

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, . Criminal No. 00-421-A
 .
 vs. . Alexandria, Virginia
 . April 6, 2001
 WILLIAM KINJO SMITH, . 9:00 a.m.
 .
 Defendant. .
 .

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MICHAEL E. RICH, AUSA
KENNETH W. GAUL, SAUSA
United States Attorney's Office
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Alexandria, VA 22314

FOR THE DEFENDANT: RICHARD E. GARDINER, ESQ.
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P R O C E E D I N G S

(Defendant present.)

THE CLERK: Criminal Case 2000-421-A, United States of America v. William Kinjo Smith. Counsel, please note your appearance for the record.

MR. GARDINER: Good morning, Your Honor. Richard Gardiner for Mr. Smith, who is present.

THE COURT: All right, Mr. Gardiner, this comes on for your post-trial motion requesting a judgment of acquittal or a new trial. My understanding is you've raised two issues that we've already, I think, really considered in this case. The first is whether the Court erred in denying your motion to suppress. Is there anything you want to add to that argument?

As you know, the Court found among other things at the original suppression hearing that there were clearly exigent circumstances. We've been through all of that, and I don't think there's anything new to consider.

MR. GARDINER: The only thing I wanted to address, Your Honor, which we didn't get a chance to address specifically at the suppression hearing, was that the Supreme Court in Buie said that the search may not take longer than it takes to complete the arrest and depart the premises, and if you'll remember, the testimony of Captain Corle was that Mr. Smith was handcuffed, was handcuffed immediately upon entry in the apartment. They put him up against the wall in the back of the foyer and handcuffed him,

1 and then Captain Corle left him with one or two other officers,
2 it wasn't exactly clear, and then Captain Corle went down and
3 looked in the bedroom.

4 And it's our position that given the fact that
5 Mr. Smith was handcuffed, in custody, that the officers at that
6 point could have removed him immediately from the apartment, and
7 that there was no need at that point to do a sweep at all,
8 because the -- they had completed the arrest, and there was no
9 point to doing any further search. They could have departed the
10 premises as soon as they had him cuffed. They were standing
11 right next to the door, and therefore, under that language from
12 Buie, the sweep was unnecessary and exceeded their authority.

13 THE COURT: All right. Does the government want to
14 respond to that?

15 MR. GAUL: Your Honor, Kenneth Gaul and Mike Rich for
16 the United States. Just very briefly, the protective sweep that
17 occurred, as Captain Corle testified, took only a minute or two.
18 At that time, the defendant was in the apartment. He was being
19 handcuffed. He was not removed from the apartment, and for
20 officers' safety, they felt it necessary to make sure there was
21 not someone else in the apartment.

22 Additionally and significantly, they had a report of an
23 individual with a gun and a hand grenade in a high-rise
24 apartment. They come in the door. They find incendiary liquids,
25 propane barricading the door partially, and they needed on the

as not blocking
the door.

not the testified
reason for sweep,
they were worried about
the persons.
not reason in
-pts or affidavits.

1 exigent circumstances to check for their safety that there
2 weren't other bombs, explosives, other hand grenades that could
3 have posed a significant risk to the other occupants of that
4 apartment building.

5 THE COURT: All right.

6 MR. GAUL: So on both grounds --

determined after words
not reliable.

7 THE COURT: I certainly agree, especially with the
8 second ground; that is, this is a unique case, because the agents
9 had first of all been given a reliable tip by the former
10 girlfriend. They go to the apartment. There is uncontested
11 testimony that they find at the point where they first see the
12 defendant what appears to be a grenade, as I recall the
13 testimony, and these canisters of potentially volatile
14 substances.

they were not
checking for volatile
substances, only
people.

15 Clearly, under that set of circumstances, responsible
16 police officers had to make an immediate protective sweep of the
17 apartment to make sure there were no other volatile substances
18 present in that apartment. And also, it's not unreasonable in an
19 apartment situation to do a quick check to make sure there's not
20 some other person in there.

here is after
arrest is made.

21 No, I'm satisfied that the agents had more than
22 adequate grounds to take the actions that they did, that this
23 defendant's Fourth Amendment rights were not violated by the
24 extent of the search, and that there was more than ample probable
25 cause and exigent circumstances to make the entry as they did,

what was the probable
cause?

CERTIFICATE OF THE REPORTER

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I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.


Anneliese J. Thomson