



Open Doors to Federal Courts 2006
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November 10, 2006

UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

United States of America
Plaintiff

v.

Criminal Docket No. 07-007

Daniel McPherson,
Defendant

MOTION TO SUPPRESS EVIDENCE

Defendant, Daniel McPherson, moves this court for an order suppressing any and all evidence seized by federal agents from defendant's premises located at 115 Northwood Drive, East Town, (name of state) during a search of Defendant's premises on Friday, 28 April 2006, on the following grounds:

1. The U.S. Supreme Court held in the case *Wilson v. Arkansas*, 514 U.S. 297 (1995), that the common law requirement that officers "knock and announce" their presence before executing a validly authorized search warrant is mandated by the "unreasonable search and seizure" clause of the Fourth Amendment to the United States Constitution.
2. The suppression of evidence taken in an unconstitutional manner is a remedy available to aggrieved defendants in order to prevent their trial from being "tainted" with evidence seized by illegal means and to serve as a deterrent for future police misconduct. *Weeks v. United States*, 232 U.S. 383 (1914). Suppression of evidence is typically used "where its deterrence benefits outweigh its 'substantial social costs.'" *United States v. Leon*, 468 897, 907 (1984).
3. The "knock and announce" rule is designed to protect individuals by giving them a chance to voluntarily allow the police into their residence so as to 1) minimize the potential for violence and 2) minimize property damage. The rule also protects the privacy rights of individuals by 3) minimizing the chance that government agents will accidentally intrude upon them in an undignified state. None of these interests can adequately be protected in the absence of suppression.

Conclusion: Since Federal Bureau of Investigation (FBI) agents Lisa Donald and Ryan Smith failed to "knock and announce" their presence before executing their validly authorized search warrant upon the Defendant's premises, described above, all evidence taken from said premises on the date of 28 April 2006 should be suppressed.

This motion is based on all files and records of this case, and any evidence that may be adduced at the hearing on the motion.

Dated _____
(Select date)

(Name and address of lawyer)

I certify that a copy of this motion was delivered to the Court and opposing counsel on _____ (Date)

(Server)

List of Authorities

Cases

Weeks v. United States, 232 U.S. 383 (1914).

Wilson v. Arkansas, 514 U.S. 297 (1995).

United States v. Leon, 468 897, 907 (1984).

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____

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Plaintiff

v.

Criminal Docket No. 07-007

Daniel McPherson,
Defendant

OPPOSITION TO DEFENDANT’S MOTION TO SUPPRESS EVIDENCE

The United States Government, through the Assistant U.S. Attorney, moves this court for an order denying the Defendant’s, Daniel McPherson’s, motion to suppress as evidence all property seized by federal agents from defendant’s premises located at 115 Northwood Drive, East Town, (name of state) during a search of Defendant’s premises on Friday, 28 April 2006, on the following grounds:

1. In the case of *United States v. Leon*, 468 U.S. 897 (1984), the U.S. Supreme Court rejected calls for “the indiscriminate application” or the exclusionary rule, *supra* at 908, and stated that the rule would only be applied “where its deterrence benefits outweigh its ‘substantial social costs.’” *supra* at 907.
2. The Government acknowledges that Federal Bureau of Investigation (FBI) agents Lisa Donald and Ryan Smith failed to “knock and announce” their presence while conducting a search on the Defendant’s premises on 28 July 2006, in violation of the U.S. Supreme Court’s command that such action was constitutionally required. *Wilson v. Arkansas*, 514 U.S. 297 (1995).
3. No deterrent effect would occur as the result of suppressing evidence in this case. The evidence was discovered during the execution of a validly authorized search warrant. The “knock and announce” rule was meant to protect the individuals and property from the potential harms that can occur during announced police searches, as laid out in Point 3 of the Defendant’s motion. It was not meant to provide criminals with a means to prevent evidence from being discovered and used at trial. The Defendant did not allege that any harm arose to himself, his property, or others as a result of Agents Lisa Donald and Ryan Smith’s failure to “knock and announce” their presence.

Conclusion: Without any distinct harm arising to the Defendant as a result of Agents Donald and Smith’s failure to “knock and announce” their presence while conducting a search otherwise authorized by a valid search warrant, the deterrent effect of suppressing the narcotic evidence gathered from the Defendant’s premises would not outweigh the substantial social costs of preventing the Government from prosecuting a trial against the Defendant, an individual whom the Government has probable cause to believe engaged in several criminal narcotics activities. Therefore, the Defendant’s Motion to Suppress must be DENIED.

This motion is based on all files and records of this case, and any evidence that may be adduced at the hearing on the motion.

Dated _____
(Select date)

(Name and address of lawyer)

I certify that a copy of this reply was delivered to the Court and opposing counsel on _____ (Date)

(Server)

List of Authorities

Cases

Wilson v. Arkansas, 514 U.S. 297 (1995).

United States v. Leon, 468 897, 907 (1984).

Louisiana and Civic Education

The Louisiana Center for Law and Civic Education is a statewide educational non-profit Organization funded in part, by the Louisiana Bar Foundation and through various public and private grants and generous donations. To obtain a copy of the report, contact our director at the location noted above.