

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No. 02-34 GMS
)	
DEMETRICE STURGIS,)	
)	
Defendant)	
_____)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On April 18, 2002, the Grand Jury for the District of Delaware indicted Demetrice Sturgis (“Sturgis”) on thirty-nine counts of willfully aiding and assisting tax fraud in violation of 26 U.S.C. § 7206(2). On June 14, 2002, Sturgis filed a motion to suppress all statements and evidence obtained by the government from Sturgis during the months of March through November 2000, and at any time before she was represented by counsel. Specifically, Sturgis argues that: (1) her consent to search her residence and remove client files was not voluntarily given; (2) her statements to agents of the Internal Revenue Service (“IRS”) were involuntary because she did not appreciate her constitutional rights; and (3) the IRS agents violated her right to counsel when they continued their investigation after she indicated that she desired the assistance of counsel.

The court held an evidentiary hearing in connection with this motion on January 29, 2003. After considering the testimony elicited during the hearing, and the arguments presented in the parties’ briefs on these issues, the court will deny Sturgis’ motion to suppress in its entirety.

II. FINDINGS OF FACT

At the evidentiary hearing, the United States called two IRS Criminal Investigation Special Agents as its witnesses: Jacqueline Zebley (“Zebley”) and Joseph Salerno (“Salerno”). At the completion of the government’s evidence, Sturgis called George Sturgis (“Mr. Sturgis”), the defendant’s husband, who interrupted one of the interviews of Sturgis during the relevant time period. In all relevant aspects, the testimony of the agents and Mr. Sturgis did not conflict. In any case, after listening to the testimony of each witness, and observing the demeanor of each, the court concludes that Zebley’s account of the facts is credible. The following represents the court’s essential findings of fact as required by Rule 12(e) of the Federal Rules of Criminal Procedure.

On March 14, 2000 IRS Special Agents Zebley and Thomas J. Winterbottom (“Winterbottom”) conducted an unexpected interview of Sturgis at her home office in Dagsboro, Delaware. *See* Transcript of Hearing on Defendant’s Motion to Suppress (“Tr.”), at 7. At the beginning of the interview, Zebley read Sturgis a “Non-Custody Statement of Rights.”¹ *Id.* at 9, 39; *see also* Gov’t Ex. 1. Zebley did not present Sturgis with a copy of the statement. Tr. at 39. After reading Sturgis her rights, Zebley asked whether she understood them and the defendant responded that she did. *Id.* at 9. Zebley then told Sturgis that she, Sturgis, was the subject of a criminal

¹ The IRS statement reads:

As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses. In connection with my investigation of your tax liability (or other matter), I would like to ask you some questions. However, first I advise you that under the 5th Amendment to the Constitution of the U.S., I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any documents which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of any attorney before responding. Do you understand these rights?

investigation. *Id.*

The agents proceeded to conduct a two-hour interview during which they learned that Sturgis was born on October 2, 1951; had received an Associate's degree in Secretarial Technology from Delaware Technical Community College; had taken an H&R Block tax course; and had attended seminars sponsored by the IRS. *Id.* at 10. Sturgis also informed the agents that she suffered from high blood pressure, bad nerves, frequent headaches, and pain in her hand, and was currently taking 'heart pills.' *Id.* at 10. Sturgis, however, did not state that she was feeling pain that day and appeared lucid and in a normal state of mind. *Id.* at 11. The agents interviewed Sturgis regarding the nature of her work. *Tr.* at 11. At no time during the interview, or any subsequent interview, did the agents detain, purport to detain, or arrest Sturgis. *Id.* at 11-12.

On March 16, 2000, the agents conducted a second interview with Sturgis at the defendant's office, where they reminded her of her "non-custodial rights." *Id.* at 13. At the beginning of the interview, Sturgis expressed that she was worried and upset because the agents had interviewed some of her clients and she believed that the agents had said negative things about her to people in the community. *Id.* at 57. During the interview, the agents and Sturgis discussed the allegations of fraud. *Id.* at 13. At the conclusion of the interview, Sturgis asked what the next step in the investigation would be, to which the agents responded that they would like to get a signed affidavit from Sturgis. *Id.* at 14. Zebley began to write the affidavit. *Tr.* at 14. The agents also informed Sturgis that she should get an attorney; suggested that the defendant cooperate with them; and told Sturgis that her cooperation would be brought to the attention of the United States Attorney. *Id.*

While Zebley was preparing the affidavit, Sturgis ran from her office and into her yard. *Id.* at 15. The agents did not attempt to stop her. *Id.* Sturgis remained in her yard for a minute or less

and then entered her house, which is separate from her office. *Id.* at 16. The agents walked out of Sturgis' office and waited for her in the driveway. *Id.* A few minutes later, Sturgis emerged from her house, telling the agents she had gotten sick but that she was 'okay' and wanted to continue the interview. Tr. at 16-17. Upon returning to Sturgis' office, the agents asked her if she needed to take any medication. *Id.* at 17. The defendant responded that she had taken her medication before they arrived. *Id.*

Before the interview could continue, Sturgis made a short phone call, apparently to her husband. *Id.* at 17-18. Very shortly after Sturgis hung up the telephone, she received a telephone call and had another conversation with her husband. *Id.* Sometime shortly thereafter, Mr. Sturgis arrived at the office and asked about the nature of the interview. *Id.* at 18. The agents replied that they could not tell Mr. Sturgis much because of their disclosure laws. Tr. at 18. During their conversation with Mr. Sturgis, the defendant became agitated and began tossing items around. *Id.* The agents then informed Sturgis that the interview was not something that had to be completed that day because "this is not life and death, this is taxes." *Id.* at 19. The agents then posed a question for Sturgis to think about overnight: "Did you fraudulently prepare tax returns for clients in order that they would receive larger refunds?" *Id.* at 19-20. Zebley said that she would call Sturgis the next day, and the agents terminated the interview and left Sturgis' office. *Id.* at 19. When Zebley called the defendant the next day, they had a brief conversation, in which Sturgis told Zebley that she could not agree that she had fraudulently prepared tax returns. *Id.* at 20.

The next interview occurred on May 2, 2000. Tr. at 20. The interview again took place at Sturgis' office, and lasted about forty-five minutes. *Id.* at 21. Agent Zebley reminded Sturgis that her non-custodial rights still applied, and Sturgis said that she understood. *Id.* Zebley began

discussing the allegations of tax fraud, and Sturgis said that she ‘wanted to get this over with.’ *Id.* at 22. Zebley told Sturgis that the best thing would be to get an attorney, and that if Sturgis thought she had done nothing wrong, Sturgis could continue to assert her innocence. *Id.* at 22 (“And I reminded Mrs. Sturgis that the best thing for her to do was to get an attorney. However, if she really felt that she had not done anything wrong, to stick to that.”).

Zebley and Winterbottom then briefly discussed the simultaneous plea program with Sturgis.² *Id.* The agents told her that the investigators did not have control over the program, and that if Sturgis wanted to enter a guilty plea, she would have to work it out with the Department of Justice and the United States Attorney’s Office. Tr. at 22-23. The agents further explained that the defendant would need an attorney to initiate the plea process. *Id.* at 69. Neither of the agents attempted to negotiate a plea with Sturgis. *Id.* at 92.

Sturgis then asked the agents what was going to happen to her next, and Agent Winterbottom explained that there were many possible results, including probation, a fine, a jail sentence, or a combination of these things. *Id.* at 23. Sturgis then expressed that she could not afford an attorney. *Id.* Winterbottom replied that she could write a letter to the attention of Zebley’s office, stating that she was interested in the simultaneous plea program but could not afford an attorney. Zebley told the defendant that Zebley would do whatever she could within the IRS to get Sturgis an attorney. *Id.* at 23-24. Zebley had previously given Sturgis a business card indicating Zebley’s business address, and she left another business card with Sturgis at the end of this interview. Tr. at 24.

² The simultaneous plea program refers to a program by which a person enters a guilty plea to criminal charges relating to tax fraud while simultaneously participating in the IRS’s investigation. The program merely expedites the agency’s internal review process. *See* Tr. at 90-91.

The next contact between the agents and the defendant occurred on May 30, 2000, when Sturgis called Zebley at her office. *Id.* at 26. Sturgis said that she had sent a letter to Zebley in which she had indicated her interest in the plea program and in obtaining an attorney for the plea process. *Id.* at 26, 80-83. Apparently, Sturgis had sent the letter to the wrong address and, after Zebley gave her the correct address, the defendant indicated that she would send another letter. *Id.* at 26.

On October 11, 2000, Sturgis called Zebley twice to discuss whether the investigation was continuing. *Id.* at 26-27. During the first conversation, Zebley asked Sturgis if she had gotten an attorney yet. *Id.* at 27. Sturgis said that she had been given the name of a law firm, but no attorney had been assigned to her case yet. *Tr.* at 27. Zebley told Sturgis that she still needed to get an attorney, and the telephone call ended. *Id.* Sturgis then called back to let Zebley know that she had called an attorney but the attorney had seemed disinterested in the case once Sturgis mentioned the IRS. *Id.* at 28.

On October 23, 2000, Sturgis called Zebley, and they decided to meet on November 3, 2000. *Id.* During the telephone conversation, Zebley explained to Sturgis that the reason she wanted an appointment was to try to obtain records from Sturgis' client files from the years 1996, 1997, and 1998. *Id.* at 29, 32. The defendant agreed to gather such records for Zebley. *Id.* at 32. Zebley also asked Sturgis if she had obtained an attorney yet, to which Sturgis replied in the negative. *Tr.* at 29.

On November 3, 2000, Zebley and Winterbottom met with Sturgis for thirty-five to forty-five minutes at Sturgis' office. *Id.* at 29-30. Zebley again reminded Sturgis that her non-custodial rights still applied, but did not read the statement of rights to Sturgis again. *Id.* at 30. Sturgis said that she understood. *Id.* at 30. Zebley then asked whether Sturgis had collected the records that they had

discussed during their last telephone conversation. *Id.* at 33. The defendant indicated that she had gathered such records, which were in boxes on the floor of the office. *Id.* at 33. Zebley then showed Sturgis an IRS waiver form, Form 6884, “Voluntary Consent to a Search of Person, Premises, or Conveyance,”³ and asked if Sturgis would like it read to her. Tr. at 30, 31. The defendant said no, that she would read it herself. *Id.* at 30. Sturgis then read and signed the form. *Id.* at 31. The defendant signed the waiver form with her left hand because her dominant right hand was in a cast. *Id.*

After receiving the signed Form 6884 from Sturgis, Zebley gave Sturgis IRS Form 2725, “Document Receipt,” for the records Zebley intended to take. *Id.* at 31, 32. Zebley did not search Sturgis’ office. *Id.* at 32. The defendant then told the agents that someone who works for the IRS had told her not to give the agents any records. Tr. at 33. Zebley replied that she did not know why someone at the IRS would tell Sturgis that. *Id.* at 34. The agents then removed the boxed records from the defendant’s office. *Id.* at 33.

During several of the interviews and phone calls, Sturgis expressed to Zebley that she saw the investigation as a life and death matter, and she expressed suicidal thoughts and fears about

³ The form reads:

Statement of Rights

Before we search your premises (or person or conveyance) you should be aware of your rights under the Fourth Amendment of the Constitution. You have the right to refuse to permit us to enter your premises (or to search your person or conveyance). If you voluntarily permit us to enter and search your premises (or to search your person or conveyance) any incriminating evidence that we find may be used against you in court, or other proceedings. Prior to permitting us to search, you have the right to require us to secure a search warrant.

Waiver

I have read the above statement of my rights and, fully understanding these rights, I waive them freely and voluntarily, without threat or intimidation and without any promise of reward or immunity.

going to prison. *Id.* at 41, 45. Zebley responded by saying that the investigation was not a matter of life and death and was a matter of taxes only. *Id.* at 41-42. It is unclear exactly when these statements occurred.

III. DISCUSSION

A. Fifth Amendment Right against Self-Incrimination

The defendant argues that her incriminating statements should be suppressed because they were obtained in violation of the Fifth Amendment right against self-incrimination. It is well-established that “if a person in custody is to be subjected to interrogation, she must first be informed in clear and unequivocal terms” of her right to remain silent and to have counsel present. *Miranda*, 384 U.S. 439, 468-69 (1966). A person is “in custody” for purposes of *Miranda* when she is “deprived of his freedom of action in any way.” *Id.* at 444; *see also Berkemer v. McCarty*, 468 U.S. 420, 429 (1984). Furthermore, to determine whether a person is in custody, the court must establish “whether there is a ‘formal arrest or restraint on freedom of movement’ of the degree associated with formal arrest.” *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)); *see also Steigler v. Anderson*, 496 F.2d 793, 798 (3d. Cir. 1974).

A custodial interrogation may occur outside the police station. *See generally Orozco v. Texas*, 394 U.S. 324 (1969). The Second Circuit, discussing *Orozco*, noted that:

Even without the light of *Orozco* we would not have thought . . . that questioning in the home could never come within the mandate of *Miranda*; we do think it suggests that in the absence of actual arrest something must be said or done by the authorities, either in their manner of approach or in the tone or extent of their questioning, which indicates that they would not have heeded a request to depart or to allow the suspect to do so.

United States v. Hall, 421 F.2d 540, 544 (2d Cir. 1969). Additionally, “the more cause for believing the suspect committed the crime, the greater the tendency to bear down in interrogation and to create

the kind of atmosphere of significant restraint that triggers *Miranda* But this is simply one circumstance, to be weighed with all the others.” *Steigler*, 496 F.2d at 799-800 (quoting *Hall*, 451 F.2d at 545).

Applying the above principles to the facts of this case, the court concludes that Sturgis was not in custody when interviewed by Agents Zebley and Winterbottom. At the beginning of the interview, Zebley read Sturgis the complete statement from the IRS “Non-Custody Statement of Rights” card, and Sturgis said that she understood them. Tr. at 8-9. At the conclusion of the interview, the agents did not arrest Sturgis. *Id.* at 11. At no time during the interview did Zebley or Winterbottom detain, physically restrain, raise their voices to, display their guns to, or threaten Sturgis. *Id.* at 11-12. Nor did Zebley or Winterbottom ever tell Sturgis that she could not terminate the interview or leave Sturgis’ office. *Id.* at 11. Indeed, the defendant herself initiated at least three of the communications with the agents. Furthermore, in a second interview, on March 16, 2000, Sturgis became ill and left the office. *Id.* at 15. Neither Zebley nor Winterbottom tried to prevent her from leaving. *Id.* at 15. When Sturgis returned, she told Zebley and Winterbottom that she would like to continue the interview; nonetheless, the agents promptly terminated the interview when Sturgis became emotionally agitated. Tr. at 17-19. It is clear from the facts that Sturgis was not in custody when she made incriminating statements because she was not “deprived of . . . [her] freedom of action in any way” as required by *Miranda* and its progeny. *Miranda*, 451 U.S. at 444.

Because the defendant was not in custody, *Miranda* warnings were not required, and the defendant’s Fifth Amendment right against self-incrimination was not violated.

B. Voluntariness of Defendant's Statements and Consent

The defendant also argues that her statements and tax records must be suppressed because they were obtained in violation of her due process rights. Specifically, Sturgis maintains that her statements and consent to search or seize her property were not voluntary. The Supreme Court has held that “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause.” *Colorado v. Connolly*, 479 U.S. 157, 167 (1986). A statement is involuntary if ‘the defendant’s will was overborne when he confessed.’ *United States v. Sharp*, 2002 WL 31855064, at *5 (D. Del. 2002) (quoting *Miller v. Fenton*, 796 F.2d 598, 604 (3d Cir. 1986)).

The court cannot conclude that the defendant’s statements or consent were involuntary. First, as reflected in the above discussion regarding custody and *Miranda* requirements, neither Zebley nor Winterbottom demonstrated any coercive activity during their interviews with Sturgis. The agents did not arrest, detain, physically restrain, or threaten Sturgis, nor did they display any weapons to her, raise their voices with her, or tell her that she could not leave the office or terminate the interview. Again, indeed, at least three of the conversations were initiated at the defendant’s own request. When Sturgis left her office during the March 16, 2000 interview, the agents did not interfere. On the contrary, they were solicitous of the defendant’s welfare. They asked her whether she needed medication, and terminated the interview when Sturgis became emotionally agitated. There is simply no evidence that the IRS agents demonstrated coercive behavior of any kind.

Furthermore, even assuming that Sturgis was in custody and that Agents Zebley and Winterbottom had exhibited the level of coercive behavior required by *Connolly*, her statements and consent would still be deemed voluntary. In order to determine whether a statement is voluntary,

the trier must examine the totality of the circumstances. *Miller*, 796 F.2d at 604. Criteria to consider in this analysis include: “the youth of the accused; lack of education or low intelligence; lack of any advice to the accused of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as deprivation of food or sleep.” *Miller*, 796 F.2d at 604 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). Each of these factors weighs against a finding that Sturgis’ statements were involuntary.

First, the court turns to the age, education, and intelligence of the defendant. Sturgis was born in 1951. Tr. at 10. Thus, she is 52 years old, neither particularly young nor old for purposes of this inquiry. The defendant holds an Associate’s degree from a technical college, has completed a tax course offered by H&R Block, and has attended seminars sponsored by the IRS and the Division of Revenue. *Id.* In 1998 alone, Sturgis prepared almost 600 tax returns. *Id.* at 85. Clearly, the defendant is not of low intelligence. Although she may have been confused at certain points in the interviews with the IRS agents, *id.* at 52, her confusion was not extraordinary or in any way indicative of an inability to understand the nature of the interviews or the consequences of her actions.

Regarding any advice as to Sturgis’ constitutional rights, the court notes that, as discussed above, the defendant was not in custody during any of the interviews. Thus, *Miranda* warnings were not required. Nevertheless, Zebley advised Sturgis of her “non-custodial rights” during the first interview on March 14, 2000 and at every subsequent interview. Additionally, when Zebley and Winterbottom went to Sturgis’ office to collect her tax records, Zebley presented Sturgis with a “Voluntary Consent to a Search” form, which includes information about the defendant’s constitutional right to decline the IRS’s request to enter or search her premises, and the possible

consequences of consenting to such a search. *Id.* at 31-32. Sturgis read and signed the form. *Id.* Clearly, Sturgis had ample advice as to her constitutional rights to remain silent, retain counsel, and refuse consent to any search or seizure of her records.

As to the final three factors, the court reiterates that Sturgis was never detained by Zebley and Winterbottom. Furthermore, as previously noted, several of the interviews or conversations occurred at the request of Sturgis herself. As to the repeated and prolonged nature of questioning, Sturgis was interviewed only four times over a seven month period, with the longest interview lasting two hours. Finally, neither Zebley nor Winterbottom employed physical punishment on Sturgis, nor did they deprive her of food or sleep. Without doubt, the interviews were not “a process of interrogation . . . so prolonged and unremitting, especially when accompanied by deprivation of refreshment, rest or relief, as to accomplish extortion of an involuntary confession.” *Miller*, 796 F.2d at 606. The court notes that Sturgis complained of certain physical ailments; however, as discussed above, the agents did not attempt to take advantage of these, and they were not so severe as to render the interviews coercive or the defendant’s statements involuntary.

Thus, because the IRS agents did not employ coercion, and because Sturgis’ statements and consent were voluntary, the court finds no violation of the defendant’s due process rights.

C. Sixth Amendment Right to Counsel

The defendant also moves to suppress the use of certain evidence because of an alleged violation of Sturgis’s Sixth Amendment right to counsel. The Sixth Amendment provides that “in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. CONST. amend. VI. This right “is indispensable to the fair administration of our adversary system of criminal justice.” *Brewer v. Williams*, 430 U.S. 387, 398 (1977). Its essential

import is that every person is entitled to the aid of a lawyer once adversary judicial criminal proceedings have been initiated against him or her. *Id.*; see also *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991). The right is offense-specific, in that “it cannot be invoked once for all future prosecutions.” *McNeil*, 501 U.S. at 175.

The defendant argues that her Sixth Amendment right to counsel was violated because she was entitled to, but was not afforded, the assistance of counsel during the interviews in which the simultaneous plea program was discussed. Sturgis urges that the discussion of the plea program represented “a shift from investigation to prosecution and [thus] the process requiring a lawyer had begun.” Defendant’s Findings of Fact and Conclusions of Law in Support of Her Motion to Suppress at 14. The court disagrees.

As noted above, the Sixth Amendment right to counsel attaches at the initiation of adversary judicial criminal proceedings. This may occur ‘by way of formal charge, preliminary hearing, indictment, information, or arraignment.’ *Brewer*, 430 U.S. at 398 (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)). There is no legal or conceptual support for the defendant’s supposition that the mere discussion of the IRS’s simultaneous plea program constitutes such initiation of adversary judicial criminal proceedings. Although it is well-settled that a defendant enjoys a constitutional right to counsel when he or she enters a plea in court, see, e.g., *White v. Maryland*, 373 U.S. 59 (1963) (*per curiam*), Sturgis, of course, did not enter a plea in court. Nor could the brief discussions between Sturgis and the agents about the plea program be construed as plea negotiations. Agent Zebley merely notified Sturgis of the existence of the program. Zebley did not attempt in any way to negotiate any terms of a plea agreement. Indeed, Zebley affirmatively informed Sturgis that the IRS agents did not have the authority to negotiate a plea with Sturgis. Tr. at 22-23. Zebley also

informed the defendant that if she wished to enter a guilty plea to any future charges, the defendant would need an attorney, and would need to get in touch with the Department of Justice and the United States Attorney's Office. *Id.* at 22-23, 69. Clearly, no Sixth Amendment right to counsel was implicated by the agents' discussion of the plea program with the defendant. Thus, Sturgis can show no violation of this constitutional right.

IV. CONCLUSION

The defendant has not shown a violation of her right to counsel or right against self-incrimination. Nor has Sturgis shown that the IRS agents who interviewed her employed coercion, or that her statements or consent were involuntary. Thus, the defendant has demonstrated no grounds for suppression of any evidence obtained by the agents.

Therefore,

IT IS HEREBY ORDERED that:

1. The defendant's Motion to Suppress (D.I. 14) is DENIED.

Dated: March 31, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE