

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

UNITED STATES OF AMERICA,

Plaintiff,

REPORT AND
RECOMMENDATION

v.

03-CR-125-C

JOSE L. LOPEZ,

Defendant.

REPORT

Defendant Jose L. Lopez, M.D., has been charged with fraud associated with the federal government's CHAMPUS health insurance program for military veterans. Before the court is Dr. Lopez's motion to suppress statements he made to postal inspectors on August 20, 2001 when they met with him at his clinic in Quezon City, Republic of the Philippines. Dr. Lopez contends that he was subjected to a custodial interrogation without the benefit of *Miranda* warnings; he further alleges that he felt compelled to answer the inspectors' questions. As discussed below, I have found that Dr. Lopez was not in custody at the time of the interview, and that any compulsion he felt was internal and not communicated to the inspectors, who conducted a professional and cordial interview. Accordingly, I am recommending that the court deny the motion.

On February 5, 2004, this court held an evidentiary hearing. Having heard and seen the witnesses testify, and having considered the exhibits, I find the following facts:

Facts

The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) was a federally-funded health care benefit program established to pay for civilian medical care received by eligible Department of Defense beneficiaries, including military retirees and their dependents. Several years ago, federal investigators began probing program participants for fraud. In August 2001, U.S. Postal Inspectors J. M. Rosandich and B. K. Washington traveled to the Republic of the Philippines to interview witnesses and targets. The inspectors had no arrest authority in the Philippines; their mission was simply to gather information and prepare reports. In fact, they did not even bring their firearms with them.

One target of their investigation was Jose L. Lopez, a medical doctor in Quezon City, who ran D&R Diagnostic Clinic. Dr. Lopez was born in 1951 and had graduated from college and medical school in the Philippines. He speaks and reads English fairly well. After his medical training, Dr. Lopez worked as a doctor in the Republic of Oman until 1998, when he returned to the Philippines to open his clinic.

During their first two weeks in the Philippines, Inspectors Rosandich and Washington interviewed approximately ten other witnesses before approaching Dr. Lopez. On August 20, 2001, at approximately 2:30 in the afternoon, they showed up at Dr. Lopez's clinic unannounced. The inspectors were accompanied by Rudi Buenaflor, a Filipino employed as an NCIS investigator. Agent Buenaflor was present simply to assist with

translation if there were communication difficulties. All three agents were wearing informal civilian clothing appropriate to the climate.

The inspectors knocked on the clinic door; Dr. Lopez answered personally. The inspectors identified themselves, explained their purpose, and asked Dr. Lopez if he would answer their questions. Dr. Lopez agreed and ushered them in to his personal office. Apparently there were no other staff members or patients present at the clinic.

Dr. Lopez's office was about 8' x 10' and furnished with a desk and chairs. Dr. Lopez seated himself behind his desk, while the agents sat on the other side of the desk facing him, the open doorway to their backs. The inspectors never told Dr. Lopez that he was under arrest or that he was not free to leave. There was sufficient room for Dr. Lopez to walk past the agents and out the door if he wished.

The inspectors questioned Dr. Lopez until approximately 5:15 p.m. The first two hours were a discussion of his involvement in the alleged fraud scheme, along with reviews of claim forms that the agents had brought with them. Following this, Dr. Lopez agreed to write a confession. Prior to putting pen to paper, the agents gave Dr. Lopez an oath, then had him fill out a form in which he acknowledged that he was giving his statement "voluntarily, without duress, promise of reward or threats." *See* Govt. Exh. 3 at 1.

Dr. Lopez neither expressed nor exhibited any distress or hesitation that might have led the agents to suspect his interaction with them was involuntary. Although the interview was lengthy, Dr. Lopez never asked for a break, never asked the agents to leave, never asked

for the interview to cease, and never asked for assistance of an attorney. Dr. Lopez was cordial and responsive throughout, never expressing any reluctance to answer the inspectors' questions. The entire interview took place in a pleasant, conversational tone. The agents never raised their voices, made no verbal or physical threats, nor said or did anything else that could have intimidated or coerced Dr. Lopez. After obtaining Dr. Lopez's written statement, the inspectors left. Dr. Lopez remained behind, free to go about his business.

Despite his pleasant and unremarkable demeanor while answering the inspectors' questions, Dr. Lopez now claims that he felt subjectively compelled to answer the inspectors' questions. Claiming to be one of many Filipinos who has an inferiority complex when dealing with Americans, Dr. Lopez testified at the suppression hearing that he could not refuse to answer the inspectors' questions. Dr. Lopez admitted that nothing the inspectors said or did caused him to feel that way, that he never verbalized his purported anxieties or fears to the inspectors, and that he did not exhibit any physical signs that would have alerted the inspectors that he was experiencing subjective distress.

Analysis

I. This was not a custodial interview

Dr. Lopez argues that before the postal inspectors interrogated him, they were required to provide him with adequate *Miranda* warnings,¹ but that they failed to do so.

¹ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

This argument is unavailing because *Miranda* warnings only are required prior to a custodial interview, see *United States v. Cranley*, 350 F.3d 617, 619 (7th Cir. 2003), and Dr. Lopez was not in the custody of the postal inspectors.

The test of fifth amendment custody is objective, not subjective: a suspect is in custody for *Miranda* purposes only if a reasonable person in his circumstances would believe himself unable to leave without the permission of the police. *Cranley*, 350 F.3d at 619. Such a belief would be reasonable if, under the totality of circumstances, the suspect were subject to a restraint on freedom of movement of the degree associated with a formal arrest. *United States v. Wyatt*, 179 F.3d 532, 535 (7th Cir. 1999). Among the factors to consider are whether the encounter occurred in a public place, whether the suspect consented to speak with the agents, whether the agents informed the suspect he was not under arrest and was free to leave, whether the agents moved the suspect to a different area, whether there was a threatening presence of several agents and a display of weapons or physical force, whether the agents deprived the defendant of documents needed to leave, and whether the agents used a tone of voice such that their requests likely would be obeyed. *Id.*

In the instant case, the inspectors approached Dr. Lopez in his own medical clinic. Although the ratio of agents to suspects was three to one, the agents were dressed casually, were unarmed, and approached Dr. Lopez deferentially. They asked if he would speak to them and he agreed. If Dr. Lopez had declined to be interviewed, then the inspectors would have had no choice but to walk away because they had no authority to arrest him. But Dr.

Lopez invited the inspectors into his clinic and picked the location of the interview. Although the office would have been crowded, space remained for Dr. Lopez to walk past the inspectors and out the door if he had wished to depart. Of course, it was *his* clinic, so it might have been awkward for him to leave the inspectors sitting in his office while he walked away, but the point is that the agents were not restraining his freedom. Dr. Lopez was free to ignore the inspectors and go about his business if he chose. Therefore, he was not entitled to *Miranda* warnings prior to being interviewed.

II. Dr. Lopez's statements were voluntary

Dr. Lopez also claims that his statements to the inspectors were not voluntary, and therefore are not admissible. Statements are voluntary if the totality of circumstances shows that they were 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 the interrogators, it is irrelevant that a suspect is a foreign national who answers questions because of a subjective compulsion arising out of foreign political or cultural perspectives. See *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 have been relevant to the analysis if the inspectors intentionally had exploited any perceived cultural or intellectual vulnerability because this would be an indicium of coercion to factor into the voluntariness determination. Other relevant factors include Dr. Lopez's age, education, emotional or mental state, physical state, the length and nature of the interrogation, whether he was advised of his constitutional rights, and the use of physical punishment or deprivation of physical needs. *Huerta*, 239 F.3d at 871.

In this case, Dr. Lopez claims that he is one of many Filipinos who suffers a cultural inferiority complex that requires him to genuflect to Americans. As a result of this complex, he was powerless to resist the inspectors' interrogation. I am skeptical of the self-abasing premise underlying Dr. Lopez's argument, but even if it were true, it would be irrelevant. First, Dr. Lopez did not present any objective evidence of this Filipino affliction other than some attempts to tease out anecdotes that bordered on racial stereotyping.

Second, there was no evidence that Dr. Lopez demonstrated to the inspectors any symptoms of knee-jerk obeisance that could have led them to suspect his interaction with them was not an act of free will. Dr. Lopez is a middle-aged, multilingual, world-traveling, practicing physician who runs his own medical clinic. It would have been insulting and insensitive for the inspectors to have approached this interview as if the doctor needed to

be advised that he was on equal footing with them. Apart from this, the inspectors had absolutely no cause to suspect, either prior to meeting Dr. Lopez or during their interaction with him, that he was mindlessly kowtowing to them. The inspectors were not aware—and had no reason to be aware—of any purported cultural vulnerability, and therefore they could not have exploited it, had it actually existed.

Thus, there was no coercion by the inspectors, nor were there any other circumstances that would establish involuntariness. In sum, there is no basis to grant Dr. Lopez’s 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 Jose L. Lopez’s motion to suppress evidence.

Entered this 26th day of February, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge