

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

<p>UNITED STATES OF AMERICA</p> <p style="text-align:center">v.</p> <p>LUIS JAVIER VILELLA</p>	<p>CRIMINAL NUMBER 16-285-2</p>
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Baylson, J.

December 6, 2016

**MEMORANDUM RE: DEFENDANT’S MOTION
TO SUPPRESS STATEMENT EVIDENCE**

I. Introduction

Defendant Luis Jaview Vilella (“Defendant”) is charged with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 294(e). (ECF 1, Indictment “Indict.” at 2).

Defendant moves to suppress his post-arrest statements pursuant to the Fourth Amendment of the Constitution. (See ECF 34, Def.’s Mot. Supp. “Def.’s Mot”). The Government filed an Opposition to Defendant’s motion on November 4, 2016 (ECF 35, Gov’t Opp’n to Def.’s Mot. Supp. “Gov’t Opp’n”), to which Defendant filed a reply on November 16, 2016 (ECF 36, “Def.’s Reply Br.”).

On November 17, 2016, the Court held a hearing (the “Suppression Hearing”), during which the Government called one witness, Task Force Officer Kyle Boyd (“Boyd”). Defendant filed a supplemental letter on November 23, 2016. (ECF 39, “Def.’s Supp. Ltr.”).

Because Defendant’s post-arrest confession is subject to the exclusionary rule, and the attenuation doctrine does not apply, Defendant’s Motion will be **GRANTED**.

II. Findings of Fact

The parties stipulated to many of the pertinent facts at the Suppression Hearing.

Accordingly, the Court makes the following findings of facts:

- (1) At 6:17 A.M. on May 13, 2016, Boyd viewed an Instagram photo posted by co-defendant Victorio-Estrada (“Estrada”), who had been under police investigation for approximately one month. (Motion to Suppress Hearing Transcript “Tr.” pp. 4:2-3, 19:2-6).
- (2) The photo depicted Estrada in his bedroom at 2552 East Clearfield (the “Residence”). Estrada is holding money in his hands and there are two handguns visible. The photo contained a caption underneath it that read “in for the night.” (Id. pp. 4:13-18; 5:13-18).
- (3) In response to this photo, Boyd, Officer Lichtenhahn and Officer Wallace (the “Officers”) went to the Residence, and observed an individual they believed to be Estrada standing in the window. The individual then backed away from the window, and the Officers heard what sounded like a toilet flushing. (Id. pp. 5:19-25; 6:1-2).
- (4) At approximately 7:30 A.M., Estrada’s girlfriend arrived at the Residence and convinced Estrada and Defendant—who was not previously under investigation by the police—to exit the Residence. (Id. p. 6).
- (5) Defendant did not reside at the Residence. (Id. p. 13)
- (6) The Officers frisked Defendant, but found no contraband. The Officers ran a warrant check, and discovered that Defendant had no warrants outstanding, but that he was on probation. (Id. p. 6:11-17).
- (7) The Officers then arrested and handcuffed Estrada and Defendant and brought them both to the East Detective Division (“EDD”), where they were each put in cells in the same detention area, within “earshot” of each other. (Id. pp. 7:1-7; 20:1-6).
- (8) After obtaining a search warrant at 10:25 AM, the Officers searched the Residence, and recovered the two handguns that were depicted in the Instagram photo, as well as some amount of cash. (Id. pp. 5:12-18; 7:8-14; 8:14).
- (9) At some time after seizing the handguns from the Residence, Boyd walked through the detention area of the EDD while holding the handguns. (Id. p. 20:17-18).

- (10) At the same time, Defendant and Estrada engaged in a conversation in Spanish. (Id. pp. 7:15-21, 20:1-18; 38:21-25).
- (11) Defendant then knocked on the window of his cell, indicating that he had something to say. When Boyd approached Defendant, he indicated that he wanted to make a statement. (Id. p. 14:19-24).
- (12) Boyd and Special Agent Patrick Mangold (“Mangold”) then brought Defendant into an interview room. At approximately 12:35 P.M.—approximately 5 hours after his arrest—Boyd and Mangold provided Defendant with his Miranda warnings in English only. Defendant understood the warnings. (Id. pp. 14:19-24; 15:1-8; 20:22-24; 48:14-18).
- (13) Defendant then provided a statement (the “Statement”) in which he admitted that the handguns found in the Residence belonged to him. (Id. p. 18:9-18). Defendant also told Boyd and Mangold that Estrada did not know that the handguns were in the Residence. (Id. p. 21:12-25).

III. Conclusions of Law

The Government concedes that the Officers’ detention and subsequent transportation of Defendant to the EDD—which unequivocally amounted to an arrest—was without probable cause and therefore violated Defendants’ Fourth Amendment right to be free from unreasonable search and seizure. (U.S. CONST. amend. IV; Def.’s Mot. at 7; Gov’t Opp’n at 6 (“[T]he police lacked probable cause to arrest [Defendant][.]”). Accordingly, the only issue presented by Defendant’s motion is whether Defendant’s Statement must be suppressed as “fruit of the poisonous tree” or whether an exception to the exclusionary rule is warranted because the link between the unconstitutional conduct and the Statement is too attenuated to justify suppression.

In establishing the familiar “fruit of the poisonous tree” doctrine, Wong Sun v. United States held that a confession preceded by questionable police activity must be suppressed at trial unless that confession was “an act of free will [sufficient] to purge the primary taint of the unlawful invasion.” 371 U.S. 471, 486 (1963); see United States v. Perez, 280 F.3d 318, 338 (3d Cir. 2002) (Evidence is not fruit of the poisonous tree “if the connection between the illegal

police conduct and the discovery . . . of the evidence is so attenuated as to dissipate the taint.”) (internal citations omitted). In Brown v. Illinois, the Supreme Court held that the question of whether a confession is the product of a free will under Wong Sun must be answered on the facts of each case. 422 U.S. 590, 603 (1975). In evaluating this question, Brown held that the defendant’s post-arrest statement had to be suppressed as fruit of his illegal arrest, and identified several relevant factors to be considered in determining whether a confession and consent were attenuated from the illegal arrest, including: (1) the temporal proximity of the arrest and confession; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the officers’ misconduct. Id. at 603–04.

Applying the Brown factors in Taylor v. Alabama, 457 U.S. 687, 691 (1982), the Supreme Court suppressed the defendant’s confession as fruit of an illegal arrest because, *inter alia*, he “was arrested without probable cause in the hope that something would turn up, and he confessed shortly thereafter without any meaningful intervening event.” With respect to the “temporal proximity” prong, the Court rejected the State’s argument that Taylor was distinguishable from Brown because “the length of time between the illegal arrest and the confession was six hours in this case, while in Brown . . . the incriminating statements were obtained within two hours.” Id. The Court explained that “a difference of a few hours is not significant where, as here, [the defendant] was in police custody, unrepresented by counsel, and he was questioned in several occasions, fingerprinted, and subjected to a lineup.” Id.

The Third Circuit applied the Brown factors in United States v. Butts, 704 F.2d 701 (1983), a case factually similar to this one, which the Government ignores. In that case, the defendant was convicted of mail theft after having been stopped in a car that police officers had followed because they *had* probable cause that two co-defendants had stolen government checks.

After being taken to the station with the co-defendants, the defendant waived his Miranda rights and admitted to possession of the stolen checks. Id. at 703. The Court held that the officers lacked probable cause to arrest the defendant and that his confession would be suppressed as fruit of the poisonous tree because the Government had failed to demonstrate that any “meaningful” event had purged the taint of the illegal arrest. Id. at 705.

Following Taylor and Butts, application of the Brown factors to the instant case evinces that the taint of Defendant’s unlawful arrest was not dissipated by the time he confessed, and Defendant’s Statement must therefore be suppressed.

A. Temporal Proximity

First, there was no temporal separation between the unlawful police conduct and the incriminating statement because the illegal arrest started at the moment the Defendant was handcuffed until he offered the Statement. As Defendant argues, after he was arrested, “[the officers] immediately transported him to [EDD] and continued to illegally detain him for three hours¹ while awaiting the issuance and execution of the search warrant.” In the intervening hours, Defendant was unlawfully confined in a room, without access to family or counsel. (Tr. p. 32).

The number of hours that elapsed between the moment of Defendant’s arrest and that of his confession is not particularly salient in this case, since Defendant remained in police custody—and therefore *illegally* detained—the entire time. See Taylor, 457 U.S. at 691. Courts routinely suppress evidence where, as here, the defendant is consistently in police custody during the interim between the constitutionally-offensive conduct and the seizure of the tainted evidence. See United States v. Rivera-Padilla, 365 Fed. App’x 343, 347 (3d Cir. 2010) (holding

¹ As established at the Suppression Hearing, Defendant was actually illegally detained for approximately five hours before making the Statement.

that confession following unlawful search must be suppressed because even though the “temporal separation between the unlawful search and the confession was about five hours . . . there were no intervening events to break the chain” such as “contact with anyone other than [law enforcement]” or “contact with a lawyer.”); see also United States v. Eaves, No. 15-cr-154 (JED), 2016 WL 1389988, at *3 (N.D. Okla. Apr. 8, 2016) (holding temporal proximity weighed strongly in favor of suppression because “[the defendant] was not freed from the officers’ custody” and “was not represented by counsel in the eleven hours between his initial detention and resulting statement.”).

The Government asks the Court to uphold the admission of Defendant’s statement relying heavily on United States v. Wade, 628 Fed. App’x 144 (3d Cir. 2015). That case involved a controlled purchase of narcotics made by a confidential informant at the defendant’s home. The day after the purchase, police officers obtained a search warrant for the house and, while executing it, another officer noticed the defendant riding in a car a couple of miles from the house. Id. That officer proceeded to stop and illegally detain the defendant. After about fifteen minutes, the officers searching the home informed the officer detaining the defendant that they had discovered contraband in the defendant’s house. Armed, at that point, with probable cause, the detaining officer *lawfully* arrested the defendant. “Approximately two hours after [his] fifteen-minute detention,” the defendant was told and waived his rights under Miranda v. Arizona, 384 U.S. 436 (1966), and confessed to selling narcotics from his residence. Wade, 628 Fed. App’x at 146. The Third Circuit held that the exclusionary rule did not require suppression of his confession because, *inter alia*, “at least two hours elapsed between [the defendant’s] brief detention and his eventual statements.” Id. Wade is easily distinguishable from the instant case

because here, unlike there, all of the time that Defendant spent in custody prior to his confession was unlawful.

Accordingly, the “temporal proximity” factor of the Brown analysis favors suppression.

B. Intervening Circumstances

Second, there were no significant “intervening circumstances” that served to purge the taint of the illegal arrest. Defendant argues that, leading up to his confession, there was an “uninterrupted course of events, during which there were no intervening events whatsoever.” (Def.’s Reply Br. at 7). The Government, by contrast, identifies three intervening events that it argues are sufficient to dissipate the taint of the unlawful arrest: (1) the provision of Miranda warnings; (2) the fact that law enforcement brought the handguns to the EDD, and Defendant saw them; and (3) the fact that Defendant independently decided to make the Statement.

We consider each in turn.

First, the Government points to the fact, which Defendant does not dispute, that Defendant was advised of and waived his Miranda rights. (Gov’t Opp’n at 5). However, as the Government concedes, “Miranda warnings alone do not necessarily render a confession free of the taint of an earlier Fourth Amendment violation, [but] are a factor to be considered in making such an assessment.” (*Id.* at 7); *see Brown v. Illinois*, 422 U.S. 590, 603 (1975) (“The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by the exploitation of an illegal arrest. But they are not the only factor to be considered.”). Hence, Defendant’s waiver of his Miranda rights, without more, does not satisfy the attenuation doctrine. *See United States v. Howard*, 210 F. Supp. 2d 503 (D. Del. 2002) (holding that even though the defendant was given Miranda warnings and his “inculpatory statements could . . . be characterized as voluntary,” “[w]here a Fourth Amendment violation ‘taints’ the confession, a

finding of voluntariness for the purposes of the Fifth Amendment is merely a threshold requirement in determining whether the confession may be admitted into evidence.”) (internal citations omitted).

Second, the Government argues that, in addition to being given his Miranda warnings, “[Defendant’s] statement was the result of his learning that the police had recovered the two handguns from the apartment, and not his original detention by the police.” (Gov’t Opp’n at 7). In support, the Government again analogizes to Wade, where the Third Circuit held that it was a “significant” intervening circumstance that “officers discovered drugs and a gun in [the defendant’s] home and told [him] at the police station that they would be ‘charging [him] with everything[.]’” Wade, 628 Fed. App’x at 148. The Third Circuit stated that this “suggest[ed] that [the defendant’s] statements were motivated by his knowledge that officers had discovered his contraband and not fruit of the unlawful detention.” Id.

Importantly, the facts present in Wade are quite different. While the defendant in Wade had been told that he was being charged with crimes in connection with the found evidence, here Defendant was not told anything in the intervening 5 hours between his arrest and his Statement. Moreover, as noted above, while the defendant in Wade was legally detained for 2 hours prior to his statement, the entirety of Defendant’s detention was illegal. Based on these facts, the Court declines to conclude that the exhibition of the handguns by Officer Boyd in the already highly-coercive atmosphere of a holding cell independently “motivated” Defendant to confess such that it was an “intervening circumstances” that dissipated the taint of the illegal arrest. As Defendant argues, “[i]f anything, [Boyd’s] walking around the police department with evidence recovered during the search in plain view, reinforced the inherent coerciveness of the environment.” (Def.’s Supp. Ltr. at 2).

Last, the Government argues that Defendant’s independent decision to offer a statement—absent police interrogation—was a significant “intervening event” under the Brown analysis. (Tr. pp. 42-43). Under these circumstances, however, this decision did not amount to “an act of free will [sufficient] to purge the primary taint of the unlawful invasion.” Wong Sun v. United States, 371 U.S. 471, 486 (1963); see Howard, 210 F. Supp. 2d at 503 (holding taint not dissipated notwithstanding the fact that the defendant was given his Miranda warnings, and his statements were not “made in response to questions made by the officers” because there remained a “direct link from the Fourth Amendment violation” to the relevant evidence). First, Defendant’s decision to speak occurred in the highly coercive atmosphere of unlawful detention and could well have been motivated by a simple desire to leave. Also, critically, Defendant’s decision to make the Statement preceded the provision of his Miranda warnings, such that not even the “threshold” level of attenuation that Miranda warnings may typically afford was present at that time.

Had Defendant been told he was free to leave the EDD but, by his own volition, *chose* to stay in order to give a statement, this would be a different case. See, e.g., United States v. Suggs, No. CRIM. 2003-109, 2003 WL 22657270, at *7 (E.D. Pa. Oct. 29, 2003) (holding that “even if [defendant] technically was ‘in custody’ due to the manner in which he was transported . . . the intervening reminders by [the police officers]” that “he was not under arrest that that he was free to leave the [station] at any time” were “intervening circumstances” that “purged the taint of the defendant’s initial detention.”).

Accordingly, the Government points to no meaningful “intervening circumstances” that would justify an exception to the exclusionary rule in this case.

C. Purpose and Flagrancy of Police Misconduct

Third, the “purpose and flagrancy of the police misconduct” supports suppression in this case. Defendant argues that the police misconduct here was “flagrant and egregious” because the “police had no reason to believe [Defendant] was linked to any criminal activity,” yet the “task force officers arrested [Defendant] on a ‘hunch’ that he might be involved with co-defendant [Estrada’s] drug trafficking organization.” (Def.’s Reply Br. at 7-8). If the investigation warranted, the Officers could have secured an arrest warrant for Defendant, but he was instead locked in a cell for five hours without probable cause.

The Court agrees with Defendant. The police misconduct here is precisely the type that the exclusionary rule is designed to deter.

The Third Circuit’s decision in Butts, 704 F.2d at 701, discussed above, is instructive on this point. There, in concluding that the officers lacked probable cause to arrest the defendant and that his confession would be suppressed as fruit of the poisonous tree, the Court explained,

[The defendant] confessed fewer than four hours after he was brought to the postal inspector’s office. Nowhere in its brief to this court does the Government suggest that any meaningful event occurred within those few hours which could have purged the taint of an illegal arrest. At the time that the police arrested [the defendant], they knew absolutely nothing about him except that he had been sitting in a car which [the co-defendants] were about to enter. Although [the defendant’s] subsequent confession at the postal inspection office may have been voluntary for fifth amendment purposes in the sense that Miranda warnings were given and understood, [this] is not by itself sufficient to purge the taint of the illegal arrest.

Id. at 705 (quoting Taylor, 457 U.S. at 690) (internal quotation marks omitted)). The same is true in this case. The Officers had no reason to conclude, at the time they arrested Defendant, that he was involved in criminal activity. See Ybarra v. Illinois, 444 U.S. 85, 90 (1979) (“[M]ere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.”).

Because all three factors in the Brown analysis support suppression, Defendant's motion to suppress his post-arrest Statement will be **GRANTED**.

IV. Conclusion

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
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<p>UNITED STATES OF AMERICA</p> <p style="text-align:center">v.</p> <p>LUIS JAVIER VILELLA</p>	<p>CRIMINAL NUMBER 16-285-2</p>
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ORDER

And NOW, this 6th day of December 2016, for the reasons stated in the foregoing memorandum, it is hereby **ORDERED** that the Defendant's Motion to Suppress Statement Evidence pursuant to the Fourth Amendment of the Constitution (ECF No. 34) is **GRANTED**.

BY THE COURT:

/s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.