

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

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Alexandria Division

UNITED STATES )  
 )  
 v. ) CRIMINAL NO. 82-00007-A  
 )  
ALAN JAY CHERNICK, et al. )

MEMORANDUM OPINION

This matter comes before the court on the motion of defendant Alan Chernick to suppress certain evidence seized by the officers who arrested him. See Fed. R. Crim. P. 41(f). For the reasons stated below, the court DENIES this motion as to the evidence seized from Chernick's person and from the apartment, and GRANTS it as to the evidence seized from Chernick's vehicle.

I. FINDINGS OF FACT

On the morning of December 30, 1981, Special Agents John DiGravio and Arthur Vogel of the Drug Enforcement Agency (DEA) applied for a warrant to arrest Alan Jay Chernick. The United States Magistrate for the Eastern District of Virginia ruled that the agents had probable cause to believe that Chernick had violated certain federal drug laws. The magistrate issued a warrant for Chernick's arrest about 11:00 A.M. on that same day. The defendant does not challenge the validity of this warrant.

DiGravio and Vogel had information that Chernick was staying at the apartment of Paula Shapiro at 2424 Pennsylvania Avenue in Washington, D.C. Shapiro was the defendant's paramour. The agents arrived in front of Shapiro's apartment building in the early afternoon on December 30, 1981. They waited in their car hoping to arrest Chernick as he either entered or exited the apartment building. About 5:30 P.M. on that same day, the agents saw the defendant leave the building. He quickly entered a waiting taxi. The agents followed the cab in their car. DiGravio and Vogel finally arrested Chernick about 6:00 P.M. as he sat in a beauty salon.

The two agents searched Chernick's person immediately after apprehending him. They seized from him more than one thousand dollars in cash, a telephone book, a piece of yellow paper inscribed with several names and telephone numbers, and a set of keys. The keys included one to Chernick's car and one to Shapiro's apartment. Chernick challenges the validity of this search incident to his arrest.

After searching Chernick's person, the agents escorted him to their vehicle. At this point, DiGravio read the defendant his Miranda rights. Chernick stated that he understood his rights. He added that he wanted to cooperate with the DEA. The agents then drove the defendant to their office at 400 Sixth Street, S.W., in Washington, D.C. They did not take the defendant before a magistrate at this time, because they believed that the local officials were unavailable for conducting arraignments after 4:00 P.M.

The agents placed Chernick in a holding room at their office for a short time. They then began processing the defendant. It is unclear exactly how much time this processing required. At some point during the processing, DiGravio told Chernick that he was preparing to apply for a warrant to search Shapiro's apartment. The officer indicated to Chernick that Shapiro might be arrested and held liable for any contraband found in her apartment. DiGravio also reminded Chernick several times of his right to call an attorney. The defendant, however, stated that he was familiar with the criminal justice system and did not need one at the present time.

After the agents completed processing the defendant, he again stated that he wished to cooperate with the DEA. He implied that he could provide the government with much useful information. At this time, DiGravio and Vogel accepted his offer of cooperation. They warned him that they could make no promises of leniency. The defendant asked the agents a few questions to determine how much they knew about his drug operation. When satisfied that the DEA had discovered all of his illegal dealings, he agreed to permit the agents to search

Shapiro's apartment.

About 8:30 or 9:00 P.M. on the same evening, Chernick, DiGravio, Vogel, and one other agent drove to Shapiro's apartment. DiGravio returned to the defendant the apartment key that the agents had seized from him earlier. Chernick let the three agents into Shapiro's apartment. He explained the circumstances to Shapiro. She then consented to a search by the officers. At this point, Chernick decided to turn over all of the contraband in the apartment to the agents. Following the defendant's instructions, DiGravio and Vogel found a briefcase containing 5,000 suspected methaqualone tablets in the closet and a briefcase containing \$2,000 in cash under the bed. The defendant provided the agents with the combinations to the locks on both of these briefcases. Chernick also pointed out the location of a small amount of cocaine.

After completing the search of the apartment, DiGravio located Chernick's car parked on the street near Shapiro's apartment building. The agent seized the vehicle for forfeiture purposes. He arranged for the car to be transported back to the DEA's Washington office. He later searched the vehicle for contraband and weapons. It is unclear what items DiGravio seized during this search. He conducted both the search and seizure of the car without a warrant.

## II. LEGAL CONCLUSIONS

Chernick moves to suppress all of the evidence seized from his person, from Shapiro's apartment, and from his car. He argues that these searches presumptively violated the fourth amendment, because they were warrantless. In addition, the defendant contends that the circumstances of the searches did not justify the failure to obtain a warrant.

The court first holds that the search of Chernick's person at the time of his arrest was valid under the fourth amendment. When an officer makes a valid arrest pursuant to a warrant, a contemporaneous search of the suspect's person for weapons or evidence of a crime requires no further

justification. See United States v. Robinson, 414 U.S. 218, 235 (1973); Chimel v. California, 395 U.S. 752, 762-63 (1969). See also United States v. Edwards, 415 U.S. 800, 804-08 (1974).

The defendant's second contention is that the warrantless search of Shapiro's apartment was illegal, because the DEA agents allegedly used coercion to obtain his consent to the search. A consent search conducted without a warrant is valid. See Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973). The government, however, must show:

that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.

Id. at 248-49. The test for voluntariness is whether the suspect's "will has been overborne and his capacity for self-determination critically impaired." Id. at 225.

There are two factors that support Chernick's coercion argument. First, the defendant gave his consent while under custodial arrest at the DEA office. The fact of custody, however, is insufficient to establish coercion. See United States v. Watson, 423 U.S. 411, 424-25 (1976). In addition, Chernick made no attempt to revoke his consent as he drove with the agents to Shapiro's apartment. Second, Special Agent DiGravio indicated to the defendant that he was preparing an application for a warrant to search Shapiro's apartment. The agent stated that Shapiro might be arrested and held liable if narcotics were found in her apartment. DiGravio made it clear that he would search the apartment only if he were able to obtain a search warrant from a magistrate. The court does not believe that DiGravio made these statements with the intent of procuring Chernick's consent to a search of Shapiro's apartment. However, even if the agent did have such an intent, an officer may use noncoercive ruses to obtain the consent of a mentally competent adult. See United States v. Riggs, 537 F.2d 1219, 1221 (4th Cir. 1976). In this case, DiGravio did not threaten to use force or to act

illegally. All of his statements to Chernick about a potential search were accurate. The statements alone, therefore, do not demonstrate coercion.

Four aspects of the case indicate that Chernick gave his consent voluntarily. First, the DEA agents did not threaten to use force or to take illegal action. Second, Chernick was familiar with the criminal justice system through prior experience. Third, the arresting officers read the defendant his Miranda rights. Chernick informed them that he understood these rights. The agents also repeatedly warned the defendant of his right to call an attorney. Fourth, Chernick showed the agents the exact location of all contraband within the apartment. All of these factors indicate that the defendant's consent was a product of his own free will. See United States v. Watson, 423 U.S. at 424-25; United States v. Stanley, 597 F.2d 866, 869 (4th Cir. 1979); United States v. Riggs, 537 F.2d at 1221. The court holds that these factors outweigh those favoring involuntariness. It, therefore, rules that Chernick's consent and the subsequent search of the apartment were both valid under the fourth amendment.

Chernick's final contention is that the warrantless search of his vehicle conducted by DiGravio violated the fourth amendment. A warrantless search of an impounded vehicle is valid in two cases. First, it is valid if the searching officer has probable cause to believe that the vehicle contains contraband. See Chambers v. Maroney, 399 U.S. 42, 48 (1970); United States v. Panebianco, 543 F.2d 447, 456 (2d Cir. 1976), cert. denied sub nom. Anatala v. United States, 429 U.S. 1103 (1977); United States v. McCormick, 502 F.2d 281, 287 (9th Cir. 1974). Second, a search of this type is permissible if it qualifies as an inventory search. See South Dakota v. Opperman, 428 U.S. 364, 373-75 (1976); United States v. Pappas, 613 F.2d 324, 330-31 (1st Cir. 1979). The search of Chernick's automobile was not an inventory search, because its purpose was to gather evidence, rather than to secure the owner's possessions. See South Dakota v. Opperman, 428 U.S. at 376; United

States v. Pappas, 613 F.2d at 331. Thus, the government has the burden of showing that the DEA agents had probable cause to believe that the car contained contraband. The court holds that the prosecution has not met this burden. There is no indication in the record that Chernick had ever used his car in connection with a narcotics transaction. Thus, the court must suppress all items seized during the search of the defendant's vehicle.

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United States District Judge

Date: \_\_\_\_\_