

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERALD W. SACHSENMAIER,

Defendant.

REPORT AND
RECOMMENDATION

04-CR-058-C

REPORT

The grand jury has charged defendant Gerald W. Sachsenmaier with membership in a cocaine distribution conspiracy in northern Wisconsin during the Spring of 2003. Among the witnesses who might testify against Sachsenmaier at trial are Lisa Connell and Kim Larrabee, each of whom made statements to Investigative Sergeant Russ Cragin of the West Central Drug Task Force and each of whom confirmed her statements under oath to the grand jury. Sachsenmaier has moved to suppress Connell and Larrabee's statements, contending that they resulted from unlawful coercion by Sergeant Cragin. Sachsenmaier is incorrect: there was no coercion. Therefore I am recommending that this court deny Sachsenmaier's motion to suppress.

On April 25, 2005, this court held an evidentiary hearing on this motion. Having heard and seen the witnesses testify, having judged their credibility, and having considered all the affidavits and other documents submitted by both sides, I find the following facts:

Facts

On June 18, 2003 at about 2:40 in the afternoon, Investigative Sergeant Russell Cragin, Investigator Chad Holum and Sheriff's Deputy Missy Zwiefelhofer of the West Central Drug Task Force visited 1908 Second Street in Menomonie to arrest Jerry Sachsenmaier on a state probation warrant. Also present were Lisa Connell and Connell's mother Rosalie Morgan, who owned the house. Connell answered the door and fetched Sachsenmaier, who stepped out onto the front porch. The officers explained why they were arresting him and advised him that they intended to charge him in the near future with cocaine trafficking. A patrol officer arrived and transported Sachsenmaier to the Dunn County Jail.

Thereafter, the three officers spoke with Connell on the front terrace for between 15-30 minutes. The agents told Connell that she was not under arrest and that they had no intention of arresting her at that time. No one yelled at, touched, displayed weapons to, or made any other threatening gesture or statement to Connell. Connell made statements incriminating Sachsenmaier in cocaine trafficking.

At the conclusion of the discussion, Investigator Holum asked if Connell would come to the Dunn County Sheriff's Department voluntarily to provide a written statement. Connell agreed to do so, so a deputy sheriff taxied Connell and her mother to the department. Connell sat in a small interview room with her mother and prepared a two-page handwritten written statement on a form that began with this preprinted statement:

I, Lisa Connell, VOLUNTARILY make the following statement to: _____, who has identified himself to me as a law enforcement officer of the West Central Drug Enforcement Group. I have been advised that I DO NOT have to make any statements. If I do make a statement, it can and will be used in a court of law against me. No threats or promises have been made to me to induce me to make this statement. I have been advised that I can talk to a lawyer or anyone else before making this statement. I have also been advised that if I do not have the money to pay for a lawyer, the court or judge may appoint one for me. I know that I can STOP writing this statement at anytime that I want to.

Govt. Sup. H'ing. Exh. 2. Connell signed both pages of her handwritten statement. At some point after writing this statement, Connell and her mother were taken home.

That same evening, June 18, 2003, Sergeant Cragin drove to Kim Larrabee's residence in rural Dunn County (perhaps a redundant characterization) to ask her about Sachsenmaier and cocaine. Cragin's college-age son was in the squad car as a criminal justice intern on a "ride-along" but he remained in the car while his father spoke to Larrabee.

Because Larrabee's roommate was home, Sergeant Cragin met with Larrabee in her driveway. It was still light out. Larrabee was very nervous. At the time, Larrabee was 20 years old, with a high school education. The tone of the discussion was conversational. Sergeant Cragin did not yell at, touch, displayed a weapon to, or make any other threatening gesture or statement to Larrabee. Sergeant Cragin advised Larrabee that she was not under arrest and he had no intention of arresting her that evening. Larabee told Sergeant Cragin at least three times during their conversation that she did not want to answer a particular

question, but Larrabee never told Cragin that she did not wish to speak to him; neither did she ever ask or demand that he stop asking her questions or that he leave.

Sergeant Cragin started by telling Larrabee that he wanted to talk about Sachsenmaier; she responded that she hardly knew him and that she “did not want to talk about it.” *See* Sup. H’ing. Govt. Exh. 7. Sergeant Cragin persisted, advising Larrabee that he knew she had bought two grams of cocaine from Sachsenmaier on May 23, 2003, and he probably told Larrabee that she faced possible prosecution for cocaine trafficking down the road. Larrabee responded that she did not want to talk about the matter. Then she talked about the matter, explaining that she never uses drugs and that she did not know why she did that night. Sergeant Cragin asked Larrabee if she got two grams of cocaine from Sachsenmaier that night; Larrabee responded that she did not want to comment on this as she hardly knew Sachsenmaier and did not want to get him in trouble. Sergeant Cragin repeated the question, asking Larrabee if she just would confirm whether she had in fact purchased the two grams of cocaine from Sachsenmaier on May 23. Larrabee responded that she would confirm that she did, but that she was not going to make any more statements about it. Sergeant Cragin terminated the conversation and departed. Larrabee remained at her home, unarrested.

Analysis

Sachsenmaier seeks to suppress from his trial Connell and Larabee's statements, claiming that Sergeant Cragin coerced the women into falsely incriminating him. Under the Due Process Clause, Sachsenmaier has the right to exclude from his trial third party statements that result from "extreme coercion or torture." *United States v. Chiavola*, 744 F.2d 1271, 1273 (7th Cir. 1984); *see also Buckley v. Fitzsimmons*, 20 F.3d 789,795 (7th Cir. 1994). The threshold envisaged by courts is high: "statements extracted by beatings and other forms of psychological torture" that are "revolting to the sense of justice" cannot be used to secure a conviction. *See Miller v. Fenton*, 474 U.S. 104, 109 (1985). What the Supreme Court had in mind were confessions "extorted by officers of the state by brutality and violence," for instance by "cutting [the suspects'] backs to pieces with a leather strap with buckles on it." *Brown v. State of Mississippi*, 297 U.S. 278, 279 (1936). Against this horrific backdrop, it seems almost petty for an accused drug dealer to invoke the Due Process Clause to suppress third-party statements obtained by brief, cordial, noncustodial interrogations that apparently irritated the two interrogatees.

Even if this court employs the test used to analyze the voluntariness of a defendant's own statements, nothing occurred in this case that possibly could justify suppression of any statements. Statements are voluntary if the totality of circumstances shows that they were the product of rational intellect and free will rather than physical abuse, psychological intimidation or deceptive interrogation tactics that overcame the suspect's free will. *United*

States v. Huerta, 239 F.3d 865, 871 (7th Cir. 2001). Coercive police activity is a predicate to finding a confession involuntary. *Id*; see also *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). Factors important to the determination include the suspect's age, education, intelligence and mental state; the length of his detention; the nature of the interrogation; whether he was advised of his constitutional rights; the use of physical punishment or deprivation of physical needs; and the suspect's fatigue or use of drugs. *Huerta*, 239 F.3d at 871. See also *United States v. Gillaum*, 355 F.3d 982, 990 (7th Cir. 2004).

The totality of circumstances in this case establish that Sergeant Cragin subjected Connell and Larrabee to brief, noncustodial, routine questioning. Connell and Larrabee now claim to have felt bullied by Sergeant Cragin, but what they suffered at his hands was mildly persistent followup questioning. Perhaps this made them uncomfortable, but it was not unconstitutional. Acting as remora to the alleged big fish in a drug conspiracy is not a risk-free proposition. Unwanted attention from pesky drug agents may be an unwelcome annoyance to hangers-on but without more it does not violate the Due Process Clause. Connell's and Larrabee's regrets at having inculpated Sachsenmaier and the resulting testimonial vacillation and recantations demonstrate lack of resolve on their part, not coercion on Sergeant Cragin's part. Connell and Larabee made voluntary statements.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Gerald Sachsenmaier's motion to suppress statements made by Lisa Connell and Kim Larrabee.

Entered this 18th day of May, 2005.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

May 18, 2005

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Re: ___ United States v. Sachsenmaier
Case No. 04-CR-058-C

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before May 31, 2005, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by May 31, 2005, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures

cc: Honorable Barbara B. Crabb, District Judge