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

UNITED STATES OF AMERICA,

Plaintiff,

REPORT AND RECOMMENDATION

v.

00-CR-114-S

RODNEY SPRUILL,

Defendant.

REPORT

Before the court for report and recommendation is defendant Rodney Spruill's motion to suppress his post-arrest statements to the FBI. Spruill contends that his statement was involuntary and that the government violated his Sixth Amendment right to an attorney. There is insufficient support for Spruill's claim that his confession was involuntary. It appears, however, that the government violated Spruill's Sixth Amendment rights by cancelling Spruill's meeting with his attorney without advising Spruill that his attorney was scheduled to meet him. Because of this, I am recommending that this court suppress all statements made by Spruill after 5:00 p.m. on January 12, 2001.

On March 13, 2001, this court held an evidentiary hearing on Spruill's motion. Having seen and heard the government's witness, having heard Spruill's telephonic witness, and having considered the exhibits, I find the following facts:

Facts

On December 13, 2000, the grand jury in this district returned a three-count indictment against defendant Rodney Spruill charging him with federal crimes relating to child prostitution. This court issued a warrant for Spruill's arrest.

On January 11, 2001, Chicago police arrested Spruill in that city on this court's warrant. At about 7:00 Friday morning, January 12, 2001, FBI Special Agents Katherine Brusuelas and Joshua Skule took custody of Spruill from the police and brought him to the FBI's office at the Dirksen Building in Chicago. The Dirksen building also houses the United States District Court for the Northern District of Illinois, the U.S. Attorney's Office, and the Federal Defender Program, among other entities. During transport the agents asked Spruill how he was feeling, but otherwise were silent. Once at their office, the agents took Spruill to a secure processing/interview room.

At some point the Chicago agents contacted their counterpart in La Crosse, Wisconsin, Agent Andy John, who advised them of the nature of his investigation into a Chicago-based prostitution ring that appeared to be recruiting underage girls in Wisconsin. Agent John identified other targets of his investigation and outlined what the evidence indicated about Spruill's role.

Once the federal agents picked up Spruill, his clock under that district's "17 hour rule" began to run. Pursuant to local rule, the government was required to present Spruill to the court for an initial appearance within 17 hours after being taken into federal custody.

This would have required Spruill to appear in court before the close of business on January 12, 2001. It is not clear when during the day the agents first notified the U.S. Attorney's Office in Chicago that Spruill was in federal custody.

At about 7:30 a.m., Agents Brusuelas and Skule began to interview Spruill. They advised Spruill that he and Cynthia Stepanek had been charged with prostitution of minors and transporting them across state lines. The agents then advised Spruill of his *Miranda* rights using a pre-printed form.[1] Prior to presenting the form to Spruill, the agents asked him if he wore glasses or contacts, whether he was under the influence of alcohol or drugs, and how far he had gone in school. Spruill confirmed that he was not under the influence of intoxicants and had received his GED. Following this exchange, Agent Brusuelas read the entire interrogation/advice of rights form to Spruill out loud. The agents then asked Spruill to read the first several lines of the form out loud to ensure that he really could read and understand the words. Spruill had no questions about the form's content, nor did he manifest any indications of confusion or misunderstanding. Spruill signed the waiver of rights at 7:47 a.m. and both agents signed as witnesses. Spruill did not ask for an attorney or make any comments that implied he might want an attorney.

The agents then interviewed Spruill for four hours. Before, during, and after the interview, the agents provided Spruill with cans of soda and breakfast from McDonald's.

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

During the interview, Spruill was willing to inculpate the others involved in the prostitution ring but essentially exculpated himself. This version of events contradicted Agent John's report of what the other participants had said. At some point during the interview, the agents told Spruill that they believed he was lying. Spruill, unfazed, continued to provide essentially the same version of events.

At about 11:45 a.m., the agents concluded their interview and processed Spruill. During this break, the agents provided Spruill with more food and a restroom break; Agent Brusuelas also contacted the Assistant United States Attorney on duty that day, Chris Niewohner, to find out when the initial appearance was scheduled before the local magistrate judge. AUSA Niewohner informed Agent Brusuelas that the initial appearance would be around 5:00 that afternoon.

At about 1:30 p.m., Agent Skule and Special Agent Steinbach began a second interview of Spruill. Agent Brusuelas joined them later. Spruill stuck with his story so the agents terminated the interview, leaving Spruill alone in the room for most of the afternoon.

During one of the two interviews, the agents asked Spruill if he would be willing to take a polygraph test. Spruill responded that he would want to check with an attorney before agreeing to do this. Upon Spruill's invocation of the "A" word, the agents asked if Spruill was asking for an attorney to be present during questioning. Spruill responded that he did not want an attorney for questioning; he simply wanted to check with an attorney before agreeing to a polygraph examination.

As the afternoon passed, the agents periodically checked on Spruill to see if he needed anything, but they did not attempt any further interview. Spruill basically was left alone for the entire afternoon.

Sometime later that same afternoon, the federal defender's office learned that Spruill had been taken into custody, so it assigned federal defender Heather Winslow, its duty attorney for the weekend, to represent Spruill for proceedings in the Northern District of Illinois. (It is not clear exactly when the appointment was made or why. That is, there is no indication that Spruill had requested appointment of an attorney or even that he had filled out and submitted an affidavit of indigency. It may be that the district court in Chicago automatically notifies the federal defender's office of all arrests and requires a federal defender to attend the initial appearance for efficiency's sake. This, however, is not of record.)

It appears that the first call Attorney Winslow received was from AUSA Niewohner, who told her that Spruill was to be arraigned at 5:20 p.m. that evening. In the Northern District of Illinois, it is common for a federal defender to meet her clients for the first time in the courtroom just prior to the initial appearance; occasionally the first meeting takes place in the marshal's lockup in the Dirksen Building. Federal defenders do not routinely seek out their newly-appointed clients elsewhere in the building.

Winslow arranged with Niewohner to have the agents bring Spruill to the courtroom at about 5:00 p.m. so that Winslow could interview him before the hearing. The AUSA did

not advise attorney Winslow that Spruill already was in the Dirksen Building, nor did Winslow ask. Apparently, no one told Attorney Winslow that Spruill had been in FBI custody since approximately 7:20 that morning.

As 5:00 approached, the agents returned to the interview room to take Spruill to his initial appearance. The agents asked Spruill one more time whether he had been honest with them. They reminded him that the information he had already provided would be memorialized in a written report that would be turned over to the prosecutors for comparison with other information already in the government's possession. The agents told Spruill that this was his last chance to be truthful with the FBI.

Spruill bit: he announced that he wished to provide a more truthful version of his actual involvement in the charged prostitution ring. The agents responded that Spruill was scheduled for an initial appearance, and would have to appear before the judge in the next few minutes unless he signed a form waiving his right to a timely initial appearance. Spruill replied that he would waive his initial appearance.

When advised of Spruill's waiver, AUSA Niewohner contacted Attorney Winslow to advise her that the initial appearance was canceled. Winslow responded that Spruill had a right to a hearing within 17 hours. Niewohner replied that Spruill had signed a waiver of this right and "was not in a place where he could see [Winslow] at that time." Transcript, Dkt. 30, at 68. Winslow protested that she was uncomfortable with the fact that Spruill had

waived his right to an initial appearance without the benefit of counsel. Niewohner replied that Spruill was cooperating and was not interested in speaking with Winslow.

Following Spruill's oral waiver of his 5:20 initial appearance, the agents provided him with a pre-printed advisal and waiver form which he signed at 5:45 p.m. That form, which the agents tailored for Spruill, indicated that Spruill was aware of his right to be brought without unnecessary delay before the magistrate judge for the purposes of arraignment, "being advised of the charges against me and of my rights," and having bail fixed. *See* Gov't Exh. 4. This form did not mention Spruill's right to an attorney at the hearing, it did not advise Spruill that an attorney already had been appointed to represent him, and it did not advise Spruill that his appointed attorney had scheduled an interview with him at 5:00 p.m., prior to commencement of the initial appearance. The agents did not orally advise Spruill of these facts, either.

Thereafter, Spruill spilled his guts to the FBI until about 8:30 p.m. One of the agents then reduced Spruill's statement to writing, handing each completed page to Spruill to review and initial. Spruill then agreed to some active cooperation by making telephone calls. At about 10:00 p.m. the agents provided dinner. The agents worked Spruill until about 2:30 a.m. the next morning, Saturday, January 13, 2001. At that point, the agents took Spruill to the MCC-Chicago.

Analysis

Spruill argues that his post-arrest statements must be suppressed because they were involuntary and because the government obtained them by violating his Sixth Amendment right to counsel. The government responds that its agents did not overbear Spruill's will, and that Spruill's Sixth Amendment right to counsel never vested because Spruill never asked for an attorney. As discussed below, I find that Spruill's statements were probably voluntary, but that the government definitely violated his Sixth Amendment right to counsel.

I. Voluntariness

A confession is voluntary if, in the totality of circumstances, it is the product of defendant's rational intellect and free will, and not the result of physical abuse, psychological intimidation, or deceptive interrogation techniques that overcame the defendant's free will. *United States v. Huerta*, 239 F.3d 865, 871 (7th Cir. 2001). Coercive police activity is a necessary predicate to any finding that a confession was not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment. *Id.*, quoting *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). Coercion is analyzed from the perspective of a reasonable person in the suspect's position. *Id.* Factors relevant to the analysis are the defendant's age, education, intelligence level, mental state, the length of the detention, the nature of the interrogation, inclusion of advice about constitutional rights, the use of physical punishment, and the effect of narcotics, alcohol, or fatigue on the defendant. *Id.*

In this case, the relevant circumstances cut in both directions. Militating in favor of voluntariness, Spruill was old enough, smart enough, and sufficiently in possession of his mental faculties to look out for his own interests during his interaction with the FBI that Friday. Militating toward involuntariness is the sheer length of time and number of interviews undertaken by the FBI. Spruill arrived at the FBI office at about 7:30 a.m. and was questioned three different times over the next 13 hours, first for four hours, then for an unknown amount of time, finally for three more hours. Even taking into account comfort breaks, snacks and down time, 13 hours is a long time to remain in an interview room, and the FBI's decision to confront, re-confront, and re-reconfront Spruill until they obtained a statement they believed borders on coercion.[2]

Somewhat tempering the coercive effect of this approach is the manner in which the FBI handled Spruill. At a basic level, the FBI looked after Spruill's physical needs, offering and providing beverages, food, a bathroom break and rest. On the next level, the agents interacted civilly with Spruill. They conducted their three interviews courteously and professionally. There were no threats, no shouting, and apparently, no overpowering accusations that Spruill was lying. Spruill, for tactical reasons, declined to present sworn testimony on this matter at the evidentiary hearing; I surmise from this that he had no constitutional complaints about the circumstances of his interviews.

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[2] Spruill actually remained in the room longer, to review the written version of his confession. He then worked for the FBI for another 6 hours or so. However, this is all irrelevant to the voluntariness of Spruill's late-afternoon confession.

Third, the agents advised Spruill of his *Miranda* rights at the outset of the first interview and obtained written acknowledgments and waivers from Spruill that he understood his rights and voluntarily waived them. When the agents challenged Spruill to take a polygraph test, Spruill stated that he wanted to consult a lawyer first. The agents properly followed up by asking Spruill if this meant he wanted the assistance of an attorney during questioning. Spruill replied that he did not; he only wished to talk to an attorney before agreeing to be polygraphed.[3]

The agents' third advisal, regarding Spruill's right to a prompt initial appearance, is more problematic. When Spruill accepted the agents' offer of a "last chance" to tell the truth, they advised him of his right to appear before the judge within 17 hours for a preliminary examination to be advised of his "rights." So far, so good. But they neglected to advise him that, by this time, an attorney had been appointed to represent him, and that she was waiting in the court room to talk to him. As discussed in the next section, this omission is a Sixth Amendment violation. Does it also render Spruill's statement involuntary?

It could, but I don't think the facts here would support such a conclusion. The Supreme Court explained in *Moran v. Burbine*, 475 U.S. 412 (1986), that a police officer's

[3] I infer that the polygraph discussion took place during one of the first two interviews; I further infer that these interviews both concluded before Ms. Winslow was appointed to represent Spruill. Because of this, for the purposes of Spruill's voluntariness claim, I find that the agents had no obligation to explore further Spruill's statement regarding an attorney.

failure to advise an arrested but unindicted defendant that an attorney is trying to reach him does not violate the Fifth Amendment, nor does it violate the Due Process Clause. *Id.* at 425, 433. If the police advise a defendant of his *Miranda* rights, they have sufficiently ameliorated the coercive effects of the custodial interrogation. *Id.* at 425. The facts here do not show any egregious behavior by the agents that would take this case outside the purview of *Moran*. Spruill has not argued that, but for the agents' failure to advise him that Winslow awaited, he would have acted differently. Although the agents should have told him this, there is no indication that this omission broke Spruill's will.[4]

Spruill also argues that the delay in presenting him to the court for his initial appearance violated 18 U.S.C. §3501. Section 3501(a) provides that a defendant's confession is admissible at trial if the judge first determines that it was voluntary. The statute goes on to list five circumstances which the court should consider, all of which are part of the list set forth above in the citation to *United States v. Huerta*, 239 F.3d at 871. Section 3501(c) states that a delay in bringing a defendant before the court for an initial appearance "shall not be inadmissible" solely because of the delay so long as the court finds that it was voluntary, "and if such confession was made or given by such person within six hours immediately following his arrest or other detention."

[4] This conclusion does not ameliorate the Sixth Amendment violation under some sort of a "no harm-no foul" analysis.

Attempting to reconcile subsections (a) and (c), the Court of Appeals for the Seventh Circuit has held that a presentment delay exceeding six hours does not itself render a confession inadmissible. *See United States v. Gaines*, 555 F.2d 618, 623 (7th Cir. 1977). Instead, the length of the delay "is merely another factor to be considered by the trial judge in determining voluntariness." *Id.* Here, there was a ten-hour delay between Spruill first arriving in custody and Spruill's first scheduled appearance before a federal magistrate judge. On top of this, Spruill agreed at the last minute to waive his hearing, thus delaying his appearance for another two to three days. Spruill argues that this delay demonstrates coercion and involuntariness pursuant to the statute.

I disagree. I am troubled that the agents kept Spruill in their offices all day without taking him before the court. On this record, however, I cannot say that this was the agents' fault or even their intent. As noted in the fact section, the evidence does not show when the FBI first contacted the Assistant United States Attorney; when the Assistant United States Attorney first contacted the magistrate judge's chambers (or the clerk of court); or why the magistrate judge set Spruill's hearing for so late in the afternoon.

If the FBI and/or the AUSA put Spruill on ice for six hours or more without notifying the court that he was in federal custody, then they acted in willful disobedience of §3501, and I would presume that they delayed the initial appearance for the purpose of obtaining a confession from Spruill.[5]

[5] My conclusion is based in part on the FBI taking custody of Spruill at 7:30 a.m. on a workday. I would not infer any disregard for §3501 if the arrest had occurred after hours.

If, however, the agents promptly notified the AUSA that Spruill had been picked up, if the AUSA promptly contacted the court to request a hearing, and if the court, for whatever reason, set the hearing later in the day, then the agents and the prosecutor are blameless.

Perhaps the prosecutor and the FBI intentionally delayed Spruill's initial appearance; or perhaps they just put him on a back burner because he was an out-of-district case involving relatively minor charges, in the scheme of federal prosecutions. On the other hand, perhaps the duty judge in Chicago on the Friday before a holiday weekend was swamped and, despite prompt notification, had no opportunity to hold Spruill's initial appearance earlier. In the absence of any evidence in one direction or the other, I will not speculate as to the reason for the delay. Accordingly, I decline to find that the government acted with improper purpose by holding Spruill so long before bringing him to the court.

But regardless *why* Spruill's initial appearance was delayed, the fact remains that it *was* delayed. Pursuant to § 3501 and *Gaines*, this court must consider the delay in determining the voluntariness of Spruill's eventual confession. I find that the delay was irrelevant to Spruill's decision to change his story.

The crucial fact is the timing of Spruill's decision: he was actually on his way to court when he decided to take advantage of his "last chance" to tell the truth. Spruill had already endured ten hours of federal custody without incriminating himself; had he waited but ten minutes more, he would have been ensconced in the neutral confines of the magistrate judge's courtroom to be advised of his rights. Spruill knew this, yet chose not to get on the

elevator. Common sense and experience indicate that Spruill's decision was based on the then-descending deadline for providing a final and binding version of events to the FBI. It was irrelevant whether one, ten, or 20 hours had passed before this moment: the catalyst was the deadline itself, not the amount of time that had preceded it. As demonstrated by the college student who never cracks a book until the night before the final exam, or the civil litigants who fritter away two years of discovery (or in this court, two months) only to settle their case the weekend before jury selection, nothing prompts decisive action quite like a firm, meaningful deadline. So it was with Spruill.

Therefore, although I do not condone the delay, on this factual record I am not in a position to condemn it. There are no indications that the delay, or any other circumstance, either singly or in combination, overcame Spruill's free will and caused him to confess involuntarily. Accordingly, this portion of Spruill's motion to suppress should fail.

II. Spruill's Sixth Amendment Right to Counsel

Spruill argues that the government violated his Sixth Amendment right to counsel because it interrogated him not only post-indictment, but after the court had appointed an attorney to represent him. The government responds that Spruill's right to an attorney under the Sixth Amendment did not vest prior to his confession because Spruill never asked for an attorney. I conclude that although that may be true, the government crossed the line

by failing to advise Spruill that his appointed attorney was looking for him and had actually set up a 5:00 meeting in the courtroom.

By way of background,

> The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." In *Michigan v Jackson*, 475 U.S. 625 (1986), we held that once this right to counsel has attached and has been invoked, any subsequent waiver during a police-initiated custodial interview is ineffective.

McNeil v. Wisconsin, 501 U.S. 171, 175 (1991). The right attaches "at or after the initiation of adversary judicial criminal proceedings–whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." *Id.*, citations omitted. Therefore, "there can be no doubt" that a defendant has the right to the assistance of counsel at any postindictment interview with law enforcement authorities. *Patterson v. Illinois*, 487 U.S. 285, 290 (1988).

Because Spruill was arrested following his indictment on federal charges, his Sixth Amendment right attached the moment he was taken into custody. The government concedes as much. The government, however, disputes that Spruill ever *invoked* his Sixth Amendment right to counsel.

The government's legal premise is correct: Spruill's Sixth Amendment right to counsel may have existed throughout his interaction with the FBI in Chicago, but it vested only if he actually invoked it. *Patterson*, 487 U.S. at 291. Toward this end, the agents had no legal obligation to advise Spruill separately of his Sixth Amendment right to counsel so long as

they apprised him of his Fifth Amendment right to counsel as part of their *Miranda* advisal. *Id.* at 293-94. By telling Spruill that he had the right to consult with an attorney, to have a lawyer present during questioning, and to have a lawyer appointed if he could not afford one, the agents conveyed to Spruill "the sum and substance of the rights that the Sixth Amendment provided him." *Id.* at 293. If Spruill waived his right to an attorney for Fifth Amendment purposes, then apparently, he waived his right to counsel for Sixth Amendment purposes:

> As a general matter, then, an accused who is admonished with the warnings prescribed by this Court in *Miranda* . . . has been sufficiently apprised of the nature of his Sixth Amendment rights, and of the consequences of abandoning those rights, so that his waiver on this basis will be considered a knowing and intelligent one.

Id. at 296.

That being so, there is a critical difference between Fifth and Sixth Amendment waivers that is material to Spruill's motion:

> This does not mean, of course, that all Sixth Amendment challenges to the conduct of postindictment questioning will fail whenever the challenged practice would pass constitutional muster under *Miranda*. For example, we have permitted a *Miranda* waiver to stand where a suspect was not told that his lawyer was trying to reach him during questioning; *in the Sixth Amendment context, this waiver would not be valid. See Moran v. Burbine*, 475 U.S. at 424, 428. . . .
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> Thus, because the Sixth Amendment's protection of the attorney-client relationship . . . extends beyond *Miranda*'s protection of the Fifth Amendment right to counsel, . . . There will be cases where a waiver which would be valid under *Miranda* will not suffice for Sixth Amendment purposes.

Patterson, 487 U.S. at 296, n. 9, emphasis added.

This seems to be exactly the sort of case anticipated by the Court. Attorney Winslow had arranged a 5:00 meeting with her client in the courtroom. The government was aware of this meeting; in fact, AUSA Niewohner was responsible for advising the agents to bring Spruill to court early for that meeting. Therefore, there is no dispute that Spruill's attorney was trying to reach him and that the government knew this. But its agents never told Spruill.

If AUSA Niewohner or the agents had told Spruill that an attorney had been appointed for him and had arranged to meet with him at 5:00, then they could have sought from him a waiver of his right to an attorney under the Sixth Amendment. As *Patterson* makes clear, because of Winslow's attempts to talk to her client, the government could no longer rely on its basic *Miranda* advisal to Spruill to questioning him further. This is because Spruill's previous *Miranda* waiver "no longer sufficed." In light of the information known to AUSA Niewohner, the agents could not continue to question Spruill unless they first advised him that Winslow was his attorney and that she wanted to see him, and then obtained from Spruill a waiver of his *Sixth* Amendment right to counsel. By failing to do so, the government forfeited its right to continue to question him.

There is no indication that the agents advised Spruill about his imminent meeting with his federal defender before they suggested that he waive his preliminary examination and make a third statement. The preliminary examination waiver form that the agents subsequently presented to Spruill after his oral waiver did not provide him with the

information necessary to effect a Sixth Amendment waiver. The form, although slightly customized, doesn't even use the word "attorney" or "lawyer," let alone specifically advise Spruill that he had already obtained an actual federal defender who was waiting to meet him in the courtroom to provide legal advice and assistance.[6]

Therefore, it was inaccurate, presumptuous and arrogant for AUSA Niewohner to brush aside Winslow's protests by asserting, without foundation, that Spruill was not interested in speaking with her. Spruill didn't even know that Winslow existed because the government withheld this information from him. Although such behavior is allowable under the Fifth Amendment, it is not allowable under the Sixth.

Under the circumstances, I find no fault with the agents, because they were only doing what they were supposed to do: try to get a usable confession from Spruill. The Supreme Court has observed that "the ready ability to obtain uncoerced confessions is not an evil but an unmitigated good." *McNeil*, 501 U.S. at 181. Accordingly, "admissions of guilt resulting from valid *Miranda* waivers are more than merely desirable; they are essential to society's compelling interest in finding, convicting and punishing those who violate the law." *Id.* The FBI agents were simply doing their job as they understood it. They did

[6] Other portions of this form suggest that it probably is aimed more at arrestees who have not yet been charged in a complaint or indictment. Such people would not be entitled to the same Sixth Amendment advisals that Spruill should have received.

Even so, it's remarkable that the form does not specifically state that a defense attorney will attend the preliminary examination (or will be appointed forthwith) to assist the arrestee in his interactions with the government. Whether this is a tactical editing decision or just poor drafting, it's misleading and it should be changed.

everything that was asked of them and more than was required to ensure the voluntariness of Spruill's statements. Their failure was based on an obscure legal distinction between the Fifth and Sixth Amendments that happened to apply to Spruill.

It was the prosecutor's obligation to understand this distinction and apply it, if not as a result of his keen knowledge of the applicable Supreme Court precedents, then at least out of a sense of fair play. Although this court has no authority to mold police conduct for its own sake, *see Moran v. Burbine*, 475 U.S. at 425, in this case the application of a little common sense and courtesy would have brought the government into compliance with the Sixth Amendment. "The Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent." *Maine v. Moulton*, 474 U.S. 159, 176 (1985). Here, the government intentionally isolated an indicted defendant from his appointed attorney for the purpose of continued interrogation and investigation beyond the district court's local rules. The government may not justify its investigative tactics with a purported waiver that Spruill made without first having been advised of facts that were material to his decision and constitutional in scope.

All the government had to do to comply with its constitutional obligations was pass along to Spruill the fact that an attorney had been appointed to represent him and would like to meet with him. Had Spruill then agreed to make his third statement, the government would have had clean hands. But we'll never know, because the government neglected to

provide Spruill with this information. As noted, this violated his Sixth Amendment right to counsel. Therefore, any statement that Spruill made after he missed the meeting his attorney had set up for 5:00 p.m. on January 12, 2001 is tainted.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court grant defendant Rodney Spruill's motion to suppress all statements he made after 5:00 p.m. on January 12, 2001 and deny his motion in all other respects.

Entered this 3rd day of April, 2001.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge