

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:03 CR 220 CDP  
 ) DDN  
 LEON FINCH, )  
 )  
 )  
 )  
 Defendant. )

**ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

This action is before the court upon the pretrial motions of the parties which were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b). An evidentiary hearing was held on July 23, 2003.

Defendant Leon Finch has moved to suppress evidence and statements. (Doc. 17.)

From the evidence adduced at the hearing, the undersigned makes the following findings of fact and conclusions of law:

**FACTS**

1. At 3:00 p.m. on July 23, 2002, a confidential informant (CI) telephoned St. Louis Metropolitan Police Detective Bobby Garrett and told him that within an hour to an hour and a half earlier the CI had seen a black male by the name of "Leon" selling crack cocaine and marijuana from the front porch and residence at 1370 Granville Place in the City of St. Louis. The CI physically described "Leon" and said that Leon kept a firearm either on his person or nearby. Det. Garrett considered the CI reliable because the CI had provided information to him over the past eight years that resulted in over sixteen arrests.

2. Soon after receiving this information Dets. Garrett and Corby Campbell, in plain clothes, drove an unmarked police vehicle to the area of 1370 Granville Place to see whether the CI was correct. After the officers were stationed for surveillance, at approximately 3:35 p.m. they saw a black man, who resembled the "Leon" described by the CI, on the porch of 1370 Granville Place. Within fifteen minutes they also saw four unknown persons walk up to the porch and visit with Leon long enough for the visitor to hand to Leon what appeared to be currency and to receive something which Leon took from a blue Crown Royal whiskey bag. The visitors then walked away from the residence. From his fourteen years in law enforcement, including twelve investigating narcotics trafficking, Det. Garrett believed that these were illegal drug transactions. Det. Garrett radioed his supervisor, Sgt. Terry James, this information. Sgt. James and four more detectives came to the area in two police vehicles.

3. While Leon was still outside the residence, the officers pulled up in front of 1370 Granville Place and exited their vehicles. Det. Garrett saw that Leon, later identified as Leon Finch, appeared to recognize them as police, turned, and walked toward the residence with the blue bag in his hand. Det. Garrett shouted, "Police Officers. Stop." Finch ran into the residence, dropping the blue Crown Royal bag on the front porch. The officers gave chase. Det. Garrett seized the blue bag from the floor of the front porch<sup>1</sup> and all the officers entered the residence after Leon. The officers caught up with Finch in the residence's inside foyer.

4. As soon as Det. Garrett entered the residence he advised Finch that he was under arrest for violating the Missouri state drug laws. Finch was handcuffed and Garrett orally advised him of his constitutional rights to counsel and to remain silent, reading

---

<sup>1</sup>Det. Garrett looked inside the bag and saw plastic bags of material that looked to him like marijuana and crack cocaine.

them from a preprinted card. Finch waived his rights and, when shown the items found inside the blue bag, stated that they were not his and that the officers were "trying to case" him. Sgt. James then asked him whether he had any drugs or guns in the house. Finch said he did not.

5. Next, Sgt. James asked Finch whether the police could search the residence; Finch answered in the affirmative. At that time, Sgt. James gave Finch a written consent-to-search form, Government Exhibit 1. The form was filled out, read by Finch, and then signed by him; thus, he consented to the officers' searching the residence. The officers did so and within five minutes Det. Garrett removed an air-vent cover from the living room floor and looked into the duct. He found an unlocked, grey metal box which he opened. Inside the box he found a revolver and a pocket scale, both of which he recognized as implements used in illegal drug dealing. No other items were seized from the residence. The search lasted approximately 20 minutes.

6. When the search was finished, the officers took Finch to the police station, where an inventory search of his person was conducted; \$185 was seized from his pants pocket. The money was believed to be drug-trafficking proceeds. Also, Det. Garrett asked Finch whether he remembered that he had been advised of his Miranda<sup>2</sup> rights at the residence. After stating that he remembered and agreeing to cooperate with the officers, Finch provided information.

7. Finch was born on September 13, 1957. He had been arrested five times prior to 2002 on charges including robbery, assault, and possession of a firearm by a convicted felon; three times he was sentenced to terms of imprisonment. As to his

---

<sup>2</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

education, he "dropped out" of school while in the tenth grade, but earned a GED while in the custody of the Bureau of Prisons.<sup>3</sup>

### **DISCUSSION**

The motion to suppress evidence and statements should be denied. When the officers drove their vehicles up in front of 1370 Granville Place, they had probable cause to arrest defendant without a warrant. Probable cause to arrest without a warrant exists when the police have information sufficient to cause a reasonable person to believe that the defendant had committed an offense or was then committing an offense. Beck v. Ohio, 379 U.S. 89, 91 (1964). This determination does not depend on individual facts, but depends on the cumulative effect of the facts in the totality of the circumstances. United States v. Brown, 49 F.3d 1346, 1349 (8th Cir. 1995).

The information provided by a reliable informant can establish probable cause to arrest. An informant's reliability, veracity, and basis of knowledge are relevant considerations--but not independent, essential elements--in finding probable cause. Illinois v. Gates, 462 U.S. 213, 230, 237-39 (1983); United States v. Robertson, 39 F.3d 891, 893 (8th Cir. 1994). Such factors as the detail of information, the extent of independent corroboration, and the number of informants who provide consistent information are relevant to the reliability of the information. United States v. Oropesa, 316 F.3d 762, 767 (8th Cir. 2003); United States v. LaMorie, 100 F.3d 547 (8th Cir. 1996). The basis of an informant's

---

<sup>3</sup>During the evidentiary hearing, the government asked the court to take judicial notice of Finch's prior arrests and convictions as set forth in the Pretrial Services Report (PSR). Finch indicated that he had no objection to the taking of judicial notice of "whatever the court deems appropriate." Accordingly, judicial notice is taken of the portions of the PSR that provide the facts of paragraph 7. See Fed. R. Evid. 201 (judicial notice of adjudicative facts).

knowledge is not a prerequisite for probable cause, if probable cause is otherwise established and supported by other indicia of reliability. See United States v. Koons, 300 F.3d 985, 991 (8th Cir. 2002) (informant's tip that defendant was dealing in drugs was independently corroborated by evidence of marijuana stems found in defendant's trash); United States v. Olson, 21 F.3d 847, 850 (8th Cir.) (vents on the roof and abnormally high electricity bills corroborated informant's report of indoor marijuana growing), cert. denied, 513 U.S. 888 (1994); United States v. Anderson, 933 F.2d 612, 615 (8th Cir. 1991).

In this case, the CI's information was specific and timely. Within the past hour and a half, the CI claimed to have seen a black male, named "Leon," who kept a firearm nearby, selling crack cocaine and marijuana from his porch and residence at a specific location, 1370 Granville Place. This information was independently corroborated by the police surveillance and observation of four short-term visitors to Leon who transacted hand-to-hand exchanges with them, which looked like illegal drug transactions to Det. Garrett. See United States v. Sherrill, 27 F.3d 344, 347 (8th Cir.) (holding warrantless arrest supported by probable cause where police relied on information from a reliable informant that defendant had been dealing crack from his residence and police corroborated the tip through surveillance), cert. denied, 513 U.S. 1048 (1994).

Defendant's flight from the police added significant corroborating information to the probable cause to arrest. See United States v. Wallace, 102 F.3d 346, 348 (8th Cir. 1996) (citing United States v. Wadley, 59 F.3d 510, 512-13 (5th Cir. 1995), for the proposition that in combination with other facts and circumstances, flight from an officer may create probable cause where the defendant persistently attempts to evade capture).

The blue Crown Royal bag and its apparently contraband contents should not be suppressed, because defendant abandoned it and thereby gave up his standing to complain about it being seized by the police. A person fleeing police capture, who throws away an object, which the police find and seize, has abandoned any protectible Fourth Amendment interest in the item. California v. Hodari D., 499 U.S. 621, 629 (1991); Abel v. United States, 362 U.S. 217, 241 (1960); United States v. Segars, 31 F.3d 655, 658 (8th Cir. 1994), cert. denied, 513 U.S. 1099 (1995); see also United States v. Koessel, 706 F.2d 271, 274 (8th Cir. 1983) (defendant abandoned drugs by throwing packet out of the car door). Defendant's later denial inside the residence that the drugs were his provides further support for the conclusion that an abandonment had occurred. See United States v. Tugwell, 125 F.3d 600, 602 (8th Cir. 1997) (whether an abandonment has occurred is determined on the basis of the objective facts available to the investigating officers), cert. denied, 522 U.S. 1061 (1998).

Defendant's arrest occurred inside the residence when the officers caught up with him. See Hodari D., 499 U.S. at 629. Generally, the reasonableness requirement of the Fourth Amendment obligates law enforcement officers to obtain a judicial warrant, issued only on a showing of probable cause, before conducting a search. Shade v. City of Farmington, Minn., 309 F.3d 1054, 1059 (8th Cir. 2002). An exception to this rule exists when the police are in hot pursuit of a suspect with probable cause to arrest him, as was the case here. United States v. Santana, 427 U.S. 38, 42-43 (1976); United States v. Selberg, 630 F.2d 1292, 1294 (8th Cir. 1980). Therefore, defendant's warrantless arrest inside his residence was lawful.

Defendant's statements, both in his residence and at the police station, should not be suppressed. The government has the burden of establishing the admissibility of a defendant's pretrial

statements by a preponderance of the evidence. See Colorado v. Connelly, 479 U.S. 157, 169-70 (1986); United States v. Astello, 241 F.3d 965, 966 (8th Cir.), cert. denied, 533 U.S. 962 (2001). The Fifth Amendment privilege against self-incrimination protects an individual from being compelled by governmental action to be a witness against himself. Malloy v. Hogan, 378 U.S. 1, 8 (1964). A waiver of this privilege against self-incrimination is valid only if it is made voluntarily, knowingly, and intelligently. Miranda, 384 U.S. at 444. A waiver is knowing if it is "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine, 475 U.S. 412, 421 (1986). It is voluntary if it is "the product of a free and deliberate choice rather than intimidation, coercion, or deception." Id.

The government has shown that defendant was advised of--and waived--his Miranda rights prior to questioning; defendant clearly was advised of and waived his rights inside the residence and at the police station he confirmed that he had been advised of his rights. No credible evidence indicated that any officer intimidated, deceived, or coerced defendant into making any statements. See Berkemer v. McCarty, 468 U.S. 420, 433 n.20 (1984) ("[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare."). Moreover, defendant, who was born in 1957, was of mature age when he was arrested in 2002; he has significant experience with the criminal justice system; his educational level includes a GED; and nothing in the record suggests that he was under the influence of alcohol or narcotics when he waived his rights. See United States v. Becker, 333 F.3d 858, 861 (8th Cir. 2003) (factors relevant to voluntariness). Thus, the undersigned

concludes that defendant was advised of, understood, and waived Miranda rights on July 23, 2002.

Finally, the grey box and its contents should not be suppressed. Defendant orally and in writing consented to the search of his residence, thus waiving his Fourth Amendment right to a warrant. See United States v. Matlock, 415 U.S. 164, 171 (1974); United States v. Moreno, 280 F.3d 898, 901 (8th Cir. 2002).

Whereupon,

**IT IS HEREBY RECOMMENDED** that the motion of defendant to suppress evidence and statements (Doc. 17) be denied.

The parties are advised they have ten (10) days to file written objections to this Order and Recommendation. The failure to file objections may result in a waiver of the right to appeal issues of fact.

**ORDER SETTING TRIAL DATE**

As directed by the District Judge,

**IT IS HEREBY ORDERED** that this matter is set for a jury trial on the docket commencing **August 25, 2003, at 9:00 a.m.**

---

**DAVID D. NOCE**  
**UNITED STATES MAGISTRATE JUDGE**

Signed this \_\_\_\_\_ day of July, 2003.