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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
DISTRICT OF UTAH  
NORTHERN DIVISION

BY: \_\_\_\_\_  
DIGNITY COURT

|                           |   |                       |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, | : |                       |
|                           | : |                       |
| Plaintiff,                | : | MEMORANDUM DECISION   |
| vs.                       | : | AND ORDER DENYING     |
|                           | : | DEFENDANT'S MOTION    |
|                           | : | TO SUPPRESS           |
|                           | : |                       |
| STEVEN LEE TAFFOLA,       | : |                       |
|                           | : |                       |
| Defendant.                | : | Case No. 1:03-CR-67 W |

This matter is before the court on Defendant's Motion to Suppress. On January 15, 2004, the court conducted an evidentiary hearing on the motion. Defendant Steven Lee Taffola ("Taffola") was present with his counsel, Robert Breeze. The government was represented by Colleen K. Coebergh. Following the hearing, the court ordered a transcript as well as supplemental briefing from the parties. Within the time allotted for supplemental briefing, the defendant requested a further evidentiary hearing, focusing on "the particulars of the entry into defendant's domicile." See Def's Request for Further Hearing at 1. Notwithstanding the government's objection, the court conducted a second evidentiary hearing on April 16, 2004. Following this second hearing, the court again ordered a transcript and supplemental briefing from the parties. After thorough review and consideration of the pleadings submitted by the parties and the testimony presented at both of the evidentiary hearings on the motion to suppress, the court enters the following memorandum decision and order.

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## BACKGROUND

The court finds the relevant facts as follows.<sup>1</sup> On December 18, 2002, the defendant's brother, Tim Taffola, was a parolee supervised by the Utah Department of Corrections Division of Probation and Parole. (Tr. I at 7.) On that same date, Tim Taffola was suspected of having assaulted his girlfriend and of abusing drugs, each of which would constitute a violation of his parole. (Tr. I at 6, 7, 32.) To investigate these alleged violations, agents from Probation and Parole went to Tim Taffola's residence of record, located at 654 East 2735 South in Ogden, Utah. (Tr. I at 7.) Agents Curtis, Moore, Woodring and a few additional agents went to the listed address. There were approximately five to six agents total. (Tr. I at 7, 9, 32.) The dwelling at the location consisted of a downstairs and upstairs apartment. (Tr. I at 7, 33.) The agents proceeded to Tim Taffola's downstairs apartment where they found Tim Taffola's girlfriend. The girlfriend reported that Tim was not there, but he might be found upstairs in his brother Steven's apartment. (Tr. I at 7, 8, 33.)

The agents proceeded to the upstairs apartment and knocked on the door. The door was answered by the defendant, Steven Lee Taffola. (Tr. I at 8.) Immediately upon defendant's opening the door, Agent Jeff Moore noticed a "very heavy odor of marijuana" coming from inside the apartment. (Tr. I at 8.) Agent Moore asked the defendant if his brother was there and the defendant responded, "no." (Tr. I at 8.) Agent Moore advised the defendant that he could smell marijuana and asked the defendant if they could come in and look for Tim. Agent Moore

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<sup>1</sup>Reference to the transcript of the evidentiary hearing conducted on January 15, 2004, will be cited as "Tr. I at \_\_\_." Reference to the transcript of the evidentiary hearing conducted on April 16, 2004, will be cited as "Tr. II at \_\_\_."

told the defendant that he “didn’t want to mess with the marijuana at that time,” but that he just wanted to look for the defendant’s brother, Tim. (Tr. I at 8.) The defendant stepped outside onto the front porch and closed the apartment door behind him. (Tr. I at 8.) The defendant refused to allow the agents to enter. (Tr. I at 8.)

Supervising Agent Woodring approached and began speaking with the defendant on the front porch. Agent Woodring described his conversation with the defendant as an on-going, “back and forth” conversation in which he explained to the defendant that the agents were concerned that Tim might be inside the defendant’s apartment. Agent Woodring told the defendant that “we really weren’t too concerned if he was smoking marijuana, we just wanted to come in and look for [Tim].” (Tr. I at 34, 35.) The defendant continued to deny Agent Woodring entrance to his apartment. Agent Woodring then explained to the defendant that the smell of the burnt marijuana could provide probable cause and was sufficient to obtain a search warrant. Agent Woodring explained to the defendant that if he continued to deny them entry into the residence, he would obtain a search warrant.

During this initial conversation with the defendant, Agent Woodring asked the defendant if there was anyone else in the apartment. The defendant reported that there were two other people inside. Agent Woodring asked the defendant to call the individuals and ask them to come out so the agents could make sure that neither was Tim Taffola. Two individuals exited the upstairs apartment. Both were patted down and allowed to leave the premises. (Tr. I at 37.) Neither individual was Tim Taffola.

Following the defendant’s refusal to let the agents enter his apartment, Agent Woodring asked Agent Moore to obtain a telephonic warrant with the presence of marijuana providing the

probable cause. (Tr. I at 10.) The agents “set a perimeter on the house” and placed an agent on each corner of the house to assure that no one could go in or out. (Tr. I at 26.) The defendant was informed that the agents were in the process of obtaining a search warrant and that he would be unable to re-enter his apartment. (Tr. I at 28.) Agent Moore testified that it is “standard policy and procedure” that while they are in the process of getting a search warrant and have a perimeter set, “we do not let someone back in the house so they cannot get rid of the evidence, tamper with the evidence, anything else.” (Tr. I at 30.) The defendant remained outside his residence while Agent Moore obtained a telephonic search warrant. (Tr. I at 10; Ex. 1.) Although at some point in time the defendant specifically asked to be allowed back into his apartment, he was refused entry due to the officers’ concern about the destruction of evidence. (Tr. I at 37.)

The defendant never disputed the agents’ assertion that there was marijuana within the residence. Agent Woodring testified that because the smell of marijuana had been so noticeable when the defendant opened the door, the fact that there would be marijuana found in the house was, “never a disputed thing [by the defendant].” (Tr. I at 46.) “We both acknowledged there would be marijuana in the house.” (Tr. I at 46.)

While Agent Moore was attempting to secure the warrant, Agent Woodring, who was with the defendant most of the time prior to the arrival of the search warrant, continued to converse with the defendant. Agent Woodring testified that the defendant “kept going back and forth,” suggesting one minute that he was going to let us in and then the next minute he was not. (Tr. I at 35.) During this conversation the defendant told Agent Woodring that there were “marijuana roaches” in his apartment. (Tr. I at 35.) The defendant asked Agent Woodring if he

agreed to let them in his apartment, would they take him to jail. (Tr. I at 35, 38, 39.) Because the agents' primary focus was on Tim Taffola, Agent Woodring told the defendant that "if there's just marijuana, we'll summons you to court, we won't arrest you." (Tr. I at 35.)

The officers spoke to the defendant in a polite and conversational tone. (Tr. I at 10, 39.) The defendant was not touched or physically restrained by the officers. Although all of the officers on the scene would have been wearing sidearms as part of their regular uniform, none of the officers ever touched their firearms or took them out of their holsters. (Tr. I at 9, 10, 38.)

While waiting for the warrant, the defendant's mother arrived at the location and asked what was happening. Agent Woodring explained that they were waiting for a search warrant. (Tr. I at 36.) She inquired whether, if the defendant let the officers in, they would arrest him. (Tr. I at 36.) Agent Woodring testified that the defendant's mother "just kind of kept hounding on [the defendant] to have him let us in." (Tr. I at 36.)

At some point, while the agents continued to wait for the warrant, the defendant received a telephone call on his mobile phone. (Tr. I at 36.) The defendant said it was his girlfriend and that she was in attorney Dan Wilson's office. (Tr. I at 36.) After talking with his girlfriend on the phone, the defendant told the officers he was not going to cooperate with them. (Tr. I at 36.) The defendant specifically asked Agent Woodring if he was under arrest. Agent Woodring responded, "no, you are not under arrest." When asked if he was being detained, Agent Woodring indicated he was. (Tr. I at 36.)

The defendant was never handcuffed during the time the warrant was being obtained. While waiting for the warrant, the defendant was permitted to enter the downstairs apartment because it was cold outside. (Tr. I at 37, 38.)

No officer entered the residence until the search warrant had been obtained. (Tr. I at 10.)

The amount of time that elapsed from the time the defendant stepped onto his front porch, closing the door behind him, until the agents entered the residence with the warrant was approximately 30-40 minutes. (Tr. I at 14.)

Upon obtaining the warrant, the agents entered the house through the unlocked front door. (Tr. II at 23.) Agent Woodring testified that the agents did not knock on the door prior to entry. Agent Woodring explained that the agents did not knock on the door because the defendant had already exited his residence, and because the agents had asked the defendant if there was anyone else inside and the defendant indicated that the two people who previously exited the residence were the only other occupants. (Tr. II at 23.) Similarly, Agent Moore testified that they did not knock on the door prior to entry because the defendant was already outside and knew the agents had a warrant, and because the defendant had said there was nobody in the house. (Tr. II at 45.)

Agent Woodring further testified that even though they believed the residence was unoccupied, the agents nonetheless "announced" their entry. (Tr. II at 23-24.) Agent Woodring testified that as a matter of common practice and habit he always announces his entry. (Tr. II at 24.) Agent Moore similarly testified that although the agents did not knock prior to entry, they did "announce" their entry. (Tr. II at 46.) Although Agent Moore had no specific recollection of "announcing" his entry on this particular visit, he testified that he has never executed a search warrant when he did not announce his presence. (Tr. II at 47.)

Upon entering through the unlocked front door and announcing their entry, the agents initially "cleared" the residence to make sure no other persons were hiding therein. Once the

house was cleared, the defendant asked Agent Woodring if he could “go in and show me where the marijuana was so we wouldn’t destroy his house.” (Tr. I at 40.) The defendant entered the residence with the agents and directed Agent Woodring to a platter under a dresser that had “a lot of different items of drugs and drug paraphernalia.” (Tr. I at 40.) At that point, the defendant was taken into custody and given a Miranda warning by Agent Woodring. The defendant indicated that he understood his rights and further indicated that he did not want to talk. (Tr. I at 12, 14, 40.) The defendant was not asked any questions. (Tr. I at 40.)

Later, during the course of the search of the residence, agents found methamphetamine in the bedroom between two mattresses. When the defendant observed that the agents had found methamphetamine the defendant exclaimed “that’s not mine, that’s my brother’s and the marijuana is just mine.” (Tr. I at 12.) At the time the defendant made these statements, he was not being asked any questions nor was he being spoken to. (Tr. I at 12.) Agent Moore testified that upon hearing the defendant make these statements, he reminded the defendant that he was under Miranda and he should not say anything more. (Tr. I at 12.)

#### DISCUSSION

The defendant claims that the officers in this case violated the Fourth Amendment by failing to comply with the “knock and announce” rule. More specifically, the defendant claims that the officers entered his residence without knocking, announcing their purpose, or affording the defendant an opportunity to admit them, and therefore all of the evidence obtained as a result of the entry into his home should be suppressed. Def’s Mem in Support at 3. Additionally, the defendant claims that the court should exclude all of the statements he made while in the company of the police because he claims the police elicited incriminating information from him

in violation of Miranda.

A. Knock & Announce

In Wilson v. Arkansas, 514 U.S. 927 (1995), the Supreme Court held that the Fourth Amendment incorporates the common law requirement that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry.” Id. at 934. At the same time, the Court recognized that the “flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests,” id. at 934, and left “to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment.” Id.; Richards v. Wisconsin, 520 U.S. 385, 387 (1997).

Since Wilson, the Supreme Court has provided the lower courts with guidance as to when a “no-knock” entry is reasonable. In Richards v. Wisconsin, 520 U.S. 385 (1997), the Court provided: “In order to justify a ‘no-knock’ entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime.” Id. at 349. The Court explained that this standard “strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries.” Id. (providing that the “showing” required by this standard is “not high, but the police should be required to make it whenever the reasonableness of a no-knock entry is challenged”).

With these principles in mind, the court concludes that the agents in this case did not violate the knock-and-announce requirement of the Fourth Amendment. First, although the

officers admit that they did not physically knock on the door of defendant's residence, the court finds that the agents did, nonetheless, announce their presence and identify their purpose prior to entering the defendant's residence. Moreover, even if the agents had not "announced" prior to their entry, their failure to do so would have been reasonable given the facts of this case.

At the time the officers obtained the search warrant and entered the defendant's residence the defendant had already exited the residence and remained with the agents. The evidence indicates that the defendant was aware: (1) that the agents wanted to look inside his residence; (2) that the reason he was waiting with the agents was so that the agents could obtain a search warrant; and (3) that the agents intended to search his residence upon securing the warrant. In addition, the agents had knowledge that there were no remaining occupants within the residence. The defendant had exited and was with the agents and the other two individuals who had been inside the residence had exited the premises and departed.

Given these facts, particularly the fact that the agents had first-hand knowledge that there was no one within the residence who would respond to their knocking, it was reasonable for the agents executing the warrant to believe that the physical act of knocking on the defendant's door would have been a futile and useless gesture. See Richards v. Wisconsin, 520 U.S. 385, 395 (1997) (providing that the reasonableness of the officers' decision must be evaluated as of the time they entered the premises). Therefore, the court concludes that the agents' entry into defendant's residence was reasonable and did not violate the Fourth Amendment.

B. Miranda

Although the defendant has not identified with particularity the statements he claims were obtained in violation of Miranda, testimony at the evidentiary hearings identified two separate

comments or admissions made by the defendant to law enforcement agents: (1) that there was marijuana or were “marijuana roaches” inside his residence; and (2) that with regard to the drugs found within the apartment, only the marijuana belonged to the defendant and the methamphetamine belonged to his brother.

The safeguards outlined in Miranda v. Arizona, 384 U.S. 463 (1966), are required when a suspect is taken into custody and subjected to interrogation. United States v. Gay, 774 F.2d 368, 379 (10<sup>th</sup> Cir. 1985). Thus, as a general rule, the Miranda warnings presuppose the satisfaction of two conditions—custody and interrogation. Id.; see Miranda, 384 U.S. at 447-48; Illinois v. Perkins, 496 U.S. 292 (1990) (Miranda requirement comes into play only when there is both custody and interrogation).

A person is not in “custody” for purposes of Miranda unless his “freedom of action is curtailed to a degree associated with formal arrest.” Berkemer v. McCarty, 468 U.S. 420, 440 (1984). The “in custody” requirement is measured objectively, the proper inquiry being whether a reasonable person in the suspect’s position would have understood his situation as the functional equivalent of formal arrest. United States v. Hudson, 210 F.3d 1184, 1190 (10<sup>th</sup> Cir. 2000) (quoting Berkemer, 468 U.S. at 442). “The term interrogation refers to ‘words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.’” United States v. Roman-Zarate, 115 F.3d 778, 782 (10<sup>th</sup> Cir. 1997) (quoting Rhode Island v. Innis, 446 U.S. 291, 301 (1980)). With these definitions in mind the court considers the statements at issue in this case.

The court first considers the defendant’s statement or admission that there was marijuana

within the residence. The facts indicate that when the agents initially approached the defendant's residence they were immediately aware of burning marijuana inside. Upon seeing the agents, the defendant stepped outside onto his porch, closed the door behind him, and engaged in conversation with the agents in which he at least implicitly acknowledged there was marijuana inside. Agent Woodring testified that because the smell of marijuana was so strong, the defendant never disputed and commonly acknowledged the agents' assertion that there was marijuana inside. (Tr. I at 46.) This exchange was part of casual conversation, during the initial encounter with the defendant, long before he was detained or arrested and taken into formal custody.

That the agents continued to converse with the defendant about the marijuana while the defendant was being detained<sup>2</sup> is of no consequence. First, as explained above, although the defendant did not specifically identify the marijuana as "marijuana roaches" until he was being detained, the defendant had already acknowledged to some extent that there was marijuana inside his residence. Moreover, even if the defendant's words and actions prior to his detention did not amount to an admission, the defendant's "detention" in this case did not amount to "custody" for purposes of Miranda. See United States v. Bennett, 329 F.3d 769 (10<sup>th</sup> Cir. 2003) (concluding that although the defendant was detained, he was not in custody for Miranda purposes while police questioned him about drug-related activities and weapons found during the search of his residence); Hudson, 210 F.3d 1184, 1191 (providing that although a detention is a "seizure"

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<sup>2</sup>It is well established that "a warrant to search for contraband founded upon probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." Michigan v. Summers, 452 U.S. 692, 705 (1981); United States v. Bennett, 329 F.3d 769, 773 (10<sup>th</sup> Cir. 2003).

under the Fourth Amendment, “a Fourth Amendment seizure does not necessarily render a person in custody for purposes of Miranda, quoting United States v. Bengivenga, 845 F.2d 593, 598 (5<sup>th</sup> Cir. 1988)).

While it is true that the defendant was detained in that he was not permitted to re-enter his apartment while the agents waited for the warrant, the defendant remained virtually unrestrained in other activities. For example, the defendant appeared to have unrestricted contact with persons other than law enforcement, including his mother, who made a personal visit, and his girlfriend, who called from an attorney’s office with legal advice. When the defendant indicated he was cold he was permitted to go downstairs into his brother’s apartment. The defendant was not touched, handcuffed or physically restrained in any manner. Finally, the defendant specifically asked and was informed that he was not under arrest at that time. (Tr. I at 36). Given these facts, the court finds that the defendant’s freedom of action was not “curtailed to a degree associated with formal arrest” while he waited with the agents for the search warrant. See, e.g., Bennett, 329 F.3d at 775 (concluding that the defendant, while detained, was not in “custody” for purposes of Miranda, and finding it significant that the defendant was not physically restrained and that he was informed that he was not under arrest). Accordingly, the court concludes that the statements made by the defendant prior to the arrival of the search warrant which acknowledged marijuana or “marijuana roaches” within the residence were not generated through custodial interrogation. Therefore, the lack of Miranda warning at that point is of no consequence, and Miranda does not dictate exclusion of such statements.

Turning to the second “statement” or admission made by the defendant, that only the marijuana belonged to the defendant and the methamphetamine belonged to his brother, the court

notes that it is undisputed that this statement was made after the defendant had been arrested and placed in custody. Accordingly, the sole issue regarding this statement is whether it was the result of interrogation.

Testimony from the hearing revealed that while the agents were executing the search warrant, and while the defendant was in his residence watching the search take place, the defendant observed the agents find methamphetamine between two mattresses. Upon observing the agents' discovery of methamphetamine, the defendant exclaimed something to the effect that the methamphetamine was not his, but was his brothers, and only the marijuana belonged to the defendant.

Agent Moore testified that the defendant spontaneously blurted out this statement, and there is nothing in the record to dispute his testimony. The evidence further reveals that when the defendant made this statement he was not being asked questions nor was he being spoken to. There were no actions on the part of the police devised to elicit this response from the defendant. In fact, upon hearing the defendant make the spontaneous statement, Agent Moore reminded the defendant that he had invoked his rights and cautioned him that he should not say anything else. (Tr. I at 12.) "Volunteered statements of any kind are not barred by the Fifth Amendment." Miranda, 384 U.S. at 487; see also Innis, 446 U.S. at 301 (concluding that defendant was not "interrogated" within the meaning of Miranda where there was nothing more than a dialogue between two officers to which no response from defendant was invited). Accordingly, the court concludes that although the defendant was in custody, because the defendant made the statement spontaneously and voluntarily, the statement was not the result of interrogation and therefore was not obtained in violation of Miranda.

In addition to concluding that the defendant's statements were not obtained in violation of Miranda, the court also concludes that the defendant's statements were voluntary. The essence of voluntariness is whether the government obtained the statements by physical or psychological coercion such that the defendant's will was overborne. See Miller v. Fenton, 474 U.S. 104, 116 (1985). The facts indicate that throughout the entire encounter the agents spoke to the defendant in a polite and conversational tone. (Tr. I at 10, 39.) The defendant was neither touched nor physically restrained by the agents. Although all of the agents would have been wearing sidearms as part of their regular uniform, there is no evidence to suggest that any of the agents ever touched a firearm or unholstered a firearm. (Tr. I at 9, 10, 38.) Based on the totality of the circumstances, the court concludes that the defendant's statements were voluntary.

Therefore, based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that defendant's motion to suppress is DENIED.

DATED this 19<sup>th</sup> day of June, 2004

BY THE COURT:



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David K. Winder  
Senior District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of June, 2004, I served copies of the foregoing by United States mail, postage prepaid, and/or by inter-office delivery, addressed as follows:

Colleen K. Coebergh  
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Robert Breeze  
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\_\_\_\_\_  
Secretary

jmr

United States District Court  
for the  
District of Utah  
June 21, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:03-cr-00067

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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