

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

UNITED STATES OF AMERICA

CRIMINAL ACTION

FILED

v.

DEC 13 2019

LAWRENCE LAWS

KATE BARKMAN, Clerk
By _____ Dep. Clerk

No. 18-224

MEMORANDUM

PRATTER, J.

December 12, 2019

The Court previously denied Mr. Laws's challenge to the victim's identification evidence in this case. (Doc. No. 60). In doing so, the Court reserved the ruling on the suppression of alleged incriminating statements made by Mr. Laws after he purportedly invoked his right to counsel during custodial interrogation. The Court now addresses that portion of his motion to suppress, and for the reasons set forth below, the Court grants Mr. Laws's challenge to certain of the statements.

FINDINGS OF FACT¹

FBI Special Agent Faith E. Greenawalt and Detective Matthew Carey interviewed Mr. Laws in June of 2018 in connection with this case. The entirety of the interview was held at an FBI office and lasted a little over 20 minutes.

At the interview, Mr. Laws stated he could read and write in English, had a high school diploma, and had at some point attended two colleges, Temple University and "CCP." Mr. Laws

¹ The Court finds the following facts based on the parties' representations and the evidence presented at the hearings held on September 26, 2019 and September 30, 2019. Herein, the Court also adopts fully the Memorandum dated October 11, 2019. In that Memorandum, the Court discussed at length the background and facts of this case. In this Memorandum, the Court includes only the factual findings that are pertinent to the ruling on the challenge to the alleged incriminating statements.

also stated he understood that he was at the FBI office in relation to charges brought against him in connection with this case. He was not taking any medications at the time nor was he under the influence of any drugs.

At the inception of his interview, Mr. Laws was informed of his *Miranda* rights. Specifically, he was told:

You have a right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you have the right to stop at any time.

Tr. of Interview 3:30-35. Mr. Laws then signed a written waiver of his rights, the Advice of Rights Form.

Mr. Laws was also informed of the charges against him. As Special Agent Greenawalt was explaining the charges against him, Mr. Laws asked, "Can I just see the evidence?" Tr. of Interview 5:5. Mr. Laws then clarified that he did not want to hear about the charges and instead "just want[ed] to see the evidence." Tr. of Interview 5:9, 13.

Subsequently, Special Agent Greenawalt began to explain the evidence she had in her possession. She specifically described:

[T]here is a lot of evidence that we have clearly in the federal system. We don't bring cases federally without enough evidence to [] indict you. So, since you have already been indicted . . . I will show you the photographs. So, I know you didn't commit this alone. And we also have plenty of video footage that shows that you did not act alone[] in this robbery. We also have plenty of witnesses who identified you, as well. So, I know this is not the best photograph but, um, here is you outside Mermaid Bar. And I am aware that you are actually a frequent customer of the Mermaid Bar, as well.

Tr. of Interview 5:26-33.

In response, Mr. Laws denied that that individual in the photograph was him. Special Agent Greenawalt and Detective Carey showed Mr. Laws another photograph to which Mr. Laws denied the photograph depicted him.

Special Agent Greenawalt then continued to discuss the case, including the evidence allegedly in her possession, the opportunity for Mr. Laws to cooperate, the potential effect of his cooperation, and the potential sentence he could face.

The discussion surrounding Mr. Laws's cooperation prior to his alleged invocation of his right to counsel is important to the Court's ruling here. With respect to cooperation, Special Agent Greenawalt stated, "[I]t doesn't matter to me if you cooperate today. You're the one that's going to jail for a long time. Okay? And, honestly, I am the only one that can help you." Tr. of Interview 7:20-21. Mr. Laws later asked, "You talking about something you can help me in all this. How you going to help me?" Special Agent Greenawalt replied:

So the way that I can help you is, one, the judge looks favorably upon people admitting to the crimes that they did when we asked them about them. Two, if you are willing to help us with the information in this robbery and/or you have other information that you can provide for other robberies or crimes that have been committed, we can knock your sentence down. I can't . . . [p]romise you years or time, it's up to the judge, but we have this thing called proffer sessions, where obviously you would speak to a lawyer. Or . . . [t]hey would help you with this deal, in the way we would knock down your sentence. Now, obviously, the judge is the only person that can decide how much time we take down, but we can take charges off. We can, use the information that you provided to help us clear up crimes that have been committed and unsolved out where you live. Okay? That is your option while dealing with me. Once you go away . . . When I send you over to the BOP, the federal detention center, that chance is gone at that point. . . . Okay? I know that you've never been locked up federally. I know that you have been locked up locally and it, it doesn't work the same way. My lawyer, or the prosecutor, is waiting to hear from me now. And she is going to make a decision based on what we talk about today. Okay? So, I am not trying to be a hard ass. I am not trying to, like,

listen, it does nothing for me to lock you up for the rest of your life.

Tr. of Interview 7:42-8:26.

Moments later, Special Agent Greenawalt informed Mr. Laws that with respect to one of his charges, he faced a mandatory minimum of seven years, and further, “[o]n top of that, depending on [his] background, the other robberies . . . convicted of, the judge [would] look at that and then calculate another sentence on top of that seven years.” Tr. of Interview 8:37-40.

Shortly thereafter, Mr. Laws asked: “Can I speak to a lawyer? I want, I want to speak with a lawyer.” Tr. of Interview 9:22. The following colloquy took place.

Special Agent Greenawalt: “You want to speak with a lawyer?”

Mr. Laws: “Yeah.”

Special Agent Greenawalt: “Okay.”

Mr. Laws: “I want to speak with a lawyer.”

Special Agent Greenawalt: “Okay. Um, so because you are asking for a lawyer, we’re gonna end the interview. Okay?”

Mr. Laws: “No, I am not saying to talk to a lawyer which ya’ll. I want to go over, like, my options. That’s it.”

Special Agent Greenawalt: “Okay. Well.”

Mr. Laws: “Before I take you on your [unintelligible].”²

Special Agent Greenawalt: “Right, I understand that. So, the, the only problem is, you get appointed a lawyer at your initial appearance. Since that already happened today, you will have your initial appearance tomorrow at one thirty.”

Mr. Laws: “Okay, so...”

² While the defendant and Government dispute the end of this sentence, Mr. Laws contending that the statement should read “Before I take you on your offer[,]” the Court need not make a determination as to the precise word spoken at the end of the sentence. Such a determination is not necessary to the Court’s ruling on the suppression motion.

Special Agent Greenawalt: "So then, if you ask for your lawyer right now, we cannot continue our conversation. And this is your, so then you'll have to talk to your lawyer tomorrow. We will take you, we'll do the rest of the paperwork, we'll fingerprint you, and then take you over to the FDC. And then you will talk to your lawyer when you meet them tomorrow [unintelligible]."

Tr. of Interview 9:24-10:10.

Immediately after this discussion, Mr. Laws, Special Agent Greenawalt, and Detective Carey had the following colloquy.

Mr. Law: "So, I can't see more evidence? Like, I can't see nothing?"

Special Agent Greenawalt: "They've seen your face, they remember you. We have people that have said that you have been in that bar before. Um, I know that you had a gun at that job and it was a real gun. I know that you pointed it at the bar owner. I know that you stole a wallet and cash and, at some point, you helped steal a gun from that bar. Okay?"

Mr. Laws: "So, (laughing), yo, that's crazy."

Special Agent Greenawalt: "So, I'm not joking when I say that we have enough evidence and there's..."

Mr. Laws: "So, you're saying, so, you're saying to me, like [unintelligible] if you got all of this evidence, I don't understand how I can help you at all."

Special Agent Greenawalt: "Because you have to understand."

Detective Carey: "You're not helping us. You are going to help yourself."

Special Agent Greenawalt: "You are going to help yourself."

Mr. Laws: "I'm saying, I'm saying. How? How? You got all of this evidence on me. How can I possibly help myself."

Tr. of Interview 10:12-39.

Throughout the remainder of the interview, Mr. Laws and the officials continued the interrogation, including a discussion of the impact of his cooperation and the evidence in the authorities' possession. At one point, Detective Carey raised his voice and stated, "You know what happened, Lar. You know what happened." Tr. of Interview 11:24. It was during the remainder

of this interview that Mr. Laws made the alleged incriminating statements at issue before the Court. At no point during the remainder of the conversation did Mr. Laws again invoke his right to counsel.

DISCUSSION

Mr. Laws seeks to suppress any statements made by him after he allegedly invoked his right to counsel, contending that the invocation was clear and unambiguous and any discussion thereafter about the case was improper and excludable.

The Government does not dispute that Mr. Laws invoked his right to counsel, but contends that Mr. Laws waived his right to counsel after he initiated conversation about his case by asking “I can’t see more evidence? Like, I can’t see nothing?” Tr. of Interview 10:12. The Government also contends that Mr. Laws’s waiver was voluntary and knowing.

The dispositive issue before the Court is whether Mr. Laws’s alleged waiver was voluntary. Upon consideration of all of the parties’ briefing and arguments, the evidence presented at the suppression hearing, and review of the applicable case law, the Court finds that it would be too problematic to conclude that Mr. Laws’s waiver voluntarily remained in place after he asked for counsel and was further engaged by the law enforcement authorities.

As set forth by the Third Circuit Court of Appeals in *U.S. v. Velazquez*, a two-step analysis governs whether a defendant has waived an invocation of his *Miranda* right to counsel. *U.S. v. Velazquez*, 885 F.2d 1076, 1085 (3d Cir. 1985) (citing *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-46 (1983)). First, the defendant must have initiated conversation with the authorities. Second, if a defendant has initiated conversation, the waiver of the right must be knowing and voluntary. *Id.*

“[A]n initiation occurs when a suspect initiates a conversation ‘evinc[ing] a willingness and a desire for a generalized discussion about the investigation.’” *Velazquez*, 885 F.2d at 1085.

Merely “routine inquiry incidental to” a custodial relationship will not constitute an invitation for purposes of the waiver. *Id.* (noting that some such incidental examples include a request for a drink of water or a request to use a telephone).

However, “the ‘initiation’ must come prior to [] further interrogation; initiation only becomes an issue if the agents . . . cease interrogation upon a request for counsel.” *U.S. v. Gomez*, 927 F.2d 1530, 1538-39 (11th Cir. 1991). “The law in this area is clear: once an accused requests counsel, the officer cannot ask questions, discuss the case or present the accused with possible sentences and the benefits of cooperation.” *Id.* at 1538-9 (noting “the bright-line rule that interrogation must end upon invocation of the right to counsel.”) That is, interrogation must have stopped entirely if Mr. Laws invoked his right to counsel, and interrogation means “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 1538 (citing *Rhode Island v. Innis*, 446 U.S. 291, 298-99 (1980)).

Whether a waiver is made voluntarily, knowingly and intelligently depends on the totality of the circumstances, including the facts of the particular case, i.e. the background, experience, and conduct of the suspect. *Velasquez*, 855 F.2d at 1086. The inquiry is two-fold. First, the court must determine if the waiver was voluntary, meaning the waiver came freely and “of deliberate choice, rather than coercion, intimidation, or deception.” *Id.* at 1088. Second, “the waiver ‘must have been made with full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.’” *Id.* at 1087. As undisputed here, to be “knowing,” Mr. Laws would need to know, i.e., recognize that his waiver covered all of the re-instituted back and forth discussion.

The Government has the burden of proving waiver by a preponderance of the evidence. *Id.*

I. Whether Mr. Laws invoked his right to counsel.

Initially, the Court finds that Mr. Laws invoked his right to counsel after formally waiving his *Miranda* rights when he sought to speak to a lawyer during the interview with Special Agent Greenawalt and Detective Carey. He invoked his right twice. He first asked “Can I speak with a lawyer? I want, I want to speak with a lawyer.” Then, in response to Special Agent Greenawalt’s question about whether he wanted to speak to counsel, he stated “I want to speak with a lawyer.” Tr. of Interview 9:22-30.

II. Whether Mr. Laws’s waiver was voluntary.

The question and extent of duration of voluntariness is a more difficult one. As noted, a voluntary waiver means that the waiver came freely and “of deliberate choice, rather than coercion, intimidation, or deception.” *Velasquez*, 885 F.2d at 1088. Mr. Laws’s alleged initiation of the conversation about his case came quickly after his invocation of counsel. While the interim between the invocation and the alleged initiating question was brief, the content of the statements made during that interim is critical and bears reiteration here.

After Mr. Laws invoked his *Miranda* right, there was no break in the discussion between Mr. Laws and the authorities. Special Agent Greenawalt and Detective Carey remained in the room, with all documents used to confront Mr. Laws present. After the first instance by which Mr. Laws sought to speak with a lawyer, and Special Agent Greenawalt asked for clarification as to whether Mr. Laws actually sought counsel, when Mr. Laws again repeated that he wanted to speak to a lawyer, Special Agent Greenawalt began explaining that the interview would end and Mr. Laws would see his lawyer at his initial appearance the next day. She specifically explained, “Right, I understand that. So, the, the only problem is, you get appointed a lawyer at your initial appearance. Since that already happened today, you will have your initial appearance tomorrow

at one thirty.” Tr. of Interview 10:1-3. She also explained that the agent would fingerprint Mr. Laws and take him to the Federal Detention Center.

If considered in a vacuum, the statements made by Special Agent Greenawalt certainly could have had an innocuous effect. However, considering the interrogatory environment as a whole, including the lack of any break in the interview even after the exercise of the right to confer with counsel, the Court finds the statements were coercive. To illustrate this assessment, the Court notes decisions from this circuit on the issue of voluntary waiver, one appellate decision and one from the trial court.

In *U.S. v. Velasquez*, 885 F.2d 1076 (3d Cir. 1989), in affirming the district court’s denial of a motion to suppress incriminating statements, the Third Circuit Court of Appeals held that deception alone did not render a waiver involuntary when the remainder of the surrounding circumstances reflected the reliability of the waiver. In that case, the defendant was taken into an interview room, and after a federal agent had identified himself, immediately expressed a desire to speak with her lawyer. *Id.* at 1079. The interview promptly ended, and the defendant was taken to the holding room. *Id.* One hour later, on her way to federal court for her bail hearing, the defendant asked for the federal agent. She was returned to the interview room where she then asked the federal agent, “What is going to happen?” *Id.* After the agent explained the court proceedings to follow and the mandatory minimum associated with the charge against her, the defendant asked what would happen to her companion. *Id.*

On these facts, the appellate court determined that the defendant had waived her *Miranda* rights after she had asked what would happen to the other suspect. *Id.* at 1087. Moreover, although the appellate court found that the officer had lied about what would happen to the other suspect, apparently to entice the defendant’s incriminating statements, the appellate court found that the

deception alone was insufficient to render the waiver of *Miranda* rights involuntary. Rather, under the totality of the circumstances, weighing that deception against the fact that the defendant had herself asked to speak to the federal agent after invoking her *Miranda* rights and that the agent had made the false statement in response to a question asked by the defendant, the court found the waiver was not involuntary. *Id.* at 1089. According to the appellate court, it was the effect of the lie that affected the voluntariness of the waiver. *Id.* at 1088.

More recently, in *U.S. v. Xi*, No. 16-22-5, 2018 WL 3340884 (E.D. Pa. July 6, 2018), a fellow district court judge found that because the defendant's incriminating statements had been made under false pretenses, suppression of those statements was warranted. In that case, despite the defendant having invoked her right to counsel twice, the agent failed to cease questioning and instead asked clarifying questions throughout the interrogation as to whether the defendant truly wanted a lawyer. In fact, when the defendant repeated that she sought a lawyer, instead of ending the interview, the agent informed the defendant that a lawyer would be provided for her in another city, while keeping the documents she and the other agents had initially confronted the defendant with on the table in front of the defendant. The three agents remained in the interrogation room with the defendant. *Id.* at *16.

In assessing whether waiver of her right to counsel was voluntary, the district court specifically noted the following circumstances that it relied upon to conclude the waiver was involuntary as a result of deception and/or coercion:

- An agent had not only inaccurately read the defendant her *Miranda* rights initially, but after the *Miranda* invocation, also misinformed the defendant about her right to counsel, in part, by stating that paying for an attorney could complicate her situation. *Id.* at *17.
- After the defendant invoked the right to counsel, the agent also made misleading statements about the defendant's ability to keep her current job or have her charges reduced or dropped as a result of her cooperation. *Id.* (holding that "telling a person

‘generally’ cooperation will make their situation better is incomplete and ambiguous and meant to entice the person into cooperation.”)

- The agent repeatedly requested clarification for whether the defendant actually sought to speak with an attorney, despite the defendant’s multiple invocations that she thought may need one. In fact, the agent asked a total of eight times after the initial invocation of right to counsel. *Id.*

Here, the Court finds that Mr. Laws’s situation is more akin to that of *Xi* than *Velasquez*, even though the *Xi* facts presented more problematic law enforcement conduct than that involved here.

Unlike in *Velasquez* where the interview ended immediately after the invocation of counsel, the agent left the defendant, and the defendant sought herself to speak with the agent before initiating conversation, here, the conversation between Mr. Laws and the authorities did not immediately and completely cease.

When Mr. Laws sought counsel the first time, Special Agent Greenawalt asked if he sought counsel, a clarifying question of the kind reproved by the *Xi* court.

Prior to Mr. Laws’s invocation of his right to counsel, Special Agent Greenawalt at length spoke to him about his potential cooperation and the hypothetical consequences of that cooperation, namely, that his charges could change and/or the Court could reduce his sentence, at times mischaracterizing that she and the detective could reduce Mr. Laws’s sentence. Then, after his invocation of the right to counsel, Special Agent Greenawalt framed Mr. Laws’s invocation as “problematic” and went on to explain that after the close of the interview, Mr. Laws would be fingerprinted and taken to the FDC, actions which she had previously described would effectively end Mr. Laws’s opportunity to cooperate. Thus, taking into consideration the totality of the circumstances, as the Court must, these statements made after Mr. Laws invoked his Fifth Amendment right lends to the conclusion that Mr. Laws was more intimidated, deceived, and/or

coerced into his alleged initiation of the conversation than not. In the context of the interview as a whole, the statements should have been reasonably known to entice Mr. Laws into making incriminating statements. Consequently, Mr. Laws's purported waiver cannot confidently be said to have been sufficiently voluntary or sustained.³

CONCLUSION

For all of these reasons, the Court finds that Mr. Laws's alleged waiver was not voluntary, and grants Mr. Laws's motion to suppress all statements made after his second invocation of his right to counsel, specifically made at the following citation: Transcript of Interview page 9, line 30. That is, the Court will strike any statements by Mr. Laws during the interview made after this citation. An appropriate Order follows.

BY THE COURT:



GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

³ Thus, the Court need not determine whether Mr. Laws initiated conversation or his waiver was knowing. Nonetheless, for the reasons it finds that waiver was not voluntary, the Court also questions whether initiation ever took place. The issue of initiation does not arise unless the interrogation ceased after a Fifth Amendment invocation and a defendant reignites a discussion about his case. Here, the Court questions that the interrogation ever stopped after Mr. Laws invoked his right to counsel. *See U.S. v. Shoulders*, No. 17-50090, 2018 WL 4204452, at *6 (W.D.S.D. Sept. 4, 2018) (noting the fact that there was no break between the defendant asking for an attorney and the agents continuously engaging in dialogue as a factor weighing against initiation). Moreover, the Court also questions whether Mr. Laws truly knowingly waived his right to an attorney. It is possible that when Mr. Laws sought to see the evidence, via the statements purported by the Government to have been his waiver, Mr. Laws wanted to see the discovery in his case to discuss the evidence with an attorney, not so to wholly give up his right to an attorney and embrace the opportunity to re-engage in the interrogation and discussion as it unfolded. As mentioned, to find a waiver was made knowingly, the waiver must have been made with complete awareness both of the right being abandoned and the effects of the decision to abandon it. The Court cannot definitively conclude that under the circumstances of the entire interrogation that Mr. Laws was aware, to the fullest extent, that he was giving up his right to counsel, and that he was doing so to the effect that he would have no counsel as he engaged in the interview again with the authorities. *See Shoulders*, 2018 WL 4204452, at *7 (holding that the waiver was not knowing, in part, because a purported rhetorical statement made by the agent could not as a matter of common sense, and in the context of the "agent's reasons for sitting down with the defendant [and] the subject matter of the question," be determined to be other than an eliciting question.)

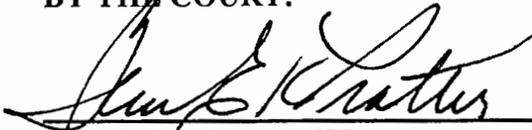
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
	:	
v.	:	
	:	
LAWRENCE LAWS	:	No. 18-224
	:	

ORDER

AND NOW, this 12th day of December, 2019, upon consideration of Mr. Laws’ Motion to Suppress (Doc. No. 51), the Government’s response thereto, and following a hearing held on September 26, 2019, and September 30, 2019, **IT IS ORDERED** that Mr. Laws’ Motion to Suppress (Doc. No. 51) is **GRANTED IN PART** for the reasons set forth in the accompanying Memorandum.

BY THE COURT:



GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE