

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Crim. No. 03-95-SLR
)
MARTIN PURNELL,)
)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Defendant Martin Purnell moves to suppress statements he made to law enforcement officers upon his arrest on October 15, 2003. (D.I. 21) Two days before the evidentiary hearing, plaintiff indicated that it did not intend to introduce defendant's statements in its case-in-chief and, instead, would use the statements only for impeachment purposes. (D.I. 30) An evidentiary hearing was held on March 26, 2004. (D.I. 34) In light of the plaintiff's position, the court limited the scope of the hearing to the issue of the voluntariness of defendant's statements. (Id. at 8) The only witness testifying was Drug Enforcement Administration ("DEA") Special Agent ("SA") Eric Miller. Post-hearing briefing is complete. (D.I. 32, 33) The court has jurisdiction pursuant to 18 U.S.C. § 3231. For the reasons that follow, defendant's motion to suppress is denied.

II. BACKGROUND

Pursuant to Federal Rule of Criminal Procedure 12(e), the following constitutes the court's essential findings of fact. Plaintiff's one witness, DEA SA Eric Miller, testified that on October 15, 2003 he and about six Task Force Officers arrived at defendant's home to execute an arrest warrant. (D.I. 34 at 9) The warrant related to distribution of cocaine base charges. Before leaving the residence, defendant was escorted into his home to inform his family that he was arrested and would be taken to the DEA office. (Id. at 10, 22) Miller and Task Force Officer Collins drove defendant to the DEA office. During the car ride Miller explained that after arrival at DEA, defendant would be processed by the United States Marshal's Office, interviewed by Federal Probation and, ultimately, would appear before a judge where the formal charges against him would be read. (Id. at 11) Miller also informed defendant of his Miranda Rights.¹

At the DEA office, Miller and Collins took defendant to an interview room in the lockup area of DEA's offices. The

¹It is well-settled that the government may not present statements in its case-in-chief collected during custodial interrogation by law officers unless defendant has been advised of, and validly waived, his "Miranda" rights: (1) to remain silent and that any statements can be used as evidence against him; and (2) to the presence of retained or appointed counsel during questioning. See Miranda v. Arizona, 384 U.S. 436, 444 (1966).

interview room was well-lit, painted white and had a small table with four chairs. (Id. at 12) Also present for the interview was Internal Revenue Service SA Raymond Green. Miller read defendant a waiver of Miranda rights form and then defendant read the form himself. Defendant asked for clarification regarding the portion explaining the right to terminate questioning. Miller read that section aloud to defendant. Defendant then signed the written waiver form and initialed the section describing his ability to cease talking at any time. Miller believed that defendant understood his rights. (Id. at 12)

After signing the Miranda form,² defendant stated that he never sold drugs and did not wish to discuss drug-related activity. (Id. at 13) Defendant, however, was willing to talk about 1800 Motorcars, a car dealership formerly operated in Wilmington, Delaware. (Id. at 13, 25) An investigation into a money laundering operation at 1800 Motorcars, apparently, was being conducted. Defendant identified specific individuals involved in 1800 Motorcars crimes. (Id. at 25) Defendant did

²The top portion of the "Miranda Advisement" form lists the rights announced under Miranda v. Arizona, 384 U.S. 436. The bottom section, "Waiver of Rights" reads:

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

(GX 1; D.I. 33, Ex. A)

not admit culpability for any of the crimes associated with 1800 Motorcars. (Id. at 13-14)

Defendant was concerned about the amount of incarceration he was facing for the drug charges. (Id. at 27) Miller stated the maximum penalty was ten years of incarceration and, if he cooperated, the United States Attorney's Office would be advised of his assistance and would so inform the sentencing judge. (Id. at 27)

The interrogation, conducted by Miller, Collins and Green, lasted about two hours. (Id. at 14) Miller was only absent from the room for about 15 minutes when he left to attend to administrative matters. Defendant was permitted to use the restroom and was given water and/or coffee during the questioning. Miller did not promise or make any deals with defendant nor did he hear the other agents make such arrangements. (Id. at 15) Defendant did not appear physically or mentally impaired, nor under the influence of alcohol or drugs. To the contrary, defendant was articulate and relaxed. (Id. at 18) Miller took notes of defendant's statements and allowed defendant to amend the notes to reflect changes that defendant requested. (Id. at 16)

III. STANDARD OF REVIEW

It is the government's burden of proving by a preponderance of evidence that defendant's statements were made voluntarily.

United States v. Swint, 15 F.3d 286, 289 (3d Cir. 1994); Colorado v. Connelly, 479 U.S. 157, 168-69 (1986). A court measures "voluntariness" in light of the totality of the circumstances. Arizona v. Fulminante, 499 U.S. 279, 285-89 (1991); Swint, 15 F.3d at 286. The potential circumstances include: 1) evidence of police coercion; 2) the length and location of the interrogation; 3) the defendant's maturity, physical condition, mental health and level of education; 4) whether Miranda warnings were given; and 5) whether an attorney was present for the interview. Swint, 15 F.3d at 289; see also United States ex rel. Hayward v. Johnson, 508 F.2d 322, 326 (3d Cir. 1975) ("we must satisfy ourselves that the confession was the product of a free and unconstrained choice by its maker"); Colorado v. Connelly, 479 U.S. at 164 (a confession is involuntary if is the product of overreaching police conduct).

IV. DISCUSSION

Defendant argues that his statements should be suppressed as involuntary pursuant to the Third Circuit's decision in United States v. Swint, 15 F.3d 286, because plaintiff has failed to prove by a preponderance of the evidence that the statements were voluntary. (D.I. 32) Specifically, the only testifying witness, Miller, was absent from the interview for at least 15 minutes, during which time the other agents could have promised or threatened defendant into making statements. Miller's statement

to defendant that his cooperation would be reported to the prosecutors and then the court constitutes an indirect promise of leniency. Moreover, Miller's failure to advise defendant of the extent of the investigation constitutes a lack of candor that vitiates defendant's ability to make a voluntary statement.

Plaintiff responds that voluntariness challenges based on a defendant's lack of information about the full consequence resulting from his Miranda waiver have been previously rejected by this court in United States v. Durham, 741 F. Supp. 498 (D. Del. 1990). In Durham, the defendant moved to suppress his statements on voluntariness grounds because the federal agents questioning him recognized that the defendant did not understand the seriousness of the charges pending against him, yet did nothing to clarify the situation. The court denied the motion and stated that the Constitution does not require law enforcement to "supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights." Id. at 502.

Considering the totality of the circumstances at bar in light of Swint, the court does not find defendant's statements were involuntary. Significantly, defendant's reliance on Swint is misplaced. In Swint, law enforcement led the defendant to believe that his statements would be an off-the-record proffer and would not be used against him. 15 F.3d at 290. Prior to his

meeting with law enforcement, neither Swint nor his attorney were told that federal agents would be at the proffer. Law enforcement never provided Swint with Miranda warnings and, at the time the incriminating statements were made, his attorney had left the meeting without any idea of the intentions of law enforcement. The Third Circuit condemned law enforcement's misleading conduct as coercive and as effectively depriving the defendant of the ability to make a free and unconstrained choice about providing a statement to authorities. Id. at 290. The court was careful to limit the holding to the specific facts in that record and emphasized that each court must evaluate the totality of the circumstances presented.

Unlike Swint, defendant at bar was advised of his Miranda rights, verbally and by written form. Significantly, after questioning the officers, defendant acknowledged his understanding of the protections afforded as well as his ability to stop questioning by circling and initialing the form. He then waived those rights by signing the waiver form. There is nothing of record to reflect that officers misled or coerced defendant into making his statements. The court credits Miller's testimony as credible and as an accurate reflection of defendant's understanding and waiver of Miranda protections. In so doing, the court notes that the defendant has presented neither evidence nor testimony to cast doubt on the testimony of the agent.

V. CONCLUSION

IT IS ORDERED this 20th day of May, 2004, that:

1. Defendant's motion to suppress (D.I. 21) is denied.
2. The court will initiate and conduct a telephonic status conference on **Wednesday, June 2, 2004 at 9:00 a.m.**
3. The time between this order and the teleconference shall be excluded under the Speedy Trial Act in the interests of justice. 18 U.S.C. § 3161(h) (8) (A).

Sue L. Robinson
United States District Judge