IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

COREY MOSS	:	**CIVIL NO. 4:07-CV-2204**
	:	
Petitioner,	:	**(Judge Jones)**
v.	:	
	:	**(Magistrate Judge Carlson)**
RAYMOND SOBINA, et al.,	:	
	:	
Respondents.	:	

REPORT AND RECOMMENDATION[1]

I. Introduction

In this case we are called upon to review a thoroughly-litigated state court determination that the warrantless seizure of a cache of illegal drugs from the motel room occupied by the petitioner, Cory Moss, in July of 2004 was supported by probable cause, and was justified by exigent circumstances. For the reasons set forth below, we recommend that Moss' petition be denied because Moss had a full and fair opportunity to litigate these issues these state court findings of probable cause and exigent circumstances are fully justified in the circumstances of this case.

[1]This Report and Recommendation was prepared in partnership with pro se staff attorney Sheila Flanagan-Sheils. The Court gratefully acknowledges Ms. Flanagan-Sheils' assistance in this case.

II. Statement of Facts and of the Case

A. Factual Background

The facts surrounding this case were aptly summarized by the Pennsylvania courts in two opinions issued by the Court of Common Pleas and the Superior Court, (Doc. 7, Apps. A and B), and are reflected in the testimony adduced during a suppression hearing conducted in December, 2004. This evidence reveals that to prosecution of Cory Moss arose out of a fast-moving July 2, 2004 police investigation into drug trafficking in York County.

This investigation began on July 2, 2004 at 9:50 a.m. when Detective Brian Murphy of the York County Drug Task Force received a call from Detective Steve Alcorn of the Dauphin County Drug Task Force. (Doc. 7 App. C pp, 7-13.) Detective Alcorn related to Murphy that he had been contacted by a confidential informant, who was a cab driver. (Doc. 7 App. C pp. 7, 13) That confidential informant had worked with Detective Alcorn on numerous occasions in the past and his efforts led to multiple arrests and successful drug buys involving undercover officers. (Doc. 7, App. C, pp. 7-8).

According to Detective Alcorn, the informant advised that the night before he picked up two men and drove them to the Keystone Inn, a motel located in York

County. (Doc. 7 App. C pp. 7, 13) The two men instructed the informant to wait and they entered Room 121 of the hotel. (Id.) After several minutes the men emerged from the room and returned to the informant's cab. (Id. at p. 7) The two men then showed the informant two "eight balls" of cocaine that they stated they had purchased in the motel room. (Id. at pp. 7, 13.)

Alerted to this information, Detective Murphy immediately contacted officers from several area police departments who were assigned to the York County Drug Task Force and requested that they meet him at the motel. (Id. at p. 8) Detective Murphy arrived at the motel at 10:40 a.m., a little less than an hour after he received the information from Detective Alcorn. At the motel, Detective Murphy and other police were able to corroborate some of the information provided by the informant and specifically confirmed that Room 121 had been occupied the previous evening, as the informant reported. When police asked the front desk clerk if Room 121 was still occupied they were told that the room was occupied by a man and a woman, who were scheduled to check out in approximately 20 minutes, by 11 o'clock. (Id. at pp. 16-17.)

From Murphy's past experience, he knew it would normally take a little over an hour to gather the required information, type up a warrant application, travel to the appropriate magistrate to get the warrant signed and then get back to the location to execute the warrant. (Id. at p. 18) Thus, despite having immediately acted upon the

information he received from the informant linking the occupants of the motel room to drug trafficking, Murphy knew that he would not be able to obtain a warrant before the suspected drug dealers checked out of the motel room. Confronted with this dilemma, detective Murphy acted prudently. He contacted attorney Scott McCabe in the District Attorney's Office and, after explaining the situation, was advised that sufficient exigent circumstances existed to immediately enter and secure the occupants of the room and then he was to either secure consent to search from the occupants or secure a search warrant. (Id. at p. 8.)

Acting on this advice, police obtained a room key from the hotel staff and the officers proceeded to room 121. (Id. at pp. 8, 11.) When Detective Murphy and the other officers entered the room they found the petitioner, Cory Moss, and a woman, Anneleise Scherrer, inside the room. (Id. at pp. 8-9, 11) As he entered the room Detective Murphy also observed a baggie of marijuana in plain view lying on the dinette table. (Id. at p. 9) The detective immediately advised Moss and Scherrer why the police had gained entry and informed them that the police had information that cocaine was being sold from that room. (Id. at pp. 9, 11) After Detective Murphy advised Moss and Scherrer of their Miranda rights, he asked whether they would give him permission to search the room. (Id. at pp. 9, 11.)

Moss and Scherrer agreed and also signed consent to search forms. (Id. at pp. 9, 11-12.) Under police questioning Moss initially identified himself as Don L. Wright, but Detective Murphy later determined that name was an alias that Moss was using because he was wanted out of Dauphin County on an outstanding detainer. (Id. at p. 9.) After obtaining consent to search, the police found a bag of crack cocaine in Moss' right front pants pocket and $2,432 in cash was located in Moss' left front pants pocket. (Id. at p. 10.) The bag of marijuana lying in plain view was also confiscated by police along with other items, including a bag with marijuana residue, a hand scale, various black and blue baggies, a digital scale, a box of sandwich baggies, three marijuana cigarettes, known as blunts, a toy gun in a holster and two cell phones. (Id. at p. 10.)

Moss was then arrested and was charged with the offenses of possession of cocaine with intent to deliver, possession of a small amount of marijuana and criminal conspiracy. In the course of this state prosecution, on October 29, 2004, Moss filed an Omnibus Pre-Trial Motion in the York County Court of Common Pleas requesting the trial court suppress the physical evidence seized by police after they entered his hotel room.

On December 2, 2004 a hearing was held on Moss' pre-trial suppression motion. At this hearing the government presented testimony outlining the information

and exigencies confronting police when they entered Moss' motel room on July 2, 2004. At the close of the hearing the trial court denied Moss' motion to suppress, finding that there was probable cause to search the motel room, and that Moss' imminent departure from the motel created an exigency, justifying a warrantless entry into the room.. (Doc.7, App. A and C .) On March 14, 2005 Moss was tried, and convicted of the offenses of possession of cocaine with intent to deliver and possession of a small amount of marijuana.

On May 4, 2005 Moss was sentenced to an aggregate term of 7 ½ to 15 years in a state correctional institution following his conviction on these state drug offenses. Moss appealed this conviction to the Superior Court of Pennsylvania. In connection with this appeal, on August 8, 2005, the trial court issued an opinion pursuant to Pa.R.A.P 1925(a), (Doc. 7, App. A), explaining its reasons for the denial of Moss' suppression motion. After detailing the factual background of this investigation in its opinion, the trial court stated that: "Based on the above referenced facts, and based on the information that Detective Murphy had from Detective Alcorn and given that there was less than 70 minutes until checkout time, we believe that Detective Murphy did indeed have probable cause and exigent circumstances which justified the entry into the hotel room." (Id. at p. 3.)

On June 14, 2006, a panel of the Superior Court of Pennsylvania issued a memorandum opinion and order affirming Moss' conviction. (Doc. 7, App. B.) In

terms that echoed the trial judge's ruling, the appellate court also found that police had probable cause to search, stating that:

> Instantly, the informant, a cab driver familiar with the York area, had transported two individuals to the Keystone Inn, after which they emerged from room 121 with two "eight balls" of crack cocaine. The passengers voluntarily showed the informant their purchase and invited him to share it with them. This behavior indicated to the informant that one could purchase cocaine from the individuals occupying room 121 of the Keystone Inn. This informant had provided reliable information to Detective Alcorn in the past leading to numerous arrests and convictions in drug related cases. Additionally, upon their arrival at the Keystone Inn, the police independently learned that room 121 had been occupied since the prior evening by the same guests who were due to check out in a few moments. Finally, given the totality of the circumstances, the officers were acting with a reasonable belief that a crime had been committed; the informant's passengers had purchased crack cocaine from the occupants of room just the prior evening. As such, the informant's familiarity with the criminal activity provided a sufficient basis to give rise to probable cause.

(Id. at p. 10.)

The appellate court went on to find that this case presented exigencies justifying a warrantless search, noting that:

> [O]ther factors weigh heavily in favor of our finding that exigent circumstances existed on July 2, 2004. First, Appellant was suspected of possession of cocaine and paraphernalia associated with selling the drug, both of which are serious offenses. The information provided by hotel management made it clear that Appellant was still in the hotel room, as he and his companion were due to check out shortly and had spent the evening there. The time of entry was mid-morning, not the evening, "which is a particularly suspect time for searches to be conducted." . . . . Moreover, the officers' entry was peaceable, as they knocked on the door and utilized the key management had provided to them to gain access to room 121. Finally, because drugs and packaging paraphernalia may be disposed of easily, and the occupants were leaving the premises within

> the immediate future, there was a strong likelihood that the evidence could either be removed or easily destroyed were the time taken to obtain a warrant prior to entry.

(Id. at p. 11.)

Moss then filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania seeking further review of the Pennsylvania Superior Court's June 14, 2006 decision. On November 29, 2006, the Pennsylvania Supreme Court issued an order denying appellate review of the Pennsylvania Superior Court's decision without comment.

On December 4, 2007, Moss filed this petition for a writ of habeas corpus. In his petition Moss raises precisely the same Fourth Amendment search and seizure issues which he unsuccessfully litigated throughout the state courts. Specifically, Moss, once again, asserts that there was no probable cause to search his motel room on July 2, 2004, and that the Commonwealth failed to show sufficient exigency to justify this warrantless search. These claims have been fully briefed by the parties (Docs. 1 and 7), and are now ripe for resolution. For the reasons set forth below, it is recommended that the petition be denied since Moss' complaints are without merit.

II. Discussion

A. State Prisoner Habeas Relief–The Legal Standard.

A state prisoner seeking to invoke the power of this Court to issue a writ of habeas corpus must satisfy the standards prescribed by 28 U.S.C. § 2254, which provides in part as follows

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> **(b)(1)** An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--
>
> **(A)** the applicant has exhausted the remedies available in the courts of the State;
> . . . . . .
> **(2)** An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

28 U.S.C. § 2254 (a) and (b).

(1.) Substantive Standards For Habeas Petitions

As this statutory text implies, state prisoners must meet exacting substantive and procedural benchmarks in order to obtain habeas corpus relief. At the outset, a petition must satisfy exacting substantive standards to warrant relief. Federal courts may

"entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). By limiting habeas relief to state conduct which violates "the Constitution or laws or treaties of the United States," § 2254 places a high threshold on the courts. Typically, habeas relief will only be granted to state prisoners in those instances where the conduct of state proceedings led to a "fundamental defect which inherently results in a complete miscarriage of justice" or was completely inconsistent with rudimentary demands of fair procedure. See, e.g., Reed v. Farley, 512 U.S. 339, 354 (1994). Thus, claimed violations of state law, standing alone, will not entitle a petitioner to § 2254 relief, absent a showing that those violations are so great as to be of a constitutional dimension. See Priester v. Vaughan, 382 F.3d 394, 401-02 (3d Cir. 2004).

(2). Deference Owed to State Court Rulings.

These same principles which inform the standard of review in habeas petitions and limit habeas relief to errors of a constitutional dimension also call upon federal courts to give an appropriate degree of deference to the factual findings and legal rulings made by the state courts in the course of state criminal proceedings. There are two critical components to this deference mandated by 28 U.S.C. § 2254.

First, with respect to legal rulings by state courts, under §2254(d), habeas relief is not available to a petitioner for any claim that has been adjudicated on its merits in the state courts unless it can be shown that the decision was either: (1) "contrary to" or involved an unreasonable application of clearly established case law; see 28 U.S.C. §2254(d)(1); or (2) was "based upon an unreasonable determination of the facts," see 28 U.S.C. §2254(d)(2). Applying this deferential standard of review, federal courts frequently decline invitations by habeas petitioners to substitute their legal judgments for the considered views of the state trial and appellate courts. See Rice v. Collins, 546 U.S. 333, 338-39 (2006); see also Warren v. Kyler, 422 F.3d 132, 139-40 (3d Cir. 2006); Gattis v. Snyder, 278 F.3d 222, 228 (3d Cir. 2002).

In addition, § 2254(e) provides that the determination of a factual issue by a state court is presumed to be correct unless the petitioner can show by clear and convincing evidence that this factual finding was erroneous. See 28 U.S.C. §2254(e)(1). This presumption in favor of the correctness of state court factual findings has been extended to a host of factual findings made in the course of criminal proceedings. See, e.g., Maggio v. Fulford, 462 U.S. 111, 117 (1983) (per curiam); Demosthenes v. Baal, 495 U.S. 731, 734-35 (1990).

This deference is particularly pronounced with respect to habeas claims like those advanced by Moss, which are premised on alleged violations of the Fourth

Amendment. As to such habeas petitions, the law is clear. For the past thirty-five years, it is well established that for habeas petitioners like Moss such claims are:

> barred by Stone v. Powell, 428 U.S. 465 (1976). . . . In Stone, the Supreme Court held a federal court should not grant a state prisoner habeas corpus relief because evidence obtained in an unconstitutional search or seizure was introduced at his trial if the state had already provided an "opportunity for full and fair litigation" of this Fourth Amendment claim. Stone, 428 U.S. at 494; see also Townsend v. Sain, 372 U.S. 293, 313-14 (1963) (defining requirements of full and fair hearing). . . . Even otherwise potentially meritorious Fourth Amendment claims are barred on habeas when the petitioner had a full and fair opportunity to litigate them. See also Gilmore v. Marks, 799 F.2d 51, 57 (3d Cir.1986) (rejecting argument that erroneous determination of habeas petitioner's Fourth Amendment claim overcomes Stone because that claim is really for a due process violation)

Deputy v. Taylor,19 F.3d 1485, 1491 (3d. Cir. 1994); see also, United States v. Torres, 926 F.2d 321, 323 (3d. Cir. 1991).

B. Moss' Fourth Amendment Claims Fail On Their Merits Since Moss Had a Full and Fair Opportunity to Litigate These Issues in State Court

These basic legal tenets apply here and are fatal to Moss' habeas petition. At bottom, in his petition Moss complains about state court suppression rulings, arguing that evidence seized from a motel room he occupied should be suppressed because police lacked probable cause, and failed to show exigent circumstances justifying a warrant less search of the room. Thus, the legal claims in this petition all revolve around alleged Fourth Amendment violations.

Yet, with respect to these complaints it is absolutely clear that Moss has enjoyed a full and fair opportunity to litigate these claims in state court. Thus, Moss filed a timely suppression motion in state court, received a full evidentiary hearing on that motion, and had the suppression issues in this case carefully examined by the state trial judge, as well as state appellate courts.

The careful, thoughtful consideration which this issue received in the state courts clearly constituted the type of "opportunity for full and fair litigation" of this Fourth Amendment claim contemplated by the Supreme Court in Stone . Since Moss has received all of the consideration that the courts allow on this issue, and has fully and fairly litigated this claim in the state courts, he may not now pursue federal habeas relief.

C. Moss Has Failed to Establish that the State Court's Findings Were Contrary to Law or Based on an Unreasonable Determination of the Facts

In any event, entirely aside from the fact that Moss was given a full and fair opportunity to litigate these suppression issues, it is also apparent that the state court rulings denying Moss' suppression motion properly found that there was probable cause to search the motel room, and that a warrantless search was justified by the exigencies confronting police.

For purposes of the Fourth Amendment, probable cause is defined as "a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983). Probable cause may exist when a known informant of proven reliability provides a tip regarding criminal activity, particularly when innocent aspects of that tip are independently corroborated by police. See Draper v. United States, 358 U.S. 307, 313 (1958); United States v. Ritter, 416 F.3d 256, 263-64 (3d. Cir. 2005)(informant tip provides probable cause).

This type of investigation, which couples an informant's tip with independent corroboration to define probable cause, is precisely what happened in Moss' case. As the Superior Court aptly observed when it described the investigation which led to this search, and Moss' arrest:

> [T]he informant, a cab driver familiar with the York area, had transported two individuals to the Keystone Inn, after which they emerged from room 121 with two "eight balls" of crack cocaine. The passengers voluntarily showed the informant their purchase and invited him to share it with them. This behavior indicated to the informant that one could purchase cocaine from the individuals occupying room 121 of the Keystone Inn. This informant had provided reliable information to Detective Alcorn in the past leading to numerous arrests and convictions in drug related cases. Additionally, upon their arrival at the Keystone Inn, the police independently learned that room 121 had been occupied since the prior evening by the same guests who were due to check out in a few moments.

(Doc.7, App. B, p. 10.)

In short, far from being a case in which probable cause was lacking, this prosecution is a paradigm of probable cause, as that term has been defined by the United States Supreme Court.

Similarly, the state courts correctly concluded that this warrantless search was justified by the exigencies presented to police. As the Superior Court aptly observed numerous:

> [O]ther factors weigh heavily in favor of [a] finding that exigent circumstances existed on July 2, 2004. First, [Moss] was suspected of possession of cocaine and paraphernalia associated with selling the drug, both of which are serious offenses. The information provided by hotel management made it clear that [Moss] was still in the hotel room, as he and his companion were due to check out shortly and had spent the evening there. The time of entry was mid-morning, not the evening, "which is a particularly suspect time for searches to be conducted." . . . . Moreover, the officers' entry was peaceable, as they knocked on the door and utilized the key management had provided to them to gain access to room 121. Finally, because drugs and packaging paraphernalia may be disposed of easily, and the occupants were leaving the premises within the immediate future, there was a strong likelihood that the evidence could either be removed or easily destroyed were the time taken to obtain a warrant prior to entry.

(Id. at p. 11.)

On these facts, a finding of exigency was not only appropriate; it was entirely in accordance with federal cases which have made similar findings with respect to exigent searches of motel rooms and other residences. See e.g., United States v. McNeill, 285 F.App'x 975 (3d. Cir. 2008); United States v. Smith, 224 F.App'x 194 (3d. Cir. 2007); United States v. Snard, No. 09-212, 2009 WL 3105271 (E.D. Pa. Sept.

27, 2009); United States v. Booker, No. 05-313, 2005 WL 2217023 (D.N.J. Sept. 9, 2005).

Thus, in this case it cannot be said that these state court findings were either: (1) "contrary to" or involved an unreasonable application of clearly established case law; see 28 U.S.C. §2254(d)(1); or, (2) were "based upon an unreasonable determination of the facts." See 28 U.S.C. §2254(d)(2). Quite the contrary, these findings are wholly consistence with settled case law, which supported findings of probable cause and exigent circumstances on the unique and compelling facts of his case. Since under §2254(d), habeas relief is not available to a petitioner, like Moss, for any claim that has been adjudicated on its merits in the state courts unless it can be shown that the decision was either: (1) "contrary to" or involved an unreasonable application of clearly established case law; see 28 U.S.C. §2254(d)(1); or, (2) was "based upon an unreasonable determination of the facts," see 28 U.S.C. §2254(d)(2), state court's careful fidelity to these benchmark federal constitutional standards compels denial of this habeas petition.

III. Recommendation

Accordingly, for the foregoing reasons, upon consideration of this Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254, and the Response in Opposition to this Petition, IT IS RECOMMENDED that the Petition be DENIED and

that a certificate of appealability should not issue. The Petitioner is further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 29th day of March, 2010.

S/Martin C. Carlson
United States Magistrate Judge