

United States v. Common

United States Court of Appeals for the Sixth Circuit

March 9, 2021, Filed

File Name: 21a0122n.06

Case No. 19-4244

Reporter

2021 U.S. App. LEXIS 7094 *; 849 Fed. Appx. 541; 2021 FED App. 0122N (6th Cir.); 2021 WL 868549

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TYRONE COMMON, Defendant-Appellant.

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Prior History: [*1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Laura McMullen Ford, Assistant U.S. Attorney, Office of the U.S. Attorney, Cleveland, OH.

For TYRONE COMMON, Defendant - Appellant: Russell Stephen Beusing, Law Offices, Cleveland, OH; Tyrone Common, Defendant - Appellant, U.S.P. Hazelton, Bruceton Mills, WV; Jeffrey P. Saffold, Brent Coon & Associates, Cleveland, OH.

Judges: BEFORE: MOORE, ROGERS, and READLER, Circuit Judges.

Opinion by: CHAD A. READLER

Opinion

CHAD A. READLER, Circuit Judge. With the backing of an arrest warrant, officers apprehended Tyrone Common in his sister's apartment. A protective sweep of the apartment revealed evidence of drug trafficking as well as two handguns. Common contends that the officers' search was unreasonable under the Fourth Amendment, and that the admission of a confidential informant's out-of-court statement at Common's subsequent trial violated his Sixth Amendment Confrontation Clause rights. The district court rejected those arguments, and the jury returned a verdict convicting Common of various federal offenses. We now affirm.

I.

While on patrol, officers in Cleveland stopped Tyrone Common for making a left turn without using his [*2] turn signal and having extremely dark tinted windows for his vehicle. Rather than engage with the officers, Common fled his vehicle on foot in an attempt to escape the scene. He was eventually detained. A search of Common and his vehicle uncovered a handgun and distribution-packaged doses of fentanyl, a scale, three cell phones, and \$500 cash. While Common was being held in jail, officers connected the handgun to an earlier shooting at a Cleveland gas station. Nonetheless, Common was eventually released on bond. But when Common failed to appear for a subsequent court proceeding, a state judge issued a warrant for his arrest.

The U.S. Marshals Service received a tip that

Common was hiding out at his sister's apartment. Officers began surveilling the apartment building. After several hours, they observed an individual whom they believed to be Common exit the building, jog to a parked car, retrieve a bag, and then reenter the building. Officers followed Common into the building to execute the arrest warrant. They knocked on the door of his sister's apartment and announced their presence. Upon receiving no answer, yet hearing a toilet flush, officers entered the apartment on the suspicion [*3] that Common was destroying evidence.

Officers discovered Common in the kitchen with his clothing covered in a white powdery substance. An unknown woman was in the living room, and drugs and related paraphernalia were in plain view throughout the apartment. Officers handcuffed Common and commenced a protective sweep of the residence. In an adjoining bedroom, officers noticed a handgun "sticking up out of . . . clothing" in an open plastic container in a doorless closet. Officers also found another handgun stashed between the mattress and box spring. Within a few hours, officers obtained and executed a search warrant for the apartment. While executing the warrant, officers seized distribution quantities of fentanyl, heroin, and fentanyl analogues, along with other drug-distribution paraphernalia.

A seven-count federal indictment followed. Before trial, Common moved to suppress the contraband seized from the traffic stop and inside the apartment. As to the search of the apartment, Common argued that officers exceeded the permissible scope of a protective sweep under the Fourth Amendment by seizing drugs and guns at the time of his arrest. The district court denied each of Common's challenges. During trial, [*4] Common raised a Sixth Amendment objection to the admission of a testimonial out-of-court statement by a confidential informant linking Common to a handgun in a separate incident. The district court, however, overruled the objection. After a three-day trial, the jury acquitted Common

on a felon-in-possession-of-firearm charge related to the gas station shooting but convicted him on six firearm and possession-with-intent-to-distribute fentanyl and heroin charges. This timely appeal followed.

II.

On appeal, Common maintains that officers violated the Fourth Amendment both by entering his sister's apartment to execute his arrest warrant, and by seizing two firearms during a protective sweep incident to Common's arrest. The district court rejected those arguments and declined to suppress the evidence. We review the district court's factual findings under a clear error standard and its legal conclusions *de novo*. *United States v. Gilbert*, 952 F.3d 759, 762 (6th Cir. 2020). In this posture, we consider evidence presented both at trial and at the suppression hearing, viewing the evidentiary record in the light most favorable to the government. *United States v. Gill*, 685 F.3d 606, 609 (6th Cir. 2012).

1. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and [*3] seizures." U.S. CONST. amend. IV. In assessing Common's Fourth Amendment challenge to the search of his sister's apartment, we note at the outset the significance of a warrant in determining whether this search was "unreasonable." "[P]hysical entry of the home" is the "chief evil against which the wording of the Fourth Amendment is directed." *United States v. U.S. Dist. Ct.*, 407 U.S. 297, 313, 92 S. Ct. 2125, 32 L. Ed. 2d 752 (1972). It follows that, absent consent or exigent circumstances, entry into a home to conduct a search or make an arrest is unreasonable without a warrant. *Steagald v. United States*, 451 U.S. 204, 213, 101 S. Ct. 1642, 68 L. Ed. 2d 38 & n.7 (1981). By the same token, "[a]s with searches, courts more often will deem seizures reasonable when they are associated with a warrant." *Graves v. Mahoning County*, 821 F.3d 772, 777 (6th Cir. 2016). That is so in part because securing a warrant "subject[s] the probable-cause determination of the police to judicial review."

Stoagald, 451 U.S. at 212-13 (noting that the special Fourth Amendment protection afforded to the home typically requires more than "judicially untested determinations" of probable cause).

As Cammon emphasizes, officers did not obtain a search warrant for his sister's residence. But officers did possess a valid arrest warrant, which afforded those officers "the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Payton v. New York*, 445 U.S. 573, 603, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). It is generally understood that *Payton*'s reach extends [*6] beyond "a dwelling in which the suspect lives" to the dwellings of relevant third parties, so long as officers have a warrant for a suspect's arrest and a reason to believe the suspect is inside. *United States v. Pruitt*, 458 F.3d 477, 482 (6th Cir. 2006). In defining *Payton*'s "reason to believe" standard, however, we have at times vacillated between a "probable cause" and a lesser "reasonable belief" standard to define whether an officer fairly had "reason to believe the suspect is within [the dwelling]." *United States v. Baker*, 976 F.3d 636, 642 (6th Cir. 2020) (collecting cases). We need not further that debate here, as Cammon does not seriously dispute that officers "were aware that [he] was in his sister's apartment," given that surveillance confirmed Cammon's presence. The officers, in other words, were entitled to enter the apartment to execute the arrest warrant under either standard.

Even then, says Cammon, the search was unreasonable in that the officers should have detained Cammon outside the apartment, when they first spotted him retrieving clothing from a car. Because Cammon makes this argument for the first time on appeal, it is subject to plain error review. *United States v. Culverri*, 836 F.3d 654, 664 (6th Cir. 2016). Officers saw an individual appearing to be Cammon outside, near a car. Although officers were "pretty positive" the man was [*7] Cammon, there was some doubt. And by the time they confirmed his identity, Cammon had reentered the

building. Under these circumstances, it was not unreasonable for officers to exhibit the momentary caution necessary to make a positive identification before arresting Cammon.

True, as Cammon notes, the First Circuit once suppressed fruits of a search when officers deliberately delayed the execution of an arrest warrant in pursuit of incriminating evidence. See *United States v. Curzi*, 867 F.2d 36, 41 (1st Cir. 1989). But in *Curzi*, the search was deemed unreasonable only after federal agents admitted making the "tactical choice" to trail the suspect for days, intentionally passing up several "golden opportunit[ies]" to make a safe arrest, later arresting the suspect in his home where officers hoped to seize evidence without a search warrant. *Id.* at 40. The "uncontested evidence" in *Curzi* showed that "law enforcement personnel planned, well ahead of time, to order not just [the suspect] but all the occupants of the dwelling to exit, and then to conduct the protective sweep, come what might." *Id.* The extreme conduct there does not resemble that here.

2. Cammon contends that, even if the officers' initial entry into the apartment was lawful, the scope [*8] of their protective sweep exceeded constitutional parameters. By way of background, in recognition of the risks attendant to performing an in-home arrest, the Fourth Amendment authorizes officers to conduct a limited protective sweep of the premises to ensure officer safety. *Maryland v. Buie*, 494 U.S. 325, 333, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990). *Buie* recognized two types of protective sweeps associated with an in-home arrest—one more expansive than the other, but both constituting a search more circumscribed than a search warrant would allow. *Id.* at 334; see also *United States v. Archibald*, 589 F.3d 289, 295 (6th Cir. 2009); *United States v. Cousins*, __ F. App'x __, 2021 U.S. App. LEXIS 1365, 2021 WL 164687, at *9 (6th Cir. Jan. 19, 2021). As a "precautionary matter" and "without probable cause or reasonable suspicion," officers may "look in closets and other spaces immediately adjoining the

place of arrest from which an attack could be immediately launched." *Buie*, 494 U.S. at 334. If officers seek to extend their search "[b]eyond" that cabin'd scope, there must be "articulable facts" together with "rational inferences" that would "warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id.* This latter type of sweep is "not a full search of the premises"; it extends "only to a cursory inspection of those spaces where a person may be found." *Id.* at 335. In both instances, an officer may seize [*9] contraband found in plain view if its incriminating character is immediately apparent. *Horton v. California*, 496 U.S. 128, 136, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990).

With this legal backdrop in mind, we turn to the search at issue here. As part of their protective sweep, officers discovered two handguns in a bedroom adjacent to the scene of Cammon's arrest: an extended magazine Glock pistol "sticking up" from an open box in the bedroom's doorless closet, and another Glock pistol wedged between the mattress and box spring. Starting with the officers' seizure of the handgun in the bedroom closet, that seizure falls under the first and more permissive category of *Buie* sweeps. When officers entered the apartment, they found Cammon in the kitchen. According to an officer, the apartment was a "very small" "efficiency" unit with close proximity between the four adjoining rooms: a bathroom, a bedroom, a kitchen, and a living room. Because *Buie* grants officers the right to automatically inspect "spaces immediately adjoining" the place of arrest "from which an attack could be immediately launched," officers were entitled to conduct a protective sweep of the adjoining bedroom and seize any contraband found in plain view. See, e.g., *United States v. Newsome*, 504 F. App'x 463, 466 (6th Cir. 2012) (holding that *Buie* allowed officers [*10] to search an adjoining bedroom as a "space immediately adjoining the place of arrest" in the kitchen). Cammon presents no compelling arguments to the contrary.

Whether the seizure of the handgun found between the mattress and box spring is justified by *Buie* presents a closer question. Cf. *United States v. Lanier*, 285 F. App'x 239, 241 (6th Cir. 2008). Given its size, arguably the entire apartment constituted an "immediately adjoining" space. See *United States v. Thomas*, 429 F.3d 282, 287-88, 368 U.S. App. D.C. 285 (D.C. Cir. 2005) ("If an apartment is small enough that all of it 'immediately adjoin[s] the place of arrest' and all of it constitutes a space or spaces 'from which an attack could be immediately launched,' then the entire apartment is subject to a limited sweep of spaces where a person may be found." (internal citation omitted)). But whether an "attack could be immediately launched" from between the mattress and the box spring is debatable. An officer testified at the suppression hearing that suspects can hide between the mattress and the box spring. The question here, however, is not merely whether the space between a mattress and a box spring poses a viable location for a suspect to hide, but also whether it is a place from which an "attack could immediately be launched." *Buie*, 494 U.S. at 334. In a short ruling from the bench, the district [*11] court treated as dispositive the testifying officer's belief that a suspect could hide beneath a mattress:

[T]his officer, I've heard a lot of testimony in my career, I've heard him a couple times, but he seemed pretty firm that on a bed, even though if the layman would look at this bed and say nobody would hide in there, I mean, that's probably what I would think, but thank goodness I'm not a policeman going in and making arrests, because they have experience, and he said he's seen it before.

And so, that was a protective sweep. There's no problem with that.

That conclusion leaves it unclear whether the district court made the related determination that an attack could be launched from between the mattress and the box spring.

Regardless of how one might read the underlying testimony and resulting determination by the district court, we can affirm on the alternative

conclusion reached by the district court, namely, that even if an unlawful search occurred, the seizure of the second handgun falls within the inevitable discovery exception to the exclusionary rule. That exception allows for the admission of evidence obtained through unlawful means if such evidence "ultimately or inevitably [*12] would have been discovered by lawful means." *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L. Ed. 2d 377 (1984). Assessing the matter from a vantagepoint before the unlawful search, we ask whether the government can show by a preponderance of the evidence that the unlawfully obtained evidence would have been discovered by a later lawful search. *Id.*; *United States v. Alexander*, 540 F.3d 494, 502 (6th Cir. 2008). Here, the answer is yes. Other lawfully found contraband provided the government with the probable cause necessary for a search warrant—namely, that Cammon was found in an apartment with narcotics, drug paraphernalia, and another handgun in plain view while his clothing was "covered in white powder residue" suspected to be drugs. That contraband would have independently prompted a search warrant, and the district court credited officer testimony that officers would have invariably searched between the mattress and the box spring and found the handgun anyway. See *United States v. Lewis*, 615 F. App'x 332, 338-39 (6th Cir. 2015) (finding a suppression challenge to be "without merit" where "incriminating evidence would have been found after the warrant was issued and a full-scale search [of the premises] conducted"). We thus decline to disturb the judgment of the district court.

III.

Cammon also asserts that his Sixth Amendment Confrontation Clause rights were violated when the district court, over Cammon's [*13] objection, admitted testimony that a confidential informant bought heroin from Cammon while Cammon had a handgun in the car. The familiar language of the Confrontation Clause instructs that in a criminal case, "the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S.

CONST. amend. VI. In practice, the Clause bars the admission of testimonial, out-of-court statements of an unavailable declarant offered to prove the truth of the matter asserted, unless the defendant has had a prior opportunity to cross-examine the declarant. *Crawford v. Washington*, 541 U.S. 36, 59, 124 S. Ct. 1354, 138 L. Ed. 2d 177 (2004).

Invoking the Sixth Amendment, Cammon challenges an out-of-court statement from a confidential informant linking Cammon to a handgun. Cammon's counsel cross-examined an officer regarding a previous controlled drug buy involving Cammon and a confidential informant. Although prosecutors never charged Cammon for the buy, defense counsel probed why investigators included it in an affidavit accompanying the request for a search warrant. On the subsequent redirect examination, the prosecutor inquired about the circumstances of that prior transaction:

Q: Detective Comersford, . . . [c]ould you please tell us the circumstances surrounding that controlled purchase by an informant of drugs for [*14] Mr. Cammon?

A: A controlled phone call was made, and they were directed to call Mr. Cammon's phone—

Once the phone call was made, a deal was made to purchase heroin at a predetermined meeting location. And once at that location, Mr. Cammon arrived driving a silver Jeep. At that time, the narcotics transaction was completed.

During the transaction, the confidential source said they did observe a black handgun sitting in Mr. Cammon's lap during the deal.

Cammon contends both that the informant's statement was testimonial and that the informant was never able to be cross-examined, meaning admitting the statement at issue ran afoul of the Sixth Amendment.

We need not resolve the Sixth Amendment question today. After all, even if a violation

occurred, Cammon is not entitled to relief unless the violation amounts to more than harmless error. *United States v. McGee*, 529 F.3d 691, 697 (6th Cir. 2008). We have routinely held that the admission of past criminal activity is harmless where other evidence against the defendant is overwhelming. See, e.g., *United States v. Powers*, 500 F.3d 500, 510-11 (6th Cir. 2007); *United States v. Savoires*, 430 F.3d 376, 382 (6th Cir. 2005); *United States v. Parsons*, 798 F. App'x 922, 926 (6th Cir. 2020). Here, "substantial evidence apart from" the challenged statement supported the verdict, most notably, the firearms and narcotics seized in Cammon's possession. *United States v. Henderson*, 626 F.3d 326, 334 (6th Cir. 2010). When considering Cammon's claims against the entire body of evidence, [¶15] we conclude that any error was harmless.

IV.

For the foregoing reasons, we affirm the judgment of the district court.

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APPENDIX B
JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
ENTERED 12-13-19

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

TYRONE CAMMON

§ JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: 1:18-CR-00058-DCN(1)

§ USM Number: 65353-060

§ James A. Jenkins

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/> pleaded guilty to count(s)	
<input type="checkbox"/> pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/> pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/> was found guilty on count(s) after a plea of not guilty	Two, Three, Four, Five, Six, Seven of the Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1) Felon In Possession Of A Firearm	11/16/2017	2
21 U.S.C. §§ 841 (a)(1) and (b)(1)(C) Possess With Intent To Distribute Fentanyl	11/16/2017	3
18 U.S.C. § 924(o)(1)(A)(i) Possession Of A Firearm In Furtherance Of A Drug Trafficking Crime	11/16/2017	4
18 U.S.C. § 922(g)(1) Felon In Possession Of A Firearm	11/16/2017	5
21 U.S.C. §§ 841(a)(1) and (b)(1)(C) Possession With Intent To Distribute Heroin	11/16/2017	6
21 U.S.C. §§ 841 (a)(1) and (b)(1)(B) Possession With Intent To Distribute Methoxyacetylfenanyl, Carfentanil, and Fentanyl	11/16/2017	7

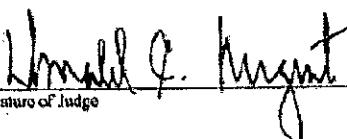
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) One of the Indictment.
 Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

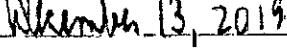
December 12, 2019

Date of Imposition of Judgment


Signature of Judge

DONALD C. NUGENT, United States District Judge

Name and Title of Judge


Date

DEFENDANT: **TYRONE CAMMON**
CASE NUMBER: **1:18-CR-00058-DCN(1)**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months as to each of Counts 2 and 5; 300 months as to each of Counts 3, 6 and 7; and 60 months as to Count 4 of the Indictment. Sentence imposed on Counts 2, 3, 5, 6, 7 to run concurrent; Sentence imposed on Count 4 to run consecutive to all other Counts for a total term of imprisonment of 360 months. The defendant is given credit for time served in federal custody.

The court makes the following recommendations to the Bureau of Prisons:

Bureau of Prisons placement near Northeast Ohio.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **TYRONE CAMMON**
CASE NUMBER: **1:18-CR-00058-DCN(1)**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **eight (8) years with standard/special conditions as directed.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution (*check if applicable*)
5. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **TYRONE CAMMON**
CASE NUMBER: **1:18-CR-00058-DCN(1)**

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change. If not in compliance with the condition of supervision requiring full-time occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: **TYRONE COMMON**
CASE NUMBER: **1:18-CR-00058-DCN(1)**

SPECIAL CONDITIONS OF SUPERVISION

Mandatory Drug Testing

You must refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release from imprisonment and to at least two periodic drug tests thereafter, as determined by the Court.

Substance Abuse Treatment and Testing

The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

Cognitive Behavioral Treatment

You must participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

Mental Health Treatment

You must undergo a mental health evaluation and/or participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

Search / Seizure

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

Mental Health Medications

You must take all mental health medications that are prescribed by your treating physician.

DEFENDANT: **TYRONE CAMMON**
 CASE NUMBER: **1:18-CR-00058-DCN(1)**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$600.00	\$0.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.*
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 1664(1), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution
 the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: TYRONE CAMMON
CASE NUMBER: 1:18-CR-00058-DCN(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$600.00 for Counts 2, 3, 4, 5, 6 and 7, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - The defendant shall pay the cost of prosecution.
 - The defendant shall pay the following court cost(s):
 - The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C
USDC ORDER DENYING MOTION TO SUPPRESS
ENTERED 2-13-19

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:18-cr-58
Plaintiff, Cleveland, Ohio

Plaintiff,

VS.

WEDNESDAY, FEBRUARY 13, 2019

TYRONE CAMMON

Defendant.

TRANSCRIPT OF SUPPRESSION HEARING PROCEEDINGS
BEFORE THE HONORABLE DONALD C. NUGENT
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

14 For the Government: Kelly L. Galvin and
15 Scott C. Zarzycki,
Assistant United States Attorneys

For the Defendant: James A. Jenkins, Esquire

25 Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

Cantlin (Cross)

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1 Q No one heard the door slam when he went back in there?

2 A Out of the people I was there with?

3 Q Yeah.

4 A No.

11:08:24 5 Q What time parameter are we looking at between Mr.
6 Common's reentering the building and agents gaining access
7 to the apartment?

8 A In total, I would probably guess less than five
9 minutes.

11:08:41 10 MR. JENKINS: All right. One second, Your
11 Honor?

12 THE COURT: Sure.

13 MR. JENKINS: Thank you.

14 (Pause in Proceedings)

11:08:57 15 MR. JENKINS: Thank you.

16 Nothing further, Judge.

17 THE COURT: Thank you.

18 Anything further?

19 MS. GALVIN: No, Your Honor.

11:09:00 20 Thank you.

21 THE COURT: Okay. Thanks. Anything further
22 then?

23 Thank you, Officer. You're excused. Watch your step.

24 MS. GALVIN: Would you like me to proceed on
11:09:13 25 the issue of argument first, Your Honor?

1 THE COURT: I'm not even sure you need to
2 argue on a case like this, because *Patton versus New York*
3 says when you have a valid warrant, you can go in and effect
4 an arrest.

11:09:25 5 They did have a valid warrant and they did effect an
6 arrest, and whether it was his place or it was somebody
7 else's place, they can do that.

8 And then, I think the argument is on the protective
9 sweep. Now, this officer, I've heard a lot of testimony in
11:09:37 10 my career, I've heard him a couple times, but he seemed
11 pretty firm that on a bed, even though if the layman would
12 look at this bed and say nobody would hide in there, I mean,
13 that's probably what I would think, but thank goodness I'm
14 not a policeman going in and making arrests, because they
11:09:51 15 have experience, and he said he's seen it before.

16 And so, that was a protective sweep. There's no
17 problem with that.

18 And the other firearm was found in plain view, so I
19 don't think there's any reason to suppress anything.

11:10:02 20 And there's a final reason, too, because they got a
21 search warrant, and there would have been inevitable
22 discovery anyway because they secured the place.

23 So you didn't think I knew that, did you?

24 MR. JENKINS: Judge, does that mean we're
11:10:16 25 overruled?

1 THE COURT: That means you're denied.

2 MR. JENKINS: Denied.

3 THE COURT: Mr. Zarzycki was surprised that
4 the Judge knew about inevitable discovery.

11:10:28 5 MR. ZARZYCKI: Actually, when he was talking
6 about it, that it would have been inevitably found during
7 the search warrant, that's when the issue just occurred to
8 me, and I didn't put it in my motion.

9 THE COURT: Oh, then, it didn't occur to you
11:10:30 10 at first?

11 MR. ZARZYCKI: Right.

12 MR. JENKINS: I'm glad he's not making the
13 ruling.

14 THE COURT: Right.

11:10:44 15 MS. GALVIN: Well, the search of the apartment
16 wasn't initially in his motion, so you couldn't have
17 addressed inevitable discovery.

18 THE COURT: All right. What are we going to
19 do here then, Mr. Jenkins?

11:10:56 20 MR. JENKINS: Your Honor, I believe we -- Ms.
21 Galvin and I at least, we didn't discuss it with Mr.
22 Zarzycki, the brains of the operation -- we were discussing
23 a potential trial date in April.

24 THE COURT: Okay.

11:11:02 25 MR. JENKINS: And not to preclude any