IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. RANDY N. GRIFFIS and SHERREE LYNN GRIFFIS, Defendants.	MEMORANDUM DECISION AND ORDER GRANTING DEFENDANTS' MOTIONS TO SUPPRESS Case No. 2:03-CR-280 TS

This matter came before the court on March 18, 2004, for hearing on Defendants' Motions to Suppress. Evidentiary hearings on the Motions were held on October 10, 2003, and January 13, 2004.

I. INTRODUCTION

Defendants move to suppress evidence of firearms seized from the bedroom closet of their trailer house on the night of February 12, 2003. The court will grant the Motions because it finds that the search behind a closed closet door exceeded the scope of defendant Sherree Griffis' consent for AP&P agents to do a walk-through of her home.

39

FINDINGS OF FACT

On February 12, 2003, Utah Adult Probation and Parole (AP&P) Agents Brad Draper and Marc McCulloch went on a field visit to the residence of parolee Shannon Griffis who lived together with Jack Russell and their three-month-old baby in Duchesne County, Utah (the Russell home). The Russell home was being visited that night by defendant Randy Griffis and his wife, defendant Sherree Griffis. Sherree and Shannon went to the store. When they returned, they found the AP&P agents at the Russell home. After events not relevant to this case, Mr. Russell, Shannon Griffis and Defendant Randy Griffis were arrested at the Russell home. Randy Griffis was arrested for Possession of Paraphernalia. Eventually, five persons associated with law enforcement or AP&P were present at the Russell home in connection with the arrests.

During the arrests, the Division of Child and Family Services (DCFS) was contacted about the baby. Sherree Griffis asked if she could take the baby home. Agent Draper declined because he was concerned that she may have been under the influence of a drug. Sherree Griffis called her 18 year-old daughter Kodi[1] for help. Kodi and her then-finance, Andrew Betts, arrived at the Russell home to pick up Sherree Griffis and the baby. DCFS released the baby to Ms. Betts' custody and she took the baby back to her parents' home, where she also lived.

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[1] Kodi later married Andrew Betts. For consistency, the court will refer to her through out this Memorandum as Kodi Betts or Ms. Betts.

The Griffis home is a small two-bedroom mobile home located in the nearby town of Neola, Utah. Sherree Griffis, Kodi and Andrew Betts, and the Russell baby traveled in two vehicles for the 20-minute drive to the Griffis home, arriving there at approximately 9:45 p.m. The Griffises kept three dogs, 21 cats and at least one bird in their home.

In the meantime, at the Russell home, Shannon Griffis told Agent Draper that the storage shed of the Russell home contained several guns and that Sherree Griffis had a key to the shed. She further told him that he could open it if he obtained the key from Sherree in Neola.

Agent Draper and his supervisor, Jim Murray, drove to the Griffis home to retrieve the Russell storage shed key from Sherree Griffis. Agent Draper was very familiar with Sherree and Randy Griffis because he had supervised them in the mid- to late-1990's during their probation for felony convictions. He had supervised Sherree Griffis from 1995 through the beginning of 1998. During her probation, Sherree Griffis had complied with Agent Draper's directives and she successfully completed her probation. She was notified by letter of the completion of her probation. During her probation, Sherree Griffis learned the difference between a home "walk-through" conducted by AP&P agents and a search. In a walk-through, the AP&P agent would walk through the home basically surveying all things out in the open. In contrast, during a search, AP&P agents would go through drawers, cupboards and closets and look under mattresses and couches. During her probation, Sherree Griffis understood that she had to allow AP&P agents to conduct walk-throughs or searches of her house.

Upon arriving at the Griffis home at approximately 10:00 p.m., Agent Draper and Agent Murray knocked on the door. All three of the adults in the Griffis home were still up and were in the combined living room/kitchen when the AP&P agents arrived. Sherree Griffis answered the door, asked them to wait while she put her dogs away and then invited them in out of the cold. Agent Draper asked for the key to the Russell home's storage shed. Due to wrist problems, Sherree Griffis was unable to remove the storage shed key from her key ring, so she handed the key ring to Agent Draper for him to remove the key. Agent Draper and Sherree Griffis talked briefly about her bird. He asked her if she had any drugs or drug paraphernalia in her home. She responded negatively. He asked if she would mind if he conducted a walk-through of the home. She responded, "sure," and said she didn't "have a problem" with that. She accompanied him on the walk-through of the kitchen/living room and down the hall to a small room and then to the room she shared with her husband. Agent Murray followed them. As he walked through the kitchen/living room, Agent Murray opened some drawers in the kitchen. The group looked briefly in the small room and then went across a hall to Sherree and Randy Griffis' room.

Sherree and Randy Griffis' bedroom is very small with only a narrow 18" walkway around three sides of the bed. The head of the bed is against the north wall of the room. There is a smoke stand on the west side of the bed and a night stand on the east side. The Griffises keep their everyday clothes in a set of built-in drawers that are flanked on each side by small built-in closets–all on the south wall. The closets have sliding doors that slide across the drawers when the closets are open. As a result, when the closet

doors are open, the drawers will not open. The Griffises routinely keep the closet doors closed because of the lack of room and to keep their many cats out of the closets. In the closet on the east side, Sherree Griffis kept various seldom used clothes, boxes, a picnic basket and, as it turns out, firearms.

When they arrived at the bedroom, Agent Draper went in through the door on the west side of the room. He went around the bed to the east side and looked through the items on the night stand, pulling open a drawer. He then went to the closet on the southeast side of the room and slid open the closed closet door and looked inside. Behind hanging clothing he found several firearms – three rifles and a shotgun.

Agent Draper testified that when he entered the room, the closet door was open and that he could see the weapons in the southeast closet in plain sight from the bedroom door. The court finds that Agent Draper's testimony on that issue is not credible. The testimony of Sherree Griffis and her daughter was that the doors were consistently closed because (1) the drawers could not be opened if the doors were not closed and (2) to keep their 21 cats out of the closets. The court finds Sherree Griffis' testimony that the closet doors were closed when they entered the room to be credible.

The court finds that Agent Murray's testimony that the closet doors were open is not credible. The Agents' testimonies are not consistent with each other on key points. Agent Murray testified that he opened drawers to look inside them as they walked through the house and that Agent Draper went over to the night stand and opened the night stand drawer before he went to the closet area. Agent Murray testified that from the doorway

looking at the closet area he could see clothes, but not the firearms. In contrast, Agent Draper testified that he was not aware that Agent Murray looked through drawers and that he, Agent Draper, saw the bottom of the guns in the open closet as he crossed the threshold into the room and scanned the room. The court agrees with Defendants' position that Agent Draper would not have walked past the closet to the night stand if the closet doors were open and the firearms in plain sight as Agent Draper testified.

The court finds that the closet doors were closed when Agent Draper entered the room and that he had to slide open that closet's door to see the firearms.

After he found the firearms, Agent Draper removed them from the closet, checked that they were unloaded and laid them on the bed. He then asked if he could go through the drawers and Sherree Griffis agreed. He found three handguns, one loaded, in a dresser drawer.

Sherree Griffis testified that she had not used alcohol or illegal drugs that day. She also testified that she had taken four prescriptions for her wrist, including no more than the prescribed amount of pain medication.

IV. ANALYSIS

Defendants make three arguments in favor of suppression: (1) that Sherree Griffis did not consent to the walk-through of the Griffis home because she was under implied duress or coercion; (2) that the search or walk-through exceed the scope of the consent given; and (3) that the firearms seized from the bedroom closet were not found in plain view.

A. Voluntariness of Consent

Defendants contend that Sherree Griffis did not freely and voluntarily give consent to the walk-through because of the following: (1) her husband was arrested at the Russell home; (2) there was an "overpowering police presence" at the Russell home; (3) she was subjected to a search while at the Russell home; (4) she was subjected to "inconclusive" sobriety tests at the Russell home and allowed to leave after it was determined that there were insufficient grounds to hold her; (5) during her years on probation, she was required to comply with requests for a walk-through or search by AP&P agents; (6) Agent Draper never informed her at the conclusion of her term of probation that she had the right to refuse such requests; and (7) almost immediately after arriving at her own home she was met by two AP&P agents.

The government contends that none of these factors are sufficient to show a lack of free and voluntary consent.

> The question of whether consent to a warrantless search was given voluntarily is one of fact to be determined from all the circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, 249 (1973). The burden of proving voluntariness is borne by the government. *Id.* at 248.
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> "The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects. The prohibition does not apply, however, to situations in which voluntary consent has been obtained, either from the individual whose property is searched, or from a third party who possesses common authority over the premises." *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990).
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> * * *

> The correct approach remains that articulated by the Supreme Court in *Schneckloth*: "The question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." 412 U.S. at 227.

U.S. v. Abdenbi, __ F.3d __ 2004 WL 551437 (10th Cir. March 22, 2004).

> We have a two-part test for determining the validity of a consent search. *United States v. Sanchez*, 89 F.3d 715, 719 (10th Cir. 1996). Under this test, the Government must: (1) 'proffer clear and positive testimony that consent was unequivocal and specific and freely and intelligently given"; and (2) "prove that this consent was given without implied or express duress or coercion." *Id.* (quoting *United States v. McRae*, 81 F.3d 1528, 1537 (10th Cir. 1996).

U.S. v. Taverna, 348 F.3d 873, 878 (10th Cir. 2003).

While no one factor is dispositive, factors that may be relevant to determining voluntariness include such things as (1) the age, intelligence, and education of the defendant; (2) the length of any detention; (3) the length and nature of the questioning; (4) whether the defendant was advised of her constitutional rights; and (5) whether the defendant was subjected to physical punishment. *Schneckloth*, 412 U.S. at 226

In the present case, all of the witnesses agreed on the following: Sherree Griffis invited Agent Draper and Agent Murray into the home; Agent Draper asked for and received the storage shed key from Sherree Griffis who indicated he was to remove it from a key ring she had handed him; Agent Draper then asked her if he could conduct a walk-through; and, Sherree Griffis readily agreed he could conduct a walk-through. Thus, the government has presented "clear and positive testimony that consent was unequivocal and specific and freely and intelligently given." *Taverna*, 348 F.3d at 878.

The fact that Sherree Griffis had been present at another home earlier in the night, when her husband and others had been arrested does not establish coercion or duress when she was subsequently asked if AP&P agents could conduct a walk-through of her own home. When she gave the consent, she had already left the premises where the arrests were made. Her request that her daughter be allowed to take custody of the Russell baby had been granted. She had then traveled by car for 20 minutes with family to her own home. She was settled in her own home with two other adults present when the two AP&P agents knocked. Sherree Griffis' own testimony is that she invited them in and gave them the key and agreed to a walk-through. There is no evidence of coercion, duress or any show of force. She was clearly aware that her parole had been completed in 1998, approximately five years before Agent Draper asked her about the walk-through. The court finds that the government has met its burden of showing that Sherree Griffis' specific and unequivocal verbal consent to a walk-through was voluntary and not the product of any duress or coercion, express or implied. The court next turns to the scope of that consent.

B. Scope of Consent

Defendants contend that the search at issue exceeded the scope of Sherree Griffis' consent because her consent was limited to a walk-through.

"The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness – what would the typical reasonable person would have understood by the exchange between the officer and the suspect."

Florida v. Jimeno, 500 U.S. 248, 251 (1991). The scope of a consent to search "is generally defined by its expressed object." *Id.* The scope is "limited by the breadth of the consent given." *U.S. v. Pena,* 920 F.2d 1363, 1514 (10th Cir. 1997).

In this case, there was a clear common understanding between Agent Draper and Sherree Griffis on what constituted a walk-through. The distinction between a walk-through and a search can be objectively applied. Thus, Sherree Griffis' consent cannot "reasonably be understood to extend" to the inside of closed closets and drawers. *See Jimeno*, 500 U.S. at 252 (If a suspect's "consent would reasonably be understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization."). The government does not dispute that Agent Draper asked for, and Sherree Griffis consented to, only a walk-through and not a search. Instead, the government contends that the firearms were found in plain view during the consensual walk-through and therefore, even if the scope of that walk-through were exceed by Agent Murray's looking through drawers in the kitchen, the firearm discovery is nonetheless valid under the plain view exception.

The court has determined above that Agent Draper looked through the night stand drawer and opened the closet door. The court finds that these actions exceeded the scope of Sherree Griffis' consent, which was to a walk-through only. Because it exceeded the scope of the consent, it was a violation of the Fourth Amendment.

Concerning Sherree Griffis' consent to have Agent Draper look through the dresser drawers after he had laid the firearms on the bed:

> When a consensual search is preceded by a Fourth Amendment violation, . . . the government must prove not only (1) the voluntariness of the consent under the totality of the circumstances, but the government must also establish (2) a break in the causal connection between the illegality and the evidence thereby obtained.

United States v. Melendez-Garcia, 28 F.3d 1046, 1053 (10th Cir.1994)

In the present case, the request to search the dresser drawers followed immediately after the Fourth Amendment violation. There is no break in the causal connection between the illegality of that search and the evidence obtained in the search of the dresser drawers.

C. Plain View

Based on its finding above that Agent Draper was not credible on the issue of the closet door being open or closed, the court must reject the government's argument regarding the plain view exception. The court has found that the firearms were not in plain view. The firearms were behind a closed closet door and Agent Draper exceeded the scope of Sherree Griffis' consent when he began to search the bedroom by going through the night stand and then opening the closet door. It was not until he exceeded the scope of the consent that he found the firearms. Therefore, the plain view exception is not applicable to the present case.

IV. CONCLUSION AND ORDER

The court is mindful that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York,* 445 U.S. 573, 585 (1980). In this case, Agent Draper requested and obtained consent to make only

a limited entry, in the form of a walk-through, to the Griffis home. When he exceeded the scope of that consent, he violated the Fourth Amendment. It is therefore

ORDERED that Defendant Sherree Griffis' Motion to Suppress and Defendant Randy Griffis' Motion to Suppress are GRANTED. It is further

ORDERED that the time from the filing of the Motions to Suppress through the date of the entry of this order is excluded from the computation of the Speedy Trial Act time pursuant to 18 U.S.C. § 3161(h)(1)(F) and (J). It is further

ORDERED that this case be set for trial.

DATED this 21st day of April, 2004.

BY THE COURT:

TED STEWART
United States District Judge

jmr

United States District Court
for the
District of Utah
April 21, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00280

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