

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
)	
v.)	CRIMINAL NO. 01-14-B-S
)	
ROSCOE B. SARGENT,)	
)	
Defendant)	

RECOMMENDED DECISION

Defendant Roscoe B. Sargent has filed a Motion to Suppress (Docket No. 4) seeking suppression of certain items of physical evidence seized from his residence pursuant to a state search warrant. An evidentiary hearing was held before me on April 25, 2001. I now recommend that the Court **DENY** the motion.

PROPOSED FINDINGS OF FACT

The sole issue raised by this motion relates to the reasonableness of the entry by police pursuant to the state search warrant. The warrant was issued by a judge of the Maine District Court on December 29, 2000, and authorized a daytime search of defendant's residence. The affiant did not seek nor did the judge specifically authorize a so-called "no-knock" execution of the warrant. The evidence at the hearing was undisputed that the officers executing the warrant knocked on the door, announced themselves to be Bangor police officers armed with a search warrant, and proceeded to make a forced entry into the apartment after approximately five seconds. Defendant

contends that the entry was the functional equivalent of a “no-knock” entry and was not reasonable.

Officer Gregg Sproul has been employed by the Bangor Police Department for twenty years. For approximately the last six years he has worked with the Bangor Police Department’s Tactical Team as a “shield man,” whose duties include making entry into apartments or other locations for purposes such as executing search warrants and subduing barricaded subjects. On December 29, 2000, at approximately 7:30 p.m., he and the other ten members of the Tactical Team were called to the Bangor police station to attend a briefing prior to the execution of the search warrant at 52 Market Street in Bangor.

The briefing was conducted by Special Agent Andrew Miller of the Maine Drug Enforcement Agency (“MDEA”). Miller informed the Tactical Team that the warrant was a daytime warrant and had to be executed prior to 9:00 p.m. He also advised the officers of the provision relating to “knock and announce” prior to making entry. He advised the Tactical Team that Roscoe Sargent, the presumed occupant of the apartment, was believed to be in possession of a large number of knives intended for use as weapons. According to the information supplied by Miller, Sargent always had a knife within arm reach and could present potential safety issues.

Special Agent Miller testified that he did not request a “no-knock” warrant from the District Court Judge because of time constraints. The warrant was issued late in the evening because the probable cause had only arisen a few hours prior to the issuance and the search had to be commenced prior to 9:00 p.m. that day. He had no other

explanation as to why the safety concerns were not brought to the attention of the issuing magistrate.

Officer Sproul was the officer in charge of making the actual initial entry into the building. He was fully informed about the extent of his authorization under the warrant and he was also cognizant of the safety concerns raised by Miller. Sproul made the decision regarding when to enter into the apartment. He knocked loudly on the door, announced that he was a Bangor Police Officer armed with a search warrant, and then, after no more than five seconds had elapsed, he motioned to another officer to make the entry and secure the premises. The door was breached with a battering ram device.

Both Roscoe Sargent and his girlfriend, Heather Fliegelman, agree with Sproul's version of events. They clearly heard him knock and announce that the officers were present and had a search warrant. Sargent says that when they knocked he hollered, "I'm opening the door," and proceeded to walk the short distance from the chair in which he had been sitting to the door, but before he could open the door it was knocked open by the police. Sproul did not hear Sargent's verbal response, but did corroborate that Sargent's position upon the police's entry into the apartment was consistent with his version of events, *i.e.*, he was right by the door and could indeed have been in the act of opening it when entry was made.

One disputed fact did arise during the course of the evidentiary hearing and that related to a statement allegedly made by Special Agent Miller after the door had been breached. According to Sargent and Fliegelman, they asked Miller why forced entry had been made and he replied, "We need to have our fun." Miller denies making any such statement. I conclude that this factual dispute is irrelevant because Miller was not the

person who actually made the entry. Moreover, he had nothing to do with Sproul's decision as to when entry should be made. Miller works with MDEA, not the Bangor Police Department, and had no supervisory authority over Sproul nor any decision making role in how the initial entry would be accomplished. Of course, the officer's actual belief about safety concerns would be a relevant factor for this court to consider in assessing the reasonableness of the entry, but this alleged statement by Miller does not shed light on the thought process of Sproul or the Tactical Team at the time of entry.

I find from the evidence presented that at the time Sproul made the decision to actually enter the apartment after approximately five seconds he did so because he had genuine safety concerns and because he believed that enough time had elapsed to alert the occupants to his presence. He candidly admitted that the time period was very brief, but he also indicated that safety concerns were paramount. Indeed, the evidence is undisputed that the chair in which the defendant had been sitting had a knife stuck in the arm, available for use as a weapon. Officer Sproul's safety concerns were not fanciful, but rather were supported by the evidence.

Discussion

When a court is called upon to determine the reasonableness of a search of a dwelling pursuant to the Fourth Amendment, a part of the reasonableness inquiry involves the application of the common-law principle of "knock and announce." Wilson v. Arkansas, 514 U.S. 927, 929 (1995). Pursuant to this principle, a law enforcement officer has the authority to break open the doors of a dwelling, but he first ought to announce his presence and authority. Id. However, this requirement is flexible and

legitimate law enforcement concerns over, *inter alia*, safety and the destruction of evidence justify dispensing with the announcement. Id. at 936.

The Government takes the position that the officers complied with the “knock and announce” principle in this case. The defendant, on the other hand, argues that for all realistic purposes it was in fact an unannounced forced entry. See State v. George, 1997 ME 2, ¶¶ 7 & 9, 687 A.2d 958, 959, 960 (finding that a brief announcement followed by the use of a battering ram to open a door was in fact an unannounced entry, but noting that the state conceded the issue). I am inclined to agree with the defendant on this score. The “knock and announce” principle gives the homeowner an opportunity to accede to the show of authority prior to destruction of his property. Wilson, 514 U.S. at 932 (describing founding-era common law). The facts of this case do not support the argument that defendant was given that opportunity.

Nevertheless, as indicated above, the Fourth Amendment reasonableness inquiry does not rigidly rest upon the “knock and announce” principle. The totality of the circumstances must be considered, including legitimate law enforcement concerns. In this case the officers were confronted with a occupant who was believed to be armed, to an excessive degree, with dangerous knives. The degree of force and property destruction associated with the forced entry was kept to a minimum. In the George case, the Maine Law Court approved a forced entry that included the ignition of a low level explosive device in the kitchen of the dwelling, under circumstances less egregious than these. George, 1997 ME 2, ¶ 4, 687 A.2d at 959. In George, the only safety concern arose from the fact that two weeks prior to the search the defendant had possessed a firearm. Id. at ¶ 2. He had no history of using firearms or resorting to violence. Id. In

the present case, the defendant's reported behaviors surrounding the use of knives presented legitimate safety concerns.

Before the Government can be given a clean bill of health regarding the execution of this search warrant, one remaining issue raised by defendant must be discussed. Defendant argues that if the law enforcement officers had pre-existing legitimate safety concerns they were obligated to recite those facts in the affidavit filed in support of the search warrant and give the issuing state court judge the opportunity to determine whether an unannounced entry was warranted. None of the testimony presented by Special Agent Miller suggested that exigent circumstances arose at the time of the execution of the warrant. Sargent's prior conduct involving knives was known at the time the affidavit was presented to the court. The Maine Rules of Criminal Procedure, Rule 41(i) contain the following provision:

Unannounced Execution of Search Warrant. The warrant may direct that it be served by an officer without providing notice of the officer's purpose and office if the judge or justice of the peace so directs by appropriate provision in the warrant. The judge or justice of the peace may so direct in the warrant upon a finding of reasonable cause shown that:

. . .

(3) the person sought, the person from whom or from whose premises the property is sought, or an occupant thereof, may use deadly or nondeadly force in resistance to the execution of the warrant, and dispensing with prior notice is more likely to ensure the safety of officers, occupants or others;

Given the factual predicate known to the officers in this case and the Maine Law Court's exceedingly deferential view toward legitimate law enforcement concerns as evidenced by the George case, it is incomprehensible that the affiant did not request a "no knock" warrant from the district court judge in order to comply with the Maine rule.

Federal laws and rules do not contain an analogous provision. Rule 41 of the Federal Rules of Criminal Procedure is silent on the issue of “no knock” entries. There is a federal statute, 18 U.S.C. § 3109, which purports to limit the circumstances under which a federal officer executing a warrant may make a forced entry, but that statute is not applicable to the facts of this case and does not fully set forth the constitutional principles articulated by the Court in Wilson. Having concluded that these state officers met the constitutional standard set forth in Wilson, the sole remaining issue is whether their apparent failure to comply with a Maine rule of court should result in the suppression of evidence.

The Maine Law Court has not addressed this precise question because the only case that mentions Rule 41(i) is the George case and the facts recited in that opinion are silent on the issue of whether or not the warrant itself authorized the forced entry in accordance with the rule. However, even if I were to assume that the officers’ failure to comply with the procedural rule made this search unauthorized under state law, it does not mean that there was a Fourth Amendment violation resulting in the suppression of evidence. “Just as a search authorized by state law may be an unreasonable one under that amendment, so may a search not expressly authorized by state law be justified as a constitutionally reasonable one.” Cooper v. California, 386 U.S. 58, 61 (1967). Because the manner in which these officers executed this “no knock” entry was reasonable under the Fourth Amendment, suppression of the evidence is inappropriate.

Conclusion

Based upon the foregoing I recommend that the Court **DENY** the defendant’s motion to suppress.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten days of being served with a copy thereof. A responsive memorandum shall be filed within ten days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated:

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court

District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 01-CR-14-ALL

USA v. SARGENT

Filed: 03/06/01

Dkt# in other court: None

Case Assigned to: Judge GEORGE Z. SINGAL

ROSCOE B SARGENT (1) BRETT D. BABER

defendant

[COR LD NTC]

BABER & WEEKS

304 HANCOCK STREET

SUITE 2E

BANGOR, ME 04401

207-945-6111

Pending Counts: Disposition

21:841A=CD.F, Distributing a

quantity of the Schedule I

controlled substances,

marijuana and psilocybin

mushrooms, and aiding and

abetting the commission of

that crime;21:841(a)(1) and 18:2

(1 - 2)

21:841A=MD.F Possession with
intent to distribute a
quantity of the Schedule I
controlled substance,
marijuana, and aiding and
abetting the commission of
that crime;

21:841(a)(1) and 18:2

(3)

18:924C.F Use of firearms
during and in relation to a
drug trafficking crime,

18:924(c)(1)

(4)

21:853.F CRIMINAL FORFEITURES

(5)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints:

NONE

U. S. Attorneys:

TIMOTHY D. WING, AUSA

[COR LD NTC]

U.S. ATTORNEY'S OFFICE

P.O. BOX 2460

BANGOR, ME 04402-2460

945-0344