

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, : CRIMINAL ACTION
 : :
 : NO. 05-00599
 : :
RODERICK SUTTON, : :

MEMORANDUM AND ORDER

Stengel, J.

June 7, 2006

Roderick Sutton is charged with armed bank robbery, possession with intent to distribute, and the illegal possession of a firearm. Mr. Sutton made several statements to police officers and others after his arrest, and he contends that these statements were obtained in violation of his rights under the Fourth, Fifth, and Sixth Amendments to the United States Constitution. I will deny Mr. Sutton's motion to suppress.

I. BACKGROUND

The government alleges that the First Commonwealth Federal Credit Union in Easton, Pennsylvania (the "FCFCU") was robbed by two individuals on January 24, 2005. Police arrested Mr. Sutton in connection to that robbery with the assistance of his girlfriend, Jacqueline Olson. Ms. Olson initially called the Easton Police Department to report that Mr. Sutton had misappropriated her vehicle from the residence where both she and Mr. Sutton lived. The police arrived at Ms. Olson's residence (which she co-owned with a person other than Mr. Sutton) shortly thereafter, but Mr. Sutton was not present. Ms. Olson then informed the police officers that Mr. Sutton had robbed the FCFCU and

that he had left a firearm somewhere in her home. She consented to a police search of her residence, and the police recovered a .357 caliber handgun as well as three loaded magazines for a .22 caliber firearm.

The police arrested Mr. Sutton later that morning when he left Ms. Olson's residence and attempted to enter her vehicle. Ms. Olson consented to a police search of her vehicle, which revealed a loaded .22 caliber pistol, a realistic looking pellet gun pistol, a black ski mask, a money wrapper from the FCFCU, and paperwork bearing Mr. Sutton's identification. The police also searched Mr. Sutton's person immediately after the arrest and discovered \$109.00 in cash, including a number of uncirculated \$5 bills in sequential order. Some of these \$5 bills were also in sequential order with bills remaining at the FCFCU.

The police charged Mr. Sutton with the illegal possession of a firearm and transported him to the Easton police station. Officers advised Mr. Sutton of his Miranda rights¹ at the police station, and thereafter Mr. Sutton waived those rights and made a lengthy tape-recorded statement to the police. In his statement, Mr. Sutton denied any knowledge of the robbery or of the weapons found in Ms. Olson's residence and vehicle. Mr. Sutton also denied possessing or using any narcotics. However, a strip-search of Mr. Sutton, performed after he requested to use the bathroom during his questioning, revealed a plastic bag containing crack cocaine in his rectum.

¹Miranda v. Arizona, 384 U.S. 436 (1966).

In the days following his arrest, Mr. Sutton made a number of telephone calls to Ms. Olson and others from the Northampton County Prison. Mr. Sutton made several incriminating statements during these telephone conversations which were recorded by the prison.²

II. DISCUSSION

A. **Mr. Sutton's Fourth Amendment rights were not violated because the police had probable cause to arrest him.**

"The Fourth Amendment prohibits arrests [made] without probable cause." Berg v. County of Allegheny, 219 F.3d 261, 269 (3d Cir. 2000). Warrantless arrests are reasonable under the Fourth Amendment when the arresting officer has probable cause to believe that a criminal offense has been committed. Devenpeck v. Alford, 543 U.S. 146, 152 (2004) (citations omitted). Probable cause is defined by the Supreme Court as "facts and circumstances 'sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.'" Gerstein v. Pugh, 420 U.S. 103, 111-12 (1975) (quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)). Courts in the Third Circuit apply a "common sense approach," based on the totality of the circumstances, to determine whether law enforcement officials had probable cause to arrest. Paff v. Kaltenbach, 204 F.3d 425, 436 (3d Cir. 2000).

²Each telephone call made from the Northampton County Prison begins with a recorded warning that advises both the caller and the recipient that the telephone call will be recorded.

In this case, I find that the Easton Police Department had probable cause to arrest Mr. Sutton as a felon-in-possession of a firearm for several reasons. First, the police reasonably relied on the tip from Ms. Olson alleging that Mr. Sutton had left a firearm in her home. A subsequent consent search of the residence³ revealed a .357 caliber handgun and three loaded .22 caliber magazines. The search therefore corroborated Ms. Olson's tip.⁴ Second, the police were aware that Mr. Sutton had a prior felony conviction which prohibited him from possessing a firearm. In light of these circumstances, the police had probable cause to arrest Mr. Sutton as a felon-in-possession of a firearm.

B. Mr. Sutton's Fifth Amendment rights were not violated because he waived his Miranda rights.

The Supreme Court requires law enforcement officials to warn a suspect held in custody of his or her constitutional rights before the officers begin an interrogation. Miranda v. Arizona, 384 U.S. 436, 478-89 (1966). The Court has also safeguarded defendants' Fifth Amendment rights by holding that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Id. at 444.

³It is well-settled Fourth Amendment jurisprudence that the co-owner or co-tenant of a residence may consent to a search of that residence. Illinois v. Rodriguez, 497 U.S. 177, 181 (1990).

⁴The Supreme Court uses a flexible standard to assess the value and reliability of an informant's tip in light of the totality of the circumstances. See Illinois v. Gates, 462 U.S. 213, 230-35 (1983). The Supreme Court has found that the corroboration of an informant's information by independent police work further increases the informant's reliability. Id. at 241-42.

To establish a valid waiver of an individual's Miranda rights, the government must demonstrate two requirements by a preponderance of the evidence. First, the individual must have relinquished his or her rights voluntarily. See Moran v. Burbine, 475 U.S. 412, 421 (1996); United States v. Sriyuth, 98 F.3d 739, 748-49 (3d Cir. 1996). Second, the individual must have been aware of those rights and understood the consequences of waiving them. Id. When determining whether an individual has waived his or her Miranda rights, courts must consider the totality of the circumstances surrounding the interrogation. Alston v. Redman, 34 F.3d 1237, 1253 (3d Cir. 1994).

Here, I find that Mr. Sutton waived his Miranda rights before making the tape-recorded statement to the police. First, the tape recording of Mr. Sutton's statement played before the Court clearly demonstrates that the police informed Mr. Sutton of his constitutional rights in accordance with the Miranda opinion. Second, the police asked Mr. Sutton if he chose to willingly waive his constitutional rights before speaking with the police officers. Mr. Sutton agreed to waive his rights orally and in writing. There is no evidence suggesting that his choice to speak with the police was involuntary. Nor is there any evidence suggesting that Mr. Sutton was not aware of his Miranda rights or that he did not understand the consequences of waiving these rights. After considering the totality of the circumstances surrounding Mr. Sutton's interrogation at the Easton police station, I find that Mr. Sutton waived his Miranda rights and that his statements at the police station did not result from the violation of any of his constitutional rights.

C. Mr. Sutton's Sixth Amendment rights were not violated because Ms. Olson neither acted as a government agent nor deliberately elicited incriminating information from Mr. Sutton.

The government violates a defendant's Sixth Amendment right to counsel where:

(1) the defendant's right to counsel has attached at the time of the alleged infringement; (2) the informant acted as a government agent; and (3) the informant deliberately elicited incriminating information from the defendant. See Matteo v. Superintendent, SCW Albion, 171 F.3d 877, 892 (3d Cir. 1999), cert. denied, 528 U.S. 824 (1999) (citation omitted).

In this case, I find that Mr. Sutton's Sixth Amendment rights were not violated because: (1) Ms. Olson did not act as a government agent; and (2) she did not deliberately elicit incriminating information from Mr. Sutton. There is no evidence before the Court demonstrating that the government had any sort of an arrangement with Ms. Olson to act on its behalf. Nor is there any evidence of an agency relationship, either express or implied, between the government and Ms. Olson. To the contrary, Inspector David Ryan and FBI Agent Alan Jones testified during the June 1, 2006 hearing that neither the FBI nor the Easton police gave Ms. Olson any instructions in the event that she received a telephone call from Mr. Sutton.

Furthermore, none of the telephone calls at issue were recorded from Ms. Olson's telephone or by the investigating law enforcement officials. Rather, uncontroverted testimony revealed the telephone calls were recorded by the Northampton County Prison

from its own telephone system and as a part of its regular course of business. The fact that these calls were recorded was announced clearly to both the caller and the recipient at the beginning of each call. The announcement was also repeated at several points during the call. Thus, Mr. Sutton certainly knew his calls were being recorded.

There is also no evidence that Ms. Olson "deliberately elicited" any information from Mr. Sutton during the telephone calls from the prison. Mr. Sutton initiated all of the telephone calls at issue, and he has failed to produce any evidence demonstrating that Ms. Olson encouraged him to disclose any inculpatory information. Accordingly, I find that the recordings of the telephone calls made by Mr. Sutton from the prison telephone system were not made in violation of his constitutional rights.

III. CONCLUSION

For the foregoing reasons, I will deny Mr. Sutton's Motion to Suppress Statements. An appropriate Order follows.

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ORDER

AND NOW, this 7th day of June, 2006, upon consideration of Defendant's Motion to Suppress Statements (Docket No. 27), the government's response thereto, and the arguments made before the Court on June 1, 2006, it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.