

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:05CR42-01

MICHAEL A. MORGAN,

Defendant.

**REPORT AND RECOMMENDATION THAT EVIDENCE OBTAINED IN SEARCH
NOT BE SUPPRESSED**

I. Introduction.

A. Background.

Defendant is one of five defendants in a twelve count indictment alleging offenses related to distribution of cocaine base.

B. The Motion.

Motion to Suppress Evidence Obtained in Search.¹

C. Recommendation.

I recommend the Motion to Suppress Evidence Obtained in the search be DENIED because Misty Johnson, as lessee of the premises, had an expectation of privacy in the premises at 21 - 7th Street, Apt. 2, Wheeling, West Virginia, from which the evidence was seized. Therefore, Ms. Johnson, as lessee of the premises, had authority to execute a written consent to a search of the premises.

¹ Doc. No. 42.

II. Finding of Fact

Ms. Johnson was the only lessee of the premises commonly known as Apt. 2, 21 - 7th Street, Wheeling, West Virginia. Ms. Johnson executed a written consent for a search of the premises.

III. The Motion

A. Contentions of the Parties.

Defendant contends the Government has not disclosed any evidence affirming Misty Johnson, who gave consent to search the premises, was entitled to occupy the premises. Therefore, evidence seized may not be introduced in evidence.

The Government contends Ms. Johnson had authority to consent to a search of the premises.

B. The Standards.

1. Valid Consent. A search pursuant to a valid consent is a recognized exception to the warrant requirement of the Fourth Amendment. Schneekloth v. Bustamonte, 412 U.S. 218 (1973).

2. Written Consent. A written consent supports a finding the consent was voluntary. United States v. Boone, 245 F. 3d, 352, 362 (4th Cir. 2001).

C. Discussion.

Ms. Johnson was the only lessee of the premises. As lessee, she had the authority to consent to a search of the premises. Ms. Johnson consented in writing to a search of the premises. There is no basis to suppress items seized pursuant to a valid consent to search by the lessee of the premises.

D. Recommendation.

I recommend the Motion to Suppress Evidence Obtained in the search be DENIED because Misty Johnson, as lessee of the premises, had an expectation of privacy in the premises at 21 - 7th Street, Apt. 2, Wheeling, West Virginia, from which the evidence was seized. Therefore, Ms. Johnson, as lessee of the premises, had authority to execute a written consent to a search of the premises.

Any party who appears pro se and any counsel of record, as applicable, may, within ten (10) days from the date of this Report and Recommendation, file with the Clerk of the Court an original and two (2) copies of the written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

The Clerk of the Court is directed to provide a copy of this Report and Recommendation to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: November 16, 2005

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE

