

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 :
MUSTAFA CAMCI, :
 :
 :
 Defendant. :

Colm F. Connolly, Esquire, United States Attorney, and Beth
Moskow-Schnoll, Esquire, Assistant United States Attorney, UNITED
STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington,
Delaware.

Attorneys for Plaintiff United States of America.

Penny Marshall, Esquire, Assistant Federal Public Defender,
FEDERAL PUBLIC DEFENDER'S OFFICE, Wilmington, Delaware.
Attorney for Defendant Mustafa Camci.

MEMORANDUM OPINION

May 3, 2002
Wilmington, Delaware.

Farnan, District Judge.

Defendant filed a Motion To Suppress Statements And Physical Evidence (D.I. 12) contending that the warrantless search of Defendant's residence and the subsequent seizure of a passport violated the Fourth Amendment to the United States Constitution. The Court held a hearing on the Motion and this Memorandum Opinion constitutes the Court's Findings of Fact and Conclusions of Law as required by Federal Rule of Criminal Procedure 12.

FINDINGS OF FACT

1) On September 20, 2001, Special Agent Eric Miller of the Bureau of Alcohol, Tobacco, and Firearms (hereinafter "ATF") and his supervisor Agent Timothy Bucher participated with the Federal Bureau of Investigation (hereinafter "FBI") in a surveillance of two suspected illegal aliens, Messrs. Saka and Tunc.

2) At approximately 8:15 p.m., Agent Miller and others approached 108 Monroe Avenue, Apartment 12B of the Crestview Manor Apartments, known to be the residence of Mr. Saka. Agent Miller knocked on the front door of the apartment and, in response, Defendant answered the door. Agent Miller testified that he identified himself and showed Defendant his ATF credentials.

3) Agent Miller testified that he asked Defendant for permission to enter the Saka apartment and Defendant allegedly

responded "yes" and allowed Agent Miller and other officers to enter.

4) As Agent Miller began questioning Defendant, Mr. Saka exited the bathroom and identified himself as such. Both Defendant and Mr. Saka were then ordered to sit on a sofa and Agent Miller questioned them, specifically, Agent Miller asked Defendant for identification. Defendant allegedly produced an international driver's license and Agent Miller made a telephone call to an Special Agent Chris Kudless of the Immigration and Naturalization Service (hereinafter "INS") to verify the identification Defendant had provided.

6) While Agent Miller was on the phone with the INS Agent, Agent Miller's supervisor, Agent Bucher, continued questioning Defendant, admittedly with translation assistance from Mr. Saka. During the course of the conversation, Defendant allegedly told Agent Bucher that he was in the country illegally. Agent Bucher relayed this information to Agent Miller once Agent Miller completed his telephone call with the INS. With this information, Agent Miller asked Defendant, with the translation assistance of Mr. Saka, if he had any other identification.

7) Agent Miller testified that Defendant, in response to the question posed, pointed to a bedroom and began walking toward that room. Agent Miller testified he followed Defendant and,

once in the bedroom, he saw a passport on a windowsill, and seized it.

8) Agent Miller testified he inspected the passport and again called Special Agent Kudless of INS to verify the passport information. After hearing Agent Miller's information, Agent Kudless advised Agent Miller to detain Defendant for violation of the immigration laws.

9) Defendant speaks almost no English, a finding supported by the use of Mr. Saka by the Government to translate their questions for Defendant.

ISSUES OF LAW

1) Did the Government Agents Enter the Saka Apartment, in Which Defendant Resided, with Defendant's Free and Voluntary Consent?

2) Did the Government Agents Seize the Passport Pursuant to the Plain View Exception to the Warrant Requirement?

CONCLUSIONS OF LAW

The Court concludes the Government Agents entered the Saka apartment without a warrant and without obtaining the free and voluntary consent of Defendant.

The Government contends that the entire encounter between Defendant and the Government Agents was consensual. To sustain its contention, the Government must prove by a preponderance of the evidence that Defendant's alleged consent for the Agents to

enter the Saka apartment was free and voluntary. Bumper v. North Carolina, 391 U.S. 543 (1969). Further, the Court must determine from the totality of the circumstances "whether a consent to search was in fact voluntary or was the product of duress or coercion ..." Scheneckloth v. Bustamonte, 412 U.S. 204, 227 (1973).

In reaching its conclusion, the Court has considered the totality of the circumstances of Agent Miller's exchange with Defendant at the front door of the Saka apartment. Specifically, the Court considered the Defendant's age, status as an illegal immigrant, limited ability to converse in English, the time and conditions of Agent Miller's exchange with Defendant, and the admitted use of Mr. Saka to translate for Defendant once the Agents entered the apartment.

It was 8:15 in the evening when the four non-uniformed federal Agents knocked on Defendant's door. Agent Miller testified that while showing his credentials he asked permission to enter and Defendant said "yes," opened the door further, and stepped back. The Court understands that the Government relies on the alleged "yes," the further opening of the door, and stepping back as the factual predicate to support the conclusion that the constitutional requirement of a free and voluntary consent was obtained without duress or coercion. However, the Court is not persuaded that the facts relied upon by the

Government prove by a preponderance of the evidence that a non-English speaking, illegal alien, confronted at 8:15 p.m. by four non-uniformed federal Agents flashing a badge, freely consented to the Agents' "request" for entry. Considering the totality of the circumstances, the Court believes it is equally plausible that Defendant felt compelled or pressured to allow the Agents to enter the Saka apartment, assuming the Defendant even understood entry was being requested. In the Court's opinion, even if Defendant were an English speaking, high school educated American citizen, a stronger showing would be required of the Government to prove that the Agents' entry into a residence was the result of consent freely and voluntarily given and not a product of coercion or duress.

The Court also observes that the Government's contentions regarding the consent to enter and Defendant's understanding of the Agents' "request" is somewhat contradicted by the Agents' use of Mr. Saka to translate for Defendant, once inside the apartment. In fact, the Agents' use of Mr. Saka as a translator in subsequent conversation with the Defendant, conversation much less critical than the conversation at the front door, is difficult to reconcile with the contention that Defendant comprehended the Agents' "request" and had the ability to convey his free and voluntary consent to enter the apartment.

In sum, the Court concludes that the warrantless entry of Defendant's residence was not the result of a free and voluntary consent when considering the totality of the circumstances surrounding the Agents' entry.¹ For this reason, any evidence obtained from Defendant after the entry will be suppressed.

CONCLUSION

An appropriate Order will be entered.

¹If the Court concluded that Defendant freely consented to the Agents' entry of the apartment, the Court doubts the constitutionality of the seizure of Defendant's passport. Horton v. California, 496 U.S. 128 (1990).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 :
MUSTAFA CAMCI, :
 :
 :
 Defendant. :

O R D E R

At Wilmington, this 3rd day of May 2002, for the reasons set forth in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED that Defendant's Motion To Suppress Statements And Physical Evidence (D.I. 12) is **GRANTED**.

 JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE