

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID A. CARLISLE,

Defendant.

ORDER

04-CR-0055-C-01

In a report and recommendation entered on May 7, 2004, the United States Magistrate Judge recommended that this court grant defendant David A. Carlisle's motion to suppress his August 18, 2003 statements to postal inspectors on the ground that they were made in violation of defendant's rights under Miranda v. Arizona, 384 U.S. 436 (1966), and that it deny the motion to suppress in all other respects. The government has filed objections to the report, arguing that no Miranda warning was required before the statements were made. The magistrate judge recommended denial of the remainder of the motion. He found that defendant's statements were not made involuntarily and that defendant was not coerced into disclosing the contents of his wallet. Defendant objects to these findings; he does not object to the magistrate judge's conclusion that probable cause

existed to arrest defendant on August 18, 2003, at the time he was questioned by postal inspectors.

After reviewing the objections, the report and recommendation and the record, I am satisfied that the magistrate judge reached the right decision on the motion to suppress. A fair evaluation of the evidence leads to the conclusion that a reasonable person in defendant's position would not have considered himself free to leave the post office while being questioned by postal inspectors. The inspectors told him he would not be able to leave until the end of the night, whenever that might be, and they refused every request by defendant to go outside for any reason. As the magistrate judge noted, the custody may have been temporary, but it was still custody.

On the other hand, the conditions of the custody were not such as to overcome defendant's free will. Other than his being kept in custody as long as he was, defendant was not subjected to any coercive police activity that would render his statements to the officers involuntary.

Although defendant objects to the government's use of the contents of his wallet as evidence at trial, he cannot establish that he was coerced into turning over the contents of his wallet. I have found that he was not subjected to any coercive activity during that interview and he has not suggested that anything happened during the interview that would have made him feel compelled to turn over the wallet. (He does assert that one inspector

threatened him with a strip search if he failed to give the inspectors his wallet, but the magistrate judge had good reason to find this assertion incredible.) Defendant cannot argue that the wallet's contents were the fruit of an illegal interview; nothing he said led them to suspect that he had stashed stolen money in his wallet. The inspectors suspected him of doing so before they began their interview because they had seen him removing money from his cash drawer that day when they had him under surveillance. Thus, I need not decide whether this might be a case in which physical evidence disclosed as a consequence of unwarned statements must be suppressed for deterrence reasons. Cf. United States v. Gilmore, 030-CR-30-C, slip op. at 13-14 (W.D. Wis. Mar. 16, 2004) (physical evidence that is fruit of Miranda violation need not be suppressed absent egregious conduct by officers).

ORDER

IT IS ORDERED that the recommendations of the United States Magistrate Judge are ADOPTED. FURTHER, IT IS ORDERED that defendant David A. Carlisle's motion to suppress statements and physical evidence obtained from him during questioning on March 18, 2004, is GRANTED with respect to his contention that his Miranda rights were violated when he was questioned without being told his rights and DENIED with respect to his remaining contentions.

Entered this 25th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge