

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

UNITED STATES OF AMERICA, Plaintiff, vs. EDDIE COSEY, Defendant.	No. 3:07-cr-0584-2-JAJ ORDER
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This matter comes before the court pursuant to the defendant's September 28, 2007, Motion to Suppress Evidence [dkt #39]. The court held an evidentiary hearing on this motion on November 28, 2007, at which the defendant was present and represented by Frederick Goetz. The government was represented by Assistant United States Attorney Clifford Cronk. The motion to suppress was denied by an oral ruling from the bench.

In the motion to suppress, the defendant challenges the admissibility of evidence seized pursuant to a warrantless search and a search warrant on June 22, 2007, at a motel in Clinton, Iowa. The defendant contends that the police did not have authority to enter the defendant's motel room on that occasion. The government contends the officers were legitimately at the motel to serve civil forfeiture paperwork on the defendant and that they entered the defendant's room only because the defendant refused to accept service of process. As they entered, the government contends that the defendant assaulted a police officer and that evidence seized in this matter was justified as a search incident to arrest and by a subsequent search warrant. The court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

This case arises out of events on June 22, 2007, at the MOTEL 6 in Clinton, Iowa. Clinton police officer Anthony Stone has worked for the Clinton Police Department since

2001 and has worked in its street crimes unit as a narcotics investigator since July 2005. Clinton, Iowa, has a strong drug connection to the city of Chicago, Illinois.

Stone became aware of defendant Eddie Cosey in early 2006. Cosey, also known as Silo, was reputed to be the person controlling crack cocaine distribution in Clinton, Iowa. As a part of his investigation, Stone determined that Cosey had a very extensive criminal history relating to drug trafficking. He had also been arrested in 1998 for carrying and possessing a firearm. Stone also knew co-defendant William Ashbaugh. Ashbaugh was a Clinton native who had been observed, on a number of occasions, with Mr. Cosey. Prior to June 22, 2007, the police knew that Cosey was renting motel rooms at the MOTEL 6 in Clinton and that Mr. Ashbaugh was residing in one of the rooms rented by Mr. Cosey. The police had information that suggested that Ashbaugh was selling crack cocaine and that Mr. Cosey was his source. In addition to Mr. Cosey's arrest for carrying a weapon, the police had other information indicating that Cosey and his associates carried guns.

On June 9, 2007, William Ashbaugh was stopped in an automobile for a traffic violation. He was found in possession of crack cocaine packaged for sale. He was driving a black 1994 Chevy Impala SS four door sedan. That car had been purchased shortly before the stop at a dealership called Midwest Luxury and Imports in Orland Hills, Illinois. The car was purchased and titled in the name of Summer Jones. The salesperson described how Jones appeared with a large African-American male wearing a fancy medallion who claimed to be a rap producer in Iowa. When the details of the transaction were agreed upon, the man pulled out a large amount of cash, counted it out and handed it to Ms. Jones to give to the salesperson. The police did not confirm that it was Mr. Cosey who purchased the automobile with Ms. Jones prior to the June 22, 2007, incident at the MOTEL 6. However, police knew that he dated Ms. Jones, that he wore a fancy medallion and that he claimed to be a rap music producer in Iowa. The physical description given by the salesperson also matched Mr. Cosey.

As a result of the June 9, 2007, traffic stop, the Clinton County Attorney decided

to initiate a civil forfeiture action against the vehicle driven by Mr. Ashbaugh. As the county attorney looked for persons who may claim an interest in the vehicle, Cosey was an obvious person of interest. Accordingly, the county attorney drafted the appropriate paperwork and directed that it be served on Ashbaugh and Cosey. This was the event that took the police to the MOTEL 6 in Clinton on June 22, 2007.

On June 22nd, Officer Stone went to the MOTEL 6 with Officer Neumar. They were dressed in plain clothes so they met up with two uniformed police officers. Stone went to the lobby and determined that defendant Cosey was staying in Room 149 and defendant Ashbaugh was in Room 244. The four police officers went to the door of Room 149 and knocked at the door.

The officers standing outside Room 149 could see into the room before they knocked. This was because there is a plate glass window, partially covered by shades, to the right of the door. Officer Stone saw two African-American males sitting at the foot of the bed in the room playing a video game. A third African-American male was walking toward the back of the motel room toward the sink as Officer Stone knocked. Stone knocked and announced that he was the police. He heard one of the occupants, later identified as Matt Davenport, say, "It's the police". The man walking toward the back of the motel room turned and looked over his right shoulder and made eye contact with Officer Stone. This man, later identified as the defendant Eddie Cosey, then went very quickly into the bathroom and closed the door.

Mr. Davenport got off the bed, walked over and opened the motel room door all the way and then went back and sat down on the foot of the bed. Stone told Davenport that he was there to serve Eddie Cosey some papers. Davenport told Stone that Cosey was in the bathroom. By this point, Stone noticed that there was a fourth African-American male in the room. He identified himself as Julian Portis. The final occupant of the room was a college student named Tony McCanns.

For the next fifteen minutes, the officers remained in the hallway with the door to the motel room wide open. Occasionally, Davenport would get up, go to the bathroom and

tell Cosey that the police wanted to see him. Stone was very concerned about entering the room. There were four men in the motel room and four officers in the hallway. Some of the men in the room were known to have histories relating to guns and drugs. Cosey had entered the bathroom under suspicious circumstances. He stayed in the bathroom an inordinate amount of time, more than enough to potentially load a firearm. Officer Stone simply did not have the advantage that he would have wanted in order to safely enter the motel room. The other occupants of the motel room were identified. Their information was called into the police dispatch. They found out there was a valid warrant for Mr. Davenport out of Rochester, Minnesota, but it was not for an extraditable offense.

After approximately fifteen minutes, the defendant came out of the bathroom and stood by the sink in what Stone described as a “bladed” stance. He stood with his left foot forward and his right foot back. Stone called it an aggressive posture or a fighting stance. The defendant looked very angry. The defendant asked Stone repeatedly what he wanted but refused to acknowledge that he was Eddie Cosey. He repeatedly stated that he would not accept service and that the papers were not for him.

Stone repeatedly told the defendant that he just wanted to serve the papers and then let the men go back to enjoying their Friday evening activities. In fact, other officers did exactly that upstairs at Mr. Ashbaugh’s room. They served Mr. Ashbaugh with the papers and immediately left. After three to five minutes of discussing these matters with Mr. Cosey, Officer Stone told Cosey that if he didn’t come over and accept the papers, the officers were coming in to arrest him. The defendant still refused to come over to the door, approximately fifteen feet away. However, as Officer Stone put one foot into the door, the defendant started coming toward the door. To Officer Stone, the defendant appeared to be coming to accept the papers. Stone took his eyes off the defendant, gathered the papers and started to leaf through the copies that he had for the defendant. At that time, the defendant slammed the motel room door into Stone’s left shoulder and foot. A struggle to enter the room ensued and it was determined that the defendant would be arrested for assaulting Officer Stone and for interference with official acts. The

defendant remained defiant and refused to be arrested until he was threatened with a taser. After his arrest, a search of the defendant's person revealed approximately twenty-two rocks of crack cocaine packaged for sale. In addition, there was marijuana on the defendant's person. Officer Stone went to the bathroom to make sure no other individuals were in there. He observed crumbs of what he believed to be cocaine. They tested positive for the presence of cocaine. Stone then went and obtained a search warrant for Room 149.

CONCLUSIONS OF LAW

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

U.S. CONST. Amend. IV. "The Fourth Amendment generally prohibits police from entering a home without a warrant unless the circumstances fit an established exception to the warrant requirement." United States v. Varner, 481 F.3d 569, 571 (8th Cir. 2007) (quoting United States v. Khabeer, 410 F.3d 477, 482-83 (8th Cir. 2005)). "[I]t is clearly established that a guest in a hotel or motel room is entitled to protection against unreasonable searches and seizures." United States v. Croft, 429 F.2d 884, 887 (10th Cir.1970) (citing Stoner v. California, 376 U.S. 483 (1964); Lustig v. United States, 338 U.S. 74 (1949)). The "'central requirement'" of the Fourth Amendment is reasonableness. Illinois v. McArthur, 531 U.S. 326, 330 (2001) (quoting Texas v. Brown, 460 U.S. 730, 739 (1983)). "[I]t is well-established that not all encounters between police officers and the citizenry fall within the ambit of the Fourth Amendment[.]" United States v. Tarantola, 332 F.3d 498, 499 (8th Cir. 2003)

Officer Stone's Entry into Defendant's Hotel Room Was Lawful

The Eighth Circuit Court of Appeals has found that when police officers serve civil process on residents, they are engaged in "a lawful pursuit that entitle[d] them to make

contact with anyone present in the residence and, indeed, to enter the residence.” United States v. Frencher, 2007 WL 2873680 (8th Cir. 2007).¹ See United States v. Raines, 243 F.3d 419 (8th Cir. 2001) (deputy’s entrance into the curtilage of defendant’s home, without a search warrant, did not violate Fourth Amendment rights of defendant because the deputy’s limited intrusion was justified by the legitimate objective to serve civil process on an occupant of the residence). In this case, Officer Stone was attempting to serve Defendant with civil process when he placed his foot inside the doorway of the hotel room. Accordingly, this Court finds that Officer Stone’s placement of his foot inside the already open doorway of the hotel room did not violate Defendant’s Fourth Amendment rights.

In Frencher, the defendant filed a motion to suppress evidence that officers discovered as a result of their entry into the defendant’s residence, without a warrant, to serve the defendant with an eviction notice. Frencher, 2007 WL 2873680*1. The defendant claimed that the officers had violated his Fourth Amendment rights by forcing him to give officers his name after they arrested him in his home. Frencher, 2007 WL 2873680*1. The defendant argued that the evidence obtained by the officers after he was forced to give them his name should be suppressed as “fruit of the poisonous tree.” Frencher, 2007 WL 2873680*1 (quoting Wong Sun v. United States, 371 U.S. 471, 488 (1963)). Specifically, the defendant argued on appeal that “he was ‘unlawfully seized and questioned’ when the officers first asked him why he had taken so long to answer the door, then entered the residence and ‘allegedly’ saw marijuana in plain view.” Frencher, 2007 WL 2873680*2. The Eighth Circuit Court of Appeals rejected the defendant’s argument

¹ In Frencher, a uniformed police officer and deputy sheriff went to a the residence of the defendant to serve an eviction notice. The officers knocked on the door of the residence, but no one answered. The officers could hear people inside the residence, so they continued to knock and explained that they were there to serve an eviction notice. Eventually, the defendant answered the door. The officers asked the defendant why it had taken him so long to answer the door, and the defendant replied that he had several outstanding warrants for his arrest. At that point, the defendant stepped back into the residence, and the officers stepped inside. After entering the residence, one of the officers saw marijuana on a coffee table about two feet away. The officers then arrested and handcuffed the defendant and another man that was present in the residence.

and affirmed the district court's denial of the motion to suppress. Frencher, 2007 WL 2873680*1. The Court found that the officers had acted lawfully by entering the residence for the purpose of serving the eviction notice on the defendant. Frencher, 2007 WL 2873680*2.

The facts of Frencher are analogous to the facts of this case. Like the officer and the deputy sheriff in Frencher, Officer Stone and three other police officers came to Defendant's hotel room to serve him with civil process. Frencher, 2007 WL 2873680*1. While standing in the hallway and speaking through a door that had been left wide open by another occupant, Officer Stone repeatedly asked Defendant to come to the door and accept civil process. Officer Stone's actions are similar to those of the officers in Frencher, who questioned the defendant about the length of time it took to answer the door while standing outside of the residence. Frencher, 2007 WL 2873680*1. Next, Officer Stone placed his foot in the doorway of Defendant's hotel room. Officer Stone's placement of his foot in the doorway of Defendant's hotel room was less of an intrusion than the officers' complete entry into the defendant's residence in Frencher. Frencher, 2007 WL 2873680*1. In Frencher, the Eighth Circuit Court of Appeals found that once the officers observed in marijuana plain view in the defendant's home, they had probable cause to arrest the defendant. Frencher, 2007 WL 2873680*2. In this case, Officer Stone testified that he placed his foot in the doorway because, based on Defendant's actions, Officer Stone thought Defendant had decided to come to the door and accept civil service. Officer Stone testified that while he was looking down at the papers he was holding, Defendant took the door and hit Officer Stone with it. Under Iowa law, Defendant's actions satisfied the probable cause requirement and permitted the officers to arrest Defendant without a warrant.²

² See IOWA CODE § 708.3(A)(4) ("Any other assault, as defined in section 708.1, committed against a peace officer . . . is a serious misdemeanor."); IOWA CODE § 804.7(1)(permitting a peace officer to make a warrantless arrest for "a public offense committed or attempted in the peace officer's presence."); IOWA CODE § 804.7(2) (permitting a peace
(continued...)

This Court finds that this case is factually on point with Frencher. Thus, in accordance with the Eighth Circuit Court of Appeals, this Court finds that Officer Stone did not violate Defendant's Fourth Amendment rights by stepping into the hotel room because he took such action with the purpose of serving civil process on Defendant. As a result, this Court will not suppress the evidence obtained by authorities subsequent to Defendant's arrest because it does not constitute "fruit of the poisonous tree." Wong Sun, 371 U.S. at 488.

CONCLUSION

The court recognizes that the Fourth Amendment protections against unreasonable searches and seizures are at their strongest when applied to the residence of private citizen. However, the police officers in this case entered room 149, albeit without a warrant, for the lawful purpose of serving Defendant with civil process.

IT IS ORDERED that Defendant's motion to suppress evidence (dkt 39) is denied.

DATED this 18th day of January, 2008.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA

²(...continued)

officer to make a warrantless arrest "where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it."); IOWA CODE § 804.7(3) (permitting a peace officer to make a warrantless arrest where "the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it."); State v. Allen 2007 WL 2964316 ("The reasonable ground standard is the equal to the probable cause standard . . . Probable cause exists when the totality of the circumstances within the arresting officer's knowledge would lead a person of reasonable prudence to believe that a crime has been or is being committed and the person arrested committed the crime.").