

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )  
)  
v. ) Crim. No. 01-76-B-S  
)  
JOSE REYES, a/k/a Jonathan Caballero, )  
BENJAMIN CRUZ, and )  
RONALD IDANO, )  
)  
Defendants )

**RECOMMENDED DECISION ON  
MOTIONS TO SUPPRESS BY  
DEFENDANTS REYES AND CRUZ**

This matter is before the court on motions to suppress physical evidence filed by Benjamin Cruz (Docket No. 18) and Jose Reyes (Docket Nos. 6 & 16). I now recommend that the court **DENY** the motions.

**Background**

Both defendants seek suppression of physical evidence removed from Room 203 of the Howard Johnson Inn located at 336 Odlin Road in Bangor, Maine. The items seized from the Howard Johnson motel room were used in support of an application for a search warrant for a second motel room at the Days Inn in Bangor, Maine. The primary issue raised by these motions relates to pre-warrant entry into the Howard Johnson's room by law enforcement. Each defendant concedes both warrants are facially valid, but asserts that all evidence must be suppressed because the warrantless entry made prior to the issuance of the warrant was not authorized by exigent circumstances or any other recognized exception to the warrant requirement. The United States justifies the prewarrant entry on the basis of exigent circumstances and further argues that neither

defendant has “standing” to challenge the search. Although an evidentiary hearing was held, the facts underlying this search are largely undisputed and are set forth in the affidavits in support of the search warrants for Room 203 of the Howard Johnson Inn and Room 223 of the Days Inn. (Exs. 1 & 3.)

### **Proposed Findings of Fact**

On August 6 and 7, 2001, two separate agents of the Maine Drug Enforcement Agency (MDEA) received information from two different confidential informants about an individual named Benji and others who were staying in the Bangor area at the Howard Johnson Inn and selling cocaine and cocaine base. Then, on August 8, agents learned through a separate informant that a drug dealer named Ron, specializing in Ecstasy tablets, was operating in the area and that Ron’s pager number was 471-1414. That same day the agents made contact directly with Ron by calling the pager number and attempting to set up a “buy” involving Ecstasy. Eventually Ron told the agent he did not have any Ecstasy available but could supply cocaine. Arrangements were made to meet in the parking lot of the Big Apple Store on State Street in Bangor.

On August 8, 2001, at approximately 9:30 p.m. two MDEA agents proceeded to the Big Apple parking lot to meet with Ron and purchase cocaine. Two males approached the agents’ car and after verifying identities, got into the backseat of the vehicle. A transaction involving a \$500 purchase of cocaine ensued. Shortly thereafter Ronald Idano and Benjamin Cruz were arrested. Agents then spoke with Nathan Doucette and Travis Adams who had been in the car that brought Cruz and Idano to the parking lot. They indicated all four had been at a residence in Bangor when Ron received a page and then used Cruz’s cell phone to return the call. At that time the two took Idano

and Cruz to the Howard Johnson on the Odlin Road. Doucette and Adams left the Odlin Road area for approximately one-half hour. They then returned and picked up Idano and Cruz and brought them to the Big Apple parking lot.

After being read Miranda Idano also gave the agents a statement. He indicated that he normally sells Ecstasy and Cruz normally sells cocaine, but on this occasion he sold the cocaine for the first time. He got the cocaine from Benji at Howard Johnson, near the doors to the motel. After being read Miranda Cruz also gave the police a statement. Admitting that he was a cocaine user and addict, Cruz stated that he had been at the Howard Johnson with a girl named Jess earlier that evening. He had been in a room on the second floor of the motel although he was not sure of the room number. He indicated that the room had been rented in a female's name.

The agents then traveled to the Howard Johnson at approximately 11:45 p.m. and spoke with the clerk on duty, attempting to locate Benji's room. The clerk told them that the only room they had been having trouble with was Room 203 on the second floor rented to a female named Daisey. The room had been receiving a large number of phone calls and traffic in and out since August 6, 2001, when it was first rented. The people in the motel room, who included not only Daisey but also three males, carried a large amount of cash and paid for the room and related incidentals in cash on a day-to-day basis. The males always carried cell phones with them.

One of the agents, posing as a motel employee, knocked on the door of Room 203 to establish if the room was related to Cruz and if so, to secure the room pending the issuance of a search warrant. The two officers assigned this task both testified at the hearing and denied that they obtained a passkey from the clerk or attempted to open the

door in any fashion. One of the agents merely knocked on the door, while other law enforcement officers remained out of sight.

Reyes responded to the knock and opened the door approximately six inches. The agent, posing as a motel employee, asked if Benjamin Cruz was in the room. Reyes indicated that Benji had left with his girl. At this point another agent, posing as the manager, approached the door and said that it was important for them to get in touch with Cruz and asked if anyone else was in the room at that time, to which Reyes responded in the negative. The agent asked if Reyes was staying in the room and he indicated that he was just visiting. Reyes further indicated that the female who had rented the room was not there.

The agents then identified themselves as police officers. Immediately upon hearing that the agents were law enforcement officers, Reyes ran into the bathroom and locked the door. The agents pursued him and opened the door, observing Reyes shoving something into his mouth. Reyes was ordered to remove the item, but he attempted to swallow it. Reyes was physically subdued and the agents forcibly removed the item from his mouth. It appeared to be a plastic baggie containing numerous gram bags of cocaine. The bag was left in the motel room until the officers obtained a warrant authorizing its seizure. The agents also viewed on a table in the room a pile of white powder believed to be cocaine and a plastic motel card used to cut the cocaine into lines. Reyes would not identify himself to the agents. All of these facts were included in the affidavit to obtain the search warrant for Room 203 at the Howard Johnson. A state court judge approved the warrant and authorized the agents to search the room during the early morning hours of August 9, 2001.

During the execution of the search warrant, agents discovered not only the previously identified cocaine, but also a handheld walkie-talkie, receipts from other motel rooms, including a receipt in the name of Darwin Rosario for a room in the nearby Days Inn for the period August 8 through 10, 2001, and paperwork with the name DEE written on it. A review of Bangor police records revealed that Darwin Rosario had previous contact with the Bangor Police Department involving an assault and that his nickname was Baby Dee. At that point the officers believed that Reyes was possibly Darwin Rosario and Rosario was keeping the majority of the drugs in a separate motel room from the room where the monetary proceeds were being kept, a common street method of drug distribution in the larger cities. They went to the Days Inn and spoke with the night clerk and learned that Darwin Rosario had rented Room 223. The agents knocked on the door, but no one responded. Placing that room under surveillance the officers obtained a second search warrant. During the execution of the second warrant additional cocaine, marijuana, and digital scales were recovered.

Although not mentioned in any warrant affidavit or police report admitted into evidence (see Ex. 4, ¶ 22), Special Agent Leonard testified that during the execution of the second warrant a second handheld walkie-talkie was recovered at the Days Inn. According to Leonard the walkie-talkie was on the same channel as the walkie-talkie discovered at the Howard Johnson. Leonard also testified that while in Room 203 during the execution of the first warrant he had spoken into the first walkie-talkie and stated anonymously that he needed some additional supplies. Soon thereafter an individual approached the room and saw at least one officer who was wearing a “raid jacket” that identified him as a law enforcement agent. The individual turned and ran. The officer, at

that time, did not know that Leonard had just used the radio to request more supplies and Leonard, who was still in Room 203, did not know that the individual had turned and ran. At that point in time the agents did not know that a second walkie-talkie would be discovered in Room 223 at the Days Inn. It is now hypothesized that the individual was a courier involved in the drug trade identified between Room 203 of Howard Johnson and Room 223 of the Days Inn.

### **Discussion**

As a preliminary matter the government asserts that neither defendant has “standing” to challenge the search at the Howard Johnson pursuant to the warrant, although the government concedes that Reyes has “standing” to challenge the seizure of the items from his mouth. Cruz argues that because the search warrant describes the place to be searched as the “motel room of Benjamin Cruz” the government should be “estopped” from raising its “standing” argument as to him. Both defendants maintain that the initial entry was unlawful and that the claimed exigent circumstances were entirely of the agents’ own making. They also claim that the illegal entry so tainted the warrant that all items seized pursuant to both warrants should be suppressed.

#### ***I. Did the Defendants Have a Personal Subjective Expectation of Privacy in the Places Searched and Were Their Expectations Reasonable?***

Beginning in Rakas v. Illinois, 439 U.S. 128, 139-140 (1978), and continuing in Minnesota v. Carter, 525 U.S. 83, 87-88 (1998), the United States Supreme Court replaced the “standing” inquiry with a new vocabulary tailored to Fourth Amendment expectations of privacy. United States v. Sturgis, 238 F.3d 956, 958 (8<sup>th</sup> Cir. 2001). In Carter the Court declared that “a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable.” 525

U.S. at 88. The Court differentiated between an overnight visitor who has a rightful expectation of privacy, id. at 89-90 (discussing Minnesota v. Olson, 495 U.S. 91, 98-99 (1990)), and another sort of visitor who, being “simply permitted on the premises,” would lack a reasonable expectation of privacy, id. at 91. It noted that a visitor for commercial purposes has a lesser expectation of privacy than an overnight guest at a private residence. Id. at 90-91.

#### **A. Privacy Expectation Analysis Vis-à-vis Cruz**

The only real evidence in the record that anyone, other than “Daisey” and three unknown males, was staying in Room 203 of the Howard Johnson is Reyes’s statement to the officers that Cruz was staying in the room. Although the officers never indicate that Cruz actually told them that he was staying in that motel room, they do indicate that they went to Room 203 to establish if Cruz was staying at this motel room, thereby suggesting that after their conversation with him they had some reason to believe that he was staying in the room. While Cruz’s argument that the government should be “estopped” from denying that he has “standing” because their warrant application describes Room 203 as Benjamin Cruz’s motel room is novel, he cites no case law to support it and I can find none. In any event, I find that since the search of the motel room and the seizure of the evidence was done pursuant to a valid warrant, Cruz has no basis to obtain suppression of any evidence based upon the argument that he is challenging the warrantless entry.

Assuming, *arguendo*, that Cruz had a reasonable expectation of privacy in the motel room, this case is almost exactly four square within the holdings of Segura v. United States, 468 U.S. 796 (1984) and Murray v. United States, 487 U.S. 533 (1988). Cruz, like Segura, had been arrested prior to the agents’ entry into the “dwelling.” Prior

to entry into the room on the heels of Reyes, the officers had sufficient probable cause to obtain a search warrant for the premises. By knocking at the door and speaking to Reyes, an action certainly not a Fourth Amendment violation in and of itself, they verified that Room 203 was the suspect room described to them by Cruz after he had been arrested. The various confidential informants and the desk clerk at Howard Johnson had given the police information that a great deal of probable drug activity was taking place in association with the room they had connected to Cruz. Even if I assumed, arguendo, that the seizure of drugs from Reyes's mouth was unlawful, an assumption I am not willing to make as will be discussed below, there is nothing about that seizure that should taint the probable cause developed prior to the police identifying themselves to Reyes. In Segura the lower court specifically found that there were no exigent circumstances justifying the warrantless entry; that finding was never disturbed on appeal. 468 U.S. at 798. The Segura court nevertheless went on to hold that since the search warrant had validly issued based entirely on information known to the officers before their entry into the apartment, the evidence seized under the warrant did not have to be suppressed as the "fruit" of the illegal entry. Id. at 799.

Cruz argues, however, that this case is distinguished from Segura on two grounds. First, he notes that in this case the officers included the observations made during the first entry in the warrant affidavit, and therefore the warrant was not based wholly on information known to the officers before entry into the apartment. However, the crucial query in this court's analysis is: If the additional information surrounding the scuffle with Reyes and the cocaine seen in the room was excised from the affidavit would there still be probable cause to search the premises? It does not make sense that the officers should

be punished and evidence suppressed because they truthfully recited all of the facts in making application to the issuing magistrate. Even when officers make an allegedly deliberately misleading statement in an affidavit in support of probable cause the reviewing court must determine if the application supports a probable cause determination with the offending facts excised before ordering a hearing on the truth or falsity of the statements. See Franks v. Delaware, 438 U.S. 154, 171-72 (1978) (“[I]f, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required.”).

The same rationale applies to excising information from an affidavit that contains information “tainted” by facts gleaned during an initial illegal entry. See United States v. Herrold, 962 F.2d 1131, 1137-38 (3<sup>rd</sup> Cir. 1992) (listing cases that take the “sensible approach” that factual averments tainted because based upon an unlawful initial entry “do not vitiate a warrant which is otherwise validly issued upon probable cause reflected in the affidavit,” internal quotations and citations omitted). After the officers arrested Cruz and obtained his statement, they went to the Howard Johnson to confirm the number of the room on the second floor where Cruz told them he got the cocaine. Their purpose was to secure that room and obtain a search warrant for it. Toward that end, they knocked on the door and asked Reyes if the room was Cruz’s. No Fourth Amendment violation even arguably occurred up to that point. See United States v. Daoust, 916 F.2d 757-58 (1<sup>st</sup> Cir. 1990) (acknowledging that a policeman may lawfully go to a person’s home to interview him, citing cases). The only arguable Fourth Amendment violation

occurred when the officers entered the room and by that time they had more than sufficient probable cause to obtain a valid warrant.

Cruz also suggests that this case is unlike Segura because in that case the evidence found during the initial entry was suppressed. In the present case that would mean that the cocaine found in Reyes's mouth and the cocaine powder seen in plain view on the table should be suppressed. However, in Segura the issue as framed before the Supreme Court required only that it consider whether the Fourth Amendment required suppression of the evidence seized during the execution of a valid warrant, following the government's illegal initial entry and after a nineteen-hour "seizure" occasioned by administrative delay in obtaining the warrant. 468 U.S. at 802-03 & n.4. Thus, the Court did not consider the "independent source doctrine" in relationship to the evidence first identified during the initial entry and ultimately taken into police possession pursuant to the valid warrant. However, in Murray the Supreme Court did have occasion to consider the admissibility of such evidence and concluded that a prior illegal entry into a warehouse would not bar the police from using evidence that was later seized pursuant to a valid warrant. 487 U.S. at 535, 542.<sup>1</sup>

The reason Murray allows the admissibility of such evidence is that the independent source doctrine allows the police to use evidence that was in fact discovered lawfully and not as a result of an illegality. On these facts it is clear that the officers

---

<sup>1</sup> The Murray case, unlike the present situation, involved an unarguably illegal entry that was not mentioned in the affidavit in support of the search warrant. Defendant Reyes tries to find grounds for relief in one sentence in the plurality decision in Murray that limits the holding that the evidence is admissible to those cases where the information obtained during the first entry was not presented to the Magistrate and therefore could not have affected the decision to issue the warrant. However, as the Third Circuit has noted, the Supreme Court intended "affect" to be understood "to signify affect in a substantive manner" in that the government's burden is to prove that a neutral and detached magistrate would have issued the warrant based upon probable cause in the absence of the "tainted" evidence. Herrold, 962 F.2d at 1141-43. As discussed above, the United States has met that burden here.

could have asked Reyes to step out of the room, patted him down, secured the premises, and obtained a warrant. They would have, in fact, seized cocaine either pursuant to the pat down (to which Cruz would have no basis to object) or pursuant to the execution of the warrant when they entered the room. Thus, even if I assume *arguendo* that Cruz had a reasonable expectation of privacy regarding Room 203 and that the officers' entry for the purpose of subduing Reyes was illegal, the evidence seized is still admissible as to Benjamin Cruz.

### **B. Privacy Expectation Analysis Vis-à-vis Jose Reyes**

To the extent the United States seeks to use the evidence seized in the room pursuant to the valid warrant, including the cocaine powder first seen in plain view during the initial entry, the above analysis would apply to Reyes. However, Reyes's reasonable expectation of privacy relates to the seizure of the cocaine from his mouth. As a preliminary matter the United States concedes that Reyes had a personal expectation of privacy in his own bodily integrity and the challenge to the seizure from his person has to be addressed. I have already concluded in discussing Cruz's claim that the evidence seized pursuant to the valid warrant, without regard to privacy expectations, is admissible. Therefore, Reyes's expectation of privacy in the actual motel room is a moot issue. However, I will address his argument.

Reyes's reasonable expectation of privacy in his motel room is tenuous at best. He bases his claim on the fact that the police had information that a Hispanic man was staying in the room and Reyes meets that ethnic description, he was in the room late at night when the officers arrived, and he was the only person there. He does not meet his burden of establishing a reasonable expectation of privacy under First Circuit standards.

See United States V. Goodine, 2001 WL 823643 \* 2 (D. Me. July 23, 2001) (Cohen, Magis. J.) ( stating, “A defendant who offers no evidence of personal interest in a hotel room registered to another beyond being present at the time of the search has not met [the reasonable expectation of privacy] burden,” citing United States v. Irizarry, 673 F.2d 554, 556 (1<sup>st</sup> Cir. 1982)). In Reyes’s own words, he was “just visiting” the room. Given the factual circumstances described by the affidavit the room could be fairly characterized as a “commercial” location. The fact that it was late in the evening does not necessarily support the reasonable inference that Reyes was “in for the night” as he suggests. In these circumstances the comings and goings of various individuals appeared fluid.

Although Reyes has no reasonable expectation of privacy entitling him to challenge the search of the room, the government concedes that he has a right to challenge the officer’s search of his person. Reyes’s primary argument on that score is that the officers’ search was based upon exigent circumstances of their own making. Apparently even Reyes would have to concede that witnessing a person stuffing gram bags of cocaine into their mouth and attempting to swallow them is an “exigent circumstance.” Reyes contends that once the officers had confirmed that the room belonged to Cruz, rather than identify themselves as police officers, they should have allowed him to remain inside the room until they obtained a warrant. However, merely identifying themselves as police officers and seizing the room so that no one can enter is not a Fourth Amendment violation. See Illinois v. McArthur, 531 U.S. 326, 331-332, (2001) (describing as permissible the warrantless “seizure” of drug suspect outside his personal residence for two hours in order to prevent destruction of drugs sought by warrant and noting that exigent circumstance determination requires a balancing of

privacy-related and law enforcement concerns to determine if a given intrusion is reasonable).

In the present case the officers had legitimate concerns about people in the room destroying or consuming evidence. The logical first priority was to determine if the room was currently occupied by knocking on the door and making inquiry. The only person there was “just visiting” and had no reasonable expectation of privacy in the premises as discussed above. Given law enforcement’s legitimate concern that someone might call the room, asking Reyes to step out of the room in order to secure it would not have been an unreasonable seizure. While their concern that Cruz might call the room is perhaps overstated since he was in custody, there were others associated with the motel room who were not in custody and might have learned of Cruz’s arrest, including his girlfriend, the two individuals in the car, and various other participants. This particular case, like McArthur, involves a “plausible claim of specially pressing or urgent law enforcement need,” 531 U.S. at 331, justifying the attempt to prevent the destruction of evidence by securing the room. It is only common sense, then, that when they actually witnessed the attempted destruction of evidence by Reyes, the necessary “exigent circumstances” arose to allow the further intrusion of removing the drugs from his mouth. There was no Fourth Amendment violation.

### **Conclusion**

Based upon the foregoing I recommend that the court adopt the proposed findings of fact and **DENY** Reyes’s and Cruz’s motions to suppress.



Terminated Counts: NONE  
Complaints: NONE

BENJAMIN CRUZ (2)                      BRADFORD S. MACDONALD, ESQ.  
defendant                      [COR LD NTC cja]  
50 COLUMBIA STREET, SUITE 20, BANGOR, ME 04401  
(207) 945-4774

Pending Counts:                      Disposition  
21:841A=ND.F NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE; CONSPIRACY TO  
DISTRIBUTE/MANUFACTURE COCAINE  
(1)  
21:841A=ND.F NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE; POSSESSION WITH  
INTENT TO DISTRIBUTE COCAINE  
(2)  
Offense Level (opening): 4  
Terminated Counts: NONE  
Complaints: NONE

RONALD IDANO (3)                      TERENCE M. HARRIGAN, ESQ.  
defendant                      [COR LD NTC cja]  
VAFIADES, BROUNTAS & KOMINSKY  
23 WATER STREET, P. O. BOX 919, BANGOR, ME 04401  
(207) 947-6915

Pending Counts:                      Disposition  
21:841A=ND.F NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE; CONSPIRACY TO  
DISTRIBUTE/MANUFACTURE COCAINE  
(1)  
21:841A=ND.F NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE; POSSESSION WITH  
INTENT TO DISTRIBUTE COCAINE  
(2)  
Offense Level (opening): 4  
Terminated Counts: NONE  
Complaints: NONE

U. S. Attorneys: DANIEL J. PERRY, ESQ. [COR LD NTC]  
U.S. ATTORNEY'S OFFICE, P.O. BOX 2460  
BANGOR, ME 04402-2460  
945-0344