

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL
	:	
v.	:	NO. 04-531
	:	
LAVELLE WALKE	:	

January 10, 2005

MEMORANDUM

The Government has charged Defendant Lavelle Walke with: (1) possession with the intent to distribute approximately 802 grams of cocaine; (2) possession of a firearm in furtherance of a drug trafficking crime; and (3) possession of a firearm by a felon. 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B); 18 U.S.C. § 924(c)(1); 18 U.S.C. 922 (g)(1). These charges stem from a search of Defendant's home conducted by the Philadelphia Police on December 31, 2003. Mr. Walke has moved to suppress the physical evidence and the oral statements he made during the search. On December 17, 2004, I conducted a suppression hearing at which Police Officer James Cullen, Sergeant Robert Friel, and Defendant testified. I credit the testimony of Officer Cullen and Sergeant Friel and largely discredit the testimony of Defendant. See United States v. Yeaman, 194 F.3d 442, 456 (3d Cir. 1999). Based on my review of all the evidence presented, I make the following factual findings.

FINDINGS OF FACT

Officer Cullen has been a Philadelphia Police Officer since 1996, and has been assigned to the Narcotics Field Unit since 2000. (Affid. of Probable Cause for 7032 Cedar Ave. at ¶ 1;

N.T. at 12, 67.) He has been involved in over 600 narcotics arrests, over 1000 investigations for violations of the Controlled Substances Act, and has received specialized narcotics investigation training. (Affid. of Probable Cause for 7032 Cedar Ave. at ¶ 2; N.T. at 67.) Sergeant Friel has been a Philadelphia Police Officer since 1992, and has been assigned to the Narcotics Field Unit since 1997. (N.T. at 70.)

On December 30, 2003, Officer Cullen received information from a Confidential Informant regarding the possible purchase of cocaine. (Affid. of Probable Cause for 7032 Cedar Ave.; N.T. at 15, 67.) The Informant had previously provided the Bureau of Narcotics Investigation with reliable information regarding the sale of drugs, and had participated in controlled drug purchases that resulted in numerous arrests and the confiscation of approximately 5.2 pounds of cocaine, drug packaging, weapons, and over \$100,000 in U.S. currency. (Affid. of Probable Cause for 7032 Cedar Ave.; N.T. at 67.)

The Informant told Officer Cullen that a woman, later identified as Adrienne Muse, could obtain cocaine. The Informant also provided Officer Cullen with information regarding the then unknown woman's vehicle. (Affid. of Probable Cause for 7032 Cedar Ave.; N.T. at 15-18, 67.) Officer Cullen performed a records check on the woman's address and automobile, confirming that Adrienne Muse resided at 7022 Cedar Park Avenue, and owned a black Chevrolet SUV with Pennsylvania license plate number FHT-1959. (Affid. of Probable Cause for 7032 Cedar Ave.; N.T. at 17-18, 67.) Muse had told the Informant that she would obtain the cocaine at a house located on the same block of Cedar Avenue from a person she knew as "Ricky." (Affid. of Probable Cause for 7032 Cedar Ave.; N.T. at 15-16, 67.)

At approximately 5:00 p.m., Officer Cullen met with the Informant to prepare for a

controlled drug purchase from Muse and “Ricky.” (Affid. of Probable Cause for 7032 Cedar Ave.; N.T. at 17-18, 67.) Officer Cullen determined that the Informant was carrying no drugs or currency. (Affid. of Probable Cause for 7032 Cedar Ave.; N.T. at 16-18, 67.) Officer Cullen then provided the Informant with \$400 in bills that the Police had photocopied. (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 3; N.T. at 16, 67.)

The Officers, who were conducting surveillance of Muse’s home, saw the Informant knock on the front door and go inside 7022 Cedar Avenue. (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 3; N.T. at 16, 67.) Two minutes later, the Officers saw Muse leave her house and walk up the block to 7032 Cedar Avenue, where she was greeted by a black male who admitted her. (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 3; N.T. at 16, 67.) Muse left 7032 Cedar Avenue within two minutes and returned to her home. (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 3.; N.T. at 16, 67.) Thirty seconds later, the Informant left 7022 Cedar Avenue carrying a plastic bag containing a substance that Officer Cullen immediately field tested and determined was 14 grams of cocaine -- a determination the Police Laboratory subsequently confirmed. (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 3.; N.T. at 16-17, 67.)

Officer Cullen then determined through a check of real estate records that Lavelle Walke was the registered owner of 7032 Cedar Park Avenue. (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 8; N.T. at 17-18, 67.) Further record examination by Officer Cullen confirmed that Walke and Theodore Betheam were registered to vote at that address. The Officer’s check of Department of Motor Vehicle records confirmed that Mr. Walke

resided at 7032 Cedar Avenue. Officer Cullen performed a criminal records check revealing that Mr. Walke had previously used the alias "Ricky Walk." (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 3.; N.T. 16, 67.)

Recording all this information -- including their extensive experience and involvement in thousands of narcotics investigations and arrests -- in a probable cause affidavit, the Officers applied for a search warrant that same day: December 30, 2003. The Honorable Allan Tereshko of the Philadelphia Court of Common Pleas approved the warrant that evening. The warrant authorized the Police to conduct the search of 7032 Cedar Avenue and its contents until 8:25 p.m. on January 1, 2004. (Search Warrant and Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 3.; N.T. at 17-18, 67.)

On December 31, 2003, at approximately 7:15 a.m., Officer Cullen, Sergeant Friel, and the seven other members of the Narcotics Squad executed the search warrant at 7032 Cedar Avenue. (Affid. of Probable Cause for 7032 Cedar Ave.; Affid. attached to Criminal Compl. at ¶ 4; N.T. at 21-22, 67.) The Officers, wearing vests that clearly identified them as "Police," loudly knocked on the door and waited between 30 to 60 seconds for a response. (N.T. at 22-23, 72.) When they got no response, they used a ram to break open the door and enter the house. (N.T. at 22-23, 72.) The Officers immediately spread out to secure the premises according to predetermined assignments. (N.T. at 23.) Officers Cullen and Planita and Sergeant Friel went to a second floor room, where they saw Mr. Walke lying in a bed. (N.T. at 24.) Walke was reaching under his bed for a Taurus .38 caliber revolver loaded with six live rounds of ammunition when Officer Planita restrained him and took the weapon. (Affid. attached to Criminal Compl. at ¶ 4.; N.T. at 24, 67.) They also found a loaded 30/30 caliber rifle in the

bedroom closet. (N.T. at 26)

The Police neither abused nor threatened Defendant. Sergeant Friel advised Mr. Walke that he had the right to remain silent; that anything he said could and would be used against him in a court of law; that he had the right to an attorney; and that if he could not afford an attorney, one would be appointed for him. (N.T. at 25, 75.) Sergeant Friel also informed Defendant that he had a right not to speak to the Officers, and had a right to stop “answering our questions at any point.” (N.T. at 25, 75.) As Sergeant Friel advised him of his rights, Defendant began to cry. Sergeant Friel “asked the Defendant if he was okay, and if he understood what I was saying.” (N.T. at 75.) Defendant stated that he did understand. After informing Defendant of his rights, Sergeant Friel again asked whether Defendant understood. (N.T. at 75.) Defendant repeated that he understood his rights. (N.T. at 75.)

When Sergeant Friel concluded, Officer Cullen asked Defendant whether he wished to cooperate with the Police. (N.T. at 25.) Defendant, who fully understood his rights, was anxious to cooperate. Officer Cullen explained that if Defendant cooperated, then he would not be arrested that day, and would not be arrested during the period he helped the Police. (N.T. at 25-26, 106-109.) Defendant agreed to cooperate, and then told the Police exactly where he had secreted drugs and money throughout the house. (N.T. at 26.) With Mr. Walke’s guidance, the Police found several bags of cocaine hidden in a video machine, and a cocaine brick of approximately 690 grams hidden under another machine. (N.T. at 28.) In total, Defendant, who was not handcuffed, led the Police topointed out approximately \$2,615.00 in U.S. currency -- including the \$400 in recorded money that had been provided to the Informant, and 802 grams of cocaine. (Affid. attached to Criminal Compl. at ¶ 4; N.T. at 26-29, 67.)

The warrant authorized the Police to search Defendant's entire home and its contents for drugs and related contraband. The Officers who raided Defendant's home were well experienced in conducting searches for illegal drugs, drug money, and weapons. In accordance with that experience, the Police would have searched for and found the drugs, guns, and money hidden in 7032 Cedar Avenue even if Defendant had not told the Police where he had hidden them. (N.T. at 26, 28-29.)

The Police did not arrest Mr. Walke on the day of the search. Rather, after determining that Defendant was not dangerously violent, the Police obtained the approval of the District Attorney's Office to allow Defendant to remain at liberty while he cooperated with the Police in their drug investigations. (N.T. 104) The Police arrested Defendant on January 3, 2004, after they determined that Defendant could not assist them in their investigations. (N.T. 55)

CONCLUSIONS OF LAW

Defendant contends that the search warrant for his home does not pass muster under the Fourth Amendment. He also contends that the Police entered his home illegally, and that his statements respecting the location of the hidden drugs and contraband were obtained involuntarily. I deny Defendant's Motion. It is apparent that the Police acted appropriately and with great care respecting their arrest of Defendant, their search of his home, and their treatment of Mr. Walke.

Adequacy of the Search Warrant

Defendant contends that the search warrant for his home and the supporting affidavit were facially insufficient. Courts will uphold a search warrant if the judicial officer who issued

the warrant had a “substantial basis” for concluding that probable cause existed for the search. See United States v. Conley, 4 F.3d 1200, 1205 (3d Cir. 1993). Probable cause exists if, based on the totality of the circumstances, there is “a fair probability that contraband or evidence of a crime will be found in a particular place.” See Illinois v. Gates, 462 U.S. 213, 238 (1983); see also United States v. Schecter, 717 F.2d 864, 869 (3d Cir. 1983). Thus, the reviewing court should “uphold the warrant as long as there is substantial basis for a fair probability that evidence will be found.” See Conley 4 F.3d at 1205.

As described earlier, the affidavit of probable cause provided abundant grounds for the Police to believe that they would find drug-trafficking evidence inside 7032 Cedar Avenue: an Informant, whose prior cooperation with the Police confirmed his reliability, told the Police that Muse would obtain cocaine from “Ricky,” who also lived on the 7000 block of Cedar Avenue. Having searched the Informant, the Police gave him \$400 in recorded bills with which to buy the cocaine. The Police watched the Informant enter the home of Muse, who then walked to Defendant’s home, entered, and returned to the Informant with 14 grams of cocaine. Municipal and DMV records confirmed that Defendant owned 7032 Cedar Avenue. Criminal records confirmed that Defendant used “Ricky” as an alias. In addition, the warrant described the extensive experience and training of the affiant, Officer Cullen, in the areas of law enforcement and illegal drug investigations.

This information certainly provided the Police with probable cause to search 7032 Cedar Avenue. See Aquilar v. Texas, 378 U.S. 108 (1964) (a search warrant must set forth “adequate indicia of the confidential informant’s reliability and basis for knowledge”); see also United States v. Ferrone, 438 F.2d 381, 388 (3d Cir. 1971) (a search warrant must set forth the reasons

that the police officers believe there is probable cause that evidence of a crime will be found at that location).

Defendant also contends that the search warrant for his home was based on “stale information.” (Motion to Suppress at ¶ 4.) The events on which the search warrant was based -- the Informant’s discussion with the Police, his purchase of cocaine from Muse, the Police surveillance, the extensive backgrounds and records checks -- all occurred on December 30, 2003, the same day the warrant issued. The Police concluded the search the next day, December 31st, at 8:15 a.m. In these circumstances, Defendant’s “staleness” contention is frivolous. See United States v. Bedford, 519 F.2d 650, 655 (3d Cir. 1975).

Manner of Entry

At the suppression hearing, Defendant claimed that the Officers violated the “Knock and Announce” Rule when they entered his home. “The ‘knock and announce rule’ is rooted in the Fourth Amendment’s protection against unreasonable search and seizures, and requires police officers to knock on the door and announce their purpose and identity before attempting a forcible entry of a dwelling.” Wilson v. Arkansas, 514 U.S. 927, 931 (1995); see also Kornegay v. Cottingham, 120 F.3d 392, 396 (3d Cir. 1997); Buss v. Quigg, CIV. No. 01- 3908, 2002 U.S. Dist. LEXIS 19324, *8 (E.D. Pa. October 9, 2002). I must determine whether the Officers waited a “reasonable time” before attempting a forcible entry in the context of the circumstances at the time of the search. See United States v. Banks, 540 U.S. 31, 41 (2003). Courts have routinely upheld delays of only 10 to 40 seconds in drug cases. See Banks, 540 U.S. at 38 (15-20 seconds); see also United States v. Antrim, 389 F.3d 276 (1st Cir. 2004) (25-40 seconds); United

States v. Pinson, 321 F.3d 558, 566 (6th Cir. 2003) (15 second delay); United States v. Jones, 133 F.3d 358, 361-62 (5th Cir. 1998) (15-20 seconds); United States v. Bonner, 874 F.2d 822, 825 (D.C. Cir. 1989) (10 seconds).

Here, the Police were investigating a drug crime, and did not know how many people were in 7032 Cedar Avenue, or if the occupants were armed. The Officers, wearing vests that clearly identified them as “Police,” knocked on Defendant’s door and announced themselves as Police Officers several times. (N.T. at 22-23, 72.) The Officers then waited between 30 to 60 seconds for a response. (N.T. at 22-23, 72.) Only after Defendant failed to respond did the Officers forcibly enter. (N.T. at 22-23, 72.) In these circumstances, I conclude that the Police properly knocked and announced their presence and waited a reasonable amount of time before entering Defendant’s home. See Banks, 540 U.S. at 41.

Voluntariness of Confession

Defendant also contends that the Police violated his Fifth Amendment rights when they obtained from him oral statements indicating where he had hidden cocaine and money in his home. Defendant complains that the Police “did not properly warn him of his rights under Miranda v. Arizona,” and that he “did not understand those rights.” (Motion to Suppress at ¶ 6.) Defendant also contends that his Fifth Amendment rights were violated because the Officers did not explicitly ask whether he waived his rights before asking him if he wished to cooperate.

The Government “must prove by a preponderance of the evidence that [the defendant’s] confession . . . was voluntary.” Nix v. Williams, 467 U.S. 431, 444 n. 5 (1984). A confession is voluntary if [the defendant] knowingly and intelligently waives his rights after a proper

administration of Miranda warnings. See United States v. Tyler, 164 F.3d 150, 158 (3d Cir. 1998). Under Miranda, the Police were obligated to inform Defendant that: (1) he had the right to remain silent; (2) the Police could use any statement he made against him; (3) he had the right to advice of counsel; (4) he would be provided with a lawyer if he could not afford one; and (5) if he chose to make any statement, he could stop at any time. See Miranda v. Arizona, 384 U.S. 436, 444-445 (1966). I have found that Sergeant Friel informed Defendant of exactly these rights, and that Defendant understood them. Accordingly, Defendant's contentions that the Police didn't adequately warn him, and that he didn't understand the warnings are meritless. See United States v. Cruz, 910 F.2d 1072, 1078 (3d Cir. 1990).

I also conclude that Defendant knowingly and freely waived his rights. Although the Police did not explicitly ask Defendant whether he waived the rights, Officer Cullen did ask, after Sergeant Friel warned Defendant of his rights, if Defendant wished to cooperate. Defendant indicated that he was anxious to cooperate with the Police. In these circumstances, I do not believe that the Officers' failure to ask Defendant explicitly if he "waived his rights" rendered his statements involuntary. "[A] waiver of Miranda rights need not be explicit but may be inferred from [the defendant's] actions and words" Tague v. Louisiana, 444 U.S. 469, 471 (1980) (citing North Carolina v. Butler, 441 U.S. 369, 373 (1979)). On the contrary, courts generally find an implicit waiver if a suspect speaks to the Police after being advised of his rights. See, e.g., United States v. Ogden, 572 F.2d 501 (5th Cir. 1978), cert. denied 439 U.S. 979 (1978). If, under the totality of the circumstances, it is clear that Defendant's statements were a product of "free and deliberate choice" rather than "intimidation, coercion, and deception," then the statements may be deemed voluntarily. See Colorado v. Spring, 479 U.S. 564, 578 (1987); see

also Haynes v. Washington, 373 U.S. 503, 513-14 (1963); United States v. Garcia, CRIM No. 93-0013-01, 1993 U.S. Dist. LEXIS 12364 (E.D. Pa. Sept. 8, 1993).

Under the totality of circumstances, presented here, I conclude that the statements Defendant made during the search of his home on December 31, 2003, were voluntary. Accordingly, the statements are admissible, as is the physical evidence the Police obtained at Defendant's direction. Furthermore, the warrant authorized the Police to search Defendant's entire home and contents. As I have found, the Police would inevitably have discovered the drugs and money Defendant hid even without Defendant's cooperation. Accordingly, the physical evidence would be admissible regardless of the voluntariness of Defendant's oral statements. See Murray v. United States, 487 U.S. 533, 539 (1988); see also United States v. Pelullo, 173 F.3d 131, 136 (3d Cir. 1999).

Defendant's Motion to Suppress is denied. An appropriate Order follows.

BY THE COURT.

Paul S. Diamond, J.

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ORDER

AND NOW, this 10th day of January, 2005, upon consideration of the Motion of Defendant for Suppression of Physical Evidence and for Suppression of Statements, the Response of the Government, and any related submissions, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT.

Paul S. Diamond, J.