

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

CALVIN BRUCE,

Defendant.

REPORT AND
RECOMMENDATION

07-CR-057-S

REPORT

Before the court for report and recommendation are defendant Calvin Bruce's motion to suppress his post-arrest statements (dkt. 26) and motion to suppress evidence obtained during a warrantless search of his residence (dkt. 27). Bruce did not brief the second motion, so the court can deny it as waived. *See Anderson v. Litscher*, 281 F.3d 672, 675 (7th Cir. 2002).

This leaves Bruce's motion to suppress his March 28, 2007 post-arrest statements which he claims were coerced by the detectives' threats against his family and threats to take his case to federal court if he did not cooperate. The government responds that the police made no improper threats and that Bruce's decision to cooperate was a voluntary one. The government is correct and I am recommending that the court deny this motion to suppress.

FACTS

Most relevant to Bruce's voluntariness claim is a CD recording of the detectives' March 28, 2007 interrogation of Bruce at the police station (attached to dkt. 30). The recorded conversation speaks for itself, but I have quoted and synopsisized portions of it below. The

parties also have provided police reports, including a March 30, 2007 report by Detective Dorothy Rietzler commemorating her March 28, 2007 interview of Bruce. Finally, the court held an evidentiary hearing on June 28, 2007 at which Detective Rietzler, Officer Denise Markham and Bruce testified. Having listened to the CD, having read the documents, having seen and heard the witnesses and judged their credibility, I find the following facts:

On March 28, 2007, defendant Calvin Bruce was 30 years old. He was involved in a romantic relationship with Endia Matthews, who lived at 5187 Chester Circle in Madison with their four-month old son, Amier (and Matthews' other older children). At that time, Bruce had a lengthy criminal history, including drug convictions in Cook County, Illinois in 1993, 1994, 1996 and 2002, Cook County convictions in 2002 for domestic battery and property damage, and a Dane County, Wisconsin conviction in 2004 for battery. Bruce had a total of over 50 arrests, fourteen since 2005 in Dane County (many for operating while revoked, others on drug charges). On March 28, 2007, Bruce still was subject to conditions of release imposed in 2005 by the Dane County Circuit Court arising from still-pending charges of substantial battery and second degree recklessly endangering safety.

At approximately 2:30 p.m. on March 28, 2007, Dane County Narcotics and Gang Task Force members Officer Denise Markham performed a traffic stop of a car in which Calvin Bruce was the passenger. Fellow task force member Detective Dorothy Rietzler and other officers arrived to assist. Bruce was arrested on an outstanding warrant and other officers took him to the West Side Police Station. There, officers recovered marijuana from Bruce's shoe and buttocks. The officers knew that Bruce was on bond and therefore could have charged him with felony bail jumping and held him at least overnight.

Back at the scene of the stop, Endia Matthews had driven over to see what was happening to Bruce. who had called her on his cell phone. Detective Rietzler talked to Matthews, learning that Matthews was on probation herself and was driving on a revoked license. Detective Rietzler could have arrested Matthews for operating after revocation and for violating her probation; instead, she asked Matthews to consent to a search of her residence on Chester Circle. Matthews agreed.

Detective Rietzler and Officer Markham returned to Matthews' apartment along with other officers to conduct the search and to interview Matthews. Although Matthews insisted that Bruce did not actually live with her, she admitted that all of the men's clothing at the apartment belonged to Bruce. Detective Rietzler found a roll of \$2,580 cash in the pocket of one of Bruce's jackets. Matthews had been unaware of this money; in fact she told Detective Rietzler that just the night before she had asked Bruce if he had any money so she could buy food for Amier. Bruce had told her that he did not have any money. When Detective Rietzler displayed Bruce's wad of cash, Matthews began sobbing hysterically.

Meantime, Officer Markham recovered from the garbage can in the garage baggies with the corners cut off, a strong indication of drug repackaging and distribution. Matthews could not explain why these cut baggies were in her garbage. In the garage sat a van belonging to Bruce's brother Omar. Officers found behind the van's headlight a baggie containing a large amount of crack cocaine (the total weight turned out to be slightly more than 50 grams, about two ounces). Matthews, still crying hysterically, continued to insist she had no idea what was going on in the house; she almost fell over when Detective Rietzler showed her the bag of crack.

After some additional questioning and after completing their search, Detective Rietzler and the officers left for the police station. Matthews remained at home with Amier.

At about 5:30 p.m. that evening Detective Rietzler met with Bruce to interrogate him and to attempt to enlist him as an informant. The interview room was small and sparsely furnished. Detective Rietzler was in plain clothes; there always was one other uniformed, armed officer present during the interview, although their identities changed. After obtaining Bruce's background information, Detective Rietzler provided Bruce with *Miranda* warnings from her preprinted card. Bruce stated that he understood his rights and was willing to answer questions. Although Detective Rietzler recorded the first portion of the interview as required by Wis. Stat. § 968.073, about 52 minutes later, after Bruce agreed to cooperate, she stopped recording to demonstrate her intent to protect the confidentiality of any information he provided to her.

Detective Rietzler advised Bruce that he had the opportunity to help himself. Bruce asked about Matthews and the kids. Detective Rietzler replied that the two older children were with a friend and that Matthews was home with Amier. Bruce asked if he was going to jail; Detective Rietzler stated that she had not made that decision yet, but that it was her decision to make. When Detective Rietzler began to read Bruce his rights, he observed that "that means I'm being locked up." Detective Rietzler replied that this was not necessarily true.

Detective Rietzler did not reveal to Bruce at that time that she had recovered his cash and the two ounces of crack from 5187 Chester Circle. She simply advised him that he faced felony drug charges because of the marijuana, but that she did not want him to go to jail that night. Detective Rietzler explained possible charges and expressed an interest in "what they had found at the apartment" still without revealing that she knew about the contraband.

Bruce denied living with Matthews, but admitted that he visited her there regularly. Detective Rietzler talked with Bruce about his brother's van parked at Chester Circle (in which the officers had found the bag of crack) and Bruce denied knowing where the keys were. In fact, officers had recovered these keys from Bruce when they arrested him on the traffic stop. Detective Rietzler asked Bruce if there were any drugs, guns or large amounts of cash in Matthews' apartment. Bruce responded that there were no guns or drugs, but that there was some money in a shoe box upstairs to pay rent and utilities. Bruce denied that there was any other money in the house.

Detective Rietzler told Bruce that they had found baggies with corners missing at Matthews' apartment. Detective Rietzler explained that this was a sign of drug trafficking. Bruce suggested otherwise, blaming the children. Detective Rietzler dismissed this explanation:¹

Rietzler: Ninety-nine percent of the time people got garbage like that, they are maintaining a drug house.

I could charge your girl with that right now. . . .She could go to jail today. Just for driving the car. You call her over, and you know she's revoked, you know, she doesn't need that, so can you tell me about this, those baggies, I'm not talking about one or two I am talking several.

Bruce: My kids use them baggies most all of the time, play with them, put chips in 'em, candy. You have a lot of kids in that house.

Rietzler: You want your girl to eat this charge, then?

¹ Because Bruce included this particular exchange in his opening brief, I am repeating verbatim it in the facts in order to present fully what Bruce deems particularly important to his motion.

Bruce: Huh?

Rietzler: You want your girl to eat this charge? To eat it? Because that's bullshit. You know as well as I know, kids, they don't take, they don't tear corners out of baggies. Okay? They don't tear corners out of baggies. And when I send those to the lab and your prints come up on that, then you are gonna have a hard time. Remember this is your chance to cooperate.

. . . I go to the district attorney and I say "he told me those lunch baggies are for his kids to put the Cheerios in," that's not cooperating. Not at all.

And I know you're not feeling good yourself, I really do have you in a hot seat. And there is another decision that's pretty strong right here, is federal or state? I know you got to know some . . . Those baggies made me look a little harder in your house and you know what was in that house.

Bruce: No, I don't know. Alright? No I don't.

Rietzler: So when the fingerprints come back on the shit I found in that house. . . . I can go federal or I can go state. With your history the feds would take you in a heartbeat, with the amount of stuff I found in there you're probably looking at 20 years, and fed time is fed time, okay? I am not playing! I am giving you a chance to help yourself. Or I can go state which you know as well as I do in this county, maybe a year and five years' paper . . .

Detective Rietzler again explained to Bruce his opportunity to help himself. Detective Rietzler explicitly told Bruce that she was not threatening him, that she was telling him the way things worked. Detective Rietzler stated that she could throw him in with the big fish who got lengthy federal prison sentences, or he could help himself. Detective Rietzler provided an

example of a suspect who got caught with $\frac{3}{4}$ of a kilo of crack whom she did not even present to the prosecutor for charges, versus those who lied to her:

There is the other [*end of the*] spectrum: I let you go, you screw me, I don't play any more, I go to the feds and do what I need to do. That's the worst, right here, okay?

There's a whole gamut in between. I can't promise you anything and say definitely tonight "Calvin, I can guarantee you . . ." I am not gonna. The only thing I can guarantee tonight is not to put you in jail. But I have to go to the district attorney or the U.S. Attorney and then I plead your case.

As Detective Rietzler had warned Bruce a moment earlier, "you pimp me, then I pimp you." But Detective Rietzler exhorted Bruce:

. . .The reason I love being a drug detective is I can give people the opportunity to help themselves and . . . to change their lives; and I happen to believe you'd like to see that little guy grow up, from the outside, not from the inside. I am not threatening you, but I am telling you straight up . . .

About 26 minutes into the interview Detective Rietzler finally told Bruce that the police had found "what was in the van." She offered to flip Bruce and maintain the confidence of his cooperation. Bruce said he wanted to talk to Matthews first; Detective Rietzler refused. Bruce observed that Matthews did not know about the drugs; Detective Rietzler agreed that she believed this to be true. Indeed, several times Detective Rietzler told Bruce that she believed Matthews when Matthews denied knowledge; Detective Rietzler agreed that Matthews genuinely did not know anything about the drugs and money at 5187 Chester Circle.

Bruce asked what Detective Rietzler wanted him to do; Detective Rietzler replied that she wanted him to set up some bigger drug dealers. Detective Rietzler repeated that she was not making any promises about who would prosecute him, but warned Bruce that if he said he would cooperate and then broke his promise, she would refer his case to the feds for prosecution.

Detective Rietzler reported to Bruce that Matthews started crying after they found Bruce's money in the house because Bruce had told Matthews the night before that he did not have any money to help the kids. This was the first Bruce was aware that the police had found his cash; his only response was, "You found my money too." Bruce asked if he could have the money back if he helped out; Detective Rietzler replied that he could not. Bruce continued to try to reclaim his money. Detective Rietzler asked Bruce where his cash had come from; he claimed that some of it was Matthews' tax return; later he changed his story and said he got it from selling two cars. Detective Rietzler accused Bruce of lying, but repeated that she still would give Bruce a chance to help himself. Detective Rietzler asked Bruce to admit that the money she found in his jacket was from selling drugs; he insisted that it was not. Detective Rietzler asked Bruce why he had not told Matthews about the money if it was not from selling drugs; Bruce retorted dismissively, "Would you tell your man about it?"

Detective Rietzler told Bruce that Matthews had been really upset when she found the crack; she repeated that she did not believe Matthews knew what was at the house. Bruce confirmed that Matthews did not know. They talked some more about the crack, then Bruce announced that he wanted to go home to his kids and would give Detective Rietzler a good target. Detective Rietzler again stated that she could not make any promises to Bruce and that with his prior history, the feds would be interested in him, so that any cooperation would be

made known to the prosecutors. Bruce responded that he did not have a choice. Detective Rietzler admonished him that he did.

Detective Rietzler explained how the police used informants and asked Bruce where he got his cocaine. Bruce began identifying the person against whom he intended to cooperate; Detective Rietzler turned off the tape recording to maintain the confidentiality of this information.

In light of Bruce's promise to cooperate, Detective Rietzler released him from custody that night as promised. Bruce, however, did not fulfill his side of the deal and never cooperated against anyone else. Not quite a year later, on April 18, 2007, the federal grand jury indicted Bruce on one count of possessing over 50 grams of crack cocaine with intent to distribute it.

ANALYSIS

I. The Consent Search

Bruce moved to suppress the crack and cash recovered from 5187 Chester Circle on the ground that Detective Rietzler coerced Endia Matthews into consenting to this search. Matthews, however, asserted her Fifth Amendment privilege and declined to testify at the evidentiary hearing, so there is no factual support for Bruce's claim. *See* June 21, 2007 Order, dkt. 40. The parties did not brief this motion. The court may deny it as waived. *See Anderson v. Litscher*, 281 F.3d 672, 675 (7th Cir. 2002).

II. Bruce's Statements

(A) Bruce's Unrecorded Statements

When Bruce agreed to cooperate with Detective Rietzler, Detective Rietzler turned off the recorder to demonstrate her intent to maintain the confidentiality of his cooperation. Wis. Stat. § 968.073 requires Wisconsin law enforcement officers to record custodial interrogations. Bruce implies that Detective Rietzler's failure to record the most inculpatory portion of his confession is grounds to suppress. But "state law is irrelevant to a determination of reasonableness under the Fourth Amendment." *United States v. Brack*, 188 F.3d 748, 759 (7th Cir. 1999), quoting *Kraushaar v. Flanigan*, 45 F.3d 1040, 1047 (7th Cir. 1995). If the unrecorded statements were to be suppressed, it only would be because they were coerced, a contention discussed and dismissed in the next section.

(B) Voluntariness

Bruce contends that this court should suppress his post-arrest self-incriminatory statements because Detective Rietzler coerced him by: (1) telling Bruce that she could charge Endia Matthews, the mother of Bruce's infant son, with operating a drug house and immediately send her to jail; (2) implying that if Bruce did not confess, Matthews would "eat this charge;" (3) threatening Bruce with 20 years in federal prison if he did not cooperate, *versus* the possibility of one year in state custody with five years' probation. *See* Motion To Suppress Involuntary Recorded Statement, dkt. 26, at 2. None of these contentions entitle Bruce to suppression.

It is the government's burden to prove by a preponderance of the evidence that a defendant's statement was voluntary. *United States v. Taylor*, 31 F.3d 459, 463 (7th Cir. 1994). 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 in custody; 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).

Here, Bruce's motion is founded primarily on his claim that he was so concerned about the welfare of Endia Matthews and his infant son that he agreed to confess and cooperate with Detective Rietzler rather than see Detective Rietzler put Matthews in jail; Bruce's secondary claim is that he was forced to cooperate because otherwise he faced 20 years in federal prison, during which young Amier would grow up without him. "He was simply doing his best to say what the detectives wanted to hear to try to save himself and his family." Reply Brief, dkt. 47, at 10.

These claims might resonate more sonorously if Bruce had not, just the evening before, refused to give Matthews money to feed young Amier, falsely pleading poverty when in fact he

had \$2580 cash in his coat pocket. When Matthews learned of Bruce's callous duplicity toward her, she disintegrated into prolonged hysterics. Having comforted Matthews through her meltdown, Detective Rietzler later asked Bruce why he didn't tell Matthews about his horse-choking wad of cash; Bruce retorted dismissively: "Would you tell your man about it?" Although there's a bit more to the analysis than this vignette, it encapsulates the critical conclusion that dooms Bruce's motion: he's prevaricating. Although Bruce showed a few sparks of genuine concern for Matthews during his interrogation, his decision to confess and to cooperate was rationally motivated by self-interest. Bruce's assertion that he loved Endia and Amier so much that he was compelled to cooperate in order to rescue them from Detective Rietzler is a fanciful revision of the actual interrogation.²

There is no substitute for listening to the entire 52 minute recording of the first portion of the interrogation. Detective Rietzler said all the harsh things quoted by Bruce in his brief,³ but it is clear from context that Detective Rietzler is *not* threatening to arrest Matthews in an attempt to get Bruce to cooperate. To the contrary, in the "eat this charge" exchange (quoted *supra* at 5-6) Detective Rietzler is rebuking *Bruce* for trying to sluff responsibility onto Matthews and her children for the cornerless baggies. At that point, Bruce still was maintaining that he

² For instance, at the evidentiary hearing, Bruce claimed, contrary to what the recording reveals, that Detective Rietzler continually threatened to arrest Matthews throughout his interrogation, and that he did not recall her telling him that he had a choice, that she told him she was not threatening him, and that she was not making any promises to him. Transcript, dkt. 45, at 49-51.

³ Although I'm not sure it was necessary to repeat five times in bolded font the statement "I happen to believe you'd like to see that little guy grow up. From the outside, not the inside . . ." See Reply, dkt. 47, at 3, 4, 6, 7 and 9).

didn't know anything about anything at Chester Circle; by implication, then, everything that happened there must have been Matthews' doing.

Detective Rietzler called Bruce out on this tactic, asking if he was trying to pin blame for his crimes on Matthews. As Detective Rietzler observed, fingerprint analysis likely would find Bruce's prints on those baggies, (*i.e.*, not Matthews' or the children's). Even under the stress Bruce was experiencing, he could not reasonably have interpreted this as a serious threat by Detective Rietzler to arrest and charge Matthews. If Bruce were to have thought through the syllogism implicit in Detective Rietzler's rhetorical question, he would have realized that: (1) if he was denying knowledge of or responsibility for the drug paraphernalia; and, (2) if the only other adult with access to these items was Matthews, then, (3) the police would have probable cause to believe that Matthews knew of and was responsible for this paraphernalia, as well as all other contraband on the premises. Therefore, in light of Bruce's intentionally false disavowals of knowledge or responsibility, it would not have been an objectively unwarranted threat for Detective Rietzler to advise Bruce that she was going to arrest Matthews for maintaining a drug house. *See United States v. Miller*, 450 F.3d 270, 272 (7th Cir. 2006). "A factually accurate statement that the police will act on probable cause to arrest a third party unless the suspect cooperates differs from taking hostages." *Id.* Therefore, it could not have been coercive conduct for her to have engaged in this exchange with Bruce during the interrogation.

Here, however, Detective Rietzler *wasn't* threatening to arrest Matthews; she was challenging Bruce's story because Bruce implicitly was foisting the blame onto Matthews. Detective Rietzler wasn't buying what Bruce was trying to sell: as she explicitly and repeatedly

announced during Bruce's interrogation, she believed that Matthews did *not* know about and was *not* responsible for the contraband in her residence. If anything, Detective Rietzler's approach was to try to evoke Bruce's sympathy for Matthews because of what he had put her through. Detective Rietzler was *not* attempting to coerce Bruce into confessing and cooperating by threatening Matthews. Thus, there was no predicate coercive police behavior upon which to anchor Bruce's claim of emotional distress and overborne will.

But even if there had been, Bruce's conduct throughout his interrogation established that he remained capable of tactical thrusts, parries and ripostes as he attempted first to evade responsibility with bald-faced lies, then attempted to negotiate his immediate release by promising (falsely, it turns out) to cooperate. Bruce's current claim of emotional distress and overborne will are simply more dodging and weaving. Bruce already was a seasoned veteran of the drug wars, with a handful of prior convictions and half-a-hundred prior arrests on his bandolier. The recording of Bruce's interrogation refutes his claim that he was reduced to Jell-O by his profound, unselfish love for Matthews and Amier. That's not what happened at all.

Similarly unavailing is Bruce's claim that Detective Rietzler overbore his will by threatening to take his case to federal court. Detective Rietzler explicitly and repeatedly announced that she was not threatening Bruce, she only was providing him options from which to choose and offering examples to assist his decision-making process. Bruce discounts this, but Detective Rietzler's statements were not threats. It is not coercion for a detective accurately to announce what she will do if her suspect clams up, "pimps" or "screws" her. *Miller*, 450 F.3d at 273. Offering—but not promising—the possibility of state disposition in exchange for cooperation

is not grounds for suppression because “an offer that makes the recipient better off cannot be condemned as coercive.” *Id.*

To the same effect, accurately advising a suspect that his failure to cooperate, coupled with his abysmal criminal history, makes him shark chum for federal prosecutors cannot be coercive because “clear articulation of the options makes a choice better informed and thus more rather than less voluntary.” *Id.* at 271. Thus, although it would be profoundly distressing to a suspected crack dealer to be told that his silence could result in a twenty year federal sentence⁴—which in turn would mean watching from prison while his son grew to manhood—it is not coercive to alert the suspect to the genuine likelihood of this outcome.

Bruce confounds unpalatable choices with coercion. He is not entitled to suppression simply because Detective Rietzler accurately observed to him that his “ass is in a pickle.” As Detective Rietzler herself told Bruce during his interrogation, her job was to flip drug dealers in order to catch the bigger fish. None of her words or acts during her attempt to flip Bruce was improper, howsoever frightening and unwelcome Bruce might have found them. As noted at the outset, Bruce claims that “he was simply doing his best to say what the detectives wanted to hear to try to save himself and his family.” Reply, dkt. 47, at 10. This is only partly right: he was trying to save himself, not his family, and his efforts were undertaken with free will and with careful, self-interested calculation. However much Bruce wished he didn’t have to make a choice between snitching and two decades in prison, his decision (on which he subsequently reneged) was not legally involuntary.

⁴ A dead-on estimate by Detective Rietzler, *see* the government’s Section 851 notice, dkt. 38.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny all of defendant Calvin Bruce's pending motions to suppress evidence.

Entered this 26th day of July, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

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July 26, 2007

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Re: United States v. Calvin Bruce
Case No. 07-CR-057-S

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 newly-updated 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 August 6, 2007, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by August 6, 2007, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures

cc: Honorable John C. Shabaz, District Judge