IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal No. 01-116
	)	
vs.	)	
	)	
CLARENCE JOHNSON,	)	ORDER
	)	
Defendant.	)	

Before the Court is a motion to suppress filed by defendant, Clarence Johnson, on August 15, 2001. The government filed a response and a brief in opposition to the motion on August 27, 2001, and a hearing was held on the same day.[1] The matter is fully submitted.

I. BACKGROUND

Officer Christopher Akres of the Iowa City Police Department[2] testified that on March 8, 2001, a confidential informant (CI) was sent to purchase powder cocaine from Frederick Roache at his apartment. Roache lived with his wife and their child in Apartment L3 at 1100 Arthur Street in Iowa City, Iowa. The CI wore a recording device and Officer Akres monitored the controlled purchase, while other officers maintained surveillance of the CI. In the course of this purchase, Mr. Roache and the CI traveled from Roache's apartment on Arthur Street to another

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[1] Defendant has faxed the Court two memoranda in support of his motion, but has not filed either memorandum nor sought the Court's permission for facsimile filing under Local Rule 5.1(c). In spite of this shortcoming, the Court has considered both memoranda.

[2] Officer Akres reported he has been on temporary assignment with the Johnson County Narcotics Task Force since December 2000, and was working in this capacity at the relevant times for this matter.

38. Copy to: Counsel, USA, USM, USPO

apartment in Iowa City, at 632 South Dodge Street. The CI returned to the officers with a quantity of cocaine.

Officer Akres testified the building where the CI's transaction with Roache was completed, 632 Dodge Street, was significant. He reports that he served a search warrant on an apartment in this building in 1998, where officers where looking for crack cocaine. At the hearing, Officer Akres reported that Clarence Johnson was present at the apartment in 1998 when the warrant was served, but that he was not arrested in connection with the warrant. The record is unclear when Officer Akres connected the defendant in this case with this apartment.

Less than a week later, on March 14, 2001, the same CI performed a second controlled purchase from Mr. Roache. Again, the CI was equipped with a recording device and the exchange was monitored by law enforcement, including Officer Akres. The CI met Roache at his apartment, L3 at 1100 Arthur Street. The two then moved to apartment D2 in the same building. It was later discovered that apartment D2 was leased to Amy Vest. After the transaction was completed, the CI returned to law enforcement with .75 grams of crack cocaine.

After this second transaction, two individuals, a male and a female, emerged from apartment D2. The individuals traveled in a vehicle to the Lakeside Apartment complex in Iowa City. It was determined that the vehicle belonged to Amy Vest, the same person who leased apartment D2. The male was dropped off at the 1400 building of the Lakeside Apartment complex, but it was unclear to the officers who monitored the couple's travel which apartment he went within that building. After the male was dropped off, the female returned to apartment D2 at 1100 Arthur Street.

After the second controlled purchase, the officers obtained warrants to search apartments L3 and D2 at 1100 Arthur Street. The warrant on apartment L3 was executed at approximately 5:47 p.m. on March 15, 2001. Present at the time was Mr. Roache's wife, Patricia Roache, and the couple's child. Officer Akres interviewed Mrs. Roache. She informed Officer Akres that her husband was with the man from apartment D2, and that she only knew him as "D Dog" or "Do-Dog," and that they had gone to Chicago together. She stated she was not certain of the purposes of the trip, but she assumed they were going to pick up drugs and bring them back to Iowa. She also stated that her husband had sold drugs on at least one occassion. Additionally, officers found numerous pipes, rolling papers, a metal scale, and other evidence consistent with the use and sale of drugs. Mrs Roache agreed to cooperate with the police.[3]

A couple of hours after the warrant on the Roache's apartment was executed, police executed the warrant on apartment D2 at 1100 Arthur Street. No one was home initially, though it was clearly an occupied residence. A letter with the name of the defendant, Clarence Johnson, was found along with photos of a man on a computer screen. Officer David Gonzalez saw the photos of the male on the screen, and identified the person as Clarence Johnson. Additionally, evidence of drug use was found. During the search, Amy Vest returned to her apartment. She confirmed that Clarence Johnson lived with her and was her boyfriend, but that they had an argument and she was not sure whether he would continue to live with her.

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[3] Mrs. Roache testified at the hearing. In response to questions from defendant's attorney, she stated she did not resist the execution of the warrant and that she was cooperative. She stated she was interviewed by Officer Akres, and that she was not coerced into placing monitored phone calls to her husband. Roache did state that she had only met D Dog once or twice and she did not know whether he was a drug dealer or user. She did testify however, that she told Officer Akres that her husband's use of drugs had increased since he had become acquainted with D Dog.

During this same time frame, beginning in the evening hours of March 15 and continuing into the early morning hours of March 16, Mrs. Roache agreed to place phone calls to her husband on a cellular telephone in order to assist the police. Officer Akres and other law enforcement personnel were then able to monitor Patrick Roache and D Dog's return to Iowa City from Chicago. Officers were sent to the Herbert Hoover Highway exit from Interstate 80 into the east side of Iowa City in the early morning hours of March 16, and told to watch for a blue van that would be driven by Roache and D Dog.

Officer Akres testified that he was orchestrating this surveillance over the radio, and he made several guesses regarding where Roache and Johnson would travel once they arrived in Iowa City. Officers were placed in various places, including several at the Lakeside apartments, where Johnson had been dropped off the previous day by Amy Vest after the second controlled purchase by the CI. Officer Paul Jacobs of the Iowa City Police Department was behind a hallway door at one end of the inner hallway on the second floor in the 1400 building of the Lakeside Apartment Complex outside apartment 1416. Officer Akres testified he placed Officer Jacobs in this position because apartment 1416 was the residence of a known user and seller of crack cocaine, and he suspected that was the apartment Johnson had traveled to the day before when the officers lost surveillance of him as he entered the 1400 building.

Around 4 A.M. on March 15, officers followed the blue van driven by Roache and Johnson as it exited Interstate 80 into Iowa City. The van's travels were broadcast over the radio, and Officer Paul Jacobs testified he was kept abreast of the van's whereabouts over the radio. He stated that he heard activity at the entrance of the building and the hallway, opposite

where he was stationed, that was temporally consistent with the broadcast arrival of Roache and Johnson's van at the 1400 building of Lakeside apartments. Officer Jacobs, believing that one of the suspects had entered the building, decided to approach the suspect.

As Officer Jacobs opened the hallway door and began walking down the hall, he saw a man trying to gain entry into apartment 1416. The man, who turned out to be Clarence Johnson, greeted Officer Jacobs,[4] but then tried to flee the building. Officer Jacobs pursued Johnson down the hallway until he tackled Johnson. Officer Jacobs was on top of Johnson, and Jacobs testified that Johnson seemed to be hiding something underneath his stomach and was trying to put his hands in his mouth as Jacobs attempted to handcuff him. However, Officer David Gonzalez, who was familiar with Johnson, arrived on the scene within seconds of Jacob's detention of Johnson and was able to help handcuff Johnson. After Johnson was handcuffed and the officers stood him up, a plastic bag with crack cocaine was found on the ground.

II. APPLICABLE LAW & DISCUSSION

Johnson argues the plastic bag found at the scene of his arrest should be suppressed as evidence. It appears undisputed that Johnson was detained, or seized, at the time Officer Jacobs tackled him at the end of the second floor hallway in the 1400 building of the Lakeside Apartment Complex in Iowa City. *See California v. Hodari D.*, 499 U.S. 621 (1991). The issue[5]

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[4] Officer Jacobs, who was dressed in his Iowa City Police Department uniform, testified that Johnson said something like "How's it going?"

[5] The other argument presented by the government is that defendant abandoned the plastic bag, and therefore did not have a Fourth Amendment expectation of privacy in the bag. *See United States v. Cabellero-Chavez*, 2001 WL 902455, __ F.3d __ (8th Cir. August 13, 2001) (citing *United States v. Tugwell*, 125 F.3d 600, 602 (8th Cir. 1997) *cert. denied* 525 U.S. 1061 (1998)). There are two important factors in analyzing whether an abandonment has occurred –

for this Court to analyze is whether Officer Jacobs had a reasonable articulable suspicion at the time he stopped Johnson. *See Terry v. Ohio*, 392 U.S. 1 (1968).[6]

"Reasonable suspicion 'is a 'particularized and objective basis' for suspecting the person stopped of criminal activity.'" *United States v. Thomas*, 249 F.3d 725, 729 (8th Cir. 2001) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). Under *Terry*, the totality of the circumstances is to be considered. *See United States v. LeBrun*, 2001 WL 913984, __ F.3d __ (8th Cir. August 15, 2001). In performing a *Terry* stop based on a reasonable suspicion officers may take steps that are "'reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.'" *Thomas*, 249 F.3d at 728 (quoting *United States v. Hensley*, 469 U.S. 221, 232 (1985)). In making the decision whether to perform the search, the officer can rely on information provided by other officers including any information known to the team of officers conducting the investigation, *see Thomas*, 249 F.3d at 728 (citing *United States v. Robinson*, 119 F.3d 663, 666-67 (8th Cir. 1997)).

In this case, Officer Jacobs justifiably relied on Officer Akres and the investigating

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whether there is a denial of ownership and physical relinquishment of the property. *See United States v. Landry*, 154 F.3d 897, 899 (8th Cir. 1998) (citing *United States v. Nordling*, 804 F.2d 1466 (9th Cir. 1986)). This Court finds it is unnecessary to analyze whether Johnson abandoned the plastic bag, as the *Terry* stop was appropriate. As an aside, the record before the Court is not clear on whether Johnson denied ownership. Additionally, the Court notes that it is difficult to determine whether Johnson 'physically relinquished' the plastic bag as it left his possession as part of a struggle with Officer Jacobs and abandonment implies it must have been voluntarily relinquished.

[6] Defendant, in a document entitled "Memorandum in Support of Motion to Suppress" that was not filed but rather is whether Officer Jacobs had probable cause to arrest Johnson. This Court finds this is not a case in which probable cause is the standard, but rather a *Terry* stop was at issue and law enforcement needed reasonable suspicion.

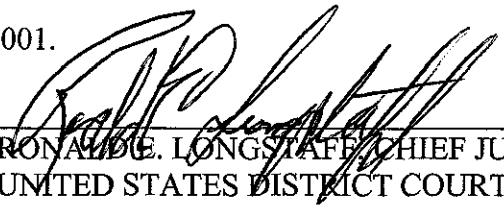
team's knowledge of Johnson, and there was a reasonable articulable suspicion that criminal activity was afoot for the *Terry* stop. The officers knew that Johnson was living at apartment D2 because of their interviews with Amy Vest and Patricia Roache, along with the evidence in the apartment confirming his presence. This apartment was where the second of the controlled purchases by the CI had just been made, the day before the stop of Johnson. The officers had reliable information from the wife of Johnson's travelingcompanion, Frederick Roache, that they had gone to Chicago and she thought the purpose was of the trip was to acquire drugs. The officers had voluntary cooperation from Mrs. Roache which let them know when Johnson and Roache would arrive back in Iowa City from Chicago, and in what vehicle. The officers had sufficient reasonable suspicion to stop Johnson, clearly beyond an "inchoate and unparticularized suspicion or 'hunch.'" *LeBrun*, 2001 WL 913984 at *1. Further, Officer Jacob's tackling of Johnson was not inappropriate in light of Johnson's attempt to flee the scene.

III. CONCLUSION

Because the Court finds an appropriate *Terry* stop was conducted, defendant's motion to suppress the evidence seized as a result of that stop is denied.

IT IS SO ORDERED.

Dated this 12th day of September, 2001.



RONALD E. LONGSTAFF, CHIEF JUDGE
UNITED STATES DISTRICT COURT