UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
	)	Case No. 1:02CR00106
	)	
v.	)	**OPINION AND ORDER**
	)	
CARLOS IVAN HAGERMAN,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

Eric M. Hurt, Assistant United States Attorney, Abingdon, Virginia, for the United States; Everett P. Shockley, Dublin, Virginia, for Defendant.

In this case charging the defendant with unlawful possession of firearms, the defendant has moved to suppress the firearms seized from his residence. After a hearing, the magistrate judge recommended that this motion be denied. For the reasons stated below, the magistrate judge's recommendation will be accepted and defendant's Motion to Suppress denied.

I

Pursuant to the Federal Magistrates Act, I referred this pretrial matter to Magistrate Judge Pamela Meade Sargent for the purpose of conducting an evidentiary hearing. *See* 28 U.S.C.A. § 636(b)(1)(B) (West 1993). She subsequently submitted

proposed findings of fact and a recommendation that the defendant's Motion to Suppress be denied. The defendant has filed timely objections to the magistrate judge's findings and recommendation. The parties have briefed and argued the objections and they are ripe for decision.

The facts as disclosed in the record are as follows.

On the early evening of September 24, 2002, Deputy Brian Lawson of the Wythe County Sheriff's Department ("WCSD") visited the home of WCSD Deputy Meredith in the Max Meadows area of Wythe County. While at Meredith's home, Lawson observed what he believed to be ten-foot-tall marijuana plants growing in a neighbor's garden, about twenty-five feet from Meredith's property line. Lawson contacted his supervisor, Sergeant Turpin, and the officers decided to further investigate the garden, which they learned was located on property owned by the defendant, Carlos Ivan Hagerman.

Officers Turpin, Lawson, and Meredith, along with WCSD Deputy Jeffrey Freeman and WCSD Sergeant Forrest Carter, arrived at the defendant's property shortly after nightfall without obtaining either a search warrant or an arrest warrant. Freeman drove his car to the front of the house to secure the location. Carter drove his car directly to the garden, shining his car headlights on the garden. Soon after the officers arrived, the defendant came out of his mobile home and stood on the covered

porch. Freeman asked the defendant, "Is that your garden?" to which the defendant responded, "Yes, and that is my marijuana." Carter began to walk toward the defendant's home and he yelled out to Freeman to arrest the defendant. Freeman told the defendant to come down off of the porch and he was arrested once he descended the stairs and came into the yard.

At that time, Freeman took the defendant over to the police car, placed him in the back seat, and advised him of his *Miranda* rights. The defendant subsequently admitted that there were firearms in the home. After again advising the defendant of his rights, Freeman asked if the officers had permission to search the defendant's home, and he responded, "That is fine." The defendant then told Freeman that he had previously been convicted of a felony. Freeman testified that it did not appear that the defendant was under the influence of alcohol or drugs, that he was compliant and volunteered information, and that Freeman did not use force or intimidation. A subsequent search of the home produced three firearms, ammunition, and additional marijuana.[1]

[1] While the defendant contests other facts as presented in the magistrate judge's findings and recommendation, these are the only facts I find relevant for the purpose of analyzing the issues before the court.

II

In criminal cases, a motion to suppress evidence may be designated to a magistrate judge to conduct a hearing and to submit proposed findings of fact and a recommendation for disposition to the district court judge. *See* 28 U.S.C.A. § 636(b)(1)(B). At the defendant's hearing before the magistrate judge, he argued that the warrantless search and seizure of the marijuana was invalid because the garden was within the curtilage of the defendant's home. He further contended that the subsequent consent search of his residence that produced the firearms was invalid and should be suppressed as "fruit of the poisonous tree" because it followed directly from the invalid seizure of the marijuana. *See generally Wong Sun v. United States*, 371 U.S. 471 (1963).

Magistrate Judge Sargent's report and recommendation concludes that the defendant's garden was outside the curtilage of his home, that the officers' search of the garden and their seizure of the marijuana did not invade the defendant's legitimate expectation of privacy, that the warrantless arrest of the defendant was valid, that the defendant validly consented to the search of his residence, that Deputy Freeman's knowledge of the defendant's consent was imputed to Sergeant Carter, and that Carter's search of the home was pursuant to the defendant's consent.

The defendant has made several objections to the magistrate judge's report.

The defendant specifically contends that his garden is within the curtilage of his home, that his warrantless arrest was invalid, that his consent to search was tainted by his invalid arrest, and that the separate consent to search given by Rita Young, the defendant's live-in girlfriend, was the product of Sergeant Carter's coercion.

After timely objections to the magistrate judge's report and recommendation have been filed, the district court judge must

> make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

Id. Although it is not necessary to call witnesses or conduct additional hearings, the district judge must independently consider all of the factual issues, and is required to review the entire record, including any hearing by the magistrate judge. *See Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982). I have reviewed the audio tapes of the hearing conducted by the magistrate judge, examined the exhibits introduced at that hearing, and considered de novo the proposed findings and recommendation.

III

While the defendant asserts that the warrantless search and seizure of the

marijuana renders his subsequent arrest and consent to search invalid as fruit of the poisonous tree, I do not find it necessary to determine whether the garden was within the curtilage. Instead, I find that the officers were lawfully present on the defendant's property, that the officers made a valid warrantless arrest of the defendant after he confessed to owning the marijuana plants, and that as a result of such arrest, the defendant thereafter gave valid consent to the officers to search the home and seize the firearms. In summary, it was not the seizure of the marijuana plants that produced the defendant's consent to search his home where the firearms were found, but it was his valid warrantless arrest that led to his consent and thus the firearms are not the fruit of a poisonous tree.

A

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. However, the Fourth Amendment is not implicated when a law enforcement officer approaches a person in a public place to question that person. *See Florida v. Bostick*, 501 U.S. 429, 434-35 (1991). More specifically, the Fourth Amendment is not implicated when a law enforcement officer approaches a dwelling to speak with the occupant. *See United States v. Cephas*, 254 F.3d 488, 493-94 (4th Cir. 2001); *United States v. Taylor*, 90 F.3d 903, 909 (4th Cir. 1996); *United States*

v. Bradshaw, 490 F.2d 1097, 1100 (4th Cir. 1974) (officers "were clearly entitled to go onto defendant's premises in order to question him"). As stated in *Cephas:*

> Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned violation of the person's right of privacy, for any one openly and peaceably . . . to walk up the steps and knock on the front door of any man's "castle" with the honest intent of asking questions of the occupant thereof—whether the questioner be a pollster, a salesman, or an officer of the law.

254 F.3d at 493 (quoting *Davis v. United States*, 327 F.2d 301, 303 (9th Cir. 1964)).

Although in this case Deputy Freeman did not knock on the defendant's front door, he was there, as were all of the officers, to ask the defendant about the garden and further investigate the presence of marijuana. It makes no difference that the defendant came out of his house on his own. The fact remains that Freeman was legally on the premises to question the defendant about the marijuana plants.

The defendant contends that a "No Trespassing" sign was posted near the entrance of his driveway, indicating an expectation of privacy in his property. However, the uncontradicted testimony is that the officers did not see any such sign. Moreover, the posting of a "No Trespassing" sign does not necessarily evidence a legitimate expectation of privacy recognized by the Fourth Amendment. *See Oliver v. United States*, 466 U.S. 170, 182 (1984). Accordingly, I find that the officers were legally on the defendant's property.

B

The next issue is whether the defendant was legally arrested without an arrest warrant. Warrantless arrests are permissible where, based on the totality of the circumstances, there is probable cause to believe a felony is being or has been committed. *See Illinois v. Gates,* 462 U.S. 213, 230-31 (1983). Here, there is no dispute that Deputy Freeman had probable cause to arrest the defendant. Deputy Lawson had observed what he believed to be marijuana plants growing on the defendant's property and this observation was not a search within the meaning of the Fourth Amendment. The marijuana plants were ten-feet tall and were within twenty-five feet of the defendant's neighbor's property line, "clearly visible" to outsiders. *See Taylor,* 90 F.3d at 908 (law enforcement officer's observation from a public vantage point does not constitute a search). Given this observation, Lawson and the other officers decided to go to the defendant's property to further investigate and possibly arrest the defendant. Once on the defendant's property, the defendant came out of his home and when asked about the garden, he confessed that the marijuana was his. This confession, combined with Lawson's earlier observation of the plants, clearly gave Freeman probable cause to arrest.

While probable cause is clear, at issue is whether the warrantless arrest was made in a "public place" or in the defendant's home. Warrantless entry into a

person's home to arrest is valid only if exigent circumstances exist. *See Payton v. New York*, 445 U.S. 573, 587 (1980). However, the arrest here was made in the defendant's yard and not in the defendant's home, and accordingly a warrant was not required.

The testimony is uncontradicted that prior to placing the defendant under arrest, Deputy Freeman asked the defendant to come down off of the porch and into the yard. The arrest was made in the defendant's yard, "one step" away from his porch. The Supreme Court has held that warrantless arrests are valid in one's yard because it is a "public place" not subject to Fourth Amendment protection. *See United States v. Santana*, 427 U.S. 38, 42 (1976). While *Santana* has been distinguished where the defendant did not exit the home entirely, *see United States v. McCraw*, 920 F.2d 224, 229 (4th Cir. 1990), or where the defendant was summonsed at gunpoint to come out of the doorway, *see United States v. Saari*, 272 F.3d 804, 808-09 (6th Cir. 2001), neither of those fact situations are present here. The defendant emerged from his home onto the porch voluntarily and Deputy Freeman, without drawing a weapon, asked the defendant to come down to the lawn after he confessed that the marijuana was his. Accordingly, the warrantless arrest of the defendant was valid.

C

Next, was the warrantless search of the defendant's home that produced the

firearms valid? A warrant is always required to conduct a search unless an exception is invoked. *See Katz v. United States,* 389 U.S. 347, 357 (1967). One such exception is when the defendant gives voluntary consent to search. *See Schneckloth v. Bustamonte,* 412 U.S. 218, 219 (1973). Several factors can be taken into consideration in determining whether consent was voluntary, such as the age, education, and intelligence of the defendant, as well as the conduct of the officer, and the duration, location, and circumstances of the encounter. *See United States v. Lattimore,* 87 F.3d 647, 650 (4th Cir. 1996). The government has the burden of proving that consent was voluntary. *See Schneckloth,* 412 U.S. at 222.

In this case, there is no indication that the defendant was under the influence of alcohol, or that he gave consent based on threats or fear of Deputy Freeman. The testimony at the suppression hearing reveals that at all times the defendant was calm, rational, and willing to cooperate in the investigation. There is simply no evidence to indicate that the defendant's consent was involuntary.

While Deputy Freeman testified that he advised the defendant of his *Miranda* rights on two occasions, the defendant points out that Sergeant Carter testified that Deputy Freeman told him that he had failed to advise the defendant of his *Miranda* rights. However, even if *Miranda* rights were not read to the defendant, this failure does not per se make the defendant's consent involuntary. *See United States v. Elie,*

111 F.3d 1135, 1146 (4th Cir. 1997) (the absence of *Miranda* warnings is only one factor to be considered in assessing voluntariness of consent). Given the totality of the circumstances, I agree with the magistrate judge that the defendant's consent to the search of his home was voluntary.

D

Another issue is whether Sergeant Carter, the officer who searched the home and discovered the firearms, knew that the defendant had consented to a search of the home. Deputy Freeman testified that he had told Rita Young, the defendant's live-in girlfriend, that the defendant had consented to a search of the home and that he told her this while Sergeant Carter was "near by." However, Sergeant Carter's testimony indicates that he may not have heard this statement. He testified that he asked Young a few questions, followed her into the home, and later obtained her consent to conduct a search.

Regardless of whether Sergeant Carter heard Deputy Freeman's statement to Young, I find that the warrantless search was valid. Under the doctrine of collective knowledge, a defendant's consent to search is deemed known to other officers working closely together at the scene of an investigation, regardless of whether that fact is specifically communicated to all officers. *See United States v. Gillette,* 245 F.3d 1032, 1034 (8th Cir. 2001) (searching officer deemed to know of consent given

to other officer where officers were investigating the scene together). Although the Fourth Circuit has not specifically adopted the collective knowledge doctrine when the issue is whether an officer knew of the defendant's consent to search, the Fourth Circuit has adopted the doctrine to hold that probable cause to arrest can rest upon the collective knowledge of the police. *See United States v. Gaither,* 527 F.2d 456, 458 (4th Cir. 1975); *United States v. Tate,* 745 F. Supp. 352, 362 (W.D.N.C. 1990). I find that under the circumstances in this case the officers were working closely together, and that Sergeant Carter can thus be deemed to have collective knowledge of the defendant's consent.

E

Finally, the defendant contends that the consent to search given by Young was coerced by Sergeant Carter's words and actions. However, I do not find it necessary to analyze this issue. Once an individual with common authority over the premises gives consent to search the premises, it is not necessary to obtain consent from another inhabitant. *See United States v. Matlock,* 415 U.S. 164, 171 (1974). The defendant had authority over the mobile home, he gave clear consent to Officer Freeman to search the home, and under the doctrine of collective knowledge, Sergeant Carter is deemed to have known of this consent, making the warrantless search of the home and the seizure of the firearms valid.

IV

For the foregoing reasons, I accept the magistrate judge's recommendation and it is **ORDERED** that the defendant's Motion to Suppress Evidence [Doc. 22] is denied.

ENTER: May 15, 2003

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United States District Judge