

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.) Criminal Action No.
) 10-00320-19-CR-W-DGK
MUHAMMAD IBRAHIM ROLLIE,)
Defendant.)

Motion to Suppress

Defendant Muhammed Rollie (“Rollie”) moves this Court suppress evidence of narcotics found on Rollie’s person as a result of the government illegal seizure, search and arrest on June 1, 2010. Rollie further moves that all statements made by him on or about June 1, 2010 to any law enforcement officers also be suppressed. In the event this Court suppresses the evidence of narcotics and the statements obtained from Rollie, Rollie further moves this Court dismiss Counts 1 and 2 against Rollie and that the government’s case against Rollie be dismissed. In support of this motion Defendant states:

1. Rollie is one of 19 defendants charged with conspiracy to distribute cocaine, crack and marijuana in violation of 21 U.S.C. 841 and 21 U.S.C. 846. Rollie is also charged with conspiracy to conduct financial transactions involving proceeds of unlawful drug activity in violation of 21 U.S.C. 841, 21 U.S.C. 846 and 18 U.S.C. 1956. The list of defendants includes his brother Deshaun Ceruti (“Ceruti”).
2. In this matter the government has produced over 800 pages of discovery as well as several tapes that include evidence of surveillance, phone taps, information provided

by confidential informants, statements from co-defendants and reports from D.E.A. agents, U.S. attorneys, and officers from the Kansas City Police Department (KCPD).

3. According to the indictment, the government began monitoring illegal drug trafficking in this case in January, 2006 or, close to five years. However, prior to Rollie's arrest on or about June 1, of 2010, there was no evidence that Rollie was ever seen entering any of the numerous locations that were under surveillance; his cell number was never captured as being a telephone number that was part of the thousands of calls and/or texts that were made and then tapped by the government; he was never identified by any of the confidential informants as being part of the alleged conspiracy in this matter; he had never been identified by the government as a target and/or suspect in this matter and was never identified by any of the co-defendants as being part of the conspiracy.

Additionally, there is no evidence Rollie called, texted or contacted anyone regarding the alleged conspiracy and the government had no evidence that Rollie had ever committed any crimes prior to his seizure and arrest.

4. According to the government, it appears they may have first noticed Rollie on May 5, 2010 when he was observed with Ceruti taking someone to KCI airport. Surveillance reports show that the government had airport police question the person that was dropped off. There was no evidence this passenger was involved in anything illegal. There was also no evidence anything criminal occurred during this drive to and from KCI and there was nothing to indicate the trip to the airport had anything to do with the alleged conspiracy in this matter. In fact, the government did nothing to try and establish Rollie's identity as a result of this trip and it merely appears Rollie and Ceruti were dropping this passenger off at the airport as a favor.

5. The government's first physical contact with Rollie occurred on the same day he was seized, searched and arrested on June 1, 2010. On the morning of June 1, 2010 Rollie was observed leaving Spruce Street (Spruce) in Kansas City, Missouri driving a blue Dodge SUV owned by Ceruti, who was a passenger. The Spruce home belonged to Rollie and Ceruti's mother and Ceruti spent the night there as he was visiting from his home in St. Louis. Rollie, who is from Kansas City, was also staying there.

6. At the time of their departure, the government had Ceruti under surveillance due to his telephone calls with co-defendant Juan Marron (Marron) about an alleged narcotics buy. Officers then followed Rollie and Ceruti to Grandview, Missouri where they picked up another passenger. They then drove to KCI airport where they dropped the passenger off. Once this passenger left the SUV and entered the airport the government stopped him, questioned him and searched him as they felt this person may have been involved in criminal activity. However, their questioning and search turned up no criminal evidence and the passenger was free to leave. This was a situation very similar to the airport incident that occurred on May 5, 2010. The passenger on this occasion was an acquaintance of Rollie's who had offered Rollie money to give him a ride to the airport.

7. Despite the government's interest in Ceruti, it doesn't appear the government had any reason to suspect Rollie was involved in any criminal activity. It is also doubtful Rollie would have been followed if he had left the house by himself.

8. After dropping off their passenger at KCI, Rollie and Ceruti then drove back to their mother's house located on Spruce. There is no evidence they made any stops that caused the government any concern.

9. At close to 2 p.m, Rollie and Ceruti returned to their mother's house on Spruce. Rollie exited the SUV and went inside the house. Ceruti moved to the driver's seat and drove off. There was no evidence Rollie had any weapons or contraband when he exited the SUV.

10. When Rollie exited the truck the government had no reason to suspect he was involved or had any knowledge of the alleged conspiracy in this case. Rollie committed no suspicious acts while driving to and from KCI airport and the government had already confirmed that the person dropped off at the airport had nothing illegal on his person or that he had committed any crimes. Moreover, there was no evidence Rollie was going to commit any crimes or that he was a danger to anyone.

11. After leaving Rollie at his mother's house on Spruce, the government alleges it followed Cerutti to Marron's residence which is located less than a mile away from his mother's house on Spruce. The government further alleges Ceruti entered Marron's house, came back out within minutes carrying a white plastic bag and then drove straight back to the Spruce house alone. According to police reports, the trip took approximately 15-25minutes. Upon returning to the Spruce address, Ceruti backed the SUV into the home's driveway and accidentally ran into the garage door thereby causing a lot of noise. At this point the officers were ordered to take Ceruti into custody and search the SUV.

12. After his return from the KCI trip, Rollie went into the house and then to the backyard to play with his young nephew. His two younger sisters were in the house. As he was playing with his nephew he heard something "hit" his mother's house and became alarmed because he did not know what had happened. Concerned about the safety of his

family he ran onto the front screened porch which overlooks the front yard and the driveway leading to the garage.

13. When Rollie came to the porch there were officers and DEA agents with guns in their hands on his mother's front yard. The group included KCPD Officer J. Crump (Crump). Rollie began asking what was happening and it was at this time Crump pointed his gun at Rollie, told him to raise his hands, directed him to exit the porch and then told him to lie on the ground face down. In other words he was seized. Crump claims Rollie came onto the porch acting in a loud belligerent manner and that he kept his hands hidden behind the door.

14. After ordering Rollie to exit the porch and lie on the ground at gunpoint, Crump was joined by another officer who frisked Rollie and found crack cocaine in his right front pocket. Crump claims he saw a small bag sticking out of Rollie's front pocket. It was later alleged by the government the bag contained 171.1 grams of crack cocaine. Defendant was then arrested and taken to KCPD headquarters where officers took his statement. Rollie does not deny he was given his Miranda rights and that he voluntarily gave the police a statement.

15. Rollie contends he did not become aggressive or threaten any officer on the day of his arrest. He further contends he never raised his voice, did not interfere with Ceruti's arrest or the search of the SUV. He had just heard something run into the house, with young family members at the house when he ran to the front screened porch and saw men in the yard holding guns and arresting his brother. As such, it was natural for him to be concerned and ask what was happening. When he asked what was happening he was still on the porch and had nothing in his hands. Moreover, he was not "hiding" his hands

behind a door. His hands were visible through the screen door as this was 2 pm in the afternoon on a clear day. In his report, Crump claims he took his actions “due to the evolving situation”. However, Rollie did nothing which would have caused law enforcement to be concerned with officer safety.

LEGAL ARGUMENT

16. The 4th Amendment protects individuals from unreasonable search and seizures. A person is seized if a police officer restrains his freedom to walk away. *Brown v. Texas*, 443 U.S. 45(1979); *United States v. Clay*, 640 F.2d 157 (8th Cir. 1981). In order to seize a person the government must have probable cause to believe a crime has been committed. *Terry v. Ohio* 392 U.S. 1 (1968) However, there are situations where police can stop individuals and perform pat downs of a person in order to ensure officer safety and/or public safety: provided the officer has a reasonable suspicion the defendant has committed or will commit a crime. *Id.* at 27. In determining whether an officer had a right to initiate a frisk the court must first determine whether the officer had a right to be where the “frisked” individual is located which in turn would cause the officer to be in danger if that person was armed. The officer must also have a sufficient degree of suspicion that the party to be frisked was armed and dangerous.” *U.S. v. Clay* 640 F.2d 157, 158 citing *Brown v. Texas, supra*. An objective standard must be used to determine whether an officer had a reasonable suspicion to believe a defendant was armed and dangerous and said suspicion must be based on the facts available to the officer at the moment of seizure. *U.S. v. Clay* at 158.

a. Seizure

17. In this case there can be no dispute Defendant Rollie was seized. He was told at

gun point to raise his hands, exit his porch and lie on the ground. He was not going to be allowed to leave. This was confirmed by Crump when he stated “due to the evolving situation” he ordered Rollie to exit the front door and lay on the front porch.

b. Probable Cause

18. The government did not have probable cause to seize and arrest Rollie. There was no warrant for Rollie’s arrest; he had not been seen committing any crimes, fleeing from a crime or with Ceruti when he left and drove to a known drug house and then came out with a bag containing illegal drugs. He was not with Ceruti when he backed into the garage of his mother’s home on Spruce. The government had no evidence that Rollie had any involvement with the alleged ongoing drug conspiracy they were investigating or that he was involved with any other type of criminal activity. At the point of Rollie coming onto the porch, there were was no probable cause to arrest or seize him. In fact, the government had no reason to arrest Rollie until they allegedly found drugs on his person.

c. Reasonable Suspicion

19. The government claims it seized Rollie because Officer Crump was concerned about an “evolving situation. However, *Terry*, requires a reasonable suspicion that Rollie was armed and dangerous when they seized Rollie. The facts do not support this conclusion.

20. Officer Clump possessed no information that Rollie had ever been a danger to anyone; he possessed no information that Rollie had been seen in the possession of illegal contraband or weapons. To the contrary, Rollie had been followed the whole day and officers did not observe him committing any crimes or exhibit suspicious behavior. Officers knew Rollie was not with Ceruti when he allegedly retrieved drugs from

Marron. Crump did not observe Rollie trying try to flee the scene and he was not the subject of their surveillance. There was also no evidence that illegal activities were being conducted at Spruce premises. Rollie was seen on the porch in the middle of the afternoon behind a visible screen porch and Rollie was not trying to hide any of his actions. Rather, his mother's house had just been hit with a car and it was perfectly reasonable for him to ask what was happening. The fact that his mother's house had been hit was also known to the officers as they saw it happen. Based on the collective experience of the many officers that were present, they should not have been surprised that someone from inside the house had a right to be concerned about something hitting the house or that someone would be concerned about a group of armed officers on his mother's front yard in plain daylight arresting his brother. See *U.S. v Clay* 640 F.2d 157,159. It would have been more suspicious if he had ignored the commotion and stayed in the house. Moreover, why would someone who was allegedly in possession of narcotics want to cause a commotion?

21. It appears that Rollie's biggest offense was his proximity to Ceruti. However *Ybarra v. Illinois*, 443 U.S. 85 (1979) prohibits the government from relying on this guilt by association reasoning as a basis for reasonable suspicion because "mere propinquity to others independently suspected of criminal activity does not, without more give rise to probable cause to search [another] person". *Id.* at 91

22. In sum, the facts known to the police prior to their encounter with Rollie on the afternoon of June 1, 2010 were: Rollie woke up, drove to Grandview, drove to KCI, dropped off a passenger who did nothing wrong as confirmed by the government's questioning and subsequent search, drove back to the Spruce residence, exits his brother's

SUV, goes into his mother's house, and comes out because his mother's house had been hit by a truck. He had no previous encounters with the police, was not known to carry a weapon and was not a target in the mass drug conspiracy investigation conducted by the government. None of these facts would give an officer reasonable suspicion to believe that Rollie committed a crime, was in danger of committing a crime or that he was armed.

23. Due to the lack of reasonable suspicion, the government did not have the right to seize Rollie, pat him down and then search him. This led to the government illegally finding drugs on his person. This also led to him being wrongfully arrested and taken in for questioning where the government obtained a voluntary statement from him. Based on the illegality of the initial seizure and pat down, the evidence of the drugs found on Rollie must be suppressed. Moreover, his subsequent statement must also be suppressed as fruits of a poisonous tree, even if it was voluntary. *Brown v. Illinois*, 422 U.S. 590 (1975).

CONCLUSION

Defendant Rollie respectfully moves this Court suppress the evidence of illegal narcotics found on his person as a result of the government's illegal search and seizure on June 1, 2010. Rollie further moves this Court suppress the voluntary statement he gave to the police after his arrest on June 1, 2010. Should the court suppress the narcotics evidence and Rollie's June 1, 2010 statement, Rollie further moves this Court dismiss Counts 1 and 2 against Rollie. If Counts 1 and 2 are dismissed Rollie moves the court dismiss the government's case against Rollie with prejudice. Finally, Rollie requests a hearing be held on this matter and for such other relief this court deems just and necessary.

Respectfully submitted,

/s/Michael L. Barrera (Mo. Bar 40998)
3711 W. 47 Place
Shawnee Mission, KS 66205
913-461-2499
Attorney for Muhammad Rollie

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion was served on AUSA Bruce Rhoades and all defense attorneys of record by CM/ECF this 15 day of June 15, 2011.

/s/Michael L. Barrera