

DIVISION OF ST. THOMAS AND ST. JOHN

Defendant.

CASE NO. ST-12-CR-521

¹ Defendant filed a motion to suppress on November 9, 2012, and the People filed an opposition on December 18, 2012. A suppression hearing was held on January 24, 2013.

time. Approximately a week before Defendant's arrest by the VIPD on September 18, 2012, one Gerwin Boynes identified Defendant in a photo array as a perpetrator in a stabbing on St. John.² The VIPD also determined that Defendant was the person depicted in the photograph of Jason Williams sent from the BVI.

Around 2:00 p.m. on the day of the arrest, V.I. police officers met with Jade Caines-Lewis in the parking lot of Barbell Plaza, the location of the Magistrates' Court Building. Caines-Lewis informed them that she knew the whereabouts of Defendant and was willing to bring Defendant to a location where the police could arrest him. Caines-Lewis also indicated that Defendant was planning to flee the island by boat later that day. Caines-Lewis met with the police a second time approximately four hours later at the Lockhart Elementary School, where Caines-Lewis called Defendant to verify his location and set up a time to meet him. At the second meeting with the police, Caines-Lewis stated she could suggest a time and place for the arrest and was willing to coordinate with the police. She also indicated Defendant may have a gun in his possession. At no point did the police attempt to acquire a warrant for Defendant's arrest.

Around 7:00 p.m., Caines-Lewis was driving a vehicle she owned near Donoe Bypass on St. Thomas with Defendant as her passenger and was pulled over by the police. The record does not reflect whether the specific location for the stop was prearranged. The police approached the vehicle with guns drawn, ordered Defendant and Caines-Lewis to exit the vehicle, and immediately placed Defendant into handcuffs. Caines-Lewis gave Detective Casandra Vincent permission to search the vehicle and told

² Detective Casandra Vincent testified that Boynes also knew Defendant by the name of "Slim." In a written statement made at the police station, Defendant acknowledged that he is known by the name "Slim."

Vincent that Defendant had entered the vehicle with a plastic bag containing a firearm that he put on the back seat of the vehicle. After conducting a search of the vehicle, the police found a plastic bag on the back seat of the vehicle, opened it, and discovered it to contain a firearm. Upon being questioned by police at the scene, Defendant admitted the firearm was his.³ The police then took him to the police station where they advised him of his *Miranda* rights for the first time. Plaintiff waived his *Miranda* rights in writing at 8:00 p.m. and signed a written statement prepared by the police in which he acknowledged ownership of the firearm.

ANALYSIS

Defendant moves to suppress the firearm and his two statements, asserting his Fourth Amendment right to protection against unreasonable searches and seizures and his Fifth Amendment right to protection against self-incrimination.

Generally, the Fourth Amendment to the Constitution of the United States protects individuals from “unreasonable searches and seizures.”⁴ It has been held that “searches without a warrant are presumptively unreasonable.”⁵ The few, narrowly defined exceptions to the search warrant requirement include, among others, certain automobile searches, consensual searches, searches pursuant to a lawful arrest, and situations involving exigent circumstances.⁶ The police may arrest and search a suspect

³ When the police questioned him regarding the ownership of the firearm, Defendant testified: “I said [the firearm was] mine [and that Caines-Lewis] had nothing to do with it.”

⁴ U.S. Const. Amend. IV.

⁵ *United States v. Mathurin*, 561 F.3d 170, 173 (3d Cir. 2009).

⁶ See *Simmonds v. Virgin Islands*, S. Ct. Crim. No. 2008–008, 2010 WL 1813502, at *5 (V.I. 2010); see also *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979).

without a warrant “if there is probable cause to believe that the suspect has committed or is committing an offense.”⁷

Here, the police acquired Caines-Lewis’ consent to stop and search her vehicle. Given that Defendant did not own the vehicle, Defendant lacked a reasonable expectation of privacy while being present in the vehicle and has no standing to challenge the search.⁸ In addition to acting under the consent of Caines-Lewis, the police also had probable cause to search the plastic bag, given that Caines-Lewis had advised the police that Defendant had entered the vehicle with a plastic bag containing a firearm and the police had located the plastic bag on the back seat as Caines-Lewis had advised them. In addition, Defendant has not claimed ownership of the bag and, consequently, he does not have a reasonable expectation of privacy in the bag or have the ability to contest the search of it.

Notwithstanding, Defendant challenges the legal effect of Caines-Lewis’ consent by arguing that her coordination with the police transformed her into an instrument of the government.

The Fourth Amendment also prohibits unreasonable intrusions by private individuals who are acting as government instruments or agents.⁹ Courts have devised various tests to determine whether a private individual acts as a governmental instrument or agent for Fourth Amendment purposes. The Sixth Circuit evaluates whether (1) the

⁷ *Michigan*, 443 U.S. at 36.

⁸ See *United States v. Kennedy*, 638 F.3d 159, 168 (3d Cir. 2011); see also *U.S. v. Davis*, 393 Fed. Appx. 895, 898 (3d Cir. 2010) (“[i]t is clear that a passenger in a car that he neither owns or leases typically has no standing to challenge a search of the car”). Generally, when a driver consents to a search of her vehicle, this consent extends to closed containers inside the vehicle, on the basis that the containers are reasonably within the scope of the initial consent. See *Florida v. Jimeno*, 500 U.S. 248, 252 (1991).

⁹ See *Coolidge v. New Hampshire*, 403 U.S. 443, 487 (1971).

police “instigated, encouraged or participated in the search” and (2) whether the individual engaged in the search did so “with the intent of assisting the police in their investigative efforts.”¹⁰ The Ninth Circuit considers (1) whether “the government knew of and acquiesced in the intrusive conduct” and (2) whether “the party performing the search intended to assist law enforcement efforts or further his own ends.”¹¹ The Third Circuit has cited the Ninth Circuit’s line of cases in its determination that a “search or seizure conducted by a private party does not violate the Fourth Amendment when the private individual has a ‘legitimate independent motivation’ for conducting the search.”¹² The Tenth Circuit requires a showing, under the totality of the circumstances, that law enforcement officers “affirmatively encourage[d] or instigate[d] the private action.”¹³ The First Circuit has found that “the extent of the government’s role in instigating or participating in the search, its intent and the degree of control it exercises over the search and the private party, and the extent to which the private party aims primarily to help the government or to serve its own interest” may all be factors “pertinent in different circumstances.”¹⁴

The Court finds that not one of these cases is exactly on point since Caines-Lewis did not conduct the search in question. But, these cases are instructive to the extent they pertain to her consent to a stop and search of her vehicle. The testimony given at the suppression hearing indicates that Caines-Lewis, apparently on her own initiative,

¹⁰ *United States v. Lambert*, 771 F.2d 83, 89 (6th Cir. 1985).

¹¹ *United States v. Miller*, 688 F.2d 652, 657 (9th Cir. 1982); see also *United States v. Walther*, 652 F.2d 788 (9th Cir. 1981).

¹² *Kartorie v. Dunham*, 108 Fed. Appx. 694, 699 (3d Cir. 2004) (quoting *United States v. Walther*, 652 F.2d 788 (9th Cir.1981)).

¹³ *United States v. Smythe*, 84 F.3d 1240, 1243 (10th Cir. 1996).

¹⁴ *U.S. v. Pervaz*, 118 F.3d 1, 5-6 (1st Cir. 1997).

designed a plan to deliver Defendant to the police. There is no evidence that the police instigated her plan or instructed her to give her consent to the stop and search of her vehicle. And, while the police conducted the search, it cannot be concluded that the police “participated” in her consent to the search. Simply stated, no evidence was presented demonstrating that the police exercised any control over Caines-Lewis in her decision to permit the police to stop and search her vehicle. Moreover, while it is not exactly clear whether Caines-Lewis primarily intended to help the police or to serve her own interests, the Court notes that, as result of Caines-Lewis’ plan, she may have acquired funds from Defendant.¹⁵ If true, that would suggest she acted to advance her own interests and not those of the Government.

Based on the totality of the circumstances, the Court finds that, although Caines-Lewis coordinated with the police to effectuate Defendant’s arrest, Caines-Lewis acted independently, in accordance with her own agenda. Accordingly, Court does not find that she was acting as a governmental instrument or agent for Fourth Amendment purposes. Given that the search of Caines-Lewis’ vehicle was valid, the Court will not suppress the firearm discovered in the vehicle.

Having acquired Caines-Lewis’ consent to stop the vehicle, the VIPD was justified in temporarily securing Defendant for the sake of their safety, given the information they had received that Defendant had a firearm in his possession.¹⁶ Moreover, during an investigatory detention, the police could have inquired of Defendant whether

¹⁵ Defendant testified that he paid Caines-Lewis at least \$500.00 to help him escape authorities on St. Thomas and leave the island.

¹⁶ The police may “temporarily detain individuals for the purpose of preventing flight, maintaining control, and protecting their safety.” *U.S. v. Lucas*, 2013 WL 149664, at *1 (N.D. Ga. 2013) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

he was licensed to possess a firearm in the Virgin Islands.¹⁷ Instead, however, the police asked him questions about the ownership of the firearm found in Caines-Lewis' vehicle without first advising him of his *Miranda* rights.

In *Miranda v. Arizona*,¹⁸ the United States Supreme Court established "certain procedural safeguards¹⁹ that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation."²⁰ Unless a suspect is advised of his or her *Miranda* rights, any statements the suspect makes during custodial interrogation are inadmissible.²¹ A suspect is considered to be in custody when the suspect is formally arrested or is questioned under circumstances in which the suspect's freedom of action is curtailed to a degree similar to a formal arrest.²²

The Court finds that, after the police approached Caines-Lewis' vehicle with weapons drawn, removed Defendant from the vehicle, handcuffed him, and began questioning about a subject outside the scope of permissible inquiry under a brief investigative detention, the police had arrested Defendant. Under those circumstances, Defendant's freedom of movement was so restricted that a reasonable person would have

¹⁷ "Prior to arrest, and in the absence of evidence supporting probable cause that other criminal activity is afoot, the police must inquire of the person as to whether he has a license to possess a firearm." *People of the Virgin Islands v. Murrell*, 2012 WL 2308543, at *7 (V.I. 2012) (quoting *People v. Matthew*, Super. Ct.Crim. Nos. 723/2009, 724/2009, 725/2009, 726/2009, 2011 WL 6071956, at *8 (V.I. Super. Ct. 2011)).

¹⁸ 384 U.S. 436 (1966).

¹⁹ *Miranda* requires agents of the government to advise a suspect of the following warnings prior to questioning: "[1] that he has the right to remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Florida v. Powell*, 559 U.S. 50, ___, 130 S.Ct. 1195, 1203 (2010).

²⁰ *Duckworth v. Eagan*, 492 U.S. 195, 201 (1989).

²¹ *Berkemer v. McCarty*, 468 U.S. 420, 434 (1984).

²² *Stansbury v. California*, 511 U.S. 318, 322 (1994).

believed that he was under arrest. Thus, the police should have mirandized Defendant prior to questioning him concerning the ownership of the firearm rather than whether he was licensed to possess one. Because Defendant was questioned while in police custody without first being advised of his *Miranda* rights, his statements at the scene must be suppressed.

At the police station, Defendant waived his *Miranda* rights in writing prior to signing a written statement acknowledging his ownership of the firearm. Notwithstanding, evidence should be suppressed if it is considered a “fruit of the poisonous tree,”²³ having a connection with the evidence that was unlawfully obtained.

Here, Defendant confessed in writing following a written waiver of his *Miranda* rights at the police station merely an hour after he made his oral statement. Because Defendant’s written statement was obtained in close temporal proximity to his oral statement, the People have failed to establish that the connection between the improper questioning at the scene and the later mirandized statement was sufficiently “attenuated [so] as to dissipate the taint” of the unlawful interrogation at the scene.²⁴ As a result, Defendant’s written statement must also be suppressed.²⁵

²³ *Nardone v. United States*, 308 U.S. 338, 341 (1939).

²⁴ *Nardone*, 308 U.S. at 341.

²⁵ In so ruling, the Court notes that it appears the People still have sufficient evidence to prosecute Defendant. The firearm has not been suppressed, and the People presumably will be able to present the testimony of Ms. Caines-Lewis and the police officers involved. Further, while suppressed for use as part of the People’s case-in-chief, Defendant’s statements may be used for impeachment should he testify at trial and deny possession of the firearm.

People of the Virgin Islands v. Craig Peter a/k/a Jason Williams

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Memorandum Opinion, February 26, 2012

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An Order consistent with this Opinion shall follow.

Dated: February 26, 2013

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:

Lori Tyson

Court Clerk Supervisor 2/26/13



HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

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