

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted December 10, 2024*

Decided December 18, 2024

BeforeDIANE S. SYKES, *Chief Judge*JOHN Z. LEE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 24-1430

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*ERIC CORDER,
*Defendant-Appellant.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 21-cr-114-1

Steven C. Seeger,
*Judge.***ORDER**

Eric Corder moved to suppress the drug evidence in his criminal case, asserting that a confidential informant (CS-2) working for law enforcement violated his Fourth Amendment rights by entering the curtilage of his property to conduct a search without a warrant or consent. The district judge denied the motion and Corder's motion to

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

reconsider. Corder appeals, but we affirm because CS-2 had an implied license to enter the property and Corder's voluntary consent to CS-2's presence there attenuated the discovery of the evidence from any illegal entry.

Corder lived in a single-family home with a backyard and a detached garage behind the house. The property was enclosed by a fence with gates at the front and the rear. A sidewalk ran through the yard from one gate to the other, with the back gate leading to an alley. Corder lived in the basement (he shared the house with his sister), and his bedroom had a window on the side of the house.

On December 15, 2020, law enforcement collaborated with CS-2, an acquaintance of Corder who was familiar with his drug dealing, to stage a drug transaction. Law enforcement equipped CS-2 with audio and video recording devices and provided \$500 to complete the transaction with Corder. CS-2 approached Corder's home and passed through one of the gates.¹ CS-2 walked along the walkway at the side of the house, cut through the backyard, and approached the window of Corder's bedroom. CS-2 knocked on the window to get Corder's attention, but Corder did not respond. CS-2 shined a cellphone flashlight into the bedroom. In total, CS-2 knocked on the window intermittently for roughly seven or eight minutes until Corder answered.

About three minutes after answering at the window, Corder emerged from the bedroom and met CS-2 in the backyard. They exchanged pleasantries for about 15 seconds, and then Corder invited CS-2 into his garage to purchase substances later confirmed to be fentanyl-laced heroin and cocaine. Corder and CS-2 talked for another ten minutes about unrelated topics, and CS-2 then left the garage and returned to law enforcement to deliver the drugs.

Using the evidence from the December 15 transaction (along with evidence from a previous transaction between CS-2 and Corder on December 1), law enforcement executed two search warrants on Corder's residence. The warrants resulted in the seizure of narcotics, among other evidence.

Two months later, Corder was charged with one count of distributing a mixture or substance containing fentanyl and cocaine base for the December 15, 2020, transaction (Count 1), and one count of possessing a mixture or substance containing fentanyl and cocaine base with intent to distribute for the drugs recovered during the

¹ The record is unclear whether CS-2 entered through the front gate or the back gate.

subsequent search of Corder's home in February 2021 (Count 2). *See* 21 U.S.C. § 841(a)(1). He moved to suppress the evidence obtained by law enforcement during the December 15 transaction, arguing that he never consented to CS-2's warrantless entry into his backyard. The government argued that CS-2 had an implied license to enter the curtilage to purchase drugs because Corder had previously received CS-2 and other buyers at the premises. Regardless, the government asserted, Corder later voluntarily consented to CS-2's presence in the garage, attenuating the drug transaction from any unlawful initial entry onto the property. Corder replied that CS-2 did not have an implied license to enter the curtilage and contested the facts surrounding CS-2's knowledge of the property and Corder's drug-dealing history. He also asserted that his later consent was tainted by CS-2's initial illegal entry onto the curtilage.

The district judge denied Corder's motion to suppress. The judge concluded that CS-2 had an implied license to enter the curtilage because CS-2 and previous buyers had customarily entered Corder's backyard to purchase drugs, and CS-2 had a reasonable belief that knocking on Corder's bedroom window was the equivalent of knocking on his front door. Further, the judge explained that even if CS-2 did not have an implied license to enter the curtilage, Corder later consented to CS-2's presence. Though his consent occurred shortly after the entry, the judge concluded that Corder was free to tell CS-2 to leave, and CS-2 did not coerce Corder into permitting entry into the garage.

Corder moved for reconsideration, contending that the judge had incorrectly engaged in a subjective analysis of the property's customary use based on CS-2's personal knowledge and misapplied precedent in its consent analysis.

The judge held an evidentiary hearing to clarify CS-2's knowledge surrounding the usage of Corder's property. At the hearing, CS-2 testified to visiting Corder's house "20-plus times," going to the backyard "a lot of times," and entering the basement many times. CS-2 also testified that Corder typically greeted buyers from his bedroom window and requested that people seeking to buy drugs knock on the "back door" because he did not want his sister to know he was selling drugs. Moreover, CS-2 testified to seeing other buyers knock on the bedroom window on two or three occasions. Based on CS-2's testimony, the judge reaffirmed the prior ruling that CS-2 had an implied license to enter Corder's property, go to the backyard, and knock on the bedroom window.

Corder then entered into a conditional plea agreement. He pleaded guilty to Count 1, reserving the right to appeal the denials of his motion to suppress and motion

to reconsider. In exchange, the government dismissed Count 2. The judge imposed 57 months' imprisonment and 3 years' supervised release.

Acting pro se on appeal, Corder renews his argument that CS-2 violated his Fourth Amendment rights by entering his home's curtilage without an implied license. Further, he disagrees with the district judge's conclusion that Corder's invitation for CS-2 to join him in the garage to complete the drug transaction was not tainted by any unlawful entry onto the property. We review the district judge's legal conclusions de novo and factual findings for clear error. *See United States v. Jones*, 22 F.4th 667, 673 (7th Cir. 2022).

Corder first argues that CS-2 exceeded the scope of the implied license to enter the backyard when CS-2 walked through a closed gate, knocked on his bedroom window for seven or eight minutes, and used a cellphone flashlight to look through the window. But we agree with the district judge that CS-2's conduct fell within the license that Corder customarily granted to drug buyers who came to his property. A person has a reasonable expectation of privacy in the curtilage of his home—the area “immediately surrounding and associated with the home.” *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). Warrantless intrusions into the curtilage are prohibited unless law enforcement enters in accordance with “social norms,” *id.* at 9, and “for the very purposes contemplated by the occupant,” *Lewis v. United States*, 385 U.S. 206, 211 (1966); *see also United States v. Shelton*, 997 F.3d 749, 766 (7th Cir. 2021). Here, CS-2 knew from previous encounters with Corder that he had permitted familiar buyers to access his backyard and knock on his bedroom window. And CS-2 entered the curtilage of the property intending to purchase drugs, a purpose contemplated by Corder when he previously opened his home to drug buyers.

Next, Corder asserts that the district judge erred when he concluded in the alternative that Corder's invitation to complete a drug transaction in the garage was sufficiently attenuated from any unlawful entry onto the property. We disagree.

Warrantless intrusions onto the curtilage by law enforcement “to engage in conduct not explicitly or implicitly permitted by the homeowner” are unreasonable. *Id.* But a warrant is not required when a search is conducted pursuant to consent. *See Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

The exclusionary rule requires that evidence obtained in violation of the Fourth Amendment be suppressed unless the connection between an unlawful search and the subsequent discovery of evidence “become[s] so attenuated that the deterrent effect of

the exclusionary rule no longer justifies its cost.” *United States v. Carter*, 573 F.3d 418, 422 (7th Cir. 2009) (alteration in original) (quoting *Brown v. Illinois*, 422 U.S. 590, 609 (1975) (Powell, J., concurring)). Indeed, “the exclusionary rule should not apply when the causal connection between illegal police conduct and the procurement of evidence is ‘so attenuated as to dissipate the taint’ of the illegal action.” *United States v. Fazio*, 914 F.2d 950, 957 (7th Cir. 1990) (quoting *Segura v. United States*, 468 U.S. 796, 805 (1984)). To determine whether a person’s voluntary consent to a search is sufficiently attenuated from the unlawful action, courts balance three factors: “(1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct.” *United States v. Ienco*, 182 F.3d 517, 526 (7th Cir. 1999).

Here, as for the timing factor, the district judge found that the mere ten or eleven minutes that passed between CS-2’s first knock on the window and the drug sale weighed more in favor of suppression than attenuation. To be sure, a few minutes may not always be sufficient to purge the taint of an unlawful intrusion from later-collected evidence. *See, e.g., United States v. Green*, 111 F.3d 515, 521 (7th Cir. 1997) (five minutes likely insufficient). On the other hand, the interaction between Corder and CS-2 was friendly, and Corder was free to end it at any time (and free to tell CS-2 to leave), attenuating any underlying violation at least slightly. *See Rawlings v. Kentucky*, 448 U.S. 98, 108 (1980) (“congenial atmosphere” made up for otherwise short passage of time, weighing in favor of attenuation). In any event, timing is “only one factor to consider, and is never dispositive.” *Carter*, 573 F.3d at 425 (internal citation omitted).

As for the second factor, we agree with the district judge that Corder’s consent to CS-2’s presence on his property was an intervening circumstance, weighing in favor of attenuation. Voluntary consent can serve as an independent intervening event so long as the consent was not obtained immediately following an illegal entry or after an illegal stop, detention, or arrest. *See United States v. Conrad*, 673 F.3d 728, 734 (7th Cir. 2012). Here, Corder’s voluntary consent favors attenuation: After Corder discovered that CS-2 was outside his window, Corder emerged from the basement, engaged in pleasantries with CS-2, and invited CS-2 into the garage to buy drugs. CS-2 did not ask to go into the garage, nor did CS-2 attempt to lead Corder there. CS-2 did not threaten Corder or otherwise pressure Corder to sell the drugs. After the transaction, CS-2 remained in the garage for ten minutes, engaging in casual conversation with Corder. Nothing about the circumstances surrounding Corder’s consent reflect that he was coerced into consenting to CS-2’s presence in the garage.

Finally, the lack of purpose and flagrancy of any official misconduct supports attenuation. A Fourth Amendment violation is purposeful and flagrant when “(1) the impropriety of the official’s misconduct was obvious or the official knew, at the time, that his conduct was likely unconstitutional but engaged in it nevertheless; and (2) the misconduct was investigatory in design and purpose and executed in the hope that something might turn up.” *Carter*, 573 F.3d at 425 (quoting *United States v. Simpson*, 439 F.3d 490, 496 (8th Cir. 2006) (internal quotation marks omitted)). Even if law enforcement errs, a lack of evidence supporting an inference of bad faith means the violation is not flagrant. *Id.* at 425–26.

Here, the evidence does not support an inference that law enforcement acted in bad faith. No doubt, law enforcement set up the controlled buy at Corder’s house to advance their investigation into Corder’s illegal drug activity. But CS-2 did not use the initial entry and knock at the window for the purpose of gathering additional information: CS-2 did not use the flashlight to look for contraband in the bedroom, wander around the yard, or attempt to enter the garage alone. *See Conrad*, 673 F.3d at 736 (law enforcement initially violated the curtilage of a home to advance an investigation but did not enter as part of a “fishing expedition,” supporting attenuation). Moreover, law enforcement did not encourage CS-2 to engage in any behavior that was “coercive or calculated to cause surprise, fright or confusion.” *United States v. Reed*, 349 F.3d 457, 465 (7th Cir. 2003). CS-2 relied on the knowledge of drug dealing activity at Corder’s house and entered the property in a manner consistent with previous visits and with knowledge of how others entered the property to buy drugs. Further, an officer involved in the controlled buy testified that law enforcement believed CS-2 had an implied license to enter the property because of CS-2’s friendly relationship with Corder. *See, e.g., Carter*, 573 F.3d at 426 (agent did not act in bad faith where he relied on tenant’s statement that unit was unoccupied before engaging in unconstitutional search).

We agree with the district judge’s conclusion that the evidence obtained by CS-2 on December 15 did not need to be suppressed where CS-2 had an implied license to enter the property and, even if there had been an unlawful entry, the discovery of the evidence was sufficiently attenuated from it.

AFFIRMED