

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW E. MATTICX,

Defendant.

REPORT AND
RECOMMENDATION

01-CR-76-S

REPORT

Before the court is defendant Matthew Matticx's motion to suppress his numerous statements made following his July 10, 2001 arrest. For the reasons stated below I am recommending that this court grant part of the motion and deny the rest.

On August 29, 2001, I held an evidentiary hearing on Matticx's motion. Having heard and seen the witnesses and having considered the exhibits, I find the following facts:

Facts

At about 1:00 p.m. on July 10, 2001, the Madison Police Department broadcast a dispatch to its patrol officers directing the arrest of Matthew Matticx, a suspect in a gun case. Officers Bartley Kinney and Jerry Goehring, driving separate squad cars, located Matticx driving his car on the east side and followed him to a gas station where they stopped his vehicle. The officers got out of their cars, drew their firearms and shouted at Matticx to

put his hands where they could see them. Once Matticx complied, Officer Kinney opened the driver's side door and ordered Matticx onto the ground. Matticx complied, and the officers placed him under arrest, cuffing Matticx's hands behind his back. Two other officers arrived on the scene but were quickly distracted by a car across the street believed to be associated with Matticx. Officers Goehring and Kinney patted down Matticx and secured him in the back seat of Officer Goehring's squad car, still handcuffed.

Matticx was agitated throughout this entire encounter, repeatedly telling the officers that they had the wrong man and that he was going to sue them. During his incessant monologue, Matticx told Officer Goehring that he wanted to talk to Officer Kinney, who was out of earshot.

Officer Kinney walked over, stood outside the squad car and asked Matticx what he wanted. Matticx volunteered for the n^{th} time that the officers had the wrong guy and that Matticx had been shot at a night or two earlier. Matticx insisted that there had been no need to stop him and handcuff him. Officer Kinney replied that the police had information implicating Matticx in a gun threat. This increased Matticx's agitation; he told Officer Kinney that they had the wrong guy because *he* was actual the victim.

Matticx alleged that the real bad guys had shot at his car the night before, and that a look at his tires would reveal damage from the gunshots. Based on this claim, Officer Kinney checked both sets of wheels and the entire exterior of Matticx's car; he found no

bullet damage. Officer Kinney reported this to Matticx, who responded that the damage already had been fixed.

Officer Kinney then asked Matticx if he knew the person in the car across the street that the other officers had just stopped. Matticx replied that the person driving the other car was his cousin, then continued that “Yeah, my cousin might have a piece, 'cause these motherfuckers been shooting at me the last two nights. He's got my back.”

The officers sought and obtained Matticx's consent to search his vehicle: apparently they found nothing of evidentiary value. The officers transported Matticx and his cousin to the police station and placed Matticx in an interview room. The 6' x 8' windowless room was furnished with a table, three chairs and a toilet behind a privacy partition. Matticx was no longer handcuffed.

At about 3:00 p.m. Detective Melanie Palmer entered to interview Matticx. Although Detective Palmer already had obtained information about this investigation from numerous sources and although Officer Kinney was sitting outside the door of the interview room, no one had told her that Matticx had made statements at the arrest scene.

Detective Palmer introduced herself to Matticx, explained why the police had arrested him and explained that she was there to interview him. Matticx interrupted Detective Palmer at this point, repeatedly informing her that he had been on Allied Drive simply to ask “Keesha” where he could find Sherry Campbell. After repeating this statement several times without stopping, Matticx paused to breathe, allowing Detective Palmer to interject

that she had some questions about these matters but first had to advise Matticx of his *Miranda* rights.¹

Detective Palmer read Matticx his rights from a wallet card. In response to Detective Palmer's waiver questions, Matticx responded that he understood his rights, he would talk to Detective Palmer, and he had been read his rights in the past other matters.

The interrogation lasted about 20 to 30 minutes. When it was over, someone processed Matticx and took him to a general holding cell whence Matticx could see Detective Palmer as she attended to other matters. From the holding cell Matticx repeatedly shouted to Detective Palmer, asking her to come over so he could talk to her. The first several times, Detective Palmer responded in order to determine whether Matticx was in distress or needed something. Invariably, all Matticx wanted was to renew his argument that the police had no case, Keesha would not testify and they should set him free. After a few rounds of this, Detective Palmer ignored Matticx's importunity.

Analysis

Although Matticx's post-arrest chatter was incessant, as a legal matter it can be divided into four parts. Part one contains Matticx's post-arrest volunteered statements; part two contains Matticx's un-*Mirandized* response to Officer Kinney's question; part three consists of Matticx's volunteered statements to Detective Palmer; and part four contains

¹ See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

Matticx's responses to Detective Palmer's questions after receiving and waiving his *Miranda* rights. Matticx's statements in parts one, three and four are admissible against him at trial during the government's case in chief; his statements during part two are not.

The government does not dispute that Matticx was in custody at all relevant times, which obliged the police to provide a *Miranda* advisal before questioning him. *See United States v. Westbrook*, 125 F.3d 996, 1002 (7th Cir. 1997). As the government correctly observes, however, *Miranda* comes into play only when the police subject an arrestee to express questioning or its functional equivalent. *Rhode Island v. Innis*, 446 U.S. 291, 300-01. Volunteered statements are not protected by *Miranda*. *See Westbrook*, 125 F.3d at 1002.

Accordingly, when Matticx initiated conversation with Officer Kinney by beckoning him to the squad car in which Matticx sat undisturbed, he had no right to be *Mirandized*. *See United States v. Cooper*, 19 F.3d 1154, 1162 (7th Cir. 1994) (fact that arrestee encouraged dialogue is critical factor in determining whether statement was compelled).

Matticx now claims that Officer Kinney initiated a custodial interrogation by asking Matticx what he wanted. *See* Brief in Support, dkt. 24, at 4. Unfortunately for Matticx, this admirably bold interpretation of events suffers the twin disadvantages of flouting common sense and contradicting undisputed material facts. Matticx was so keen on broadcasting his version of events that he summoned an otherwise-occupied officer and demanded that he listen to Matticx talk. This is the antithesis of interrogation. Everything Matticx said until

Officer Kinney asked *him* a question was volunteered and can be used against Matticx at trial.

This includes Matticx's statements in response to Officer Kinney's observation that he saw no bullet damage to Matticx's car. Officer Kinney was not attempting to elicit information from Matticx, he merely was reporting what he saw in response to Matticx's exhortation that he check the car. The test is whether an objective observer would have believed that Officer Kinney's words or acts were reasonably likely to elicit an incriminating response. *Westbrook*, 125 F.3d at 1002. Officer Kinney's remarks about the car did not cross this threshold. In fact, Matticx's response wasn't incriminating so much as grist for future impeachment: it simply demonstrates that Matticx's patter, like stream water, slips in whatever direction provides the least resistance.

Things changed, however, when Officer Kinney asked Matticx if he knew who was in the other car that the police had just intercepted. Asking an arrested suspect if he knows the identity of other suspects qualifies as custodial interrogation. *Westbrook*, 125 F.3d at 1003. The government concedes this point, but contends that there is a conceptual and legal break between Matticx's literal response to the question (fingering his cousin) and his immediately subsequent statement that his cousin might have a gun because he needed it to protect Matticx from the people who had been shooting at him.

Perhaps there are circumstances in which the government's gloss would be logical, but not here. Although Matticx's comments about his cousin may not have been directly

responsive to the question that Officer Kinney actually posed, they were *in response* to the question and were a logical segue from it. Given Matticx's demonstrated garrulity, it was reasonably foreseeable that he not only would identify the detained driver for Officer Kinney but also would provide additional information about him. The government's attempt to split hairs on this point is understandable but unavailing. Because it obtained Matticx's statement about his cousin as a direct result of Officer Kinney's question, that statement is tainted by the lack of *Miranda* warnings and it should not be used during the government's case in chief.²

Things changed again when Matticx met with Detective Palmer at the police station. Unable to keep his mouth shut, Matticx interrupted her pre-interrogation introductory statement to harangue her about the same issues he had raised to the officers on the scene. Normally, a court would presume that the taint attendant to an arrestee's un-Mirandized statements would remain unpurged until he had received a *Miranda* advisal and waived his rights. See *Oregon v. Elstad*, 470 U.S. 298, 314 (1985); *United States v. Muhammad*, 120 F.3d 688, 697 (7th Cir. 1997).

Here, however, *Innis* controls the analysis because Matticx once again was volunteering information so obstreperously that Detective Campbell was compelled to listen to him until he paused long enough for her to get a word in edgewise and alert him that he

² As the government observes, because Matticx's response to Officer Kinney's question was voluntary, it could be used at trial to impeach Matticx if he chooses to testify. See *Harris v. New York*, 401 U.S. 222, 224-25 (1971).

had a *Miranda* advisal coming. Matticx was in a different location speaking to a different officer on a different topic than that broached by Officer Kinney's one impermissible question. There was absolutely no police compulsion of the sort with which the Court was concerned in *Miranda* and its progeny. Once again, Matticx's unwillingness or inability to keep his mouth shut drives the analysis: his initial statements to Detective Palmer were indisputably volunteered *and* voluntary, notwithstanding the earlier *Miranda* violation that Detective Palmer had not yet had the opportunity to purge. Matticx was so intent on being heard that he repeatedly demanded Detective Palmer's attention *after* she had run out of questions to ask him. I recommend that the government be allowed to offer at trial any statements that Matticx made during this stage of his interaction with the police.

Finally, we have Matticx's statements to Detective Palmer after she was able to advise him of his *Miranda* rights and obtain his waiver. As noted above, this cleared any lingering taint because Matticx, now fully aware of his rights, was willing to resupply and amplify the information previously given. *See Elstad*, 470 U.S. at 314; *United States v. Gupta*, 183 F.3d 615, 618-19 (7th Cir. 1999).

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court grant in part and deny in part defendant Matthew Matticx's motion to suppress his post arrest statements. Specifically, I recommend that this court find that all of Matticx's statements to the police on July 10, 2001 are admissible against him during the government's case-in-chief except those made to Officer Kinney following the officer's inquiry whether Matticx knew who was in the other car.

Entered this 18th day of September, 2001.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge