

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
) v. CRIMINAL NO. 02-10013-WGY
)
RICHARD COLVIN REID)

DEFENDANT'S MOTION TO SUPPRESS STATEMENTS

Defendant moves to suppress statements allegedly made by him to law enforcement agents on December 22 and December 23, 2001, as well as any fruits of the statements.

The government has the burden of proving both (1) that defendant, who was subjected to custodial interrogation, waived his rights under Miranda v. Arizona, 384 U.S. 436, 444, 479, 86 S.Ct 1602 (1966), after being given required Miranda warnings; and (2) that defendant's statements were voluntary.

Information, described below, in reports provided in discovery make it clear (a) that the interrogation was illegal in that it occurred after defendant invoked his right to silence and (b) that, even had he not done so, his mental condition, as the interrogating agents knew, interfered with his making a voluntary statement.

CERTAIN SIGNIFICANT FACTS

Defendant, a passenger on American Airlines Flight 63, bound for Miami from Paris on December 22, 2001, was taken into custody shortly after a 12:55 p.m. landing at Logan Airport. (All time references are to Eastern Standard Time, i.e., local Boston time on December 22.) During the flight, after the events alleged in the indictment, defendant had been restrained by several male passengers and tied up by members of the flight crew. Shortly afterwards, at approximately 9:30 a.m., he had been forcibly medicated by an injection into his abdomen of 10 mg Diazepam (Valium) and 0.4 mg Narcan. Defendant had remained tied up throughout the rest of the flight. Approximately an hour before landing, he was forcibly injected with medication a third time, by an injection into his abdomen of 25 mg of Phenegren.

The flight landed at approximately 12:55 p.m. Four Massachusetts State Police officers boarded the airplane, removed defendant to the tarmac, and placed handcuffs on him. Defendant was allegedly informed of his rights at 1:00 p.m. (The report we have received does not say by whom and at what stage of defendant's removal from the airplane.) Defendant was placed in a Massachusetts State Police cruiser to await transport to the Massachusetts State Police Station at Logan Airport. The driver, Trooper Louis Santiago, began asking defendant various questions, and defendant responded by giving non-committal answers. The trooper asked defendant what his name was. Defendant said that his name could be gotten from his passport. The trooper asked where defendant was from. Defendant said only that he was from Europe. The trooper asked what had happened on the plane and what defendant had tried to do. Defendant asked several times why no media were present and there was a short discussion about whether the event was a "big deal" or not. At some point, defendant said: "You'll see, you'll see." Defendant then terminated the discussion by saying: "I have nothing else to say." (Emphasis is supplied.)

Another trooper and two FBI agents then drove defendant to the Massachusetts State Police station at Logan Airport. He was placed in a holding cell and remained there for 3-4 hours.

According to an entry on a page of an agent's handwritten notes that the government has provided, defendant was again informed of his rights at approximately 2:15 p.m.

At 4:20 p.m., Emergency Medical Technicians (EMT's) Ian Riley and Steven Solletti, of the City of Boston's Emergency Medical Services, arrived at the Logan police station. Riley and Solletti were told that defendant had been restrained and forcibly medicated in unknown dosages. Riley and Solletti contacted their supervisor, EMT Captain Robert Haley. The EMT's then made it clear to the FBI that defendant should be taken to a hospital for evaluation, and agreed to try to expedite the hospital evaluation. (Copies of a report of Captain Haley, a report of a physical examination, and a report of EMT Riley are attached as Exhibits A, B and C, respectively.) At approximately 4:56 p.m., the FBI permitted Riley and Soletti to enter defendant's cell and take his vital signs. His blood pressure, it turned out, was elevated (130/100) and his pulse was low (58). Riley and Soletti told the FBI that defendant's vital signs were off, again stating that defendant needed to be taken to a hospital for evaluation. The FBI told the EMT's that the agents needed to talk to defendant for about

15 minutes before the EMT's took him to a hospital. During the 15 minutes, the EMT's made arrangements with the nurse in charge of the Massachusetts General Hospital emergency room for defendant to be seen expeditiously.

Meanwhile, defendant was taken from his cell and brought off to an interview room. According to an FBI 302 report, defendant was informed of his Miranda rights at 5:07 p.m. A long interview began. The agents who questioned defendant were FBI Special Agents Bradley Davis and Charles Gianturco and U.S. Department of State Diplomatic Security Service Agent Dan Choldin.

After the interview had gone on for about 50 minutes, the EMT's asked another FBI Agent about defendant's situation and were told that the agents would not stop the interview. This was because defendant "was being so forthcoming." The EMT's requested access to defendant to check his vital signs. Access was refused. The EMT's believed that it was not medically appropriate for defendant to be questioned by the FBI. About two hours later, the FBI refused another request by the EMT's to check defendant's vital signs. At some point, Captain Haley called Emergency Medical Services's Dispatch Operations, and Deputy Superintendent Bosse arrived at the police station. The FBI assured Bosse that defendant was OK.

According to an FBI report, before the questioning, defendant had apparently been resting or sleeping in his cell. At the start of the interview, his hand shook once. He also drank lots of water. The report says that during the first part of the interview, defendant spoke slowly and his head rolled around, but that he became more animated as the interview progressed.

At around midnight, defendant was transported to Plymouth County Correctional Facility ("PCCF"). Agents David and Cholden went to PCCF the next day, Sunday December 23, and resumed the questioning. Before that questioning, defendant signed the PCCF advice of rights form, a copy of which is attached as Exhibit D.

PRELIMINARY ARGUMENT

Because the court has not yet heard the evidence on the matter, defendant cannot now make his final argument on whether the government can satisfy its burden to show the statements may be admitted into evidence. Nevertheless, the statements would appear to be almost certainly inadmissible on the

ground that defendant was subjected to questioning after unequivocally invoking his right to silence. Even apart from that ground -- seemingly conclusive of the issue -- information contained in the reports shows that the government would have a difficult time sustaining its burden to show that the statements are admissible.

a. Invocation of right to silence

If an individual in custody at any time invokes his right to silence or to counsel, questioning must stop. As the Court said in Miranda:
If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.

384 U.S. at 473-74, 86 S.Ct. 1627-28. "...[A]dmissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his 'right to cut off questioning' was 'scrupulously honored.'" Michigan v. Mosley, 423 U.S. 102, 104, 96 S.Ct. 321, 327 (1975) quoting Miranda, 384 U.S. at 474, 479, 86 S.Ct. at 1627, 1630. According to Mosley, "it is clear that police can not, as if by alchemy, negate ... [a defendant's] invocation of his right to remain silent by a mantra-like recitation of Miranda warnings." United States v. Tyler, 164 F.3d 150, 155 (3rd Cir. 1998) (giving Miranda warnings did not obviate earlier invocation of right to silence). See also Coppola v. Powell, 878 F.2d 1562, 1567 (1st Cir. 1989) (questioning after defendant said "if you think I'm going to confess to you, you're crazy" violated Miranda).

Here, after clearly showing his reluctance to be questioned and after the conversation about the media, defendant made the unequivocal statement: "I have nothing else to say." Given defendant's flat assertion of his right to silence, the later questioning of him is improper.

b. Other

Even had defendant not made this unequivocal statement, there is an obvious reason why the government would have a difficult time satisfying its burden of showing that the statements may be admitted: defendant's condition at the time he made the statements, coupled with the FBI's refusal to

follow the advice of the medical professionals whom the FBI had called to the scene that defendant should be seen by a physician. We briefly note some pertinent legal principles.

Courts must presume that a defendant did not waive his rights. United States v. Jackson, 918 F.2d 236, 241 (1st Cir. 1990). Thus, "a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained." Miranda, 384 U.S. at 475. Indeed, "the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights." Id. at 476 (emphasis added). Here, after arrest, defendant was placed in a holding cell for several hours before the interrogation began.

The due process voluntariness test takes into account the totality of all surrounding circumstances and involves "a weighing of the circumstances of pressure against the power of resistance of the person confessing." Dickerson v. United States, 530 U.S. 428, 120 S.Ct. 2326, 2331 (2000), quoting Stein v. New York, 346 U.S. 156, 185, 73 S.Ct. 1077 (1953). "Custodial police interrogation, by its very nature, isolates and pressures the individual . . . [It] trades on the weakness of individuals." Id., citing Miranda, at 445, 86 S.Ct. 1602. Beyond the pressures inherent in custodial police interrogation, a court's consideration of the totality of the circumstances includes consideration of "the tactics used by the police, the details of the interrogation, and any characteristics of the accused that might cause his will easily to be overborne." United States v. Palmer, 203 F.3d 55, 60 (1st Cir. 2000) quoting United States v. Rohrbach, 813 F.2d 142,144 (8th Cir. 1987). Where an individual's "will was overborne" or where his confession was not "the product of a rational intellect and a free will" his confession is inadmissible because coerced. "These standards are applicable whether a confession is the product of physical intimidation or psychological pressure and, of course, are equally applicable to a drug induced statement." Townsend v. Sain, 372 U.S. 293, 307, 83 S.Ct. 745, 754 (1963). See also Blackburn v. Alabama, 361 U.S. 199, 207, 80 S.Ct. 274, 280 (1960)(where confession came after eight or nine hour interrogation of suspect who was probably incompetent at the time, basic sense of justice affronted because of strong conviction that "our system of law enforcement should not operate so as to take advantage of a person in this fashion").

Moreover, “[k]nowing exploitation of a mental condition will likely run afoul of Miranda Inadvertent and unforeseen psychological pressure exerted by police conduct will not do so.” United States v. Gordon, 638 F.Supp. 1120, 1142 (W.D. Louisiana 1986)(no Miranda violation where police neither knew nor should have known of suspect’s psychological disorders). Cf. Rhode Island v. Innis, 446 U.S. 291, 303 n.8, 100 S.Ct. 1682, 1690 (1979) (“Any knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion might be an important factor in determining whether the police should have known that their words or actions were reasonably likely to elicit an incriminating response”).

Where, unlike here, interrogators ameliorated conditions that might interfere with a suspect’s knowing and intelligent waiver of Miranda rights, no exploitation of known susceptibilities warranting suppression has been found. See e.g., United States v. Morris, No. 01-6025, 2002 WL 660895 (8th Cir. April 23, 2002) (statements not coerced where FBI told wounded defendant to focus on recovering from wounds before speaking with them, consulted with physician about effects of medication before obtaining waiver, and verified that painkiller would not affect mental capacities); United States v. Nguyen, 250 F.3d 643 (8th Cir. 2001) (no coercion where Miranda warnings given and interrogation began only after medical attention for burn wounds).

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