

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

CALVIN BRUCE,

07-CR-057-S

Defendant.

Defendant Calvin Bruce was indicted on the charge of knowingly and intentionally possessing with the intent to distribute 50 grams or more of a mixture or substance containing cocaine base (crack cocaine). He moves to suppress his 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. Defendant's motion to suppress evidence will be denied as waived because he did not brief it.

On July 21, 2007 the Honorable Stephen L. Crocker, United States Magistrate Judge, held an evidentiary hearing. On July 26, 2007 he recommended that defendant's motions to suppress his statements and evidence be denied.

On August 7, 2007 defendant filed objections to the report and recommendation. Specifically, he objects to the Magistrate Judge's findings that his statements were not coerced. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews the report and recommendation and finds as follows.

FACTS

On March 28, 2007 the 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 the defendant had a lengthy criminal history including four drug convictions, a domestic battery conviction, a property damage conviction and a battery conviction. He also had a total of over 50 arrests.

At approximately 2:30 p.m. on March 28, 2007 Dane County Narcotics and Gang Task Force Member Officer Denise Markham performed a traffic stop of a car in which the defendant was a passenger. Fellow task force member Detective Dorothy Rietzler and other officers arrived to assist. The defendant was arrested on an outstanding warrant and other officers took him to the West Side Police Station. Officers recovered marijuana from the defendant's shoes and buttocks.

Defendant's girlfriend, Endia Matthews, consented to a search of her Chester Circle residence. Detective Rietzler found \$2,580 cash in the pocket of one of the defendant's jacket. Matthews was unaware of this money and was very upset because the previous night she had asked the defendant for money for food for Amier and he told her he did not have any money.

The detectives also found baggies with the corners cut off in the garbage, a strong indication of drug re-packaging and distribution. The detectives found a baggie containing 50 grams of

cocaine behind a van's headlight in the garage. The van belonged to the defendant's brother who had no knowledge of these items.

At about 5:30 p.m. on said day Detective Rietzler met with the defendant in a small interview room. There was one uniformed, armed officer in the interview room. Detective Rietzler was in plain clothes and advised the defendant of his Miranda rights. Although Detective Rietzler told the defendant that she could charge his girlfriend, she also told him that she knew his girlfriend did not know about the drugs or money at the Chester Circle residence.

Detective Rietzler also told the defendant that she could prosecute him in state or federal court and that he faced a federal sentence of twenty years in federal prison if he was prosecuted in federal court. She told him she believed that he would rather not be in prison while his little son grew up. She also told him that she was not making any promises about who would prosecute him but told him that if he said he would cooperate and then did not she would refer the case for federal prosecution.

The defendant began to cooperate and Rietzler turned off the tape recording to maintain the confidentiality of the information. Detective Rietzler released him from custody. The defendant did not cooperate against anyone else. On April 18, 2007 a federal grand jury returned the indictment against him.

MEMORANDUM

Defendant claims his post arrest statements were coerced by the detectives' threats against his family and threats to take his case

to federal court if he did not cooperate. 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 (7th 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.

_____The CD of the defendant's interrogation by Detective Rietzler together with the evidence presented at the hearing indicate that Detective Rietzler was not threatening to arrest defendant's girlfriend if defendant did not cooperate. Rather, she was telling the defendant explicitly and repeatedly that she believed his girlfriend did not know about the contraband in her residence and that she should not be held accountable for it. It is also difficult to believe that the defendant was truly concerned about his girlfriend's welfare when he would not give her money for food for their baby the night before. Detective Rietzler was not attempting to coerce the defendant into confessing by threatening his girlfriend.

Detective Rietzler advised the defendant that if he did not cooperate he could face a federal sentence of twenty years in prison.

She was not threatening him but providing his options from which to choose and offering examples to assist his decision making process. Detective Rietzler offered the defendant the possibility of state disposition in exchange for his cooperation. This offer was not coercion. See United States v. Miller, 450 F.3d 270, 272 (7th Cir. 2006).

_____ Considering the evidence in the record the Court finds that defendant's statements were voluntary. Defendant had been advised of his Miranda rights, was 30 years old and had extensive experience with the criminal justice system. Detective Rietzler's comments did not overcome defendant's will. 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 statements. Defendant's motion to suppress his statements will be denied. The Court will also deny defendant's motion to suppress evidence as waived.

ORDER

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

IT IS FURTHER ORDERED that defendant's motion to suppress his statements and evidence is DENIED.

Entered this 8th day of August, 2007.

BY THE COURT:

/s/
JOHN C. SHABAZ
District Judge