

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

DEALLO GORDON,

06-CR-103-S

Defendant.

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On August 23, 2006 defendant Deallo Gordon pled guilty to knowingly and intentionally distributing 5 grams or more of a mixture or substance containing cocaine base. He moves to suppress his post arrest statement on the ground that it was involuntary.

On July 27, 2006 the Honorable Stephen L. Crocker, United States Magistrate Judge, held an evidentiary hearing. On August 11, 2006 he recommended that defendant's motion to suppress his statement be denied.

On August 18, 2006 defendant filed objections to the report and recommendation. Specifically, he objects to the Magistrate Judge's finding that the agents did not threaten him. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews the report and recommendation and finds as follows.

FACTS

On May 11, 2006 defendant was arrested and interviewed by Agent Mayers. Mayers advised the defendant that he had the opportunity to

co-operate and tell the truth and that if he did not one of his alleged co-conspirators would have that opportunity. Mayers did not threaten defendant that he would not see his children again if he refused to cooperate. Mayers did not tell the defendant that if he asked for an attorney he would not be provided an opportunity to cooperate.

About 8:18 Mayers advised the defendant of his Miranda rights. The defendant then signed the Miranda waiver form. The interviews lasted from 8:30 a.m. to 11:40 a.m. Defendant never asked for an attorney. He was allowed to use the restroom and provided a soda. Defendant never voiced or exhibited any signs of distress that would have suggested he felt overcome by his situation.

The defendant is 31 years old and had been arrested 16 times previously. He has a high school education and is in good physical and mental health.

#### MEMORANDUM

Defendant claims his post arrest statement was involuntary. A statement is voluntary if the totality of circumstances shows that it was the product of rational intellect and free will rather than physical abuse, psychological intimidation or deceptive interrogation that overcame the suspect's free will. United States v. Huerta, 239 F.3d 865, 871 (7<sup>th</sup> Cir. 2001). Coercive police activity is a necessary predicate to finding a confession involuntary. Id. Factors to be considered include the suspect's age, education, intelligence and mental state, the length of his detention, the

nature of his interrogation, whether he was in custody, whether he was advised of his constitutional rights, the use of physical punishment or deprivation of physical needs and the suspects's fatigue or use of drugs. Id.

\_\_\_\_\_Considering these factors the Court finds that defendant's statement was voluntary. He was 31 years of age, had a high school education and was in good mental health. Although he was in custody he had been advised of his Miranda rights. There is no evidence that the interviewing agent deprived the defendant of any physical needs or coerced or threatened him. There is no basis to find that defendant's statement was involuntary.

Accordingly, the Court adopts the Magistrate's report and recommendation to deny the defendant's motion to suppress his post-arrest statement. Defendant's motion to suppress his statement will be denied.

ORDER

IT IS ORDERED that the recommendation of the Magistrate Judge to deny defendant's motion to suppress his statement is ADOPTED.

IT IS FURTHER ORDERED that defendant's motion to suppress his statement is DENIED.

Entered this 29th day of August, 2006.

BY THE COURT:

/s/

JOHN C. SHABAZ

District Judge