

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-2015-CR-186
Plaintiff,	)	
vs.	)	14 V.I.C. 297(a)(2)
	)	14 V.I.C. 2251(a)(2)(B)
KARL CAESAR,	)	14 V.I.C. 298(5)
(D.O.B.: 05-17-63)	)	14 V.I.C. 622(1)
Defendant.	)	

MEMORANDUM OPINION

Before the Court is Defendant's Motion to Suppress and/or Exclude Certain Evidence and to Compel Production of Discovery with Incorporated Memorandum of Law filed on February 17, 2016 and the People's Opposition to Defendant's Motion to Suppress and Compel Production of Discovery filed on February 25, 2016.¹ A hearing was held on February 29, 2016 at which time the Court heard testimony regarding Defendant's Motion to Suppress and on the issue of a photograph of the Defendant that the Complainant, Aqueesha Renault, showed to the police.²

In his Motion, Caesar seeks to suppress his firearm and any photographs of the firearm seized by the Police when he was arrested on May 9, 2015.³ The People argue that the seizure of Caesar's firearm and the photographs taken in his home were reasonable pursuant to the law and obtained with his full consent and cooperation.⁴

Because the totality of the circumstances indicate that Caesar voluntarily consented to the search of his bedroom closet for the limited purpose of obtaining the firearm, the Court will deny the Motion with respect to the seizure of the firearm, its holster and the photographs taken of both items.

¹ The Defendant is represented by Court-appointed counsel, Susan Bruch Moorehead, Esquire. The People are represented by Assistant Attorney General Denise George Counts.

² A separate order will to be issued addressing Defendant's Motion to Dismiss for Loss of Evidence in which the Defendant argues that a photograph, referenced in the Probable Cause Fact Sheet and in the Affidavit which supported the Information, was not properly preserved by the People and, as a consequence, the case should be dismissed.

³ Defendant's Motion to Suppress and/or Exclude Certain Evidence and to Compel Production of Discovery and Incorporated Memorandum of Law (the "Motion"), 1, February 17, 2016.

⁴ People's Opposition to Defendant's Motion to Suppress and Compel Production of Discovery, 1, February 25, 2016.

STATEMENT OF FACTS

On May 9, 2015, V. I. Police Officer Alphonso Boyce, Sr. was called to a restaurant in the Smith Bay area regarding an alleged assault. There he met the Complainant, Aqueesha Renault, who provided Boyce with the suspect's name, a description of the vehicle the suspect was driving including information that the vehicle had taxi plates. A witness at the scene may have provided the license plate number of the vehicle.

Boyce testified that he has known the suspect for many years and that he had seen the suspect and Renault together in the Coki Point area earlier the same day. Boyce thought that the suspect would be home and he had a general idea of where the suspect lived in the Anna's Retreat area.

Boyce then left the Smith Bay area and proceeded to the area where he believed the suspect lived. Either en route, or after he identified the suspect's vehicle, he notified dispatch for other units to travel to the location. Still unsure of exactly where the suspect lived, but having positively identified his vehicle, Boyce saw Caesar coming up the stairs from a house accompanied by two children. Boyce asked Caesar if he had someone to watch his kids. Caesar replied that his mother, who lives on the same property, could watch the children. Boyce then allowed Caesar take the children to their grandmother.

Boyce then placed Caesar under arrest, handcuffed him, read him his rights, and patted him down. While Caesar was handcuffed, Boyce asked Caesar if he had a licensed firearm and said that he had to secure the firearm.

Caesar told Boyce that he did have a firearm and that it was in the house. Caesar's residence was locked at the time so Boyce took the keys out of Caesar's pocket and unlocked the front door to the residence. Caesar told Boyce where the firearm was located in a bedroom. Boyce and Caesar went into the bedroom and Caesar showed Boyce where the firearm was. Boyce says he observed the firearm located on a shelf under some clothes in a closet. After observing the firearm's location, Boyce left the house with Caesar and waited for forensics to arrive.

V.I. Police Department crime scene technician Aneaca David then arrived at the house. According to David, Boyce told her that there was a firearm involved and he wanted her to retrieve it. Boyce testified that he wanted forensics to retrieve the firearm to reduce the number of persons involved in the chain of custody. At the time, Caesar was present and did not say anything and did not object. David testified that she was not told that Caesar did not consent to the search of his residence. Boyce showed David where the firearm was located. As she walked from the outside into the house, David took photographs of how the house was situated, the rooms she walked

through all the way to the bedroom where the firearm was located. When she arrived in the bedroom, David was able to see the firearm tucked under some clothing on a shelf. David photographed the location of the firearm and the location of the holster. She then removed the firearm from the shelf, disarmed it by removing the magazine and secured the firearm. David further testified that she carried both the firearm and holster back to her office and turned them into the property room.

According to David, Caesar did not say anything to her nor did he object to any of her actions. David was not told that Caesar consented to the search of his residence, nor was she told that there was a search warrant, nor was she aware that Caesar was under arrest.

In contrast to Boyce's description of the events, Caesar testified that he was walking up the stairs with his children when he encountered Boyce around 12:30 p.m. According to Caesar, Boyce asked "What did you do to that girl?" and proceeded to handcuff him in front of his children. Caesar's mother came outside after hearing the commotion and looked after the children, who were crying. Caesar claims that he was not read his rights and that when Boyce said he needed to secure the firearm, Caesar thought he did not have any other choice but to let him in the house and take him to the firearm. According to Caesar, Boyce retrieved the firearm, took out the clip and placed it on the bed. Caesar testified that Boyce did not ask permission to search his home. Caesar also claims that he did not have a clear view when David and Boyce went into the bedroom together and only had a partial view from the kitchen, where he was told to stay while in handcuffs. Caesar could only assume the firearm was taken from him because "they had bags." Caesar was eventually placed in the police car and taken to the station where he was told to eat the fish and johnnycake he got at Coki Point Beach before he would be transported to the main station. Around 3:00 p.m. that day, Caesar gave a statement to police. Caesar testified that the Police would not let him give a statement until he had waived his rights. Before giving his statement, Caesar was read his rights and signed a waiver.

ANALYSIS

Caesar argues that the VIPD conducted a warrantless search of his residence, that he was not advised of his *Miranda* rights and that he consented to the search of his residence because he didn't think he had any choice.

The Fourth Amendment to the U. S. Constitution applies to the U.S. Virgin Islands pursuant to section 3 of the Revised Organic Act of 1954.⁵ Generally, the Fourth Amendment protects individuals from "governmental intrusion not authorized by a warrant."⁶ It is well

⁵ The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995), reprinted in V.I. Code Ann., Historical Documents, Organic Acts, and U.S. Constitution at 73-177 (1995) (preceding V.I. Code Ann. tit. 1).

⁶ *Simmonds v. People of the Virgin Islands*, 53 V.I. 549, 555-556 (V.I. 2010).

established that individuals have a reasonable expectation of privacy in their homes.⁷ A search or seizure of a residence without a warrant is *per se* unreasonable absent the applicability of one of a few, well-delineated exceptions.⁸ One such exception is consent.

If a person gives free and voluntary consent to a search, a warrantless search is considered constitutionally valid.⁹ Consent can be express, implied by the circumstances surrounding the search,¹⁰ the person's prior actions or agreements,¹¹ or the person's failure to object to the search.¹² The Government, however, "has the burden of proving that the consent was, in fact, freely and voluntarily given."¹³ In determining the meaning of "voluntariness," the Supreme Court in *Schneckloth v. Bustomone*, declined to adopt one dispositive factor or "single controlling criterion" in determining the meaning of voluntariness.¹⁴ Instead, the Court provided that whether consent was indeed voluntary is a question of fact to be determined from the totality of all the circumstances.¹⁵

Some of the factors that the court may take into consideration regarding consent are the defendant's age, education, and intelligence;¹⁶ whether the officers told the defendant he could refuse to consent, although such knowledge is not required to prove consent;¹⁷ the degree to which the consenting individual cooperates with the police;¹⁸ the length of the encounter;¹⁹ the consenting

⁷ *United States v. Karo*, 468 U.S. 705, 714, 104 S. Ct. 3296, 3303, 82 L. Ed. 2d 530 (1984).

⁸ *Browne v. People*, 56 V.I. 207, 217 (V.I. 2012) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)).

⁹ *Thomas v. People of the Virgin Islands*, __ V.I. __, 2015 V.I. SUPREME LEXIS 25, at *19 (V.I. 2015).

¹⁰ See, e.g., *U.S. v. Winston*, 444 F.3d 115, 121 (1st Cir. 2006) (consent to search dresser implied when defendant was asked for identification and he pointed officers to dresser); *U.S. v. Moreland*, 437 F.3d 424, 428-29 (4th Cir. 2006) (consent to search residence implied because informant had close working relationship with law enforcement, a day earlier allowed officer into residence for controlled purchase of drugs from defendant, and testified that officers were welcome to enter his home even though they did not ask his permission to do so).

¹¹ See, e.g., *U.S. v. Woodrum*, 202 F.3d 1, 9 (1st Cir. 2000) (consent implied because taxi driver chose to register for safety program and displayed decal demonstrating consent); *U.S. v. Peterson*, 100 F.3d 7, 11 (2d Cir. 1996) (consent implied because defendant removed knapsack, handed it to officer, and later admitted giving officer permission to search).

¹² See, e.g., *Bates v. Harvey*, 518 F.3d 1233, 1244 (11th Cir. 2008) (consent not implied when homeowner did not initially reply to officer's search request, shook her head when asked about suspect's location, and said "something to the effect of I guess so" when police entered bedroom and asked to look around).

¹³ *Schneckloth v. Bustamonte*, 412 U.S. 218, 222, 93 S. Ct. 2041, 2048, 36 L. Ed. 2d 854, 863 (1973).

¹⁴ *Id.* at 226-227.

¹⁵ *Id.* at 277.

¹⁶ *Id.*

¹⁷ *Id.*; See also *U.S. v. Mendenhall*, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980), reh'g denied, 448 U.S. 908, 100 S. Ct. 3051, 65 L. Ed. 2d 1138 (1980) (consent to search was voluntary because police did not threaten the defendant, twice informed her of her right to withhold consent, and briefly questioned her).

¹⁸ See e.g., *U.S. v. Winston*, 444 F.3d 115, 122 (1st Cir. 2006) (consent voluntary because defendant immediately told agent where identification was located).

¹⁹ *U.S. v. Boone*, 245 F.3d 352, 363 (4th Cir. 2001) (consent voluntary though suspect in custody because he received *Miranda* warnings, gave consent in public, and agreed to wait for more police to arrive to search).

individual's attitude about the likelihood of the discovery of contraband;²⁰ whether the police threatened, physically intimidated, or punished the defendant;²¹ whether the defendant was in custody or under arrest when consent was given;²² and whether the consent occurred in a public or a secluded place.²³

There are two notable instances where consent is deemed invalid. First, consent must not be a result of duress or coercion, by express or implicit means, or by implied threat of force.²⁴ The presence of such coercion, however subtle, "would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed."²⁵ Second, consent is not voluntary if given only in acquiescence to a claim of lawful authority such as a suspect being told that the officers have a search warrant or in circumstances where the officers conveyed a message that compliance by the Defendant was required.²⁶

Here, Caesar points out several factors that weigh against a finding of voluntary consent: (1) he was arrested and handcuffed after exiting his residence in the presence of his children, creating a coercive environment; and (2) he was not advised of his rights at the time of the arrest. Neither argument is persuasive in the instant case.

First, "although sensitivity to the heightened possibility of coercion is appropriate when a defendant's consent is obtained during custody, custody alone has never been enough in itself to demonstrate . . . coerced . . . consent to search."²⁷ In the instant case, there is no indication in the record that Caesar was mistreated or that Boyce brandished a weapon, made threatening gestures, or spoke threatening words during the interrogation.²⁸

²⁰ See, e.g., *U.S. v. Crespo*, 834 F.2d 267, 272 (2d Cir. 1987) (consent to search voluntary because defendant agreed to search believing agents would not find materials hidden in bag on closet shelf); *U.S. v. Mata*, 517 F.3d 279, 291 (5th Cir. 2008) (consent to search voluntary because defendant stated he had "nothing to hide," provided officers with combination to safe containing firearms, and helped them open it); *U.S. v. James*, 571 F.3d 707, 715 (7th Cir. 2009) (consent to search voluntary because defendant's mother contacted police regarding location of safe containing firearm belonging to son in her home and allowed police into home to remove safe).

²¹ *Schneckloth*, 412 U.S. at 226; See, e.g., *U.S. v. Dupree*, 202 F.3d 1046, 1050 (8th Cir. 2000) (consent voluntary partly because officer did not use physical violence).

²² *United States v. Raibley*, 243 F.3d 1069, 1076 (7th Cir. Ill. 2001); *United States v. Strache*, 202 F.3d 980, 985 (7th Cir. 2000); *Valance v. Wisel*, 110 F.3d 1269, 1278 (7th Cir. 1997).

²³ *Schneckloth*, 412 U.S. at 226-227; See also *United States v. Price*, 558 F.3d 270, 278 (3d Cir. 2009).

²⁴ *Schneckloth*, 412 U.S. at 226-227.

²⁵ *Id.* at 228.

²⁶ *Bumper v. North Carolina*, 391 U.S. 543, 548-549 (1968); See e.g., *Trulock v. Freeh*, 275 F.3d 391, 402 (4th Cir. 2001) (consent to search not voluntary because suspect was falsely told FBI had search warrant); *U.S. v. Stephens*, 206 F.3d 914, 917-18 (9th Cir. 2000) (consent to search not voluntary because officers conveyed message that compliance by defendant was required); But see, e.g., *U.S. v. Winston*, 444 F.3d 115, 122 (1st Cir. 2006) (consent to search nightstand voluntary though in-home arrest was inherently coercive situation because officer's request for identification was reasonable and defendant's immediate response suggested lack of coercion).

²⁷ *United States v. Barnett*, 989 F.2d 546, 555 (1st Cir. Mass. 1993) (quoting *United States v. Watson*, 423 U.S. 411, 424, 46 L. Ed. 2d 598, 96 S. Ct. 820 (1976)).

²⁸ *United States v. Jones*, 523 F.3d 31, 38 (1st Cir. Me. 2008).

Caesar did not testify that Boyce threatened him in any way. Boyce further testified that the Defendant was very cooperative and that Caesar appeared free to ignore the request. Caesar never objected to the search. Nor was Caesar told by Boyce that there was a search warrant or that compliance with Boyce's request was required. Therefore, the Court finds that Caesar voluntarily consented to the search.

Second, Caesar argues that he was not advised of his rights at the time of his arrest. Although police officers are generally required to advise a suspect in custody of his *Miranda* rights before interrogating him,²⁹ when public safety is endangered by exigent circumstances, police officers may ask a suspect in custody questions targeted at neutralizing the threat without first providing *Miranda* warnings.³⁰ A suspect who has not received required *Miranda* warnings can still give valid voluntary consent to a search of his home "because the *Miranda* rule protects against violations of the Self-Incrimination Clause, which is not implicated by the introduction at trial of physical evidence resulting from voluntary statements."³¹

In *United States v. Patane*, Patane, was arrested for harassing his ex-girlfriend, Linda O'Donnell.³² He was released on bond, however, he subsequently violated the restraining order by attempting to telephone O'Donnell. The county probation officer informed an agent of the Bureau of Alcohol, Tobacco and Firearms (ATF), that Pantane illegally possessed a .40 Glock pistol. After arriving at the residence and inquiring into Pantane's attempts to contact O'Donnell, ATF agent arrested Pantane for violating the restraining order. Pantane was not advised of his rights.³³ One of the officers then asked Pantane about the Glock. Pantane told him that the pistol was in his bedroom. Pantane then gave the officer permission to retrieve the pistol. The officer retrieved the pistol. The Supreme Court ultimately held that the introduction of the non-testimonial fruit of a voluntary statement, such as Pantane's Glock, does not implicate the Self-Incrimination Clause.³⁴

Thus, even if Caesar did not receive *Miranda* warnings, the Supreme Court has held that the non-testimonial fruit of a voluntary statement would still allow the firearm and photographs of the firearm to be admitted into evidence.

Caesar argues that the police should have obtained a warrant to search Caesar's house in accordance with *Thomas v. People of the Virgin Islands*.³⁵ However, *Thomas v. People* factually distinct from the case at hand. In *Thomas*, a VIPD forensics unit arrived after Thomas had left his apartment and then returned the next morning to Thomas's apartment to perform another search at

²⁹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

³⁰ *New York v. Quarles*, 467 U.S. 649, 655, 657-58 (1984).

³¹ *United States v. Patane*, 542 U.S. 630, 643, 124 S. Ct. 2620, 159 L. Ed. 2d 667 (2004).

³² *Id.* at 634.

³³ *Id.*

³⁴ *Id.*

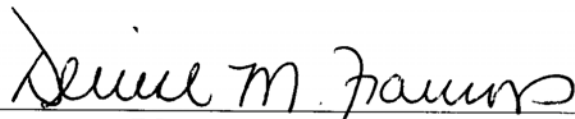
³⁵ __ V.I. __, 2015 V.I. SUPREME LEXIS 25, at *19 (V.I. 2015).

which time Detective Smith conducted a forensic crime scene examination.³⁶ In the case at hand, Caesar led Boyce straight to the firearm. While there is a dispute as to whether or not the bedroom door was locked or unlocked, at no time did Caesar ever say no to Boyce. Boyce testified repeatedly that Caesar was cooperative. The May 11, 2015 Memorandum of Proceedings indicates that Caesar holds a B.A. in Communications. While testifying, Caesar was articulate and poised. Although he may have disputed some of the officer's testimony, Caesar did not persuade the Court, even when considering the totality of the circumstances including crying children, that he had been under duress or coerced into showing Boyce where his firearm was located.

Considering the factors outlined above, the Court finds that the circumstances here were not so inherently coercive as to render consent unknowing or involuntary. The Court finds that the People have met their burden in providing that they conducted a limited search of Caesar's home with Caesar's consent. Accordingly, Defendant's Motion to Suppress and/or Exclude Certain Evidence with respect to the firearm and the photographs of the seized firearm will be denied.

A separate Order will follow.

DATED: March 4, 2016



DENISE M. FRANCOIS

Judge of the Superior Court of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE



Lori Boynes-Tyson

Court Clerk Supervisor: 3, 4, 16

³⁶ *Id.* at *3.