BENCH MEMO: United States v. Eugene Dell Marquart, CR 87-92-R
Motions to suppress, etc., Tues., Dec. 1, at 3:00.

SEARCH + SEIZURE

ATTORNEYS
Govt: Roger Frydrychowski
Deft: John B. Boatwright, III

I. Introduction

Judge, the defendant Marquart is charged with having knc ingly received through the mails a child-pornographic magazi entitled "Lolita-Sex", in violation of 18 U.S.C. § 2252(a)(2). We have already discussed the factual background of the case. I will here outline the motions, the factual issues in dispute, and the law that is of primary importance.

This case comes before you, Judge, on three motions: (1) the deft's motion for discovery and inspection; (2) the deft's motion to suppress certain statements he made and the results of the search of his car trunk; and (3) the Govt's motion in limine to introduce certain evidence, to show the deft's knowledge, intent, etc., in committing this crime. Rules 402, 404(b), Fed. R. Evid.

The deft's first motion for discovery and inspection has apparently been resolved by the Govt's "open file" policy in this case. The Govt's motion in limine is similar to the motion filed in Flippen, and I believe you want to defer ruling on that motion until trial. However, you may want to view the evidence sometime today. The deft's motion to suppress merits a ruling on it before trial, since it goes to the admissibility of central pieces of incriminating evidence: (a) the deft's statements made during the search of his home and car; and (b) the "Lolita Sex" magazine which the deft. is charged with having received.

II. Factual Disputes

There are several key factual issues in dispute on the motion to suppress that need to be cleared up at the hearing. Basically, the Govt. contends that it conducted the search properly and completely "by the book." The deft. categorically denies this, saying that: he was unaware of the search warrant until later in the search; he reasonably believed that he was under arrest or in custody; he was never read his Miranda rights and never voluntarily signed a waiver of those rights; and he did not voluntarily or freely "consent" to opening, or allowing the search of his automobile's trunk, where the dirty magazine was.

The factual issues are these:

(1) Was the deft. shown the search warrant during the search; and if so, when? Did the officers explain the purpose of the search to him?

(2) Was the deft. read his Miranda rights? Did he acknowledge this and then voluntarily sign a waiver of those rights? When did this happen during the search?

(3) Was the deft. placed "under arrest" or "in custody" during the search? Did he have objectively reasonable grounds for believing that he was?

(4) If the deft. gave his "consent" to search his car trunk, was that consent obtained freely and voluntarily, or under circumstances of duress and coercion?

(5) Were the deft's statements during the course of the search made freely and voluntarily, or under circumstances of duress and coercion?

III. The Law and the Arguments

A. The Statements.

The deft. contends that his statements made during the course of the search should be suppressed because they were made under duress and coercive circumstances. The deft. says he "reasonably believed that he was in custody and in fact under arrest," and claims that he was never read his Miranda rights. He claims his statements were not voluntary. Therefore, the Govt. bears the burden and must "clearly establish that consent was given without coercion or duress, and also that it was an intelligent waiver of a specific constitutional right." Porter v. Ashmore, 298 F.Supp. 951, 957 (D.S.C. 1969); quoting United States v. Page, 302 F.2d 81 (9th Cir. 1962).

The Govt. contends that it read Marquart his Miranda rights and that he voluntarily signed a waiver of those rights. (See Govt's Attachment 2.) The Govt. also says the officers expressly told Marquart that he was not under arrest. If this is true, then it seems the statements should not be suppressed.

B. The Car Search.

The deft. next contends that the results of the "search" of his automobile trunk (i.e., the "Lolita-Sex" magazine), should be suppressed because the search of the car was warrantless. The search warrant did not specifically authorize the search of any vehicles. (This much is true: the search warrant specified only the premises, by the street address and lot number; it did not expressly mention any vehicles. See Govt's Attachment 1.)

However, the Govt. rightly points out that this warrant still validly authorized a search of the car trunk. The courts hold that a vehicle may properly be searched pursuant to a warrant that authorizes a search of "the premises"(identified by street address, etc.), where the vehicle belongs to a resident of those premises and it was parked off the street on the premises. United States v. Freeman, 685 F.2d 942, 955 (5th Cir. 1982); United States v. Percival, 756 F.2d 600, 612 (7th Cir. 1985)(and cases there cited). The Fourth Circuit has implicitly followed this approach in United States v. Stanley, 597 F.2d 866, 870 (4th Cir. 1979). There the Court held that a warrant for the search of a mobile home did not justify a car search, but only because the car was not within the "curtilage" of the home; instead, the car was parked on a common area parking lot, not near or "within the general enclosure surrounding his home." Stanley, 597 F.2d at 870 (4th Cir. 1979).

Furthermore, a search of an auto located on the premises may be justified on the ground that the officers were acting in good faith. See United States v. Asselin, 775 F.2d 445, 447 (1st Cir. 1985); citing United States v. Leon, 468 U.S. 897 (1984). In the instant case, the car was parked on the deft's lot inside his fence, next to the mobile home. Therefore, the car search did properly fall within the scope of the search warrant's authority, and the "Lolita Sex" magazine should not be suppressed on this ground.

A Consent-Search? Finally, and in the alternative to the warranted search view, you could rule that this was a valid

"consent search" of the car trunk. This basis for decision all depends on the evidence brought out at the hearing. The deft. naturally contends that this was not a valid consent search, because it was coerced and involuntarily allowed by the deft. The burden is on the Govt. to clearly prove that the consent was "in fact freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." Bumper v. North Carolina, 391 U.S. 543, at 548-49 (1968).

The Govt. contends that the deft. in fact freely led Inspector Fisher to the trunk, opened it and gave the magazine to Fisher. And the consent-search was fully voluntary and uncoerced: the deft. had been read his rights, he was aware of the warrant and told that he was not under arrest. If all the Govt. says proves true, then this is a valid alternative ground for refusing to suppress the magazine.

In summary, Judge, whether to suppress the deft's statements depends on the facts proven at the hearing. On the other hand, the law seems clear that this warrant properly authorized the search of Marquart's car trunk, even if he did not consent to the search. The magazine is not inadmissible on this basis.

DRW, 12/1/87