

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL R. SIEGLER,

Defendant.

REPORT AND
RECOMMENDATION

00-CR-75-C

REPORT

Before the court for report and recommendation is defendant Michael R. Siegler's motion to suppress his June 14, 2000 statement to law enforcement officers. For the reasons stated below, I am recommending that this motion be denied.

Facts

On June 14, 2000, defendant Michael R. Siegler was an inmate at the Oxford Correctional Institution serving a sentence of incarceration following his guilty plea to federal gun charges. At a little past noon that day, Investigators Wilson and Sturz, members of the West Central Drug Task Force, met with Siegler at Oxford. They wanted to interview Siegler regarding allegations that he had attempted to retaliate against witnesses in his previous case.

The record does not reflect where this meeting took place within the institution or under what level of restraint Siegler was held during the interrogation.

The investigators treated the interrogation as custodial and began by reading Siegler his rights off of a pre-printed card. The card, which is rife with grammatical, spelling and typographical errors, states:

ADVISE OF RIGHTS

- 1) You have the right to remain silent.
- 2) Anything you say can and will be used against you in a court of law.
- 3) You have the right to talk to a lawyer for advice before making any statements or answering any questions and to have a lawyer present with you while you are being asked.
- 4) If you cannot afford a lawyer, one will be appointed to represent you before any questioning, if you wish.
- 5) If you decide to make statements or answer questions now without a lawyer present, *you will still have the right to stop at any time and ask for a lawyer.*

See Affidavit, dkt. #20, Exh. 2 (errors in original; emphasis added).

The investigators then read Siegler the back of the card, which states:

WAIVER OF RIGHTS

I HAVE BEEN INFORMED OF MY RIGHTS, ON THE REVERSE SIDE, AND I UNDERSTAND EACH OF THOSE RIGHTS AND HAVING THESE RIGHTS IN MIND, I HEREBY CONSENT OF MY OWN FREE WILL TO

VOLUNTARY WAIVE THEM AND MAKE A STATEMENT
OR ANSWER ANY QUESTIONS.

Id.

Siegler signed the waiver portion of the card on its provided signature line and Investigator Wilson signed the card as a witness. The investigators interrogated Siegler until about 2:25 p.m. that afternoon.

Analysis

Citing to *California v. Prysock*, 453 U.S. 355 (1981), Siegler concedes that the investigators were not required to convey his *Miranda* rights with talismanic precision. Nonetheless, Siegler contends that the advisal did not reasonably convey to him his right to stop questioning. Pointing to the italicized portion of Paragraph 5 of the advisal, Siegler argues that the erroneous substitution of the word “to” for “the” in the phrase “you will still have to right to stop at any time and ask for a lawyer” was materially misleading. According to Siegler, a reasonable person to whom this phrase is *read* would believe he was required “*to write*” to stop the interrogation and ask for a lawyer. Memorandum in support, dkt. #24, at 4. Siegler argues that it is imperative for a warning to be an effective and express explanation of a suspect’s *Miranda* rights, and that the challenged phrase was inadequate. The government responds that Siegler cannot prevail because, whatever the merits of his argument in the abstract, there is no factual support for it in his case. Siegler did not submit a sworn affidavit or testimony indicating that he actually was misled by Investigator Wilson’s advisal such that

he actually believed he could only stop his interrogation or obtain a lawyer if he made such requests in writing. As the government observes, it is Siegler's burden to produce definite, specific and detailed facts to support his claim. See *United States v. Randle*, 966 F.2d 1209, 1212 (7th Cir. 1992). A mere conclusory statement contained in a memorandum of law does not meet this burden. *Id.*, see also *United States v. Rodriguez*, 69 F.3d 136, 141 (7th Cir. 1995).

So, Siegler loses. Criminal prosecutions have different rules from Sophomore English class, and evidence will not be suppressed simply because the drug task force prepared and used an advisal form that would make a grammarian cringe. The operative question for suppression is whether the agents' advisal was so misleading that Siegler genuinely did not understand his *Miranda* rights. Siegler has the initial burden of showing that the question should be answered "yes"; he has not met this burden.

Indeed, he cannot: Siegler signed the waiver portion of the form, indicating that he understood his rights. Siegler is a veteran of the criminal justice system with a half-dozen prior felony convictions; if he had been confused by what the agents told him about his rights, he would have said something. Because he did not, I conclude that Siegler did in fact understand his rights prior to answering the agents' questions.

Nothing is gained by taking the analysis further. In defense of its advisal form, the government is reduced to arguing that the placement of the word "still" before the challenged phrase in Paragraph 5 makes the form confusing in the *opposite* direction because it implies the

existence of a prior required writing that was never mentioned. Government response, dkt. #25, at 3. This is not an inspiring riposte.

Actually, I suspect that the oral advisal did not follow the flawed card verbatim: when Investigator Wilson read the advisal form to Siegler, he probably substituted “the” for “to” in the challenged phrase because it trips the tongue for a reader to read the card as written. But this is not in the record, so my suspicion is mere speculation on which I do not rely.

Finally, it is not clear that this was a custodial interview for which *Miranda* rights were required in the first place. *See, e.g., United States v. McKinley*, 84 F.3d 904 , 908 n.4 (7th Cir. 1996)(whether inmate is in custody for *Miranda* purposes depends on totality of circumstances). But the government never raised this point, and the circumstances of Siegler’s interrogation are not in the record, so this is not a basis to deny the motion.

The bottom line remains unchanged: Siegler has not made a *prima facie* showing that he did not understand his *Miranda* rights. His signature on the waiver form shows that he did understand his rights. Therefore, his motion must fail.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Michael R. Siegler’s motion to suppress his statement.

Entered this 8th day of January, 2001.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge