

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

PETER WHYTE,

Plaintiff,

ORDER

v.

12-cv-145-slc

KYLE MAGNUS and BOB BRADFORD,

Defendants.

In this proposed civil action for monetary and injunctive relief under 42 U.S.C. § 1983, plaintiff Peter Whyte, a prisoner at Waupun Correctional Institution, contends that defendants Kyle Magnus and Bob Bradford violated his rights under the Fifth Amendment when they interrogated him in a criminal investigation without a valid waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). Whyte is proceeding under the *in forma pauperis* statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because Whyte is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. Having reviewed the complaint, I conclude that Whyte may proceed on his claim that defendants violated his rights under the Fifth Amendment.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes these facts that Whyte alleges in his complaint:

Plaintiff Peter Whyte is confined at the Waupun Correctional Institution in Waupun, Wisconsin. During the events relevant to this case, defendants Kyle Magnus and Bob Bradford were investigators with the St. Croix County Sheriff's Department.

On August 20, 2006, Whyte called 911. When the police responded, they found Whyte with multiple stab wounds to his chest and stomach and found his girlfriend dead from multiple stab wounds. Whyte was taken to the hospital for emergency surgery. The next day, Whyte was placed in intensive care with a morphine drip, various tubes and an IV line. Defendants questioned Whyte three times in his hospital room on August 21, 2006, during which time Whyte was physically unable to get out of bed or leave the room.

At the start of the first interrogation, defendant Magnus read Whyte his *Miranda* rights and Whyte acknowledged that he understood them. Whyte invoked his right to remain silent and at no time waived his *Miranda* rights. Defendants continued to interrogate Whyte at his bedside. Whyte denied harming his girlfriend and denied that she had stabbed him.

Before defendants could leave the hospital, they "received word" that Whyte had something to tell them. Defendants returned to Whyte's room and began a second interrogation of plaintiff without referencing Whyte's *Miranda* rights. During the second interrogation, Whyte suggested that drug dealers had attacked him and his girlfriend.

Later that afternoon, defendants returned to the hospital to question Whyte a third time. They did not read Whyte his *Miranda* rights again but asked if he remembered them. Defendants told Whyte that they had talked to the district attorney, who said that if Whyte acted in self-defense, she would take that fact into consideration. Whyte continued to deny any involvement in his girlfriend's death.

When Whyte later left intensive care, he was arrested and transferred to a secure part of the hospital. At Whyte's criminal trial, the prosecutor used Whyte's statements against him and argued that Whyte was not credible because he had first denied killing the victim and then tried to blame it on drug dealers. The prosecutor further argued that Whyte took the idea of self-defense and ran with it.

DISCUSSION

Whyte alleges that defendants violated his Fifth Amendment rights when they interrogated him without first obtaining a valid waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). A *Miranda* violation provides a basis for § 1983 liability when, like in this case, the suspect's statements were used against him in a criminal case. *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1024 (7th Cir. 2006) (citing *Chavez v. Martinez*, 538 U.S. 760, 778 (2003)).

In *Miranda*, 384 U.S. 436, the Supreme Court held that before police officers interrogate a suspect in custody, they must warn the suspect of his right to remain silent and his right to an attorney. This “*Miranda* warning” is required only when police interrogate a person after the person “has been taken into custody or otherwise deprived of his freedom.” *Id.* To determine whether a person was in “custody” for the purpose of applying *Miranda*, a court considers the circumstances surrounding an interrogation and whether a “reasonable” person would have believed that he or she was at liberty to terminate the interrogation and leave. *Thompson v. Keohane*, 516 U.S. 99 (1995).

A person may waive his *Miranda* rights if the waiver is “made voluntarily, knowingly, and intelligently.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (quoting *Miranda*, 384 U.S. at 444). A waiver is voluntary if, “in the totality of circumstances, it is the product of a rational intellect and free will and not the result of physical abuse, psychological intimidation or deceptive interrogation tactics that have overcome the individual’s free will.” *U.S. v. Vallar*, 635 F.3d 271, 282 (7th Cir. 2011) (internal citations omitted); *U.S. v. Ross*, 510 F.3d 702, 709-10 (7th Cir. 2007) (internal citations omitted). Relevant factors include the defendant's age, intelligence, education and mental state; whether *Miranda* rights were administered; the duration and environment of the interrogation; the conduct of law enforcement; and whether narcotics, alcohol and fatigue played a role. *Id.*

At this early stage, Whyte’s allegations are sufficient to state a claim upon which relief may be granted under the Fifth Amendment. Given that Whyte was a captive audience while in the intensive care unit in the hospital, an inference to be drawn that a reasonable person in his position would not have believed that he was free to terminate the interrogations and leave. It is also reasonable to infer from Whyte’s allegations that he did not waive his *Miranda* rights voluntarily and that he did not speak voluntarily when he answered defendants’ questions in the hospital (which is a slightly different issue). Whyte alleges that even though he expressed his intent to remain silent, defendants visited him three times in one day while he was recovering from major surgery and was under the influence of narcotic pain medication in the intensive care unit.

Whyte should be aware that to receive more than nominal damages for a *Miranda* violation, he will have to establish the actual damages caused by the violation. The basis for

these damages may not call into question the validity of his confinement, *see Heck v. Humphrey*, 512 U.S. 477 (1994), unless he has succeeded in having his conviction overturned, and damages for any mental or emotional injury may be limited, *see* 42 U.S.C. § 1997e(e) (2006).

ORDER

IT IS ORDERED that:

- (1) Plaintiff Peter Whyte is GRANTED leave to proceed on his claim that defendants Kyle Magnus and Bob Bradford violated his rights under the Fifth Amendment.
- (2) Copies of plaintiff's complaint and this order are being forwarded to the United States Marshall for service on defendants.
- (3) For the remainder of this lawsuit, Whyte must send defendants a copy of every paper or document he files with the court. Once Whyte has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by Whyte unless he shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- (4) Whyte should keep a copy of all documents for his own files. If Whyte does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (5) Whyte is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 24th day of April, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge