

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Docket No.
	:	3:02 CR 69 (CFD)
ARTHUR PUGH	:	

RULING ON DEFENDANT’S MOTIONS TO SUPPRESS

The defendant, Arthur Pugh, is charged by an indictment with one count of possession with intent to distribute 50 grams or more of a mixture or substance containing a detectible amount of cocaine base (“crack cocaine”) in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(A)(iii), one count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1), and one count of possession of a firearm during and relating to a drug trafficking crime in violation of 18 U.S.C. § 924 (c)(1)(A)(i).

Pending are the defendant’s Motion to Suppress Evidence “obtained as a result of the search of 107 Mather Street, Hartford, Connecticut, and of his person on March 7, 2002, and any evidence derived therefrom” and Motion to Suppress Statement obtained during a custodial interrogation on March 11, 2002.

At the hearing on these motions, counsel for the government indicated that the government does not intend to use the statements that are the subject of the Motion to Suppress Statement in its case-in-chief and counsel for Pugh represented that Pugh does not plan to testify at the trial. In light of these representations, the defendant’s Motion to Suppress Statement [Doc. # 21] is DENIED, as moot, without prejudice to renewing at trial. For the following reasons, the Motion to Suppress Evidence [Doc. # 20] is DENIED.

I. Findings of Fact

The Court makes the following findings of fact based on the evidence presented at the hearing on the motion to suppress evidence:

On the evening of March 7, 2002, Sergeant Arvid Leftwich of the Hartford Police Department was conducting surveillance outside the La Mirage Café, a bar at the corner of Albany Avenue and Deerfield Street in Hartford. Sergeant Leftwich is a nineteen-year veteran of the Department, including eight years as a narcotics detective. He had previously obtained a search warrant from a Connecticut Superior Court Judge for Pugh's residence at 107 Mather Street in Hartford and was planning to execute it that evening. Leftwich was the team leader for the search that was to occur that night. The warrant authorized the search of Pugh's house for cocaine, weapons, and related items.

While conducting surveillance, Leftwich recognized Pugh going in and out of the La Mirage. Leftwich then observed a Ford Explorer pull up in front of the La Mirage. After the Explorer stopped in front of the bar, Pugh and another man walked to a white car parked nearby, opened its trunk, and then Pugh approached the Explorer. Pugh put his hand in the driver's side window. When he removed his hand from the car, he was holding a "fold" of money, which he counted and then placed in his pocket. Pugh then handed the driver of the Explorer an item. After returning briefly to the white car, Pugh gave a portion of the money to three other individuals who were in front of the La Mirage. Leftwich observed two other similar exchanges involving different vehicles and Pugh before Pugh and his companions left the La Mirage. Based on his training and experience, Leftwich believed these events constituted hand to hand illegal drug transactions by Pugh, which he believed provided probable cause to arrest Pugh.

After Pugh left the La Mirage, Leftwich radioed Hartford Police Officers and Drug

Enforcement Administration (“DEA”) Agents to arrest him for selling illegal narcotics. They stopped Pugh’s car and arrested him based on Leftwich’s observations. During the search incident to the arrest, the officers seized a set of keys from Pugh which they subsequently gave to Detective Ezekeil Laureano of the Hartford Police.

After leaving the La Mirage, Sergeant Leftwich proceeded directly to Pugh’s residence at 107 Mather Street to execute the search warrant.¹ Leftwich (with other officers) knocked on the door of Pugh’s house,² a male voice from inside asked who was at the door, and Leftwich indicated that it was the police. Pugh’s father opened the door, and Leftwich informed him he had a search warrant for the house. Pugh’s father let the police in and directed the officers to Pugh’s upstairs bedroom, which was locked. After Leftwich entered the house, Detective Laureano arrived with Pugh’s keys, which were used to unlock the padlock on Pugh’s bedroom door.³

In searching Pugh’s second floor bedroom pursuant to the search warrant, the officers found marijuana and cocaine, a scale, and plastic bags on the bed. They also saw an air conditioning unit, which was within an arm’s reach of Pugh’s bedroom window. The air conditioning unit was on a first floor roof, but placed up against Pugh’s bedroom window. Wedged between the air conditioning unit and the exterior wall of the house the officers found a bag containing crack cocaine and marijuana. Inside the air conditioner the officers discovered a handgun and ammunition. All of these items—those

¹Leftwich did not participate in the stop of Pugh’s car.

²107 Mather Street is a single family residence.

³Pugh seeks to suppress the keys because they may show Pugh’s ownership and control of the bedroom and the items that were found there. As mentioned below, Pugh’s challenge to the keys is based on his claim that probable cause did not exist for stopping his car and arresting him that night. He concedes, however, that if the car stop and arrest were appropriate, the keys were properly seized incident to the arrest.

wedged between the air conditioner and the house as well as those in the air conditioner—were within an arm’s length of the bedroom window.⁴

II. Conclusions of Law

In his Motion to Suppress Evidence, Pugh makes three arguments: 1) that his keys were improperly seized from him because there was not probable cause to arrest him⁵; 2) that the search of 107 Mather street, conducted pursuant to the search warrant, was invalid because the officers executing the warrant failed to knock and announce their presence before entering; and 3) that the scope of the search warrant did not encompass the air conditioner and the area outside Pugh’s bedroom window.⁶

A. The Officers Had Probable Cause to Arrest Pugh

An arrest without a warrant is valid if it is supported by probable cause. See Wong Sun v. United States, 371 U.S. 471, 479 (1963). Probable cause exists when the facts and circumstances within an officer’s knowledge and of which he has a reasonable trustworthy belief are sufficient in themselves to warrant a person of reasonable caution in the belief that a crime has been or is being committed. See Breniger v. United States, 338 U.S. 160, 175-176 (1949); United States v. Scopo, 19 F.3d 777 (2d. Cir. 1994). Sergeant Leftwich’s observation of three apparent drug transactions by

⁴The facts in this paragraph are undisputed.

⁵As noted above, Pugh seeks to suppress the keys because they may constitute evidence that he was in control of the second-floor bedroom. This claim is unrelated to the “knock and announce” and the “scope of the warrant” claims. The “knock and announce” claim seeks suppression of all the evidence found, while the “scope of the warrant” claim seeks suppression of the drugs, gun, and ammunition found wedged between the house and the air conditioner and inside the air conditioner.

⁶In his original motion, Pugh also objected to the search warrant having been executed “in the dark hours of the evening.” However, at the October 21, 2002 portion of the hearing, Pugh indicated that he was no longer pressing an objection to the search on that basis.

Pugh in front of the La Mirage were sufficient to warrant a person of reasonable caution to believe that a crime had been committed by Pugh. In particular, Pugh's exchange of items retrieved from the white car in exchange for cash from occupants of vehicles who briefly stopped in front of the bar was a sufficient basis for the officer's conclusion of probable cause that Pugh was selling illegal narcotics. See United States v. Caballos, 812 F.2d 42, 50 (2d Cir. 1987) (“[E]vidence must be seen and weighed . . . as understood by those versed in the field of law enforcement.”) (citations omitted). Moreover, because the arrest was supported by probable cause, the search of Pugh incident to his arrest and the seizure of his keys were also permissible. See United States v. Richard, 563 F.2d 45, 49 (2d Cir. 1977), cert denied, 435 U.S. 916 (1978) (as long as there is probable cause to arrest a suspect prior to searching him, the search is valid).⁷ After seizing the keys pursuant to the search incident to arrest,

⁷The defendant asserts that “the reason for the stop had nothing to do with probable cause based upon observations at La Mirage Café, but had everything to do with the inconvenience that would be caused by to the police officers if the three occupants of the vehicle had passed 107 Mather Street and saw a search warrant being executed.” Def.’s Proposed Findings of Fact and Conclusions of Law [Doc. # 48], at 5. In support of this assertion, the defendant notes that his vehicle was pulled over on Mather Street, near 107, rather than at some other point along the route between La Mirage and the defendant’s residence: “The path of the vehicle . . . provided the police ample opportunity to stop the occupants for an alleged drug deal well before the car reached Mather Street.” Id.

However, in light of this Court’s ruling that there was probable cause to support an arrest of the defendant based on Sergeant Leftwich’s observations, it is irrelevant whether the timing of the stop was motivated by a desire to prevent the defendant from interfering with the execution of the search warrant. As long as there is probable cause to justify a search and an arrest, it does not matter if the officers’ true intent in making the arrest or the search was motivated by other factors. See, e.g. Scott v. United States, 436 U.S. 128, 138 (1978) (“the fact that the officer does not have the state of mind which as hypothesized by the reasons which provide the legal justification for the officer’s action does not invalidate the action as long as the circumstances, viewed objectively, justify that action”); United States v. Pascarella, 84 F.3d 61, 72 (2d Cir. 1996) (“[A]s long as a valid basis for a detention and search . . . exists . . . [it] is not rendered invalid by the fact that police resort to a pretext for one purpose or another to continue that detention and search”) (citation and internal quotation marks omitted); United States v. LaVallee, 517 F.2d 750, 754 fn.5 (2d Cir. 1975) (“In view of our holding that there was probable cause to arrest [the suspect] . . . appellant’s assertion that the arrest was a mere pretext for the purpose of enabling the police to search his car for evidence relating to the . . . homicide is clearly without

the officers were permitted to use the keys to open the padlock on the bedroom door. The search warrant and the lawful search incident to arrest made that use of the keys constitutionally permissible. See United States v. Kyles, 40 F.3d 519, 523 (2d Cir. 1994) (“Officers may force open a locked door on the premises if they have probable cause to believe the objects sought are behind it.”). Accordingly, the keys were properly obtained as part of Pugh’s lawful arrest and will not be suppressed as evidence of Pugh’s control of the second-floor bedroom or for other purposes.

B. The Search Warrant for 107 Mather Street was Validly Executed

Absent exigent circumstances, police officers executing a search warrant at a private residence must knock and announce their presence before entering the residence and conducting the search. See United States v. Brown, 52 F.3d 415, 420-424 (2d Cir. 1995) (discussing the statutory and constitutional origins of the knock and announce rule and setting forth exigent circumstances that excuse compliance). See also 18 U.S.C. § 3109. No exigent circumstances existed at the time the warrant was executed here that would have excused a failure to knock and announce. However, notwithstanding the evidence presented by Pugh that the officers did not knock and announce, the Court credits the testimony of Sergeant Leftwich that he knocked at 107 Mather Street, announced his status as a police officer and the search warrant, and was allowed in by Pugh’s father. In particular, contrary to Pugh’s contention, the Court concludes that Leftwich did not use Pugh’s keys in opening the front door to the home as he did not possess them at the time of his entry. Accordingly, Leftwich fully complied with his responsibility to knock and announce prior to entering 107 Mather Street.

merit.”).

C. The Scope of the Search Warrant

Pugh argues that the items found in the air conditioning unit outside his bedroom window and wedged between that unit and the outer wall of the residence were outside the scope of the search warrant. He argues that those areas were not part of the residence described in the warrant.

“The scope of a search pursuant to a valid warrant is defined by the warrant's description of the premises and the objects of the search, and by the places in which the officers have probable cause to believe those objects may be found.” United States v. Kyles, 40 F.3d 519, 523 (2d Cir.1994) (citing Garrison, 480 U.S. at 84, 107 S.Ct. at 1016). Here, the language of the warrant authorized the officers to “enter into or upon and search the place and thing described in the foregoing affidavit and application, to wit: 107 Mather Street, Hartford, CT, described as two story, single family light blue structure located on the south side of Mather Street, with the numbers 107 clearly displayed on the front entrances.”⁸ In United States v. Ross, the Supreme Court held, regarding the lawful scope of a search, that a “lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search.” 456 U.S. 798, 820-21 (1982). Courts have interpreted the scope of a warrant that defines a residence broadly as including not just the residence itself, but also the

⁸The “objects of the search” were are described in the warrant as “Cocaine, white powder material, scrapers, packaging materials, rifles, shotguns, revolvers, semi-auto weapons, fully-auto weapons, beepers, cellular phones, telephone toll records, financial records, property or land records, rent or mortgage records, bank account passbooks and statements, receipts showing cash purchases, such as electronic equipment, including video equipment, television sets, gold and silver jewelry, which are believed to have been purchased with monies derived from the sales of narcotics and controlled substances. Proof of residence, records of sale and purchases of narcotics and controlled substances, also safety deposit box keys or records of safety deposit box rentals or storage facilities. Safes and U.S. Currency.”

land on which the residence sits as well as certain other structures on that land. For example, in United States v. Griffin, the defendant argued that evidence found in his backyard, his toolshed, and his car (parked in the driveway) should be suppressed because it did not fall within the scope of the warrant. In Griffin, the warrant was for “*the premises known as . . . 5311 East 13th Avenue, Gary, Indiana, with detached garage . . .*” 827 F.2d 1108, 1113 (7th Cir. 1987) (emphasis in original). The Seventh Circuit held that “the specific mention of the ‘house’ and the ‘garage’ does not limit the scope of the search to those specific areas, but instead makes the premises to be searched more readily identifiable.” Id. at 1113-14. Based on this reasoning, the Court upheld the search of the defendant’s yard and toolshed on the basis of the broad language of the warrant.⁹ Similarly, there is no reason in the instant case to exclude the exterior of the building from the area that could be legally searched, as nothing in the warrant’s description of the building at 107 Mather Street limited the search to only the interior of the structure. Here, the evidence was seized from the roof of the very structure described in the warrant, and it was within an arm’s reach of an interior room.¹⁰ Thus, it was within the scope of the warrant.

Even if the Court were to accept Pugh’s argument that the search outside his bedroom window

⁹The Court noted that the search of the defendant’s car pursuant to the warrant for the premises was “problematic” and that the preferred practice would be to include a description of the car in the warrant. See Griffin, 827 F.2d at 1113, fn.3. However, the Court did not address the constitutionality of the search of the car because the government did not seek to introduce evidence from that search. See id.

¹⁰As the Court finds that the evidence was seized lawfully pursuant to the warrant, the Court need not consider whether officers reasonably believed in good faith that the warrant authorized such a search pursuant to United States v. Leon, 468 U.S. 897 (1984).

was outside the express scope of the warrant, that area would fall within the residence's "curtilage."¹¹

The Supreme Court set forth the factors for determining whether an area constitutes curtilage in United States v. Dunn, 480 U.S. 294 (1987):

[W]e believe that curtilage questions should be resolved with particular reference to four factors: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

480 U.S. at 301. After considering these factors, the Court concludes that the area was within the curtilage to Pugh's home. With regard to the first two factors, as noted above, the area was immediately adjacent to Pugh's room, and actually constituted a part of the structure described in the warrant. As to the third factor, the roof was used to support an air conditioning unit obviously intended to serve the interior of the home. As to the final factor, although there is no evidence in the record that Pugh took any steps to protect the roof outside his window from public view, the area was not easily observed from the street. Ordinarily, "if the place to be searched is identified by street number, the search is not limited to the dwelling house, but may also extend to the garage and other structures deemed to be within the curtilage." Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 4.10(a) (3d ed. 1996). See, also, United States v. Gorman, 104 F.3d 272, 273 (9th Cir. 1996) (holding that the search of the yard around an immobile bus used as a residence pursuant to

¹¹Curtilage refers to the "area immediately surrounding a dwelling house" to which Fourth Amendment protection extends. Dunn, 480 U.S. at 300. The concept was first used in the common law of burglary. See id. Most cases now involving curtilage issues are in the context of warrantless searches by law enforcement officials where the claim is made that a warrant should have been obtained because the search at issue involved an area within the curtilage to a home subject to Fourth Amendment protection. However, the curtilage issue is also relevant to the scope of a warrant. See, LaFave, supra, at § 4.10(a).

a search warrant for the residence was valid); United States v. Gottschalk, 915 F.2d 1459, 1461 (10th Cir. 1990) (“A search warrant authorizing a search of a certain premises generally includes any vehicles located within its curtilage if the objects of the search might be located therein.”); United States v. Stanley, 597 F.2d 866, 869-70 (4th Cir. 1979) (holding that a search warrant for a home includes the home’s curtilage). Therefore, even if the area outside Pugh’s window was not part of the residence as defined in the search warrant, it was part of the curtilage, and as such fell within the scope of the search warrant.

The search warrant also permitted the officers to search inside the air conditioning unit. As noted above, the Supreme Court has stated that a “lawful search of fixed premises generally extends to the *entire area in which the object of the search may be found* and is not limited by the possibility that separate acts of entry or opening may be required to complete the search.” Ross, 456 U.S. at 820-821 (emphasis added). Therefore, as the nature of the items searched for (which included illegal narcotics, weapons, and jewelry) was such that they could readily be hidden in an air conditioner, the warrant to search the premises for those items authorized the search of the air conditioning unit. See also United States v. Williams, 687 F.2d 290, 293 (9th Cir. 1982) (upholding search of lunch box and noting that “it would be absurd to suggest that a warrant to search the premises could be frustrated by simply concealing the marijuana inside a closed container.”); United States v. Gentry, 642 F.2d 385, 387 (10th Cir. 1981) (upholding search of briefcase pursuant to search warrant for the premises where “[i]t [was] logical and reasonable that the drug, the object of the search, could be concealed in the briefcase situated on the premises.”); United States v. Bruckman, No. CR-90-198E, 1991 WL 255370, at *3 (Nov. 12, 1991 W.D.N.Y.) (holding that, based on Ross, “an officer searching for illegal drugs may open containers that are likely to contain those drugs.”).

Thus, because the language of the search warrant and the nature of the items searched for permitted the search of the area immediately outside Pugh's window and of the air conditioning unit found there, and because that area was within the curtilage of the structure to be searched, Pugh's motion to suppress evidence on the basis that the search exceeded the scope of the warrant is DENIED.

III. Conclusion

For the preceding reasons, the defendant's Motion to Suppress Evidence [Doc. # 20] is DENIED and the defendant's Motion to Suppress Statement [Doc. # 21] is DENIED, as moot, without prejudice to renewing at trial.

SO ORDERED this ____ day of May 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE