

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

LAZZERICK ALEXANDER,

07-CR-071-S

Defendant.

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Defendant Lazzerick Alexander was indicted on the charge of unlawful transport of firearms and ammunition. On August 29, 2007 defendant pled guilty to the charge.

Defendant reserved his right to pursue his motion to suppress evidence. His motion is based on his claim that the police did not obtain valid consent to perform either the car search or the apartment search that led to the discovery of the two handguns.

On August 7, 2007 the Honorable Stephen L. Crocker, United States Magistrate Judge, held an evidentiary hearing. On August 24, 2007 he recommended that defendant's motion to suppress evidence be denied.

On September 4, 2007 defendant's counsel filed objections to the report and recommendation. Specifically, he objects to the Magistrate Judge's findings that defendant Alexander had no expectation of privacy in the car, the repo-man did not have apparent authority to consent to the search of the vehicle, and that the search of the apartment was illegal. These objections concerning the

search of the vehicle were also raised in a letter that the defendant himself submitted on August 31, 2007.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews the report and recommendation and finds as follows.

#### FACTS

In April 2007, Vaniece Harris rented Apt. 1 at the Country Meadows apartment complex at 6804 Schroeder Road. Shortly thereafter the complex's manager, Kathy Bastien, received an extraordinarily detailed anonymous telephonic tip regarding an alleged drug dealer staying with Harris. The informant told Bastien that a man named Lazzerick Alexander, date of birth 10/24/80, was living with Vaniece at 6804 Schroeder Road, Apt. 1. The informant described Alexander and the vehicle that he drove, a white Buick Riviera with "nice wheels" and Wisconsin license plate 909-LRS. The informant told Bastien that Alexander was selling crack cocaine out of Apt. 1 and kept a gun hidden under the hood of his car. The informant also reported that Alexander had been involved in a stabbing in Madison and currently was on probation or parole.

Bastien promptly conveyed all of this information to the Madison Police Department. Police Officer Daniel Nale confirmed Alexander's vital statistics and learned that Alexander's probation officer had issued a warrant for his arrest. Based on this, Officer Nale began preparing to locate and arrest Alexander.

On April 16, 2007 Officer Nale overheard a police radio broadcast assigning two officers to accompany an automobile repossession company employee (a "repo man") to 6804 Schroeder Road as security during

repossession of a white Buick Riviera. The repossession company (Ultimate Repossessors, Inc., or URI) had requested assistance because the woman to whom the Riviera was titled (Jennifer Fjelstad) had warned that the man who actually drove this car might react violently to a repossession attempt. Officer Nale contacted the repo man, Bryan Bowman, to advise that he expected to arrest the driver of the Riviera that evening, after which Bowman could repossess Fjelstad's car. Bowman agreed.

At about 8:15 p.m. on April 16, 2007, police officers waited for Alexander in the Country Meadows parking lot. The Riviera pulled in with a different man (Antwan Richmond) driving and Alexander in the front passenger seat. Officers stopped the car and arrested Alexander on the warrant. Alexander denied that the Riviera was his car.

Officer Nale telephoned Bowman, who was waiting at a nearby gas station. Bowman arrived, checked the Riviera's VIN against his paperwork and confirmed that this was Jennifer Fjelstad's vehicle which he was assigned to repossess. Officer Nale turned possession of the vehicle over to Bowman who consented to its search including checking under the hood. Police officers found a handbag containing a handgun under the hood of the vehicle just as the informant had predicted.

Defendant asked the officers to contact Harris in Apt. 1 to report his arrest. Several officers entered the common hallway, including Officer Jeff Felt and his K-9 partner, Gilden, a trained drug-sniffing dog, who did not alert to the doorway of Apt. 1. Officer Matt Schroedl and another officer knocked on the door. Harris answered and allowed the officers to enter. The officers reported Alexander's arrest. Then

they explained that they had received a tip that Alexander was cooking and selling crack from the apartment and that he possessed a firearm. They asked her permission to search the apartment but she declined. The officers accepted this answer and left.

About the same time Gilden alerted strongly to the doorway of Apt. 1. In Officer's Felt's opinion, Gilden's alert signaled that there probably were drugs in Apt. 1. The officers returned to the parking lot to consult with their supervisor, Sergeant Linda Kosovak who decided to secure Apt. 1 in order to preserve the status quo pending a search. Sergeant Kosovak, Officer Schroedl and Officer Bernards went back into the building, knocked on the door of Apt. 1, and when Harris answered they entered without seeking her permission.

The officers advised Harris that based on the K-9 alert, along with the informant's detailed information (corroborated by recovery of the firearm from the Riviera), they believed that they had probable cause to search. Therefore, they could apply for and obtain a search warrant. In light of this, Sergeant Kosovak asked Harris if she would consent to a police search. Harris verbally consented to the search but did not agree to sign the consent form.

Sergeant Kosovak declined to search on those terms and directed Officer Schroedl to return to the police station to draft a search warrant application. The other officers remained in the apartment to prevent the destruction of evidence. Sergeant Kosovak believed that she had probable cause to search based on the informant's richly detailed tip corroborated by recovery of the firearm in the Riviera's engine compartment and Gilden's alert on Apt. 1.

After Officer Schroedl left Harris decided to consent to the search without requiring the officers to obtain a search warrant and signed the consent form. Police searched the apartment at 9:25 p.m. and discovered a second handgun.

#### MEMORANDUM

Defendant contends that the Magistrate Judge incorrectly found that defendant Alexander had no expectation of privacy in the car. He argues that he did not denounce ownership until after the car was searched. Defendant relies on a very recent opinion United States v. Ellis, No. 06-3137, slip. op at 5 (7<sup>th</sup> Cir. August 27, 2007. In Ellis the Court found as follows:

Although Ellis denied living in the home when speaking to Officers McNeil and Chu through the closed front door, the government agrees that Ellis did live in the home. He had a legitimate expectation of privacy in his home and therefore he has standing to challenge the search of his home.

Defendant's circumstances are easily distinguished from those of Ellis. At some point defendant denied owning the vehicle. But unlike Ellis defendant never showed that he owned the vehicle. The vehicle was titled to Jennifer Fjelstad which the officers knew at the time of the arrest. Defendant Alexander had no expectation of privacy in the vehicle.

Defendant also contends that the Magistrate Judge incorrectly found that Officer Nale turned the vehicle over to the repo man Bowman based upon his Order to Repossess. He argues that Nale never actually saw the Order to Repossess. Officer Nale, however, relied

on the repo man's assertion that the vehicle matched his paper work to turn the vehicle over to him. Once the vehicle was in the repo man's possession he had the authority to consent to the search which he did. His consent included looking under the hood of the vehicle. There the officers found the bag with the gun as they had been advised by the informant. The police did not violate Alexander's Fourth Amendment rights by searching the vehicle.

Defendant argues that the police officers should not have reentered the Harris apartment. The re-entry was legal. "Securing a dwelling, on the basis of probable cause, to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents." *Segura v. United States*, 468 U.S. 796, 810 (1984). Because Harris was aware that Alexander had been arrested and that the police had reason to believe he kept crack and firearms in Apt. 1, it was reasonable for the police to re-enter her apartment, with or without her permission and to remain there until they obtained their warrant.

The officers had probable cause to support the search for which they were seeking the warrant. The informant's information had been corroborated by the seizure of the handgun in the vehicle. It was, therefore, reasonable to rely on the informant's information concerning the apartment. In addition the positive alert by a trained drug dog provides probable cause for a search. *United States v. Washburn*, 383 F.3d 638, 643 (7<sup>th</sup> Cir. 2004). There is no doubt that the police would have obtained a warrant.

Prior to the officers obtaining the warrant Harris changed her mind and consented to the search. There is no evidence that this consent was the product of duress or coercion. Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). She made the choice to consent to the search of her own free will. Her consent was not tainted by the officers re-entry into her apartment which was legal. Neither did the officers use any coercive conduct to try to obtain her consent.

Defendant's Fourth Amendment rights were not violated by either the search of the Harris apartment or the search of Fjelstad's repossessed vehicle. Accordingly, the Court adopts the Magistrate's report and recommendation to deny the defendant's motion to suppress evidence. Defendant's motion to suppress evidence will be denied.

ORDER

IT IS ORDERED that the recommendation of the Magistrate Judge to deny defendant's motion to suppress evidence is ADOPTED.

IT IS FURTHER ORDERED that defendant's motion to suppress evidence is DENIED.

Entered this 5th day of September, 2007.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge