

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

REPORT AND
RECOMMENDATION

v.

02-CR-117-S

FAKEBBA CEESAY,

Defendant.

REPORT

Before the court is defendant Fakebba Ceesay's motion to suppress post-arrest statements he made to federal agents on September 25, 2002. Ceesay claims that as a foreign national who also happened to be physically ill that morning, he did not understand the *Miranda* warnings administered to him, he felt compelled to answer the agents' questions, and that any statements he made were not voluntary. The government responds that this was a by-the-book arrest and interrogation, and whatever Ceesay's subjective beliefs, the agents did not speak or act coercively. The government is correct, and I am recommending that the court deny Ceesay's motion.

On November 26, 2002, this court held an evidentiary hearing on Ceesay's motion. Having heard and seen the government's witness and having considered the two exhibits, I find the following facts:

Facts

On September 18, 2002, a grand jury in this district returned a series of separate indictments against foreign nationals who allegedly had submitted forged letters to the Social Security Administration in an attempt unlawfully to obtain a social security card. Defendant Fakebba Ceesay, a citizen of The Gambia, was among those indicted. Special Agent Nathan Catura of the Office of Inspector General for the Social Security Administration ran records checks on this group of defendants in an attempt to determine their current whereabouts. He learned that Ceesay had applied to the State of Wisconsin for identification documents on September 6, 2002. Ceesay's application revealed a home address of 3602 Packers Avenue, Madison, Wisconsin, Apartment 201. Agent Catura gathered a team of agents to go arrest Ceesay. Agent Catura knew that Ceesay was a native of The Gambia and knew that he spoke English.

At approximately 8:30 a.m. on September 25, 2002, Agent Catura and five other agents from SSA, INS and FBI arrived at Apartment 201. All were dressed casually. Agent Catura knocked on the door and Omar Ceesay answered the door. Agent Catura showed his official identification, and Omar Ceesay allowed the agents into the tiny apartment. Agent Catura asked if Fakebba Ceesay or Modifa Cham was there. Omar Ceesay stated that there were two other people in the apartment's bedroom, but that neither Fakebba Ceesay nor Cham was present. Agent Catura asked for and received permission to check the apartment.

The agents fanned out. While Agent Catura was checking Omar Ceesay's driver's license, another agent gave Agent Catura the high sign, then introduced him to Fakebba Ceesay.

Agent Catura redirected his attention to Fakebba Ceesay (hereafter simply Ceesay) and asked if he could produce a visa or passport. Ceesay stated that they were in the closet behind Agent Catura; Agent Catura told Ceesay to retrieve them. Upon verifying that the person in front of him was Ceesay, Agent Catura displayed his badge and advised Ceesay that he was under arrest for having made false statements to the Social Security Administration. Agent Catura did not raise his voice, did not display his weapon, did not handcuff Ceesay, and did not physically touch him. Indeed, throughout their entire interaction in the apartment, Agent Catura spoke in a calm and conversational tone with Ceesay. He was able to understand Ceesay's English and it appeared that Ceesay understood what Agent Catura was saying to him.

Agent Catura pulled out a *Miranda* advisal card and told Ceesay that he was going to read him his rights. Agent Catura read the card verbatim. At no point did Ceesay verbally or physically indicate that he did not understand his rights, or that he did not understand what was happening. Agent Catura asked Ceesay if he understood what he had been read and Ceesay responded that he did. Agent Catura asked Ceesay if he had any questions about the advisals that had just been read; Ceesay responded that he did not. Agent Catura asked Ceesay if he was willing to waive his rights and speak with him. Ceesay said, "Yes." At no time during this advisal and subsequent questioning did Agent Catura raise his voice, touch

Ceesay, threaten him, promise him inducements, display his weapon, or engage in any other arguably coercive activity. The same is true for the other agents present in the apartment.

Agent Catura and Ceesay sat down at the kitchen table to begin the interrogation. It was a small apartment with lots of people milling around, so about halfway into the interview, Agent Catura told Ceesay that it would be easier to talk if they could go someplace in the apartment that was more quiet. Agent Catura took Ceesay into the small bathroom at the back of the apartment. No one else was present during this phase of the interview. Ceesay answered some of Agent Catura's questions, but declined to answer others. Ceesay's demeanor was unremarkable up to this point.

His appearance changed dramatically, however, when Agent Catura mentioned the false letter that led to Ceesay's indictment. Ceesay bent over and began taking deep breaths. It looked as if he might vomit. Agent Catura asked Ceesay if he was going to throw up. Ceesay responded that he was not. Agent Catura tried to calm Ceesay down by advising him to have a seat on the closed toilet, take some deep breaths, and pause for a moment to regain his composure.

Ceesay did these things, and after a minute or so, he seemed okay. Agent Catura asked Ceesay one or two more questions about the letter at which point Ceesay asked to speak to an attorney. Agent Catura asked if that meant Ceesay did not want to answer any more questions; Ceesay responded that this was the case, and that he wanted to talk to an attorney. Catura replied that that was fine and ended the interview. Both men left the

bathroom, Agent Catura placed handcuffs on Ceesay and took him from the apartment to be processed downtown. At no time during their interaction in the apartment did Agent Catura advise Ceesay of his right to contact his embassy pursuant to the Vienna Convention.

Analysis

In a sworn affidavit, Ceesay claims that he did not understand his *Miranda* rights and that his confession was involuntary. Ceesay alleges that because he is Gambian, did not understand the rights and waiver read to him by Agent Catura. He further alleges that because he was raised in a society with an oppressive police culture, he felt compelled to answer Agent Catura's questions. It didn't help, claims Ceesay, that he was physically ill during the interrogation.

As the preceding fact section indicates, to the extent that Ceesay's version of what occurred on September 25 in his apartment deviates from Agent Catura's version, I have found that Agent Catura's version is correct and Ceesay's version is incorrect. These findings essentially doom Ceesay's motion.

A confession is voluntary if the totality of circumstances shows that it was the product of rational intellect and free will rather than physical abuse, psychological intimidation or deceptive interrogation tactics that overcame the suspect's free will. *United States v. Huerta*, 239 F.3d 865, 871 (7th Cir. 2001). Coercive police activity is a predicate to finding a confession involuntary. *Id*; see also *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). The

Constitution does not protect suspects against confessions that are made for reasons other than official coercion. Therefore, absent coercion by his interrogators, it is irrelevant that a suspect is a foreigner unfamiliar with the American legal system who comes from a country in which the police beat and torture people who will not answer their questions. *United States v. Lawal*, 231 F.3d 1045, 1048-49 (7th Cir. 2000); *cf. Young v. Walls*, 311 F.3d 846, 850 (7th Cir. 2002) (it is irrelevant to suppression analysis whether defendant possessed intellectual capacity to reason abstractly about the legal system or to understand long term legal consequences of his acts).

That said, it *would* be relevant to the analysis if Agent Catura or his colleagues intentionally had exploited Ceesay's cultural or intellectual vulnerability, since these would be indicia of coercion to factor into the voluntariness determination. Other relevant factors include Ceesay's age, education, emotional or mental state, the length and nature of the interrogation, whether he was advised of his constitutional rights, the use of physical punishment or deprivation of physical needs; and the suspect's fatigue or illness. *Huerta*, 239 F.3d at 871.

In this case, six plain-clothed agents arrived at Ceesay's residence during daylight hours and entered peacefully with the consent of Omar Ceesay. Although there were many agents present in a small space, Ceesay's interaction was one-on-one with Agent Catura. Agent Catura orally placed Ceesay under arrest at the outset, but he did not handcuff him or otherwise physically restrain him. Agent Catura read Ceesay his *Miranda* rights, and

Ceesay said he understood them and was willing to waive them. Because Ceesay was able to communicate effectively in English, Agent Catura had no reason even to suspect that Ceesay did not actually understand his rights, or that Ceesay might feel some internal cultural compulsion to acquiesce to official interrogation. To the contrary, during his interview Ceesay demonstrated a firm grasp of his rights by choosing to answer certain questions but declining to answer others, then invoking his right to an attorney when confronted with the forged letter he alleged submitted to SSA.

The interview proceeded cordially, first at the kitchen table, then in the bathroom. Agent Catura moved Ceesay in an attempt to relax the situation, not to isolate Ceesay. Ceesay did not become ill until they moved; his symptoms appear to have been prompted by Agent Catura's display of the forged letter. Agent Catura did not exploit Ceesay's physical distress, he attempted to alleviate it. In any event, Agent Catura learned nothing more from Ceesay thereafter because after Ceesay calmed down he ended the interview by asking for a lawyer. The record does not reflect the length of the interview, but it must have been less than an hour and probably was less than 30 minutes. So, there is no evidence that Ceesay's statements were not legally voluntary.

In his reply brief, Ceesay sharpens his focus a bit, moving beyond intentional misconduct by the agents to something akin to a civil negligence theory. According to Ceesay, pursuant to the policies underlying *Miranda*, it was not enough for the agents to read him his rights and ask if he understood them. Because they knew he was a foreign national,

and because they saw him become physically ill during the interview, the agents had a further duty of special care to Ceesay that required them to ensure that Ceesay genuinely understood his rights and really meant it when he agreed to answer questions. Ceesay's position is understandable, but it's not the law. Agent Catura did everything that *Miranda* required of him when he read Ceesay his rights, asked Ceesay if he understood his rights, asked him he wished to waive them, and received affirmative responses. Agent Catura was not Ceesay's fiduciary, he was his adversary, and as such, he was not obliged to explore the depth and breadth of Ceesay's knowledge of his Fifth Amendment rights, nor was he obliged to second-guess Ceesay's decision to answer some questions but not others, or otherwise interpret the nuances of Ceesay's mood. *See United States v. Kontny*, 238 F.3e 815, 817 (7th Cir. 21001). Agent Catura sufficiently accounted for Ceesay's background, demeanor and sudden discomfort to comport with the laws and Constitution of the United States.

As something of a fallback to his fallback, Ceesay asks that the court forbid the government from arguing that the sudden onset of nausea when confronted with the false letter is evidence of his guilt. That is an in limine concern, not a suppression issue, and Ceesay should raise the issue at trial.

Finally, Ceesay notes that Agent Catura did not advise him of his right under the Vienna Convention to have his arrest reported to the Gambian consulate. This is not a ground to suppress evidence. *United States v. Lawal*, 231 F.3d 1045, 1048 (7th Cir. 2000).

The Marshals Service advised Ceesay of this right on September 25, 2002. The record does not reflect whether he requested notification, but this is irrelevant in any event.

In sum, applying the law to the facts establishes that there was no official coercion, Ceesay did understand his *Miranda* rights, and his statements were voluntary. There is no basis to grant his motion to suppress.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Fakebba Ceesay 's motion to suppress evidence.

Entered this 19th day of March, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge