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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIMINAL CASE NO. 92-188
)	
Plaintiff,)	
)	
v.)	DECISION
)	
HENRY I. IGUEL,)	
)	
Defendant.)	

Defendant Henry I. Iguel moves to suppress all the evidence^{1/} seized in the course of a police search of his home on November 17, 1992. Defendant argues that the police violated 6 CMC §6203 when they did not knock and announce their presence or state their purpose prior to entering Defendant's home.

I. FACTS

On November 16, 1992, Special Agent Johnny A. Sokau of the Department of Public Safety obtained a warrant authorizing a

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^{1/} The police seized a .44 magnum revolver, a .22 caliber rifle, ammunition and glass tubes, pipes, and plastic bags containing methamphetamine and its residue.

1 search of Defendant's home. The affidavit in support of the
2 search warrant specifically requested a no-knock warrant, based in
3 part on information from a reliable unidentified informant. This
4 informant had told Edward Pua of the Attorney General's
5 Investigation Unit that he had seen Defendant in possession of
6 numerous handguns and rifles, both in his home and in a black
7 Nissan Maxima. Specifically, the informant told Investigator Pua
8 that he had seen the Defendant in possession of five 9 millimeter
9 handguns (three in the Nissan Maxima and two in Defendant's home)
10 and four rifles (three with loaded magazines in the Nissan Maxima
11 and one in Defendant's home).

12 The Sokau Affidavit also related that Iguel told the
13 informant "he was the one who shot the houses of [sic] the three
14 congressmen," that "if the Police were to search his house, he
15 will never surrender, and that he [would] rather have a shoot out
16 than to be arrested," that "he sleeps with his guns," and that
17 "wherever he goes he always carry [sic] his firearms." In
18 addition, the Sokau Affidavit stated that the informant said
19 Defendant "is always on Ice (Methamphetamine)." Finally, the
20 Sokau Affidavit related that "Henry Iguel is known to have shot
21 Henry Sablan and served jail time for the said offense."

22 On November 17, 1992, at about 7:10 a.m., Agent Sokau and
23 other DPS agents went to the defendant's home with a sledge hammer
24 and forced entry by breaking the front door to the defendant's
25 home without first knocking and announcing their presence.
26 Defendant and his family were still in bed at the time the police
27 executed the warrant.

1 The search warrant does not mention whether it authorizes a
2 no-knock unannounced entry. Moreover, the issuing judge gave no
3 indication that he was denying the request for a no-knock search
4 warrant. The warrant merely commanded the police to search the
5 defendant's home in the daytime.^{2/}

7 II. DISCUSSION AND ANALYSIS

8 A. Commonwealth judges may issue no-knock search warrants.

9 The first issue that must be resolved is whether or not a
10 judge of this Commonwealth may issue a no-knock search warrant.
11 The issuance of search warrants in the Commonwealth is governed by
12 Rule 41(c) of the Commonwealth Rules of Criminal Procedure.^{3/}

14 ^{2/} Daytime is defined as the hours between 6:00 a.m.
15 and 10:00 p.m. See Rule 41(h) of the Commonwealth Rules of
16 Criminal Procedure.

16 ^{3/} Rule 41(c) states, in pertinent part:

17 (1) Warrant Upon Affidavit. A warrant other than a
18 warrant upon oral testimony under paragraph (2) of this
19 subdivision shall issue only on an affidavit or affidavits
20 sworn to before a judge and establishing the grounds for
21 issuing the warrant. If the judge is satisfied that grounds
22 for the application exist or that there is probable cause to
23 believe that they exist, the judge shall issue a warrant
24 identifying the property or person to be seized and naming or
25 describing the person or place to be searched. The finding
26 of probable cause may be based upon hearsay evidence in whole
27 or in part. Before ruling on a request for a warrant, the
28 judge may require the affiant to appear personally and may
29 examine under oath the affiant and any witnesses he/she may
produce, provided that such proceeding shall be taken down by
a court reporter or recording equipment and made part of the
affidavit. The warrant shall be directed to a policeman. It
shall command the officer to search, within a specified
period of time not to exceed ten (10) days, the person or
place named for the property or person specified. The
warrant shall be served in the daytime, unless the issuing
authority, by appropriate provision in the warrant, and for
reasonable cause shown, authorizes its execution at times
other than daytime. It shall designate the judge to whom it
shall be returned.

(2) Warrant Upon Oral Testimony.

1 This Rule neither expressly grants nor expressly withholds the
2 authority to issue no-knock search warrants. It has been held
3 that where a statute neither authorizes nor prohibits the issuance
4 of a no-knock search warrant, judges are not precluded from
5 granting one. See e.g. *State v. Cleveland*, 348 N.W. 2d 512, 519
6 (Wis. 1984). Accordingly, this Court holds that judges in this
7 Commonwealth may issue a no-knock search warrant under Rule 41 of
8 the Commonwealth Rules of Criminal Procedure.

9 (i) Requirements of no-knock search warrants.

10 Upon application for a no-knock search warrant, the affidavit
11 in support of the warrant must clearly ". . .set forth special
12 circumstances with sufficient particularity to show reasonable
13 cause to believe that circumstances presently exist which justify
14

15 (A) General Rule. If the circumstances make it
16 reasonable to dispense with a written affidavit, a judge
17 may issue a warrant based upon sworn oral testimony
18 communicated by telephone or other appropriate means.

19 (B) Application. The person who is requesting the
20 warrant shall prepare a document to be known as a
21 duplicate original warrant and shall read such duplicate
22 original warrant, verbatim to the judge. The judge
23 shall enter, a verbatim, what is so read to such judge
24 on a document to be known as the original warrant. The
25 judge may direct that the warrant be modified.

26 (C) Issuance. If the judge is satisfied that the
27 circumstances are such as to make it reasonable to
28 dispense with a written affidavit and that grounds for
29 the application exist or that there is probable cause to
believe that they exist, the judge shall order the
issuance of a warrant by directing the person requesting
the warrant to sign the judge's name on the duplicate
original warrant. The judge shall immediately sign the
original warrant and enter on the face of the original
warrant the exact time when the warrant was ordered to
be issued. The finding of probable cause for a warrant
upon oral testimony may be based on the same kind of
evidence as is sufficient for a warrant upon affidavit.

(E) Contents. The contents of a warrant upon
oral testimony shall be the same as the contents of a
warrant upon affidavit.

1 a no-knock entry. . ." and the issuing judge must clearly indicate
2 ". . .in the warrant specific authority to enter the premises
3 without announcement of presence and purpose and without allowing
4 time for the door to open." Id. at 519.

5 In the case at bar, the police specifically requested a
6 no-knock search warrant, and the affidavit in support of the
7 application clearly justifies the issuance thereof. The warrant,
8 however, is silent as to whether or not a no-knock search was
9 authorized. Hence, the Court finds that the warrant issued to
10 search defendant Henry Iguel's home was a knock and announce
11 warrant as opposed to a no-knock search warrant.

12 B. Execution of knock and announce search warrants.

13 Section 6203 of Title 6 of the Commonwealth Code governs the
14 execution of knock and announce search warrants, as follows:

15 If a building or ship or any part thereof is designated
16 as the place to be searched, the police officer executing the
17 warrant may enter without demanding permission if the officer
18 finds the building or ship open. If the building or ship be
19 closed, the officer shall first demand entrance in a loud
20 voice and state he or she desires to execute a search
21 warrant. If the doors, gates, or other bars to the entrance
22 be not immediately opened, the officer may force an entrance,
23 by breaking them if necessary. Having entered, the officer
24 may demand that any other part of the building or ship, or
25 any closet, or other closed space within the place designated
26 in the search warrant in which the officer has reason to
27 believe the property is concealed, be opened for inspection,
28 and, if refused, the officer may break them. Whenever
29 practicable these demands and statements shall be made in a
language generally understood in the locality.

It is clear from the above provision that the knock and announce
requirements only come into play when the door to a ship or
building is "closed". Under such circumstances, a police officer
must ". . .first demand entrance in a loud voice and state
[his/her desire] to execute a search warrant."

1 It is undisputed in this case that the door to defendant
2 Henry Iguel's house was "closed" and the police did not knock and
3 announce their presence and state their purpose when they executed
4 the search warrant. Therefore, the police did not comply with the
5 requirements of 6 CMC § 6203.

6 (i) Non-compliance of knock and announce requirements.

7 The "knock and announce" rule expressed in 6 CMC § 6203
8 substantially resembles 18 U.S.C. § 3109,^{4/} which in turn codifies
9 the common law rule. See *Sabbath v. United States*, 391 U.S. 585,
10 591 n.8 (1968); *Rodriguez v. Jones*, 473 F.2d 599, 607 (3d Cir.
11 1973). As interpreted by the Ninth Circuit, this common law rule
12 is subject to exceptions when exigent circumstances exist.^{5/}
13 *United States v. Turner*, 926 F.2d 883, 886 (9th Cir. 1991), cert.
14 den., 112 S. Ct. 103 (1991); *United States v. Ramirez*, 770 F.2d
15 1458, 1460 (9th Cir. 1985); *United States v. Manfredi*, 722 F.2d
16 519, 524 (9th Cir. 1983). Specifically, "a police officer's
17 reasonable belief that an announcement might place him or his
18 associates in physical peril constitutes exigent circumstances,"

19
20 ^{4/} Defendant argues that the differences between 6 CMC § 6203 and
21 18 USC § 3109 indicate that the Commonwealth statute is intended
22 to "supplant" the common law rule. See *Supplemental Memorandum*
23 *Supporting Motion to Suppress*, at 3-6. The argument fails. The
fact that the Trust Territory Code, and later the Commonwealth
Code, adapted the common law rule to fit local conditions does not
alter its character as common law.

24 ^{5/} Defendant asserts that because one "exception" to the common
25 law knock and announce rule -- the "open door" provision of § 6203
26 -- is explicitly mentioned, other "exceptions" are by implication
27 excluded. See *Supplemental Memorandum, supra*, at 6. However, as
28 interpreted by the Ninth Circuit, unannounced entry through an
29 open door is not an "exception" to the common law rule, but rather
falls wholly outside the rule's scope. *United States v. Vargas*,
436 F.2d 1280, 1281 (9th Cir. 1971). Therefore, the fact that §
6203 explicitly allows entry through an open door has no effect on
judicially-created exceptions to the knock and announce rule, such
as the exigent circumstances exception at issue here.

1 thus excusing noncompliance with the federal "knock and announce"
2 statute. *Turner, supra*, 926 F.2d at 886.

3 In *Turner*, an informant told police that the suspect in
4 question "kept weapons in the apartment he used for his drug
5 operation." Moreover, the suspect had told the informant that he
6 kept these weapons "to protect his merchandise and to use against
7 the police if they raided his apartment." *Id.* at 885. The Ninth
8 Circuit found that these facts justified the police officers' no-
9 knock entry. Likewise, here, the Sokau Affidavit stated that
10 Defendant Iguel told the informant he would "rather have a
11 shootout than be arrested" and that "he sleeps with his guns."
12 These specific facts form the basis of at least as reasonable a
13 fear for the officers' safety as was present in *Turner*. For
14 these reasons, exigent circumstances existed, thus excusing
15 noncompliance with the requirements of 6 CMC § 6203.

16
17 **CONCLUSION**

18 Based on the foregoing, the Court DENIES Defendant Henry I.
19 Iguel's motion to suppress the evidence seized from his home on
20 November 17, 1992.

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22 SO ORDERED this 15 day of October, 1993.

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26 ALEXANDRO C. CASTRO, Presiding Judge
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