

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONCLAIR HENDERSON-EL,

Defendant.

ORDER

04-CR-162-S-2

On December 2, 2004 this court held a telephonic hearing to discuss with the affected parties the need to take evidence on defendant Monclair Henderson-El's suppression motions. Henderson-El did not participate personally but was represented by his attorney, Jonas Bednarek. The government was represented by Assistant U.S. Attorney Meredith Duchemin.

The government stated that it will not use in its case in chief any evidence obtained by the Iontrac Ionizer device used to check for cocaine ions in the Lincoln Navigator. This obviates the need for an evidentiary hearing on the motion to suppress docketed at 28. Because the government reserved its right to use this evidence to impeach or in rebuttal, Henderson-El might file a motion in limine under *Daubert* to exclude this evidence from *any* use at trial. That is an issue for another day.

The government conceded that all but one of the statements made by Henderson-El during the search of his apartment were obtained in violation of *Miranda*. Therefore, it will not use these statements in its case in chief but it reserves the right to use these statements to

impeach or in rebuttal. Henderson-El does not claim that these statements were involuntary, so he is not challenging their use for proper impeachment or rebuttal.

The government *does* intend to use in its case in chief Henderson-El's statement that the Brinks safe key was his. The government contends that Henderson-El volunteered this statement and that it was not in response to questioning or the functional equivalent of questioning. This is the only portion of the suppression motion on which we will take evidence at the December 3, 2004 hearing.

Entered this 2nd day of December, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge