

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,                     :  
   :  
                          Plaintiff,               :  
   :  
                          v.                        :  
   :  
ALSHAREEF HARRIS,                           :  
   :  
                          Defendant.             :

Criminal Action No. 03-06-JJF

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Colm F. Connolly, Esquire, United States Attorney, and Richard G. Andrews, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Eleni Kousoulis, Esquire, Assistant Federal Public Defender, FEDERAL PUBLIC DEFENDER'S OFFICE, Wilmington, Delaware. Attorney for Defendant.

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**MEMORANDUM OPINION**

July 14, 2003  
Wilmington, Delaware

**FARNAN, District Judge.**

Presently before the Court is Defendant Alshareef Harris' Motion to Suppress Evidence and Statements (D.I. 12). For the reasons discussed below, the Court will deny the Motion.

**INTRODUCTION**

On February 11, 2003, Defendant Alshareef Harris was indicted on one count of possession of a firearm by a felon, in violation 18 U.S.C. § 922(g)(1) and 924(a)(2). On April 17, 2003, Mr. Harris moved, pursuant to the Fourth and Fifth Amendments of the United States Constitution, to suppress any evidence directly or indirectly derived from the search of 426 North Street, Seaford, Delaware, on January 9, 2003.

The Court held a hearing on the Motion to Suppress (D.I. 12) on May 8, 2003, and ordered the parties to submit letter briefs with proposed findings of fact and conclusions of law. This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law regarding the instant Motion (D.I. 12).

**FINDINGS OF FACT**

1. On January 9, 2003, at approximately 10:50 p.m., Senior Probation and Parole Officer Mark Dawson ("Officer Dawson") of the Delaware Department of Corrections and Corporal Rodney Layfield ("Cpl. Layfield") of the Delaware State Police

(collectively, the "Officers")<sup>1</sup> were at 426 North Street in Seaford, Delaware to conduct a curfew check on probationer Shmaar Harris. Tr. 2-4.<sup>2</sup>

2. While standing on the front porch and preparing to knock on the front door at 426 North Street, the Officers could see through the windows that there were people inside. Officer Dawson knocked on the front door and saw Shmaar Harris get up from the couch and walk toward the door. Tr. 4.

3. When Shmaar Harris opened the door, Officer Dawson identified himself as a Probation and Parole Officer and told Shmaar Harris that he was there to do a curfew check. Tr. 4-5.

4. Upon entering the living room of the residence, the Officers initially saw, in addition to Shmaar Harris, a black male seated on the couch and a white male standing next to the couch. Tr. 5.

5. Officer Dawson noticed that the individuals in the room were acting nervously, i.e., their hands were shaking, their eyes

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<sup>1</sup> The Officers are both assigned to the Governor's Task Force ("GTF"), which is a partnership between Probation and Parole ("P&P") and the Delaware State Police ("DSP"). When DSP Officers assigned to the GTF accompany P&P Officers to conduct curfew checks, the DSP Officers provides security for the P&P Officers and conduct any arrests that need to be made or process any evidence that is found; however, the P&P Officers conduct all administrative searches. Tr. 36-37.

<sup>2</sup> Transcript of the May 8, 2003, Suppression Hearing (D.I. 14). Unless otherwise noted, transcript citations at the end of a numbered paragraph are for the entire numbered paragraph.

were darting around, and there was a shakiness in their voice when they spoke. Tr. 5. Cpl. Layfield noted that the white male's hands were violently shaking and that everyone in the room was talking at the same time. Tr. 39.

6. Just after the Officers entered the house, a black female, who was later identified as Shmaar Harris' mother, walked from the kitchen, located in the back corner of the two-story cottage-style house, into the living room. Tr. 6, 7.

7. At that point, Officer Dawson, out of concern for his own safety, conducted a pat-down search of Shmaar Harris to ensure that he did not have any weapons on him. Officer Dawson then began discussing probation issues with Shmaar Harris. Tr. 6-7.

8. While Officer Dawson spoke with Shmaar Harris, Cpl. Layfield asked the white male if he had any weapons, and he said no. Cpl. Layfield then asked the white male if he had any identification, and he again said no and pointed at the black female and said he was with her. Cpl. Layfield approached the white male, who reached in his back pocket and pulled out his wallet. As the wallet opened, Cpl. Layfield clearly saw the white male's identification. Cpl. Layfield asked the white male why he had said that he did not have any identification, and the white male turned to the black female and began talking loudly. At that point, Cpl. Layfield called for backup on the radio,

handcuffed the white male, and walked him towards the front door. Tr. 39-40.

9. After Cpl. Layfield walked the white male to the front porch, the white male advised Cpl. Layfield that he was at the house to buy crack cocaine. The white male stated that he had given the money to the black female and that he believed that Shmaar Harris was going to be providing him with the crack cocaine; however, the Officers had knocked on the door before the white male received the crack cocaine. Tr. 40.

10. Cpl. Layfield then went back into the house and informed Officer Dawson that everyone in the house should be handcuffed for officer safety reasons. Officer Dawson handcuffed Shmaar Harris, and Cpl. Lineweaver, who arrived in response to Cpl. Layfield's call for backup, handcuffed the black male on the couch. Tr. 40-41.

11. Officer Dawson then walked towards the kitchen with his head down while Cpl. Layfield whispered in his ear that the white male was in the process of buying crack cocaine when the Officers had arrived. While looking down, Officer Dawson noticed a white clear plastic bag on the floor next to the trash can that contained an off-white, chunky substance similar in appearance to crack cocaine. Tr. 8-9. Officer Dawson pointed out the bag to Cpl. Layfield, who agreed that the bag appeared to contain crack cocaine. Tr. 41, 43-44.

12. At that point, based on the nervous demeanor of the occupants of the house, the white male's statement that he was present to buy crack cocaine, and the Officers' discovery of what appeared be a bag of crack cocaine, Officer Dawson decided to conduct an administrative search of the residence. Tr. 12-13.

13. Officer Dawson first searched Shmaar Harris' person and discovered no contraband but did find approximately \$200 in his pocket. Officer Dawson then asked Shmaar Harris if there was anyone else in the house, and Shmaar Harris replied that his two sisters and his brother were upstairs. Tr. 13-14.

14. At that point, Alshareef Harris, Shmaar Harris' brother, came down the steps. Officer Dawson handcuffed Alshareef Harris and informed him that he was being detained while an administrative search of the house was conducted. Officer Dawson asked Alshareef Harris if he was on probation, and Alshareef Harris said that he was on level three probation. Officer Dawson then asked Alshareef Harris where he lived, and Alshareef Harris replied that he lived in the house and that his bedroom was upstairs. Tr. 14-16.

15. Officer Dawson decided to extend the scope of his administrative search to include Alshareef Harris and his bedroom. Officer Dawson searched Alshareef Harris' person and found no contraband. Officer Dawson then placed Alshareef Harris on the couch and went upstairs with Shmaar Harris to unlock the

bedroom door of the two younger sisters. Tr. 17-18. On the upper level of the house, there were two bedrooms and one bathroom. While at the sister's bedroom door with Shmaar Harris, Officer Dawson asked whose bedroom was across the hall, and Shmaar Harris said that it was Alshareef Harris' bedroom. Tr. 17-18.

16. After bringing Shmaar Harris and the two girls downstairs, Officer Dawson went upstairs and began searching Alshareef Harris' bedroom. In the bedroom, Officer Dawson found a wallet containing Alshareef Harris' identification. Also, underneath the computer, Officer Dawson found a key to a safe. After further searching, Officer Dawson found a safe, opened it with the key, and discovered a .25 caliber Raven semiautomatic handgun, a handgun magazine case, and a black Tanita digital scale. Tr. 19-20.

#### **CONCLUSIONS OF LAW**

1. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV.

2. "A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable.'" Griffin v. Wisconsin, 483 U.S. 868, 872 (1987).

3. However, "[a] State's operation of a probation system

... presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements." Id. at 873-74.

4. Accordingly, probation officers may search a probationer's residence based on a reasonable suspicion that the probationer is engaged in criminal activity therein. United States v. Knights, 534 U.S. 112 (2001); Griffin v. Wisconsin, 483 U.S. 868 (1987); United States v. Baker, 221 F.3d 438 (3d Cir. 2000); United States v. Hill, 967 F.2d 902 (3d Cir. 1992).

5. The United States Supreme Court has noted that "the concept of reasonable suspicion is somewhat abstract." United States v. Arvizu, 534 U.S. 266, 274 (2002). "While 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification...." Illinois v. Wardlow, 528 U.S. 119, 123 (2000).

6. Additionally, "[r]easonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors--quantity and quality--are considered in the totality of the circumstances--the whole picture that must be taken into account when evaluating whether there is reasonable suspicion." Alabama v. White, 496 U.S. 325, 329 (1990) (internal citations and



quotation marks omitted).

7. Generally, for a suspicion to be reasonable, an officer must be able to articulate specific facts that support the suspicion and thus justify the intrusion. Terry v. Ohio, 392 U.S. 1, 21 (1968). "Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches." Id. at 22.

8. In evaluating whether a particular search was reasonable, "it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" Id. at 21-22.

9. In the instant case, the Court must determine whether, at the time of the search, Officer Dawson had a reasonable suspicion that contraband would be found in Alshareef Harris' bedroom. After reviewing the record, the Court concludes that the facts available to Officer Dawson at the time of the search were sufficient to justify an administrative search of Alshareef Harris' bedroom. The nervous demeanor of the occupants of the residence, the statement by the white male that he was present to buy crack cocaine, and the Officers' discovery of a bag of crack cocaine in plain view in a common area of the residence provides, in the Court's view, "the minimal level of objective

justification...." needed to form a reasonable suspicion that crack cocaine or other contraband could be found in the bedroom of a probationer that is present and living in the residence. Wardlow, 528 U.S. at 123. Alshareef Harris argues that there was absolutely no evidence to suggest that he had any involvement in the drug sale occurring in the house. However, the issue is whether it was reasonable to suspect evidence would be found in the place searched. In the Court's view, there is no doubt that Officer Dawson had reasonable suspicion that there was contraband in the house after finding a bag of crack cocaine on the floor of a common area. The question then was not if he could search, but where he could search. Once Officer Dawson learned that there were two probationers, who were brothers, in the house, he had no reasonable means of distinguishing between the two. In that situation, because Officer Dawson could reasonably suspect that either Alshareef or Shmaar Harris possessed crack cocaine in violation of their parole, the Court concludes that it was reasonable to search both brothers' bedrooms.

10. Alshareef Harris contends that his mere propinquity to a person suspected of selling crack cocaine does not amount to reasonable suspicion that he himself is in possession of contraband. Generally, "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." Ybarra

v. Illinois, 444 U.S. 85, 91 (1979). However, the facts of the instant case are distinguishable from those at issue in Ybarra. In Ybarra, police officers with a search warrant for a public establishment (and one if its employees) searched patrons of the establishment for simply being present and with no probable cause. Here, Officer Dawson, under a reasonable suspicion standard rather than a probable cause standard, searched Alshareef Harris' bedroom after entering the house during a drug transaction and after finding a bag of crack cocaine on the living room floor. Alshareef Harris lives in the house, was present at the time, and was related to two of the participants in the downstairs transaction. For these reasons, the Court concludes that it was not unreasonable for Officer Dawson to suspect that Alshareef Harris was in some way involved in the illegal conduct at issue or had contraband in his bedroom. Accordingly, the Court will deny Alshareef Harris' Motion to Suppress.<sup>3</sup>

### **CONCLUSION**

For the reasons discussed, Defendant Alshareef Harris' Motion to Suppress Evidence and Statements (D.I. 12) will be

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<sup>3</sup> Defendant also seeks the suppression of his statement on the sole basis that it is the product of an illegal search and thus fruit of the poisonous tree. Because the Court concludes that the administrative search was supported by reasonable suspicion and thus that the physical evidence is admissible, the fruit of the poisonous tree doctrine is inapplicable.

denied.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 03-06-JJF
	:	
ALSHAREEF HARRIS,	:	
	:	
Defendant.	:	

**ORDER**

At Wilmington this 14th day of July 2003, for the  
reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant Alshareef Harris' Motion  
To Suppress Evidence and Statements (D.I. 12) is **DENIED**.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE