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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 01-5338

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

SEAN CARTER,
a/k/a Marquan Antonio McCall

Defendant-Appellant

Appeal from the United States District Court
For the Eastern District of Kentucky at Lexington
Criminal Action No. 00-58

SUPPLEMENTAL BRIEF FOR APPELLANT

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POINT 1.......... 10

BECAUSE A CIGAR IS AN INTRINSICALLY INNOCENT ITEM AND POLICE HAD TO EXAMINE IT TO DETERMINE IF IT CONTAINED MARIJUANA, IT WAS NOT IMMEDIATELY APPARENT THAT THE CIGAR WAS A CRIMINAL INSTRUMENT AND THE "PLAIN VIEW" DOCTRINE CANNOT BE INVOKED TO EXCUSE THE WARRANTLESS ENTRY.

POINT 2.......... 19

BECAUSE POLICE HAD PROBABLE CAUSE AND AMPLE OPPORTUNITY TO OBTAIN A WARRANT BEFORE THEY TOOK ANY ACTION THAT COULD ALERT APPELLANT OF THEIR PRESENCE AND BECAUSE THERE IS NO EVIDENCE THAT APPELLANT WAS AWARE OF THE POLICE PRESENCE PRIOR TO OPENING THE DOOR IN RESPONSE TO THE POLICE'S REPEATED CALLS OF "HOUSEKEEPING," ANY EXIGENT CIRCUMSTANCES WERE MANUFACTURED BY THE POLICE AND CANNOT BE INVOKED TO EXCUSE THEIR WARRANTLESS ENTRY.

POINT 3.......... 27

EVEN IF THE CRIMINAL CONNECTION OF THE CIGAR WAS IMMEDIATELY APPARENT AND IF THE EXISTENCE OF EXIGENT CIRCUMSTANCES MUST BE ASSESSED AT THE

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POINT WHERE POLICE WERE AT THE MOTEL ROOM DOOR, THE POLICE EXCEEDED THE MINIMAL INTRUSION AUTHORIZED AND NECESSARY TO PREVENT THE DESTRUCTION OF EVIDENCE AND THEIR SEARCH FOR AND SEIZURE OF EVIDENCE VIOLATED THE FOURTH AMENDMENT.

POINT 4.. 35

BY STEPPING BACK ACQUIESCENTLY AS POLICE BARGED INTO THE ROOM APPELLANT DID NOT CONSENT TO THEIR WARRANTLESS ENTRY.

POINT 5.. 37

THE "INEVITABLE DISCOVERY" DOCTRINE CANNOT EXCUSE THE UNLAWFUL SEIZURE OF THE EVIDENCE.

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