University of Baltimore Law Forum

Volume 19
Number 2 *Winter, 1989*

Article 7

1989

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Recommended Citation

Carey, David (1989) "Consent Searches and Voluntariness: An Analysis of Maryland Cases," *University of Baltimore Law Forum*: Vol. 19 : No. 2 , Article 7.
Available at: http://scholarworks.law.ubalt.edu/lf/vol19/iss2/7

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Consent Searches and Voluntariness: An Analysis of Maryland Cases

by David Carey

The search warrant requirement of the fourth amendment[1] is the individual's primary protection against constitutionally proscribed unreasonable searches and seizures. However, one is not entitled to the protection of the fourth amendment when he has waived his right to its protection; such is the case with a "consent search,"[2] which occurs when one waives his or her expectation of privacy with respect to the place searched.[3] In order for a consent search to be valid, the prosecution must prove that the consent to search was voluntarily given.[4] Establishing voluntariness based on the decisions of the Maryland courts of appeal is the topic of this article. Through an analysis of the relevant Supreme Court and Maryland decisions, a rough road map emerges that can assist an attorney in attacking a case in which the voluntariness of a consent to search is at issue.

I. The Supreme Court Decisions

The Supreme Court's first close scrutiny of the voluntariness aspect of the consent search was in *Bumper v. North Carolina*,[5] in which police had secured a search warrant to search the house where the defendant lived with his grandmother. When police told the woman they had a search warrant, she allowed them to search. The prosecution did not rely on the warrant at trial, but on the consent of the defendant's grandmother. The Court ruled the consent was not voluntary, holding that "[w]hen a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving 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."[6]

The question of how the prosecution demonstrates that a consent was "freely and voluntarily given" was placed squarely before the Supreme Court in *Schneckloth v. Bustomonte*.[7] Justice Stewart, writing for the majority, rejected the argument that the police must advise an individual of the right to refuse to consent to a search, just as a police officer must warn an individual of the right to remain silent during a custodial interrogation,[8] because "it would be impractical to impose on the normal consent search the detailed requirements of an effective warning."[9] The Court also rejected the defendant's argument that the test for voluntariness should be the one applied in *Johnson v. Zerbst*,[10] that of "an intentional relinquishment of a known right or privilege."[11] This "knowing and intelligent" standard, Justice Stewart stated, applies to those rights which the Constitution guarantees in order to preserve a fair trial,[12] e.g., waiver of the right to counsel in a federal criminal trial,[13] waiver of right to a jury trial,[14] waiver of the right to a speedy trial.[15] "The protections of the fourth amendment are of a wholly different order and have nothing to do whatever with promoting the fair ascertainment of truth at a criminal trial."[16] Thus, the Court reasoned, there is no need to impose on the prosecution the heightened burden of proving that the waiver was "knowing and intelligent." Rather, voluntariness should be determined by analyzing all the circumstances of an individual consent in order to ascertain "whether in fact it was voluntary or coerced."[17] Significantly, knowledge of the right to refuse consent is merely one of the factors to be taken into account, along with the age, intelligence and emotional state of the subject, the behavior of the police, etc. No single factor will *ipso facto* make the consent valid or invalid.[18] Rather, the "totality of the circumstances"[19] should be analyzed in full.

Because this analysis emphasizes an examination of all the relevant circumstances, factors rarely occur in isolation. Most cases involve the weighing of different factors, some pointing to voluntariness, others toward a finding or coercion. Not all factors are weighed evenly. The court will sift the unique facts and circumstances of each case[20] and assign a weight to each factor depending upon its significance in that particular case. Since each factor is analyzed completely within the context of the case in which it appears, one cannot attach a precise value to a particular factor for all cases. However, in cases before the Maryland courts, certain factors are consistenly given primary importance in the overall totality of the circumstances analysis, while other factors are consistently of lesser, or secondary, importance. Knowing which factors are considered primary and which are considered secondary in the overall evaluation of voluntariness will allow an attorney to more effectively present his or her case to the court and give the attorney a better idea of the likelihood of success in a particular case.

II. Factors Tending to Show Coercion in Maryland

Judging by the decisions of the Court of Appeals of Maryland and Court of Special Appeals of Maryland, the prosecution more often than not meets its burden of proving a consent voluntary. However, in those cases where the prosecution does not, it is because the defence has presented evidence that one or more primary factors

affected the defendant's decision to consent to the search. Three primary factors that show coercion can be identified from the decisions of the Maryland courts of appeal: (1) intimidation of the defendant, either physical or psychological, by a law enforcement officer; (2) an invalid claim of lawful authority by an officer; and (3) prior illegal police activity leading to a consent.

A. Intimidation

The first of these factors was present in *Johnson v. State*,[21] in which the Court of Special Appeals of Maryland invalidated a consent that it found was based on sheer physical intimidation. In this case, the defendant and an associate left the defendant's apartment and drove off in the defendant's car. They were followed by police at least two unmarked cars, one of which pulled next to them at a red traffic light. Two plainclothes officers approached the car with shotguns drawn and did not announce that they were police officers. The defendant accelerated through the red light, while another police car apprehended them fifty yards down the road. The defendant and his associate were taken from the car, forced to assume a spread eagle position, and searched. The search revealed narcotics in the car and on the defendant's person. The defendant's hands were manacled behind him and he was put in the back seat of the police car. Three or four police officers were in the car with him while other uniformed officers remained outside. Within fifteen minutes of the arrest, the defendant verbally consented to a search of his apartment. Thirty-five to forty minutes later, the defendant signed a "consent-to-search" form. His hands were uncuffed to allow him to sign the form and then recuffed. The police advised him that if narcotics were found, charges would be brought against him, and that he had a right not to consent.

The court found that the physical intimidation present in this case was substantial enough to show that the consent was coerced. Although factors that favor voluntariness were present, the court found that the physical intimidation was substantial enough to render the consent coerced. Citing "the melodramatic atmosphere of Johnson's midnight apprehension at gunpoint, followed by his confinement to the back seat of a police car with his hands manacled behind his back,"[22] the court stated that "[i]t is hard to imagine a more coercive atmosphere than appears from the facts of the instant case."[23]

In *Whitman v. State*,[24] the intimidation was psychological, not physical, but the court nevertheless found that the consent was coerced. The defendant was a truck driver suspected to be transporting illegal unstamped cigarettes. He was arrested shortly after midnight without probable cause, given is *Miranda* warnings and taken to a State Highway Association (SHA) barn in a state police car while a police officer drove his truck there. The defendant was twenty-three years old, had a tenth grade education, and had no prior criminal involvement. While in custody, he was treated with civility, was not handcuffed, was not threatened, could move around and smoke, and did not complain of being denied food or drink. However, he was subjected to questioning in the SHA barn for ninety minutes by two state troopers and one assistant state's attorney. An application for a search warrant was typed in his presence, a phone call was made in his presence to a judge about signing the warrant that was being typed, the police unequivocally stated that they could conduct the search whether he consented or not, and the defendant was told by police that type would be saved if he consented. After ninety minutes in custody, at 2:30 a.m., the defendant consented to the search.

"[T]he prosecution more often than not meets its burden of proving a consent voluntary"

Although there was no physical intimidation as in *Johnson*, the court found the consent invalid because of the coercive psychological atmosphere. Despite the fact that the defendant was treated with civility, was not cuffed or restrained, was free to move about and smoke, and was not threatened at all, the court found that "the psychological atmosphere was critically suggestive."[25] It is this form of subtle coercion, the court pointed out, that the Supreme Court has proscribed.

> The lesson articulated by *Bumper* and *Schneckloth* is that the individual subjected to the search may indeed be submitting rather than consenting, even in an atmosphere of relative cordiality because of the presence of psychological forces as potent and effectual in achieving a 'consent' as the traditional techniques and familiar instruments of physical 'persuasion.'[26]

The actions by the officers in this case were found to be calculated to make the defendant think that insistence on his fourth amendment rights would only delay the inevitable search rather than protect him from unreasonable searches.[27]

The holding in *Jarrell v. State*,[28] reinforces this view. Jarrell was legally arrested after his car was stopped, and a valid automobile exception search was revealed ten pounds of marijuana. The defendant was taken to the police station, given his *Miranda* warnings, told that his residence had been secured by placing two officers each at the front and rear entrances, and was asked for consent to search the house. He verbally consented and signed the consent form. At the pre-trial hearing, he stated that he consented to the search because one officer had told him that if he did not consent, his codefendant would be released. This testimony was not rebutted by the state. In ruling that the consent was coerced, the court cited both the unrebutted testimony of the defendant and the "inherently coercive"[29] atmosphere. Relying on *Whitman*, the court held that the statement to the defendant that his house was secured by four officers "was calculated to persuade Jarrell that the seach was inevitable, with or without consent,"[30] and was therefore coerced. If the psychological atmosphere is calculated to make the defendant think that the issuance of a warrant will be automatic, then consent is not a voluntary decision on the part of the defendant but in acquiescence to the inevitable.

B. Invalid Claim of Lawful Authority By An Officer

In the recent case of *Titow v. State*,[31] the court addressed the second of three primary factors showing coercion. The defendant was stopped at an airport on at least reasonable suspicion if not probable cause, and was asked to consent to a search of his luggage. Even though he refused, the officers told him that they were going to seize the luggage and issue a receipt for it. The defendant then consented. The court found it significant that the officers misrepresented the fourth amendment rights of the defendant by implying that they had the authority to search the luggage regardless of whether the defendant consented or not, because this was not a correct description of defendant's constitutional options. Had there been probable

cause, the bag could have been seized, but the officers would still have been required to obtain a warrant to search it; if they could not obtain a warrant, the bag would have been returned unsearched; had there been reasonable suspicion, the officers could only hold the luggage for a limited period of time for a dog to sniff. The court held that this was similar to the situation that the Supreme Court faced in *Bumper v. North Carolina*,[32] where the police claimed to have a valid warrant, except that in *Titow*, "the claim of lawful authority that was effectively communicated to the appellant—through a combination of words, actions and selected silence—was 'You may as well consent to the search of the luggage because we are going to hold it (and presumably search it) in any event'"[33] The court further stated that

> [t]he appellant was not only uninformed as to his full constitutional options, he was, at least by strong implication, affirmatively misled as to those options. A significant misrepresentation, by commission or omission, of the constitutional choices available to him is a strong circumstance, in the larger totality of circumstances, militating against the voluntary quality of the appellant's consent.[34]

There is a close relationship between cases of intimidation and cases of acquiescence to a claim of lawful authority.[35] In *Whitman* and *Jarrell*, consent was coerced because the psychological atmosphere was calculated to make the defendant think that his refusing consent would be ineffectual. In *Titow*, the consent was coerced because the defendant was misled as to his true constitutional options.

However, it should be noted that the advice of a police officer, based on his experience and his analysis of the present situation, that a warrant will probably be issued, will not invalidate a consent. As the court said in *Whitman*, "the well founded advice of a law enforcement agent that, absent consent to search, a warrant can be obtained does not constitute coercion."[36] The key is whether the advice is the product of an officer's reasoned judgment as to the likelihood of a neutral and detached magistrate finding probable cause, or is merely an attempt to induce a defendant into thinking that refusing consent would only delay the inevitable, and is not based on the officer's own judgment as to the possibility of securing a warrant. As the above cases suggest, misleading a defendant as to his true constitutional options in order to obtain a consent is a strong factor tending to show coercion.

C. Prior Illegality

The third primary factor in the analysis of voluntariness is a prior illegal act by the police. Consent has been found to be coerced when this factor, along with others, was present. In *Johnson v. State*,[37] a prior illegal police action was found. The court ruled that the initial stop of the defendant's car was without probable cause, and that probable cause was only obtained when the defendant subsequently sped through a red light. Although the court noted the illegal police action, it was the physical intimidation that rendered the consent coerced. In *State v. Wilson*,[38] the police entered the defendant's apartment based on a valid search warrant for narcotics. While executing the search, an officer copied down the serial numbers of various pieces of electronic equipment in the apartment that he thought might be stolen. The court ruled that this was an unconstitutional seizure.[39] Upon returning to the police station, the officer learned that the serial number on a tape recorder in the defendant's room was the same as the serial number on one reported stolen from an apartment in that area. The next evening the police went to the defendant's apartment and were let in by his roommates. They spotted the defendant, told him that stolen property had been observed in his room the night before by a uniformed officer, advised the defendant of his *Miranda* rights, and asked him to "relinquish" the tape recorder. He replied that it was in his room and he led police officers to it. The court embarked on a thorough analysis of all the circumstances surrounding the consent, noting that the defendant was not in custody, he was in his own apartment with his roommates, he was advised of his *Miranda* rights, and he led the police to the tape recorder. The court ruled that this evidence of voluntariness was not sufficient to overcome the prior illegal police seizure and the order coercive factors. Because the police were let into the apartment by the defendant's roommates and because the officers did not reveal that the search executed the previous night was unconstitutional, the defendant could reasonably have believed that they were still acting under the authority of the warrant used the night before. In addition, the court found it significant that although the police advised the defendant of his *Miranda* rights, they did not advise him of his right not to consent, and that one without the other could reasonably have led him to believe that he did not have the option of refusing consent. In addition, the officer's request that he "relinquish" the recorder may have reinforced the view that this was a demand that must be complied with and not a request which could lawfully be refused.

"[A]n illegal seizure does not automatically render a consent coerced."

In its analysis of the totality of the circumstances, the court paid special attention to the prior illegal seizure. Although an illegal seizure "does not automatically render evidence obtained by a subsequent consent search inadmissible,"[40] the court ruled that it will render a consent coerced unless the prosecution presents strong evidence of consent,"[41] The evidence in this case was insufficient. Thus, when a defendant presents evidence that a prior illegal seizure was a factor in his giving consent, it is likely that the consent will be ruled coerced, unless rebutted by the prosecution presenting strong evidence of voluntariness. This case concerned a prior illegal seizure; it is unclear whether this is also true with respect to prior illegal arrests[42] and searches.

III. Factors Tending To Show Voluntariness

An examination of the cases in which the prosecution has prevailed in Maryland reveal two primary factors that show voluntariness. The first factor is evidence that, in addition to consenting to a warrantless search, the defendant cooperated with the police in either executing the search or in aiding the overall investigation. The second primary factor tending toward voluntariness is the giving of consent motivated by the belief of the consenting party that the police will not find the object of the search.

A. Cooperation With The Police

In *Lewis v. State*,[43] the defendant, who was not originally a suspect to the murder of his wife and child, was asked by police for permission to search his house in order to "go through personal papers and things like that".[44] He was going to be out of town, so he arranged to leave a key to his home with a neighbor to allow police access to his house. While the police were searching, they found a poem that the

defendant had written that implicated him in the murder. The court held that the consent was voluntary because the defendant had indicated a purpose of cooperating with the police and then affirmatively made arrangements for the police to obtain a key during his absence. This was sufficient to indicate that the consent was voluntary.

A defendant who was in jail argued that he was coerced into consenting to give hair and saliva samples in *Simms v. State*.[45] The police explained to the defendant that they wanted the samples and they showed him how to drop a few drops of saliva on the paper, which the defendant did. The officer then selected hairs from his head and cut them off without objection from the defendant. The defendant had not been forcibly brought but rather walked from his cell on request. During the procedure there were no threats or promises made, and defendant was standing alone and was not held or cuffed by the officers. The court held that the seizure of the hair and saliva was the product of a voluntary consent.

In *Armwood v. State*,[46] the police had arrived at a house intended for surveillance. The suspect came out of the house, saw the police, and fled. The police yelled, "Halt," and defendant stopped. They did not touch him or search him, but they told him they had information that he had heroin in his apartment. The defendant said "You have got me," and said he would take the officers to where the drugs were. He led the officers to his third floor bedroom and pointed out the drugs. The court cited the defendant's cooperation with the police in taking them to his room and the lack of evidence of coercion in finding the consent voluntary.[47]

B. Consent Based on Subject's Belief That Incriminating Evidence Would Not Be Found

In *Humphrey v. State*,[48] the police asked the defendant's wife to consent to a search of the home of herself and the defendant. The police told the woman that they were looking for evidence to be used in the prosecution of the defendant for murder. She consented to the search and the police found two revolvers and $150 in cash that implicated the defendant. The court noted that the woman was not under the threat of arrest, that the police used no coercive tactics, that she was in her own home and that she had been told that she could refuse to consent. On the other hand, she had never experienced arrest or custody, she had only a tenth grade education, she was alone with her four young children, and she became nervous in the officers' presence. In holding the consent voluntary, the court took special note of the fact that the woman testified that she had consented because she did not believe that a search would uncover anything incriminating and that her consent was, in fact, a tactical decision "to turn suspicion away from [her husband] by appearing to give the authorities innocent and wholehearted cooperation."[49]

In *Logue v. State*,[50] the police asked the defendant's wife if they could search the house for the defendant. The defendant's wife went into the house, came back out, and consented. The police did not find the defendant, but they did seize clothes of his that matched a police description. The court ruled that the consent was voluntary because the wife knew that the defendant was not at home and had no reason to believe that the clothes were incriminating. Her consent was based on her belief that the police would not find anything to incriminate her husband.

"[T]he cumulative effects of two or more secondary factors could render them... one primary factor."

The court applied the same reasoning in *Borgen v. State*,[51] in which the police requested that the defendant, who was in custody, consent to a search of his apartment for tools allegedly stolen from a garage where he worked. The defendant consented and the tools were found. At trial, he argued that the tools were actually his. The court, citing *Humphrey*, ruled that the consent was voluntarily given, that the defendant did not think that the tools were incriminating, and that his "willingness to allow the warrantless search to take place was basically a tactical decision calculated 'to turn suspicion away from him.'"[52]

IV. Secondary Factors in Maryland

There are many other factors that are involved in a totality of the circumstances analysis. The five previously analyzed are those that the Maryland courts find especially indicative of whether a consent was voluntarily given. Other factors are secondary in importance, meaning that they are not as significant as the primary factors but still somewhat influential and thus worthy of scrutiny as part of the totality of the circumstances analysis.

A. Knowledge of Fourth Amendment Rights

Perhaps the most difficult secondary factor to classify is the knowledge of the consenting party of his or her right to refuse consent. In *Schneckloth*, the Court stated that this is merely a factor to be considered, along with others, and the Maryland courts have followed the Supreme Court's direction. Some cases have presented this factor in a context that renders the subject's knowledge of his or her rights extremely persuasive, as in *Titow*, in which police officers misrepresented the defendant's fourth amendment rights,[53] and *Wilson*, where police advised the defendant of his *Miranda* rights but did not adivse him of his right to refuse to consent, thus implying that no such right existed.[54] In other cases, the court noted that the subject was either advised of the right to refuse to consent,[55] or was not,[56] but this was not a significant factor. One argument based on the officers' failure to advise a defendant of his fourth amendment rights was rejected in *Fidazzo v. State*.[57] The defendant argued that the *Schneckloth* holding applied only to non-custodial consents, and that a custodial consent is *per se* coerced unless the defendant is advised of his right to refuse consent. The court, citing *United States v. Watson*,[58] stated that a "*per se* rule demanding a warning as a sine qua non is not called for under the fourth amendment, even where custody is involved."[59]

B. Written Evidence of Consent

Another secondary factor that courts refer to is whether the consenting party signed a form consenting to the search. Although this factor has never been dispositive, it usually occurs in a case in which the defendant is aware of his right to refuse consent, because this notice is generally given on the consent form, and can be construed as evidence of cooperation with the police. Cases in which physical or psychological intimidation is at issue may also contain a signed consent form. Thus, a signed consent form has been held to be a factor both in cases ruling that the consent was voluntary[60] and those finding the consent coerced.[61]

Although not likely to be the deciding factor in settling the voluntariness issue, secondary factors are nonetheless important. Maryland case law has specifically stated that they are to be

considered, and in cases where they are no primary factors, they gain added significance. Moreover, the cumulative effect of two or more secondary factors could render them as important as one primary factor.

IV. Potentially Relevant Factors in Maryland

There are other factors that are potentially relevant which have not yet appeared in a case in which they play a critical role. For example, the age, education, and familiarity with the criminal justice system of the consenting party, which has played a major role in many third party consent cases and are indeed mentioned in the analysis of consent search cases, have not yet been cited as controlling in any Maryland cases. Courts have taken notice of these factors,[62] but they have not significantly affected the outcome of a case in Maryland. Thus, factors such as age and education should be considered when preparing a case for trial, because they may be highly relevant.

Another potentially relevant factor has been addressed by the Court of Appeals of Maryland, but not completely enough to indicate whether it is of any true significance. In *Carter v. State*,[63] the defendant argued that because he had a prior narcotice conviction that he could not have freely consented to a search of his car that turned up narcotics. The court, in finding the consent voluntary, said that this is "only one of the circumstances to be considered by the court in determining" the validity of the consent.[64] The court did not state if, or to what degree, this factor was significant.

Whether the defendant is in custody when consenting to a search is another potentially relevant factor.[65] Like the other potentially relevant factors, the courts have mentioned custody as part of the totality of the circumstances to be analyzed, but have said little more.

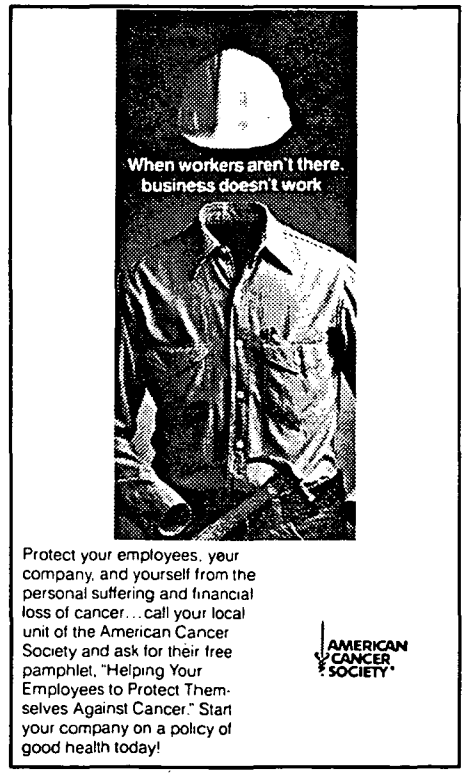
Rejected Factors In Maryland

The only factor that has been explicitly rejected in Maryland as not relevant is deception by a police officer as to identity. In *Killie v. State*,[66] an undercover state trooper did not reveal his true identity to the defendant, who invited him to his home. While there, the officer witnessed drug use by the defendant. The defendant argued that the consent given to the police officer to enter the house was *per se* involuntary, because it was gained by subterfuge. The court, recognizing the need for undercover work, rejected this argument and ruled that the defendant's reading of the fourth amendment was overbroad. Thus, deception by an officer as to identity when performing valid undercover work is not a factor in the totality of the circumstances analysis.

V. Conclusion

The foregoing analysis of Maryland decisions shows that determining whether a consent to search was voluntarily given can be a complex matter, because any number or combination of factors may be involved and the weight given to a particular factor may change from case to case. However, looking at these cases collectively a certain hierarchy emerges, certain enough that particular factors can be identified and roughly labeled as either primary, secondary or potential factors.

Attacking a voluntariness issue in a consent search case based on Maryland law is even more difficult because of the relatively small number of cases on this issue that have been decided. Indeed, an attorney faced with such a case is advised to turn to other jurisdictions where many more cases of this type have been litigated.[67] However, as helpful as a factually similar case may be, it is important not to lose sight of the fact that this is a totality of the circumstances test, and that what is most important is not what one particular court has already said, but what all the circumstances of the case at hand indicate. It is in conjunction with a thorough analysis of the facts of a particular case that this analysis of what the Maryland courts have already said is most useful.



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NOTES

[1]U.S. Const. amend. IV.

[2]It should be pointed out that some commentators consider consent searches as instances where the fourth amendment is applicable and is satisfied. For an analysis of these two approaches, *see* Moylan, "*The Fourth Amendment Inapplicable vs. The Fourth Amendment Satisfied: The Neglected Threshold of 'So What?'*", 1977 So. Ill. U. L. J. 75, 114-17.

[3]C. Whitebread & C. Slobogin, *Criminal Procedure* 231 (2d ed. 1986).

[4]*Id.*

[5]391 U.S. 543 (1968); *see also Katz v. United States*, 389 U.S. 347 (1967); *Davis v. United States*, 328 U.S. 582, 593-94 (1946); *Zap v. United States*, 328 U.S. 624, 630 (1946).

[6]391 U.S. at 548.

[7]412 U.S. 218 (1973).

[8]*See Miranda v. Arizona*, 384 U.S. 436 (1966).

[9]*Schneckloth*, 412 U.S. at 231.

[10]304 U.S. 458 (1938).

[11]*Id.* at 464.

[12]*Schneckloth*, 412 U.S. at 237.

[13]*Johnson v. Zerbst*, 304 U.S. 458 (1938).

[14]*Adams v. United States*, 317 U.S. 269 (1942).

[15]*Barker v. Wingo*, 407 U.S. 514 (1972).

[16]*Schneckloth*, 412 U.S. at 242.

[17]*Id.* at 233.

[18]R. Gilbert & C. Moylan, Jr., *Maryland Criminal Law: Practice and Procedure* 411 (1985).

[19]*Id.* at 410

[20]*Schneckloth*, 412 U.S. at 233.

[21]30 Md. App. 280, 352 A.2d 349 (1976).

[22]*Id.* at 287, 352 A.2d at 354.

[23]*Id.* at 282, 352 A.2d at 351.

[24]25 Md. App. 428, 336 A.2d 515 (1975).

[25]*Id.* at 454, 336 A.2d at 529.

[26]*Id.* at 455-56, 336 A.2d 530.

[27]*Id.* at 456, 336 A.2d at 530-31.

[28]36 Md. App. 371, 373 A.2d 975 (1977).

[29]*Id.* at 380, 373 A.2d at 980.

[30]*Id.*

[31]75 Md. App. 555, 542 A.2d 397 (1988).

[32]See text accompanying notes 5-6.

[33]*Titow*, 75 Md. App. at 558, 542 A.2d at 398.

[34]*Id.* at 560, 542 A.2d at 399.

[35]*See also Gardner v. State*, 32 Md. App. 629, 363 A.2d 616 (1976) (The court found that an illegal police seizure of a pipe with marijuana residue and the statement to the defendant that a warrant "wouldn't be very hard to get" rendered the consent "no more than acquiescence by the appellant to a claim of lawful authority" and thus invalid.).

[36]*Whitman*, 25 Md. App. at 450, 336 A.2d at 527.

[37]30 Md. App. 280, 353 A.2d 349 (1976). See text accompanying notes 21-23.

[38]279 Md. 189, 367 A.2d 1223 (1977).
[39]*But see Arizona v. Hicks*, 480 U.S. 321 (1987).
[40]279 Md. at 203-04, 367 A.2d at 1232.
[41]*Id.* at 204, 367 A.2d at 1232.
[42]*See Armwood v. State*, 229 Md. 565, 569, 185 A.2d 357, 358 (1962) ("it is well established in this State that the fact that an arrest was illegal does not make a subsequent search unlawful and the evidence obtained thereby inadmissible if the accused voluntarily consented to the search").
[43]285 Md. 705, 404 A.2d 1073 (1979).
[44]*Id.* at 719, 404 A.2d at 1080.
[45]4 Md. App. 160, 242 A.2d 185 (1968).
[46]229 Md. 565, 185 A.2d 357 (1962).
[47]For other examples of cases in which cooperation led to a finding of voluntariness, see *Combs v. State*, 237 Md. 428, 206 A.2d 718 (1965); *Anderson v. State*, 237 Md. 45, 205 A.2d 281 (1964); *Dougher v. State*, 236 Md. 629, 204 A.2d 324 (1964); *McCray v. State*, 236 Md. 9, 202 A.2d 320 (1964); *Hall v. State*, 232 Md. 588, 194 A.2d 801 (1963); *Sessoms v. State*, 3 Md. App. 293, 239 A.2d 118 (1968).
[48]39 Md. App. 484, 386 A.2d 1238 (1978).
[49]*Id.* at 490, 386 A.2d at 1242 (quoting *United States v. Curiale*, 414 F.2d 744, 747 (2d. Cir.) *cert. denied*, 396 U.S. 959 (1969)). This was a valid third party consent search, which is beyond the scope of this paper. It does not matter whether it is a first person or third person consent search. For this factor, it matters only that a person with authority to consent gives the consent believing that no incriminating evidence will be found.
[50]282 Md. 625, 386 A.2d 780 (1978).
[51]58 Md. App. 61, 472 A.2d 114 (1984).
[52]*Id.* at 81, 472 A.2d at 124. *See also Ward v. State*, 52 Md. App. 664, 451 A.2d 1243 (1982) (relying on *Humphrey* in holding the consent to search the automobile trunk was voluntary when the defendant thought police would not find incriminating evidence).
[53]See text accompanying notes 31-36.
[54]See text accompanying notes 38-41.
[55]*See Johnson v. State*, 30 Md. App. 280, 352 A.2d 349 (1976) (consent found to be coerced because of physical intimidation, although the defendant was advised of his right not to consent); *see also Humphrey v. State*, 39 Md. App. 383, 490, 386 A.2d 1238, 1242 (1978) (although the consent was ruled voluntary because of the defendant's wife's cooperation with police, the court stated that "while not controlling," that the subject knew of her right to refuse consent was significant).
[56]*See Simms v. State*, 4 Md. App. 160, 242 A.2d 185 (1968) (consent ruled voluntary because of the defendant's cooperation even though he was not advised of his right to refuse consent); *see also Lopata v. State*, in which 18 Md. App. 451, 307 A.2d 721 (1973), a garage owner consented to a search of his garage for stolen property that the defendant allegedly stored there. The garage owner came to the police station and signed a consent form. The court ruled that the owner's cooperation in coming to the station to sign the consent form rendered the failure to warn him of his right not to consent insignificant. *See also Ricketts v. State*, 46 Md. App. 410, 417, 417 A.2d 465, 469 (1980), in which the court ruled the consent voluntary. The fact that the defendant was not advised of his right to refuse consent or of the purpose of the search "are factors to be considered, [but] they are not controlling."
[57]32 Md. App. 590, 363 A.2d 583 (1976).
[58]423 U.S. 411 (1976) (holding that custodial consent to search was voluntary even though the defendant was not advised of his right to refuse consent).
[59]*Fidazzo*, 32 Md. App. at 592, 363 A.2d at 584.
[60]In *Borgen v. State*, 58 Md. App. 61, 83, 472 A.2d 114, 126 (1984) the court stated that the defendant's signing of a consent form "cannot be deemed insignificant." *See Lopata v. State*, 18 Md. App. 451, 307 A.2d 721 (1973). *Cf. McCray v. State*, 236 Md. 9, 202 A.2d 320 (1964) (consent of the parents to search of an area where the son occasionally slept held voluntary even though they refused to sign a consent form).
[61]In *Jarrell v. State*, 36 Md. App. 371, 373 A.2d 975 (1977), *Johnson v. State*, 30 Md. App. 280, 352 A.2d 349 (1976) and *Whitman v. State*, 25 Md. App. 428, 336 A.2d 515 (1975), a consent form was signed but consent was nonetheless found to be coerced. See text accompanying notes 28-30.
[62]*See e.g., Whitman v. State*, 25 Md. App. 428, 336 A.2d 515 (1975) (the court noted that the defendant's wife who gave consent was a twenty-three-year-old mother of four with a tenth grade education who had never been arrested before or in custody); *Borgen v. State*, 58 Md. App. 61, 472 A.2d 114 (1984) (the court noted that no evidence was presented that this was the defendant's first arrest or that he was unfamiliar with the criminal justice system).
[63]236 Md. 450, 204 A.2d 322 (1964).
[64]*Id.* at 453, 204 A.2d at 323.
[65]*See, e.g., Smith v. State*, 62 Md. App. 627, 490 A.2d 1307, (1985) (the court found it significant that the defendant was not in custody when he consented to the search); *State v. Wilson*, 279 Md. 189, 367 A.2d 1223 (1977) (the court noted that the defendant was not in custody when he consented to the search); *Humphrey v. State*, 39 Md. App. 484, 386 A.2d 1238 (1978) (the court noted that the defendant's wife who consented was in her home and not in custody when she consented to the search).
[66]14 Md. App. 521, 287 A.2d 319 (1972).
[67]A comprehensive analysis of all consent search cases in the United States can be found in Lafave's *Search and Seizure* (2nd ed. 1986), to which the reader is especially directed.

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1. Eat more high-fiber foods such as fruits and vegetables and whole-grain cereals.

2. Include dark green and deep yellow fruits and vegetables rich in vitamins A and C.

3. Include cabbage, broccoli, brussels sprouts, kohlrabi and cauliflower.

4. Be moderate in consumption of salt-cured, smoked, and nitrite-cured foods.

5. Cut down on total fat intake from animal sources and fats and oils.

6. Avoid obesity.

7. Be moderate in consumption of alcoholic beverages.

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