

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
 v. : CRIM. NO. AMD 08-0210
 :
 REGINALD VANDERVALL :
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ORDER

Defendant Reginald Vandervall, who is charged in a three-count Indictment with narcotics and firearm offenses, filed motions to suppress certain statements he made and a firearm seized from his constructive possession at the time of his arrest. On September 2, 2008, the court conducted an evidentiary hearing on the motions to suppress and counsel presented extended argument. Thereafter, the court invited counsel to file post-hearing supplemental memoranda and they have done so. The matter is ready for decision and no further hearing is needed.

The facts are simple and straightforward. On the date of his arrest, October 25, 2007, defendant was a visitor at a home in which he indisputably enjoyed a reasonable expectation of privacy. The residence had been the scene of a drug raid by Baltimore City police officers several months earlier. Specifically, on the basis of information provided by a confidential informant and undercover drug purchases, police had obtained a search warrant for the residence.

On or about the date of the arrest of defendant here, the arresting officers received information from the same confidential informant to the effect that drugs were once again being sold out of the premises. Specifically, the confidential informant told the officers that if an officer approached the rear basement door to make a purchase using the alias "Rick," the officer would be served narcotics.

The officers, without first obtaining a warrant, did exactly what the confidential informant had suggested: they conducted a form of “knock and talk.” They entered the rear yard of the residence, knocked at the basement door, and indicated to the person standing behind the still unopened door that “Rick” wished to purchase narcotics. An individual (one Dudley, who is not a defendant here) then opened the door and stepped across the threshold, with a small amount of narcotics in the open palm of his out-stretched hand. Dudley quickly noticed that he had been lured out of the house by a law enforcement ruse and immediately retreated into the house. Officers followed him into the house to arrest him. When they entered, they immediately observed defendant Vandervall, seated nearby, in possession of plastic baggies of narcotics. Defendant was promptly arrested and, simultaneously (or nearly so) volunteered to the officers that he was in possession of a firearm, which was recovered under the chair where he was seated.*

For the reasons stated on the record in colloquy with counsel, the court finds and concludes that the officers had probable cause to arrest Dudley when he stepped across the threshold to deliver narcotics to “Rick” and that Dudley’s flight from the officers justified their warrantless entry into the residence in order to effect his arrest. *See United States v. Santana*, 427 U.S. 38, 42-43 (1976). The facts in the case at bar do not sweep this case within the compass of those in which police-created exigency vitiates the reasonableness of a warrantless residential entry. *E.g., United States v. Mowatt*, 513 F.3d 395 (4th Cir. 2008). In other words, this is not a case in which the police “created the ‘exigency’ themselves *for no*

*Vandervall seemingly concedes that the officers acted reasonably in retrieving the firearm from under the chair. In any event, if the entry into the residence comported with the Fourth Amendment, as the court concludes, then Vandervall’s arrest was plainly lawful, and the seizure of the gun was proper as incident to his arrest.

apparent reason,” id. at 403 (emphasis added). Rather, the exigency here (i.e, that the person opening the door in response to the “knock and talk” technique would come to the door bearing the narcotics being sold from the premises and, upon discovering that it was the police and not “Rick” who was there to make a purchase, would retreat back into the premises), though perhaps foreseeable, arose in consequence of a course of investigation that was reasonable in every respect. The mere fact that the police chose not to obtain a search warrant in advance does not render unreasonable their chosen investigative technique under the circumstances here. *See U.S. v. Hagan*, 539 F.3d 916, 920, 922 (8th Cir. 2008)(officers who had just witnessed a drug transaction approached residence for a “knock and talk” but made exigency-based warrantless entry; *held*: entry not unreasonable and district court’s denial of motion to suppress evidence obtained in consequence of the entry affirmed).

Finally, the court invited the parties to file post-hearing briefs on the issue of whether the officers’ entry into the backyard of the home-- the curtilage-- in order to conduct the “knock and talk” technique violated the Fourth Amendment. The court is satisfied that, based on the substantial showing here that the basement of the residence was being maintained as a marketplace for narcotics sales, open to any or most members of the public wishing to make purchases at the doorway, the officers did not violate defendant’s reasonable expectation privacy when they, like ordinary drug users, entered the yard with the intent to obtain narcotics. *See also United States v. Weston*, 443 F.3d 661, 667 (8th Cir.)(recognizing “knock and talk” as a reasonable investigative technique), *cert. denied*, 127 S.Ct. 417 (2006); *United States v. Hammett*, 236 F.3d 1054, 1059 (9th Cir. 2001) (“Law enforcement officers may encroach upon the curtilage of a home for the purposes of asking questions of the occupants.”). And this is true, notwithstanding that the fence surrounding the backyard was

