

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 07-20385 MLV
)	
EUGENE BRANCH,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Eugene Branch, has been indicted on one count of being a felon in possession of a firearm on or about August 1, 2007, in violation of 18 U.S.C. § 922(g), and one count of possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1). Presently before the court is Branch's January 24, 2008 motion to suppress all statements made by him at the time of his arrest and any evidence seized as a result of those statements. The motion was referred to the United States Magistrate Judge for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B)-(C).

Pursuant to the referral, an evidentiary hearing was held on April 17, 2008. At the hearing, the government presented two witnesses: Detective Gracie Hatchett and Detective David Ballard. Branch called one witness: Gardenia Blue. The defendant did not testify. The government introduced one exhibit - the search

warrant and affidavit. Branch introduced five photographs of his residence where the search and seizure took place.

After careful consideration of the statements of counsel, the testimony of the witnesses, the exhibits, and the entire record in this case, this court submits the following findings of fact and conclusions of law and recommends that Branch's motion to suppress be denied.

PROPOSED FINDINGS OF FACT

On August 1, 2007, Detective Hatchett obtained a search warrant from a Shelby County Judicial Commissioner to search the person and premises of a black male known as Eugene Branch who was believed to be selling and storing marijuana at his residence, 879 Faxon, in Memphis, TN. Detective Hatchett has been employed by the Shelby County Sheriff's Department for seven years and is currently assigned to the Homeland Security Unit. In August of 2007, she was assigned to the Street Crimes Unit.

On August 1, 2007, at approximately 2:30 p.m., eight officers, led by Detective Hatchett, executed the search warrant at the residence located at 879 Faxon. Upon arriving at the entrance to the residence, the officers knocked on the door, announced their presence, waited approximately 40 seconds, according to Detective Hatchett's testimony, and then forced entry into the residence when no one responded. Upon entering the premises, the officers found Branch in the kitchen area of the residence. The officers also

located a black female, Gardenia Blue, who was holding a baby.

Detective Hatchett testified that upon finding Branch, an officer instructed Branch to get down on the floor, where Branch placed his hands behind his back and was handcuffed. After he was secured, Detective Hatchett stated, Branch was escorted to the dining room and seated in a chair at the dining room table where she informed him of his *Miranda* rights. Detective Hatchett then asked Branch if he understood his rights, to which he replied, "Yes." She next asked him if there were any drugs in the house, and he responded, "Yes." She also asked him if there were guns in the house, and he responded, "Yes." According to Detective Hatchett's testimony, Branch assisted the officers in searching the house by leading Detective Ballard to the location of the gun. A gun was located in the closet of the middle bedroom in a suit coat pocket along with an ID.

Detective Hatchett described Branch's demeanor as cooperative and polite. She stated that Branch appeared to understand everything that was going on. Detective Hatchett also testified that Gardenia Blue, who was not handcuffed because she was holding a baby, was led into the dining room area and seated on a cushion at the window seat.

Detective Ballard also testified for the government. Detective Ballard has been with the Shelby County Street Crimes Unit since its inception about two years. He confirmed Detective

Hatchett's testimony in all respects with some additional detail. He recalled Branch being seated at the dining room table in the dining room chair closest to the front door, with Detective Hatchett seated to his right and Gardenia Blue seated in the window seat. He specifically recalled Detective Hatchett reciting the *Miranda* rights to Branch.

Detective Hatchett described the overall atmosphere in the dining room as friendly with no yelling and screaming. He described Branch as cooperative, friendly, and even joking at times.

Gardenia Blue was called as a witness by the defendant. She has known Branch for about five years and frequently stays at Branch's house. She admitted to a romantic involvement with Branch. When the officers arrived at Branch's house, Blue was in bed in the back bedroom off the kitchen with her granddaughter. She was instructed to "get down," and she complied by sitting on the floor in the kitchen. She was then taken into the dining room and instructed to sit on the orange cushion at the window seat.

Blue testified that she never heard any officer tell Branch his *Miranda* rights or ask if he understood his rights. She believed the questioning of Branch lasted an hour. At one point, according to Blue's testimony, she left the room because an officer was using profanity. She stated on cross-examination, however, that the officer was not yelling at her but he was talking loudly and asking questions about drugs. She admitted that she was not in

the dining room the entire time that Branch was there, but she claimed that she could still faintly hear what was going on in the dining room and that no one ever advised Branch of his right to remain silent. She further testified that her grandbaby was not crying at that time and no one was talking loudly so as to prevent her from over-hearing what was going on in the dining room.

The only critical difference in the testimony of all the witnesses is whether the officers gave Branch *Miranda* warnings. The two officers testified that Branch was given *Miranda* warnings, and Blue testified that he was not. Having observed the witnesses and their demeanor while testifying, the court finds the testimony of the officers to be more believable than that of Blue. The officers' testimony completely corroborated each other's. Both officers were present in the dining room the entire time. Blue, on the other hand, was not present in the dining room the entire time, and therefore, the possibility exists that she did not hear the officers advise Branch of his rights. In addition, because Blue is romantically involved with Branch, she is not completely impartial. Therefore, the court finds as fact that Branch was advised of his *Miranda* rights by Detective Hatchett in the dining room before he was asked about drugs and guns in the house.

PROPOSED CONCLUSIONS OF LAW

Branch's sole ground upon which he seeks to suppress his

statements is the lack of *Miranda* warnings.¹ *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* requires that before a person in custody is questioned, he be advised of his Fifth Amendment right to remain silent, that anything he says may be used against him, and that he has a right to have an attorney, either retained or appointed, present during interrogations. *Miranda*, 384 U.S. at 444. If the defendant is not informed of these rights, any pretrial statement obtained in a custodial interrogation is presumed coerced and inadmissible at trial in the government's case in chief. *Oregon v. Elstad*, 470 U.S. 298, 317 (1985).

In this case, the court has previously determined in its proposed findings of fact, based on Detectives Hatchett and Ballard's testimony, that *Miranda* warnings were in fact given to Branch before he made any incriminating statements. There was no evidence that Branch asserted his *Miranda* rights at any point during the questioning that ensued, nor was there any proof that he was coerced or gave a statement under duress. Moreover, an express waiver of *Miranda* rights is not necessary. *United States v. Frankson*, 83 F.3d 79, 82 (4th Cir. 1996). Therefore, it is submitted that defendant implicitly waived his right to remain silent when he freely answered questions propounded by the police.

¹ In his written motion, Branch also raised an issue concerning voluntariness of his statements based on mental capacity due to learning disabilities but he abandoned this argument at the hearing.

See United States v. Boon San Chong, 829 F.2d 1572, 1574 (11th Cir. 1987). Accordingly, the court concludes that any statements made by Branch should not be suppressed.

RECOMMENDATION

For all of the above reasons, it is recommended that the motion to suppress evidence filed by defendant Eugene Branch be denied.

s/ Diane K. Vescovo
DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

DATE: May 1, 2008

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.

ANY PARTY OBJECTING TO THIS REPORT MUST MAKE ARRANGEMENTS FOR A TRANSCRIPT OF THE HEARING TO BE PREPARED.