IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 17-cr-20327-JTF**
	)	
EDGAR ALLGOOD,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

Before the court by order of reference is defendant Edgar Allgood's Motion to Suppress. For the following reasons, it is recommended that the motion be granted.

I. PROPOSED FINDINGS OF FACT

On April 10, 2017, the Memphis Police Department ("MPD") learned about an anonymous "warrant tip" that had been received through the Shelby County Sheriff's Office's website regarding an individual named Edgar Allgood. (Hr'g Tr. at 14.) The anonymous tip advised that Allgood could be found at 2585 Davey Drive, Apartment 104, in Memphis, Tennessee ("Apartment 104"). (Tr. at 15.) The anonymous tip also advised that earlier that day, Allgood had tried to obtain a key for Apartment 104 from the leasing office and that Allgood was driving a gold-colored Nissan. (Id.) No additional information, such as a license plate number, was provided about the Nissan. MPD Officer James Reed verified that

Allgood had an outstanding arrest warrant for a violation of probation. (Tr. at 15.) Another Memphis Police Officer assisting with the investigation determined that Allgood was not listed as the leaseholder of the apartment. (Tr. at 15-16.) Four Memphis Police officers, including Officers Reed and Courtney Bullard, then proceeded to Apartment 104 in their squad cars. (Tr. at 17.) Officer Bullard was wearing a body camera that began recording video and audio once they arrived in the parking lot in front of Apartment 104. Although Officer Reed was also wearing a body camera, he testified at the suppression hearing that he had forgotten to activate his camera and did not turn it on until after the events in question had transpired. (Tr. at 33.)

Upon pulling into the parking lot, the officers observed that a gold Nissan was parked in front of the apartment. (Tr. at 16-17.) The officers did not run the license plate to determine who the Nissan was registered to or whether it was in any way connected to Apartment 104. Officers Bullard and Reed approached the front door of the apartment, while the two other officers went around back to secure the perimeter. (Tr. at 17.) The officers wore black vests indicating they were "Police." (Tr. at 18.) The officers' guns were not drawn. (Tr. at 17.) Officer Reed knocked on the apartment door, as Officer Bullard stood directly behind him. An eleven year old boy ("M.W.") opened the door. (Tr. at 18, 64.) Officer Reed testified that he asked M.W. if his mother was

home, to which the boy responded "No." (Tr. at 29.) Officers Reed and Bullard testified that Officer Reed then asked if Edgar Allgood was there, and M.W. responded by saying "yes" and also by "slightly nod[ding] his head." (Tr. at 18, 29, 56.) Because Officer Bullard was standing behind Officer Reed, the interaction between Officer Reed and M.W. was not captured on Officer Bullard's body camera recording. At this point, Officer Reed was standing just outside the apartment, holding the door open with his arm. (Tr. at 37.) Officer Reed testified that he was holding the door open to ensure officer safety. (Tr. at 39.)

Within ten seconds of M.W. answering the door, one of the officers called out "Ed," at which time Kiana Burnett, M.W.'s older sister and the apartment's leaseholder, appeared in the doorway. (Tr. at 18; 64.) According to the body camera recording, Officer Reed told Burnett, "We're looking for Edgar," and Burnett responded, "Who . . . Who is that?" Officer Reed indicated to M.W. and said, "He said he was here." Burnett turned to M.W. and asked him, "Who is Edgar?" and then identified herself as Kiana Burnett, which was the name the officers recognized as being the listed leaseholder. (Tr. at 38.) Officer Reed asked, "How old are you?" and Burnett responded "Twenty-two." Officer Reed asked M.W., "Little dude, how old are you?", to which he responded, "Eleven." Officer Reed then said to Burnett, "Don't get in trouble. . . He just said Edgar was here." Burnett responded by again asking, "Who

is Edgar? No one asked . . . what's his first name? [] I don't know Edgar, Edgar, Edgar who?" At this point, Officer Reed said to Burnett, "Alright, we're gonna come in and check just to see, if he's not here, we're gonna leave." Burnett testified that, because Officer Reed was in the doorway of her apartment, she did not feel that she could shut the door or tell him to leave, and that she never gave consent for the officers to enter her apartment. (Tr. at 66-67.)

Officers Reed and Bullard entered the apartment, looked around the first floor, and then went upstairs. They found Burnett's boyfriend in one of the bedrooms. (Tr. at 21.) Burnett then advised the officers that her mother's boyfriend, who Burnett knew only as "Jay," was in the other upstairs bedroom. (Tr. at 21-22.) The officers entered the second bedroom where "Jay" was located. (Tr. at 22.) The officers identified "Jay" as Edgar Allgood and asked him to get out of the bed. (Id.) As Allgood got up, the officers observed a handgun next to him on the bed. The officers immediately detained Allgood and secured the weapon.

As the officers were asking the occupants if they knew "his real name," M.W. indicated that he did not and Burnett said "Jay." At the suppression hearing, Burnett credibly testified that she and M.W. never knew Edgar Allgood by that name, that no one in the house called him by that name, and that they knew him only as "Jay." (Tr. at 61, 64-65.) She testified that "Jay" was her

mother's boyfriend and that her mother and "Jay" had been dating for about twelve years. (Tr. at 61-62.) Burnett also testified that, because her mother was incarcerated during April of 2017, "Jay" would stop by her apartment occasionally to bring food and household items, and he would also spend the night at the apartment, including on the day of his arrest. (Tr. at 63; 66.)

After Allgood was detained, Burnett provided consent, both verbally and through a signed consent to search form, to allow officers to search the room where Allgood was found for contraband. (Tr. at 22.) Officers recovered cocaine and marijuana next to the bed. (Id.) On October 25, 2017, a federal grand jury returned a one-count indictment charging Allgood with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

II. PROPOSED CONCLUSIONS OF LAW

The Fourth Amendment provides, in relevant part, that "[t]he 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. Warrantless searches are "'per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'" Arizona v. Gant, 556 U.S. 332, 338 (2009) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). Two such exceptions are relevant here: first, a warrantless search of a dwelling may be conducted "with the voluntary consent of an individual possessing

authority." Georgia v. Randolph, 547 U.S. 103, 109 (2006); see also Florida v. Jimeno, 500 U.S. 248, 250-51 (1991) ("it is no doubt reasonable for the police to conduct a search once they have been permitted to do so"). Second, "'an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.'" United States v. Pruitt, 458 F.3d 477, 482 (6th Cir. 2006) (quoting Payton v. New York, 445 U.S. 573, 603 (1980)).

Allgood asserts that his Fourth Amendment rights were violated because (1) the officers never obtained valid consent from Burnett to enter the apartment and (2) the arrest warrant did not provide the officers with authority to enter Burnett's apartment to search for him. Thus, Allgood argues that all evidence obtained as a result of the officers' unlawful entry must be suppressed. In response, the government initially asserts that Allgood lacks "standing" to challenge the validity of the entry and search. The government further argues that the officers obtained valid consent to enter and search the apartment. Alternatively, the government contends that even without Burnett's consent, the officers were authorized to enter the apartment to search for Allgood because they had an arrest warrant and had sufficient information to reasonably believe that Allgood was inside.

A. Standing

It is well-settled that an overnight guest retains a "legitimate expectation of privacy in his host's home" sufficient to establish standing to challenge the validity of a warrantless search. See Minnesota v. Olson, 495 U.S. 91, 98 (1990); United States v. Knowledge, 418 F. App'x 405, 407 (6th Cir. 2011). The evidence establishes that Allgood was, at the very least, an overnight guest. Allgood and Burnett's mother had a twelve-year relationship, he would bring food and household items to the apartment, and he would spend the night at the apartment, including on the day of his arrest. Accordingly, the court submits that Allgood has standing to challenge the officers' entry into the apartment and their subsequent search.

B. Entry Into Apartment Based on Consent

The court submits that the officers did not obtain valid consent from Burnett to enter the apartment to search for Allgood. "'[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.'" United States v. Thomas, 430 F.3d 274, 276 (6th Cir. 2005) (quoting Payton, 445 U.S. at 590); see also Welsh v. Wisconsin, 466 U.S. 740, 748 (1984) ("It is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.") (internal quotations omitted). "If an officer obtains consent to search, a warrantless search does not offend the Constitution."

United States v. Moon, 513 F.3d 527, 537 (6th Cir. 2008); see also United States v. Steagald, 451 U.S. 204, 205-06 (2000). Such consent must be voluntary and freely given. Moon, 513 F.3d at 537 (citing Bumper v. North Carolina, 391 U.S. 543, 548 (1968)). "Consent is voluntary when it is 'unequivocal, specific and intelligently given, uncontaminated by any duress or coercion.'" Id. (quoting United States v. McCaleb, 552 F.2d 717, 721 (6th Cir. 1977)). "The government is required to show something more than 'mere acquiescence' on the part of the defendant." United States v. Holland, 522 F. App'x 265, 274 (6th Cir. 2013) (quoting United States v. Canipe, 569 F.3d 597, 603 (6th Cir. 2009)).

"'[W]hether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.'" Moon, 513 F.3d at 537 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973)). Relevant circumstances may include the age, intelligence, and education of the individual, whether the individual understood that she had the right to refuse consent, the use of coercive conduct by police, and whether the individual knew her constitutional rights. United States v. Worley, 193 F.3d 380, 386 (6th Cir. 1999). Although a police officer is not required to inform an individual of her right to refuse consent, "the absence of such a warning is considered in the totality of the circumstances analysis." United Sates v. Cowan,

704 F. App'x 519, 526 (6th Cir. 2017). "The burden of proving that a search was voluntary is on the government, . . . and 'must be proved by clear and positive testimony.'" Moon, 513 F.3d at 537 (quoting United States v. Scott, 578 F.2d 1186, 1188-89 (6th Cir. 1978)). "The government's showing must satisfy the preponderance standard." Holland, 522 F. App'x at 274 (citing Worley, 193 F.3d at 385).

The court finds that none of the officers ever asked Burnett for consent to search. Instead, the officers entered the apartment only after Officer Reed *told* Burnett, "Alright, we're gonna come in and check just to see, if he's not here, we're gonna leave." Officer Reed's testimony at the suppression hearing that this statement was somehow intended as a request for consent to search is completely inconsistent with the evidence. Burnett credibly testified that she did not feel that she could shut the door or tell the officers to leave, and that she never gave consent for the officers to enter her apartment. (Tr. at 66-67.) As shown on the body camera recording, the officers walked into the apartment without making any attempt to seek permission from Burnett, who the officers knew to be the leaseholder. The government has not met its burden of showing that the officers obtained consent to enter the apartment to look for Allgood.

C. Entry Into Apartment Based on Arrest Warrant

The court must next determine whether the officers' entry into

the apartment, despite the lack of valid consent, was nevertheless reasonable because they had a warrant for Allgood's arrest. "[A]n arrest warrant is sufficient to enter a residence if the officers, by looking at common sense factors and evaluating the totality of the circumstances, establish a reasonable belief that the subject of the arrest warrant is within the residence at that time." Pruitt, 458 F.3d at 483; see also Payton, 445 U.S. at 603.

The Supreme Court has not defined what "reasonable belief" means under Payton, and the lower courts have taken different approaches in applying the standard. Compare United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005) (holding that reasonable belief is a lesser showing than probable cause); Valdez v. McPheters, 172 F.3d 1220, 1225-26 (10th Cir. 1999) (same); United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995) (same) with United States v. Vasquez-Algarin, 821 F.3d 467, 477 (3d Cir. 2016) (holding that reasonable belief is the same standard as probable cause); United States v. Barrera, 464 F.3d 496, 500-01 & n.5 (5th Cir. 2006) (same); United States v. Gorman, 314 F.3d 1105, 1110 (9th Cir. 2002) (same); see also United States v. Jackson, 576 F.3d 465, 469 (7th Cir. 2009) ("Were we to reach the issue, we might be inclined to adopt the view of the narrow majority of our sister circuits that "reasonable belief" is synonymous with probable cause."). The Sixth Circuit appeared to have endorsed the lesser reasonable belief standard in Pruitt. 458 F.3d at 484-85. But see

United States v. Jones, 641 F.2d 425, 428 (6th Cir. 1981) (summarizing Payton as holding that "an arrest warrant can authorize entry into a dwelling only where the officials executing the warrant have reasonable or probable cause to believe the person named in the warrant is within."). However, the court in United States v. Hardin, 539 F.3d 404 (6th Cir. 2008), explained that "[t]he majority's statements in Pruitt 'holding' that Payton established a lesser reasonable-belief standard were unnecessary to the outcome of the case, and when the facts of the instant case do not require resolution of the question any statement regarding the issue is simply dicta." Id. at 415 (internal quotations omitted); see also United States v. Gibbs, No. 2:10-cr-20053-JPM, 2010 WL 5156433, at *5 (W.D. Tenn. Dec. 14, 2010) (discussing the conflicting case law within the Sixth Circuit regarding the applicable standard and declining to decide which standard applies).

The court submits that it is not necessary to decide which standard applies in the present case because even under the lesser standard, the government has not established that the officers had a reasonable belief that Allgood was inside the apartment. The court must look to "common sense factors" and evaluate the "totality of the circumstances" to determine whether a reasonable belief existed. See Hardin, 539 F.3d at 420. In Hardin, the Sixth Circuit held that information provided by a confidential informant,

standing alone, did not establish that the defendant (Malik Hardin), who had an outstanding arrest warrant, was inside a third party's apartment to even the lesser standard of reasonable belief. Id. at 421. The informant had previously shown reliability to an officer by providing accurate information regarding another case. Id. The informant then told the officer that Hardin might be staying with a girlfriend at the Applewood Apartment complex; Hardin was likely driving "a tan-colored, four-door vehicle, maybe a Caprice"; the informant had purchased crack cocaine from Hardin in the past; and Hardin would be staying at the apartment with an unnamed woman. Id. at 421. However, the informant did not say when the informant had last seen Hardin or even that the informant had ever seen Hardin at the apartment. Id. Officers went to the apartment complex, identified the apartment that the informant had described, noticed a vehicle matching the description parked nearby, and learned from the apartment manager that the apartment was leased to a woman. Id. With the help of the apartment manager, the officers entered the apartment, where they found the defendant and arrested him. Id. at 408. The court found that the officers "may well have reasonably suspected that Hardin was generally living at this residence, but they had essentially *no* evidence to indicate that Hardin was *then* inside the apartment." Id. at 423-24 (emphasis in original). The court held that, because officers are required to have, at a minimum, "a reasonable belief

that the subject of the arrest warrant is within the residence *at that time*," the officers' entry violated the Fourth Amendment. Id. at 424 (emphasis added in Hardin) (quoting Pruitt, 458 F.3d at 483).

In the present case, the information known to the MPD officers prior to speaking with the occupants of Apartment 104 was even less detailed than the information that was found to be insufficient in Hardin. Unlike the informant in Hardin who had provided reliable information in the past, the tip that was sent to the Shelby County Sheriff's Office's website came from an anonymous source. See Gibbs, 2010 WL 5156433 at *5 (quoting United States v. Gay, 240 F.3d 1222, 1224 (10th Cir. 2001)) ("[A] face-to-face informant must, as a general matter, be thought more reliable than an anonymous telephone tipster, for the former runs the greater risk that he may be held accountable if his information proves false."). The tip did not describe how the source knew who Allgood was or how the source knew that Allgood had tried to get a key for the apartment and that Allgood would be driving a gold Nissan. See Hardin, 539 F.3d at 421 (noting that informant knew Hardin because the informant had purchased crack cocaine from Hardin in the past). Unlike the officers in Hardin who at least verified with the apartment manager that a woman (Germaine Reynolds) leased the apartment in question, no such verification occurred in this case, aside from the officers determining that Allgood was not the

leaseholder. See United States v. Block, 378 F. App'x 547, 550 (6th Cir. 2010) (agents confirmed with management that apartment was rented to "Miss Pleasure," which was the same last name as defendant's girlfriend with whom defendant resided at another address). Even though the officers saw a gold Nissan parked outside of Apartment 104, they did not have any information regarding who the vehicle was registered to or whether it might be connected to the apartment. See id. at 550 ("The license plate for the car that Block was purportedly driving was registered to the same woman with whom the informant said Block was staying.")

The court, having determined that the above-described information falls short of meeting the reasonable belief standard, now turns its attention to the officers' encounter with M.W. and Burnett. On the one hand, Officers Reed and Bullard both testified that Officer Reed asked M.W. if Edgar Allgood was inside and that M.W. responded by saying "yes" and nodding. A few seconds later, Officer Reed can be heard on the body camera telling Burnett that M.W. had told them that Allgood was inside. M.W. did not testify at the suppression hearing to refute the officers' account, Officer Bullard's body camera did not capture this encounter due to where he was positioned at the time, and Burnett testified that she was not present when the officers initially spoke with M.W. On the other hand, Officer Reed's questionable testimony regarding the purported consent he obtained from Burnett raises concerns

regarding his testimony about his conversation with M.W. Moreover, neither Burnett nor M.W. knew Allgood by any name other than "Jay," and after Allgood was taken into custody, M.W. can be seen on the body camera denying (credibly) that he knew Allgood's real name. If M.W. knew Allgood only as "Jay," it raises the question of why M.W. would have told the officers that Allgood was inside when he answered the door.

The court believes that it need not resolve this factual dispute because even if the court were to accept the officers' account of Officer Reed's interaction with M.W., the court nevertheless finds that the officers could not have reasonably relied on the information conveyed by M.W. It is apparent from M.W.'s demeanor and interaction (albeit limited) with the officers on the body camera recording that M.W. did not display the maturity of someone who could provide reliable information. And to the extent the officers arguably could have given some weight to what M.W. had told them, any such reliance on that information vanished when Burnett, who the officers identified as being the leaseholder of the apartment, immediately showed up at the front door and denied knowing anyone named Edgar Allgood. Burnett appeared credible on the body camera recording when she repeatedly denied knowing an Edgar Allgood, and at one point even turned to M.W. to ask him, "Who is Edgar?" The inherent unreliability of the information provided by M.W., coupled with Burnett's more reliable

information refuting any knowledge of an Edgar Allgood, rendered the officers' reliance on M.W.'s information unreasonable.

Under the totality of the circumstances, the court submits that the officers lacked a reasonable belief that Allgood was inside Apartment 104. Therefore, the government cannot rely on the arrest warrant as a basis for justifying the officers' entry into the apartment. Because the officers violated Allgood's Fourth Amendment rights by entering the apartment to search for him, all evidence obtained as a result of the unlawful entry, including the firearm and contraband, must be suppressed. Wong Sun v. United States, 371 U.S. 471, 484–85 (1963); United States v. Pearce, 531 F.3d 374, 381 (6th Cir. 2008).

III. RECOMMENDATION

For the above reasons, it is recommended that Allgood's Motion to Suppress be granted.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

August 17, 2018
Date

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.