IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	**CRIMINAL NO. DKC-16-0070**
	*	
DEONTE CARRAWAY	*	
	*	
	*******	

GOVERNMENT'S CONSOLIDATED RESPONSE TO DEFENDANT'S PRE-TRIAL MOTIONS (ECF NUMBERS 19, 20, 21)

The United States of America, by and through its attorneys, Rod J. Rosenstein, United States Attorney for the District of Maryland, and Kristi O'Malley, Assistant United States Attorney for said District, submits this consolidated response to the following pre-trial motions filed by the Defendant in this case:

- Motion to Suppress Evidence Seized from BLU Cell Phone with Orange Back, Model No: D 870U, Serial No: LS1532501689 (ECF 19)
- Motion to Suppress Fruits of Illegal Search of Defendant's White Samsung Cell Phone (ECF 20)
- Motion to Suppress Statements (ECF 21)

For the reasons set forth below, this Court should deny the Defendant's motions.

Background

On February 29, 2016, a federal grand jury indicted Defendant Deonte Carraway with thirteen counts of sexual exploitation of a minor for the purpose of producing child pornography, in violation of 18 U.S.C. § 2251(a). The case involves allegations of Carraway's sexual abuse of minors, and production of videos and images of sexual exploitation of those minors, with whom Carraway had contact at an elementary school, recreation center, and church in Prince George's County.

A. Initial Investigation

On February 4, 2016, at approximately 7:00 p.m., Prince George's County Police Department ("PGPD") Officer Defreitas responded to an address in Hyattsville, Maryland for a complaint involving child pornography. Upon arrival, PGPD Officer Defreitas spoke with the complainant, who stated that he had discovered that his nine-year-old relative (hereinafter "Victim 1"), had electronically sent a picture of his naked buttocks to Deonte Carraway through the Kik messenger application. At the time, Carraway was a Dedicated Assistant for a Prince George's County Elementary School where Victim 1 was enrolled as a student.

On Victim 1's phone, investigators observed messages that were sexual in nature and a picture of Victim 1's buttocks that were sent from Victim 1 to Carraway on January 18, 2016. Victim 1 used a unique Kik user name known to the police, and Carraway also used a unique Kik user name known to the police. Investigators interviewed Victim 1, who disclosed that Carraway provided Victim 1 with Carraway's unique Kik user name while Victim 1 was in class at the Prince George's County Public Elementary School in December 2015 so they could communicate using Kik. Victim 1 stated that Carraway requested a picture of Victim 1's naked buttocks and that Victim 1 complied. Victim 1 also stated that Carraway claimed to have received an additional naked buttocks picture from another classmate and a third classmate told Victim 1 that he had also sent a picture to the Defendant. Victim 1's phone was forensically examined and messages between Carraway and Victim 1 were recovered and reviewed by police.

B. Arrest and Interview of Carraway

On February 5, 2016, Carraway was arrested, advised of his constitutional rights, and voluntarily agreed to speak with PGPD detectives. The interview of Carraway was audio and

video recorded.[1] At approximately 2:09 p.m., PGPD Detective Kelly obtained basic biographical information about Carraway, including Carraway's name, date of birth, address, and telephone number. Detective Kelly then asked Carraway if he needed a glass of water, which Carraway declined, and then Detective Kelly left the interview room for approximately 30 minutes. At approximately, 2:39 p.m., Detective Kelly returned to the interview room with Detective Quarless. Before asking any substantive questions, Detective Kelly read an advice of rights form out loud to Carraway, insured that Carraway understood his rights, including the right to a lawyer, and asked if Carraway wanted to proceed without a lawyer. Carraway agreed to answer questions. At approximately 2:43 p.m., Carraway signed the advice of rights form indicating his willingness to be interviewed without a lawyer. (The advice of rights form signed by Carraway is attached as Exhibit 1.) At the time that Carraway was signing the advice of rights form, Detective Kelly asked Carraway how far he went in school. Carraway responded that he had a high school diploma.

Less than five minutes into the interview, at approximately 2:45 p.m., Carraway admitted that Carraway asked Victim 1 to send Carraway a picture of Victim 1's buttocks. A couple of minutes later, at approximately 2:49 p.m., Detective Kelly asked Carraway if Carraway would be willing to give written consent to search Carraway's cell phone. Carraway signed consent forms for two cell phones – a white Samsung and a black Kyocera. (The consent forms are attached as Exhibit 2.) Two minutes later, at 2:51 p.m., Detective Kelly provided Carraway a form on which Carraway could provide a written statement, and the detectives left the room. Carraway then

[1] A DVD containing a copy of the entire recorded interview of Carraway will be provided to the Court as Exhibit 6 to this response. In order to ensure the protection of child victims referenced in exhibits, pursuant to 18 U.S.C. § 3509(d), the exhibits to this motion will be filed with the Court separately under seal.

spent approximately 20 minutes writing the first page and a half of his written statement. (Carraway's written statement is attached as Exhibit 3.)

At approximately 3:09 p.m., Detectives Kelly and Quarless returned to the room after the Carraway completed the first part of his written statement. Carraway initially admitted that three kids from the "A.K.A." group sent pictures or videos via Kik. Carraway subsequently named two other children from which he solicited and obtained videos or images of them engaged in sexually explicit conduct. Carraway admitted that he received videos in which a child's buttocks and penis were visible. Carraway also admitted to directing children to send him videos if they wanted to be part of the group and to sending a video of himself masturbating to several children. Carraway commented that in order for the children to send something, they had to see Carraway do it.

At approximately 3:48 p.m., the two detectives left the room again to give Carraway an opportunity to add to his written statement based on what Carraway told them during his interview but had not included in the first statement he wrote. Carraway remained in the interview room alone and added another page to his statement. In the continuation of his statement, Carraway admitted that he went along with the sending of pictures and videos as part of the group and stated, "I knew what I did would come to light," "God is mad at me," and "I know I messed up." However, Carraway denied any physical sexual conduct with the children.

At approximately 4:06 p.m., Detectives Kelly and Quarless returned to the room to go over Carraway's additions to his written statement. Detective Kelly asked Carraway whether Carraway wanted something to eat or drink or needed to use the bathroom. Carraway declined. Detective Kelly read Carraway's written additions and then wrote out specific questions for

Carraway to answer. For each of the questions included in the written statement, Detective Kelly wrote the question and then had Carraway write the answer and initial next to the answer.

As the interview continued, Carraway initially claimed he had no other phone. He also claimed that he had an old phone that broke and he threw it away. A little after 6:00 p.m., Detective Quarless informed Carraway that police had discovered a hidden video app on Carraway's white Samsung phone and Carraway provided the password. (Detective Quarless's notes with the password are included in Exhibit 2.) After a few minutes of questioning, Carraway was left alone for about 30 minutes, at which point Detective Quarless came in with pictures of a backpack and plastic bag that Carraway identified as belonging to him and for which Carraway gave consent to search. (The consent forms are part of Exhibit 2.) Carraway was again asked if he needed to use the bathroom. At approximately 6:58 p.m., Carraway was taken out of the interview room, presumably to use the restroom.

At approximately 7:06 p.m., Detectives Kelly and Quarless continued their interview of Carraway for about 30 minutes. During that portion of the interview, Carraway admitted to recording or facilitating the recording of videos of children engaged in sexually explicit conduct with each other. Carraway also admitted to receiving videos of children engaged in sexually explicit conduct and sending video of himself masturbating to children. At approximately 7:30 p.m., Carraway admitted to having another phone – orange in color – with the same types of videos of children engaged in sexually explicit conduct.

At approximately 7:38 p.m., Detective Kelly provided Carraway dinner from a fast-food restaurant and paper to write more in his statement. Carraway spent the next twenty minutes eating and adding an additional two pages to his statement. *See* Ex. 3, pages 5-6. The following are portions of the last statement Carraway wrote:

> Okay, it's time I told the truth yes I have videos and yes you will find some on my orange phone basically the same ones. How I get the videos is the kids would send them in the Chat. I would hide them but I really do care for the children. I know it was wrong, I'm a bad person, I'm no child of god for doing this, I know I'm grown. I made a lot of mistakes….
>
> I only got the orange, white, and little tracfone [phones]. It's true I directed one video the rest of the videos the kids recorded their selfs…..
>
> you will find videos of the group….
>
> the videos you see me in are the ones I already had saved in my phone. No matter what the kids say, I have the videos of the group. Everything the group did was recorded, either if its Play fighting, sexual, hide and seek, tag….
>
> I take full ownership for making A.K.A and I'm sorry for that….
>
> For some of the videos the kids used their tablets or cell to send the videos to me and the one at the school was my phone. I know I'm older and I knew it was wrong because kids don't know better and I just lost it and now it don't look good on my part."

One or two detectives continued to interview Carraway on and off until about 11:45 p.m. Throughout Carrway's interview, there were never more than two plain-clothes detectives in the room. Carraway was offered food, water, and bathroom breaks several times. Carraway was provided dinner. Carraway was not handcuffed throughout the interview. Several times throughout the interview, Carraway was left alone, sometimes for a half hour or more, without being questioned.

C. Information Provided By Victims

During the course of the investigation, law enforcement officers have interviewed dozens of children. The children range in age from approximately nine years old to approximately fourteen years old. During the interviews, the children disclosed that they engaged in sexual acts with other children at the direction of Carraway. At least one victim disclosed that Carraway

performed oral sex on him. Several of the victims also disclosed that Carraway utilized an "orange" cell phone to video record the sexual acts.

During the course of the victim interviews, investigators learned that Carraway provided cellular devices to some of the victims as a means to record themselves engaged in sexually explicit activity. At least one of the victims stated that Carraway had multiple SD cards that Carraway switched out between his multiple cellular devices to store videos recorded by the victims. Another victim stated that Carraway had ten or more separate cellular phones, which he disseminated between the victims in the beginning of the school day and then requested that the victims record sexually explicit conduct (referred to as "dares" by Carraway) on the phones. The victims then returned the phone to him at the end of the school day. According to other victims, Carraway told them what they did was a "secret," not to tell anyone, and at times "faked" calls to 911 to scare the children.

During the investigation, a parent of one of the victims recovered a blue, black, and white backpack from their residence and indicated that the backpack belonged to Carraway. During a search of the backpack, investigators recovered a "BLU" cell phone with an orange back. During the interview with Carraway detailed above, Carraway stated that the backpack and its contents belonged to him.

Some of the parents of the victims voluntarily provided cell phones, tablets and other digital devices utilized by the victims to communicate with Carraway. Some of the parents, however, did not know where the victims obtained the digital electronic devices.

D. Search Warrants and Forensic Analysis

During the course of Carraway's interview on February 5, 2016, and pursuant to his written consent, PGPD detectives searched Carraway's white Samsung cell phone. In that

phone, investigators found numerous videos of prepubescent and pubescent children engaged in sexual acts with each other. In addition, during some of these videos, Carraway can be seen or heard. The phone also contained videos and images that children created at the direction of Carraway and then sent to Carraway via Kik or another chat app.

On February 8, 2016, Prince Georges County Circuit Court Judge Nicholas Rattal signed a search and seizure warrant authorizing the search of Carraway's residence in Glenarden, Prince George's County, Maryland for evidence and violations of Criminal Law Article, Section CR 11-207 (Child Pornography) Annotated Code of Maryland. The same day, law enforcement officers executed the search at Carraway's residence. During the search, officers seized multiple electronic devices, including laptop computers, SD cards, cell phones, other digital storage devices, as well as papers, notebooks, a binder containing names and/or lists of children, and information regarding the choir organized by Carraway, to which some members of the A.K.A. group also belonged. PGPD detectives turned the electronic items seized from Carraway's residence, as well as the BLU phone with the orange back and white Samsung phone, over to the FBI.

On February 11, 2016, FBI Special Agent Jacqueline Dougher obtained a search warrant from United States Magistrate Judge Charles B. Day for all of the electronic devices obtained from PGPD, including the BLU phone with the orange back, the white Samsung phone, and phones provided by victims. (The search warrant and supporting affidavit are attached as Exhibit 4.) On March 8, 2016, out of an abundance of caution, Special Agent Dougher obtained a second search warrant for the BLU phone from United States Magistrate Judge William Connelly. The purpose of obtaining the second warrant was to make clear that the BLU phone had been recovered in the Defendant's blue, black, and white backpack, not the Defendant's

residence, where multiple other electronic devices had been discovered during the execution of the warrant by PGPD on February 8, 2016. (The search warrant and accompanying affidavit are attached as Exhibit 5.)

Argument

For the reasons detailed below, the Defendant's pre-trial motions should be denied.

I. THE DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE SHOULD BE DENIED (ECF 19, 20).

The Defendant has filed two motions to suppress evidence seized pursuant to searches of cell phones conducted by PGPD and the FBI. *See* ECF 19, 20.

In his a five-paragraph motion to suppress evidence seized from the BLU cell phone with orange back, the Defendant claims that in or about March 2016, federal agents, "in possession of a tainted search warrant[,] searched Mr. Carraway's Blu cell phone with orange back." ECF 19, at 1. In a separate four-paragraph motion, the Defendant claims the "police violated the Fourth Amendment when they searched the contents of Mr. Carraway's Samsung cell phone, including reading text messages and viewing images, without consent." ECF 20, at 1.

A. The Search Warrant for the BLU Phone With the Orange Back Was Supported By Probable Cause.

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." U.S. Const. Amend. IV. The probable cause standard involves "a practical, common-sense decision" by the issuing judge as to whether the circumstances set forth in the affidavit establish "a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates,* 462 U.S. 213, 238 (1983). "The probable cause standard is incapable of precise definition or quantification into percentages because it deals with

probabilities and depends on the totality of the circumstances." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). Probable cause exists to search a location when "there are reasonably trustworthy facts which, given the totality of the circumstances, are sufficient to lead a prudent person to believe that the items sought constitute fruits, instrumentalities, or evidence of crime and will be present at the time and place of the search." *United States v. Suarez*, 906 F.2d 977, 984 (4th Cir. 1990). The law "does not demand showing that such a belief be correct or more likely true than false." *United States v. Williams*, 974 F.2d 480, 481 (4th Cir. 1992).

When assessing a search warrant application, the judge is simply tasked with making a "practical, common-sense decision" based on "all the circumstances set forth in the affidavit." *Gates*, 462 U.S. at 238. A judge's "finding of probable cause is subject to great deference on review." *Suarez*, 906 F.2d at 984. "[T]he task of a reviewing court is not to conduct a *de novo* determination of probable cause, but only to determine whether there is substantial evidence in the record supporting the magistrate's decision to issue the warrant." *Massachusetts v. Upton*, 466 U.S. 727, 728 (1984); *see also United States v. Blackwood*, 913 F.2d 139, 142 (4th Cir. 1990) (reviewing court "may ask only whether the magistrate had a substantial basis . . . for concluding that probable cause existed").

The affidavits in support of the February 11, 2016 and March 8, 2016 search warrants for the BLU cell phone, the Samsung cell phone (for the February 11 warrant) and certain other electronic devices seized from Carraway and provided by victims set forth ample probable cause. *See* Exs. 4, 5. In relevant part, both affidavits describe a victim's relative reporting to law enforcement that Carraway had engaged in sexually explicit chats with and solicited images from a 9-year-old boy through the Kik messenging app. The victim's family provided the victim's cell phone to PGPD detectives, who observed text messages that were sexual in nature and a

picture of Victim 1's buttocks that had been sent to Carraway in January 2016. The affidavits also recount that Victim 1 told investigators that Carraway requested that Victim 1 send the picture and that Carraway told Victim 1 that other children had also sent such pictures of themselves to Carraway. Further, both the February 11 and March 8, 2016 affidavits recount that PGPD detectives interviewed Carraway on February 5, 2016, and that Carraway admitted during the interview that there were images of children engaged in sexually explicit conduct on his phone. The affidavits also note that Carraway provided consent to search his cell phone during the interview. Further, the affidavits recount portions of Carraway's written statement in which Carraway wrote that he had videos on his "orange phone." The affidavits also recount the portion of Carraway's written statement where he stated he knew he "was wrong because kids don't know better." The affidavits further recount interviews of more than ten children who stated that they engaged in sexual acts at the direction of Carraway or with Carraway (in the case of one child) and that Carraway provided them electronic devices as a means of recording sexually explicit videos for him. *See* Exs. 4 and 5.

The affidavits set forth "trustworthy facts which, given the totality of the circumstances, are sufficient to lead a prudent person to believe that the items sought constitute fruits, instrumentalities, or evidence of crime and [would] be present" in the cellular devices for which the warrants were obtained, including the BLU phone with the orange back. *Suarez,* 906 F.2d at 984. Accordingly, evidence seized pursuant to the search warrants should not be suppressed.

B. Even If The Search Warrants Were Not Supported By Probable Cause, The Good-Faith Exception Applies.

In addition to establishing probable cause for the warrants, the above discussion also demonstrates that a reasonable officer in the same shoes as the investigator would not second-

guess the determination by a judge that the affidavits were sufficient. The exclusionary rule "is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *United States v. Leon*, 468 U.S. 897, 906 (1984). The rule is "designed to deter police misconduct, rather than to punish the errors of judges and magistrates." *Id*. at 916. The policy behind the rule is not furthered by excluding evidence "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope." *Id*. at 920. As the policy of the rule is not furthered by excluding evidence secured in good faith, the rule does not bar the admission of evidence obtained from a defective warrant where the executing agents acted in good faith. *Id*. at 920-22.

The good-faith analysis takes the objective perspective – whether a reasonable officer standing in the agent's shoes could be expected to have known that the warrant was invalid. *See United States v. Clutchette*, 24 F.3d 577, 582 (4th Cir. 1994). In "the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient." *Leon*, 468 U.S. at 921. But an officer's reliance on a judge's probable cause determination is unreasonable where (i) the officer provided knowingly or recklessly false information; (ii) the magistrate wholly abandoned his judicial role; (ii) the affidavit was so deficient in probable cause as to render reliance entirely unreasonable; or (iv) the warrant was so facially deficient as to render reliance unreasonable. *Id*. at 923.

As discussed above, the law amply supports the judges' conclusions that there was a fair probability that evidence, fruits, and instrumentalities of violations of law would be found within the electronic devices to be searched. To be sure, "[r]easonable minds frequently may differ on the question whether a particular affidavit establishes probable cause . . . ." *Leon*, 468 U.S. at

914. But even if this Court concludes that probable cause is lacking despite the deference traditionally afforded to the issuing judicial officer, the analysis discussed above more than supports the notion that the affidavits were not so unreasonable as to preclude reliance by the officers. As such, the search of the BLU cell phone with the orange back pursuant to the February 11, 2016 and March 8, 2016 warrants were permissible and in compliance with the demands of the Fourth Amendment.

C. The Search Of White Samsung Cell Phone Was Consensual.

Defendant Carraway argues that search of his white Samsung cell phone violated the Fourth Amendment because the police did not obtain a search warrant before searching the phone. *See* ECF 20, at 1. The motion to suppress also claims that the police conducted the search without valid consent. ECF 20, at 2. The Defendant therefore argues that any evidence found in the white Samsung cell phone must be suppressed. *Id.*

Although searches conducted without a search warrant are *per se* unreasonable, the general requirement for a warrant does not apply where valid consent to the search is obtained. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). "Consent to search is valid if it is (1) knowing and voluntary and (2) given by one with authority to consent." *United States v. Buckner*, 473 F.3d 551, 554 (4th Cir. 2007) (citations and internal quotation marks omitted). The voluntariness of consent is determined from examining the totality of the circumstances, including "the characteristics of the accused (such as age, maturity, education, intelligence, and experience) as well as the conditions under which the consent to search was given (such as the officer's conduct; the number of officers present; and the duration, location, and time of the encounter)." *United States v. Lattimore*, 87 F.3d 647, 650 (4th Cir. 1996). "Written consent supports a finding that consent was voluntary." *United States v. Boone*, 245 F.3d 352, 362 (4th

Cir. 2001). Although consent must be knowing and voluntary, the government is not required to show that an individual knew he could refuse to consent. *See, e.g.*, *United States v. Robinette*, 519 U.S. 33, 39-40 (1996); *Boone*, 245 F.3d at 362. Finally, even if a person is in custody, that person can still provide voluntary consent to search. *Boone*, 245 F.3d at 362-63.

On February 5, 2016, Defendant Deonte Carraway was brought in for questioning after reports that he had engaged in sexual chats with a child and directed that child to send him pictures of the child's buttocks. As detailed above, Carraway was read, acknowledged he understood, and waived his *Miranda* rights before he signed any consent forms. Within ten minute of waiving his rights, Detective Kelly presented Carraway with written consent forms for two cellular phones, including his white Samsung phone. Detective Kelly read over the consent form out loud with Carraway. Carraway also signed the written consent to search form, which stated in relevant part:

> I agree to allow officers of the Prince George's County Police Department to do the following:
>
> Search my cell phone, description: white Samsung
>
> I consent to the police taking the above action without obtaining a search warrant and I give permission freely and voluntarily. I understand that police may take and obtain any property found for investigative purposes and which may be evidence of a crime.

See Ex. 2. Defendant Carraway acknowledged, in writing, that he consented to search of his phone without a warrant and that he gave permission freely and voluntarily. At the time, he was 22 years old, had a high school diploma, and of sufficient maturity to understand the situation. There is no evidence that he was intoxicated or otherwise impaired. Accordingly, a warrant was not required and the consent search of the white Samsung cell phone was valid.

Moreover, subsequent to the initial consent search of the phone, FBI Special Agent Dougher obtained a search warrant for the white Samsung phone, along with all other devices seized from the Defendant. *See* Exhibit 4. The search warrant was supported by probable cause, executed in good faith, served as the basis for forensic analysis of the electronic devices by the FBI, and withstands scrutiny for the same reasons articulated above.

II. THE DEFENDANT'S MOTION TO SUPPRESS STATEMENTS SHOULD BE DENIED (ECF 21).

The Defendant has also filed a 4-page motion (with a total of seven paragraphs) to suppress statements. ECF 21. In his motion, the Defendant argues that the Court should find that his statements were obtained in violation of the Fifth and Sixth Amendments. ECF 21, at 1. The Defendant claims that he is entitled to a hearing to challenge the voluntariness of his statements. ECF 21, at 2. The Defendant also baldy asserts, without offering any supporting evidence or details, that the Defendant was in special education classes in school and had a psychological evaluation on an unspecified date that noted that he "exhibited significant cognitive deficits, with a Full Scale IQ score of 63." ECF 21, at 2-3. On those bald assertions, the Defendant asks that his statements be suppressed because they were made in violation of the Fifth and Sixth Amendments.

A. Defendant Deonte Carraway Made Voluntary Statements After Waiving His *Miranda* Rights.

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In *Miranda v. Arizona*, the Supreme Court held that members of law enforcement must inform individuals who are in custody of their Fifth Amendment rights prior to interrogation. 384 U.S. 436, 444 (1966). Specifically, an individual interrogated while in police custody "must be warned that he has a

right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Berkemer v. McCarty*, 468 U.S. 420, 429 (1984) (quoting *Miranda*, 384 U.S. at 444). *Miranda* warnings may be given orally or in writing. *See, e.g.*, *United States v. Abdi Wali Dire*, 680 F.3d 446, 474 (4th Cir. 2012) (upholding oral warnings and stating that "no precise formulation of the warnings or talismanic incantation is required to satisfy Miranda's strictures" (citation and alterations omitted)); *United States v. Frankson*, 83 F.3d 79, 81 (4th Cir. 1996) (same). For any subsequent custodial statements to be admissible, the individual must then knowingly and voluntarily waive his rights. *United States v. Cardwell*, 433 F.3d 378, 389-90 (4th Cir. Va. 2005); *see also id.* at 389 ("Waiver need not be express, but may be implied from the defendant's actions and words."). Absent *Miranda* warnings and waiver, a defendant's statements made during a custodial interrogation are generally inadmissible. *Id.*; *United States v. Hargrove*, 625 F.3d 170, 177 (4th Cir. 2010).

In addition to complying with *Miranda*, an individual's statements also must be provided voluntarily. The applicable test for evaluating the voluntariness of a statement or confession is whether, given the totality of the circumstances, the will of the speaker was "overborne and his capacity for self-determination critically impaired." *United States v. Gray*, 137 F.3d 765, 771 (4th Cir. 1998) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973)); *see also Mincey v. Arizona*, 437 U.S. 385, 399 (1978); *Haynes v. Washington*, 373 U.S. 503, 513 (1963). In making this determination, "coercive police activity is a necessary predicate" to any finding that a confession was not "voluntary" within the meaning of the Due Process Clause of the Constitution. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). In applying these general principles to various factual scenarios, the Fourth Circuit has considered, among other things,

factors such as: (1) whether law enforcement officers properly advised the suspect of his right not to make any statements and of his right to have an attorney present; (2) whether the officers inappropriately told the suspect that he was legally obligated to speak with them; (3) whether the officers physically or verbally threatened the suspect; (4) whether the suspect appeared to be cooperative; (5) whether the suspect was misled by the officers into believing that his statements could not be used against him; and (6) whether the officers engaged in any violent behavior during their questioning. *See generally United States v. Braxton*, 112 F.3d 777, 781-85 (4th Cir. 1997); *Gray*, 137 F.3d at 771.

Defendant Deonte Carraway's post-arrest statements made to law enforcement should not be suppressed. As discussed in detail above, PGPD detectives advised Carraway of his *Miranda* rights at the start of his interview. Detective Kelly went through each right verbally with Carraway, had Carraway acknowledge that he understood his rights, and then had Carraway sign a written waiver form and initial next to each right he was waiving. Detective Kelly also inquired about Carraway's education level (which was a high school diploma) at the time that Carraway signed the waiver. Detectives never told Carraway that he was legally obligated to speak with them. The detectives also never physically or verbally threatened Carraway. Instead, the detectives provided Carraway with multiple breaks, water and food, opportunities to use the restroom, and opportunities to write out his statement with no one else present in the room. The detectives explained up front that the statements could be used against Carraway as part of the *Miranda* warnings. The detectives also explained to Carraway that his conduct constituted a crime. No more than two officers were ever in the room at one time, Carraway was not handcuffed during the interview, and Carraway remained cooperative (although not always forthcoming) throughout the interview. Finally, at no time did detectives engage in any violent

behavior toward Carraway. Thus, Carraway's confession was obtained in compliance with the requirements of the Fifth and Sixth Amendments.

The recorded interview also speaks for itself. *See* Exhibit 6. The Defendant understood the questions presented to him, answered questions with significant detail, and wrote out a statement in addition to his oral statements. The Defendant has not presented any evidence, and none exists, that the Defendant's will was somehow "overborne" or his "capacity for self determination critically impaired." *United States v. Pelton*, 835 F.2d 1067, 1071-72 (4th Cir. 1987).

Finally, the cases cited by the Defendant on the issue of voluntariness are inapposite to the facts of this case. For example, in *Withrow v. Williams*, the Supreme Court found the defendant's statements involuntary where a police sergeant threatened to "lock up" the defendant, obtained a confession, and only then advised the defendant of his *Miranda* rights forty minutes into the interview, followed by more questioning. 507 U.S. 680, 683-84 (1993). In *Withrow*, the officers also made a conscious decision not to advise the defendant of his *Miranda* rights at the start of questioning. *Id*. at 643.

Similarly, this case is distinguishable from *Fikes v. Alabama*, in which the defendant started school at age eight and left at age 16 while still in third grade. 352 U.S. 191, at 193 (1952). The defendant in *Fikes* was also arrested by civilians, taken to a local jail, and then removed to a state prison. *Id*. at 197. The defendant was kept incarcerated and in isolation for a week except for sessions of questioning by law enforcement. *Id*. The defendant in *Fikes* was questioned on and off for five days before he confessed and then again interrogated at length before giving a written statement. *Id*. The facts in *Fikes* are a far cry from facts in the case

before this Court. Carraway has a high school diploma, was volunteering with kids at a school, and was read and waived his *Miranda* rights before any oral or written confession.

Finally, the Defendant's reference to *Sims v. Georgia* is also misplaced. In *Sims*, the defendant claimed he was physically abused before giving a confession. 389 U.S. 404, 406 (1967). The Supreme Court also noted that the defendant in *Sims* was in custody for over eight hours without being fed, was illiterate with only a third grade education, and his mental capacity was "decidedly limited." Under those facts, the Supreme Court found that the fact that the police may have warned the defendant of his right not to speak to be of "little significance." *Id*. at 407. In contrast, as noted above, Carraway was not physically or otherwise abused by law enforcement, was provided food, water, and bathroom breaks, had a high school education, signed a written waiver of rights form, provided a written statement, and demonstrated throughout the interview that he understood the questions posed to him.

Thus, Carraway's motion to suppress statements lacks merit and should be denied.

Conclusion

For the reasons stated, the government respectfully requests that this Court deny the Defendant's motion to suppress statements and evidence.

Respectfully,

Rod J. Rosenstein
United States Attorney

/s/ *Kristi N. O'Malley*
Kristi N. O'Malley
Assistant United States Attorney

Certificate of Service

I certify that on this 16th day of September, 2016, I caused a copy of the foregoing Government's Consolidated Response to Defendant's Pre-Trial Motions to be transmitted to counsel for the defendant via ECF.

/s/ *Kristi O'Malley*
Kristi N. O'Malley
Assistant United States Attorney