

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Criminal Action No. 03-106-KAJ  
 )  
 RONNIE JOSEPH, )  
 )  
 Defendant. )

**MEMORANDUM ORDER**

*Introduction*

On December 2, 2003, a federal grand jury returned a four count indictment (Docket Item ["D.I."] 6) against Ronnie Joseph ("Defendant"), charging her in Count I with possession with intent to distribute marijuana, in Count II with possessing firearms in furtherance of her illegal possession with intent to distribute marijuana, in Count III with making a false statement to deceive a federally licensed firearms dealer, and in Count IV with possessing a firearm while being an unlawful user of a controlled substance. The Defendant filed a Motion to Suppress certain statements that she made to law enforcement officials on the day of her arrest. (D.I. 10; the "Motion".) The parties participated in an evidentiary hearing (D.I. 15)<sup>1</sup> on the Defendant's Motion, and they have submitted post-hearing memoranda setting forth their opposing positions. (See D.I. 16, D.I. 17, D.I. 18.) For the following reasons, the Motion is denied.

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<sup>1</sup>Docket Item 15 is the transcript of the April 7, 2004 evidentiary hearing.

## *Background*

On September 25, 2003, Special Agents Veronica Hnat and Joseph Kusheba of the Bureau of Alcohol, Tobacco, and Firearms went to the Defendant's apartment in Wilmington, Delaware to question her about her purchase of multiple hand guns from a firearms dealer.<sup>2</sup> (D.I. 15 at 3-5.) They wore plain clothes and, though armed, did not display their weapons. (*Id.* at 5, 30-31.) They identified themselves to the Defendant as law enforcement agents, when she opened the door. (*Id.* at 5.) Agent Hnat showed her badge and identification to the Defendant and told her the name of the law enforcement agency they represented and the purpose of their visit. (*Id.*) Specifically, Agent Hnat told the Defendant that they "were there to talk to her about a multiple gun purchase." (*Id.*) The Defendant, a legal adult in her late twenties (*see id.* at 18), said, "okay," and let the agents in, inviting them to sit in the front room of the apartment. (*See id.*) Her demeanor was calm, casual, and friendly, and she showed no reluctance in having the agents come in and question her. (*See id.* at 6-7.)

Once inside, Agent Hnat explained that the ATF will frequently interview individuals who purchase more than one handgun from a dealer within a short time. (*See id.* At 6.) The Defendant acknowledged having bought two guns from a dealer in Wilmington the previous week. (*Id.*) Agent Hnat asked if the Defendant still had the

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<sup>2</sup>Agent Hnat testified that "when a person purchases two handguns within five business days, ... a form is filled out ... . [I]f they purchase two guns within five business days from the same gun dealer, we get notified." (D.I. 15 at 4.) The purchase of multiple guns in a short period of time raises the concern that the purchaser may be making a so-called "straw" purchase, not buying the gun for himself but buying it on behalf of another who might otherwise be prohibited from obtaining a firearm. (*See id.* at 9.)

guns, and the Defendant said that she did, which prompted Agent Hnat to ask whether the Agents could see them. (*Id.* at 8.) Without hesitation, the Defendant said yes to that request and started to get up to retrieve them. (*Id.*) Agent Hnat said, “Do you mind if Special Agent Kusheba and myself come with you, just for officer safety reasons?”, to which the Defendant responded, “No, you can come.” (*Id.*)

The agents followed the Defendant to a back bedroom. (*Id.* at 9.) As the Defendant approached the bedroom, her pace quickened noticeably. (*Id.* at 9-10.) For obvious reasons, law enforcement officers do not want someone they are questioning to leave them and retrieve a weapon. (See *id.* at 10-11; 36.) Consequently, Agent Hnat asked the Defendant to slow down, but the Defendant continued quickly into the bedroom, with Agents Hnat and Kusheba following. (See *id.* at 9.) As the Defendant entered the bedroom, with Agent Hnat behind her, she made a “sweeping motion” with her left hand, across the dresser that was immediately to the left of the door to the bedroom. (*Id.* at 10.) Agent Hnat could see that, as the Defendant made that motion, “there was a baggie, and ... in the baggie, it appeared to be a green leafy like substance,” consistent with the appearance of marijuana, and inside the baggie were smaller baggies, which were a transparent red in color. (*Id.*) The Defendant succeeded in knocking the baggie behind the dresser, then she moved quickly to a small table under which the handles of two guns could be seen. (*Id.* at 11.) At that point, Agent Hnat was concerned that the Defendant could turn a gun on her and her partner, so she ordered the Defendant to stop and not to touch the guns. (*Id.*) She told the Defendant to let Agent Kusheba retrieve the guns, while she and the Defendant returned to the front room. (*Id.*)

The Defendant complied and, after settling back on the couch in the front room, continued in a friendly manner to converse with Agent Hnat. (*Id.* at 12.) Agent Hnat assumed the Defendant did not realize that her effort to hide the baggie had been seen. (*Id.*) Within a few moments, Agent Kusheba joined the two women in the front room and Agent Hnat asked him to call Detective Bell of the New Castle County, Delaware Police Department. (*Id.* at 13.) Detective Bell was part of a joint law enforcement task force on firearms and was the uniformed police officer to whom the agents turned for assistance, since ATF agents do not typically take illegal drugs into their custody. (See *id.* at 13-14.) Agent Kusheba stepped out of the room to make that call, and, immediately upon his return, Agent Hnat advised the Defendant of her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), by reading to her from a printed card. (See *id.* at 14; Ex. 1.) The Defendant acknowledged that she understood what had just been read to her. (*Id.* at 17.) Agent Hnat then asked, “[d]o you wish to talk to us?” (*Id.*) By all appearances, the Defendant was in possession of her faculties, she clearly understood what she had been told and what she had been asked (see *id.* at 17-20), and she did not hesitate or equivocate in answering “yes.” (*Id.*)

After being advised of her rights, the Defendant made a series of statements to the agents, and later to Detective Bell, implicating her in the offenses for which she has been indicted.

## *Discussion*

The Defendant asserts that all of the statements she made to law enforcement officers on the day of her arrest must be suppressed because those statements were not voluntary, that she was not properly advised of her rights before being questioned, and that, when she was told of her rights, she did not adequately understand them and therefore did not knowingly waive them. (See D.I. 10 at ¶ 6.) The Defendant is correct that the Government bears the burden of demonstrating that the Defendant's statements were voluntary and that, once she was advised of her rights, any decision she made to waive those rights was knowing and voluntary (see D.I.17 at 4-5), but she is mistaken about the results of applying those rules to the facts shown at the evidentiary hearing in this case.

The analysis of what took place in the Defendant's apartment on the day in question must begin with an inquiry into whether the Defendant was "in custody" when the ATF agents began to interview her. It is axiomatic that "[t]he police are required to give *Miranda* warnings only where there has been such a restriction on a person's freedom as to render him in custody." *California v. Beheler*, 463 U.S. 1121, 1124 (1983) (internal quotation marks and citation omitted). In the present case, the unrebutted record demonstrates that the Defendant was not in custody when the ATF agents began to ask her questions. The agents came to her apartment, identified themselves and the agency for which they work, asked for and were granted permission to enter the apartment and to speak with her, and conducted the initial portion of the interview on a basis that was entirely voluntary and free of any coercion on the Defendant. (See *supra* at pp. 2-3) In short, the record shows nothing more than ATF

agents conscientiously interviewing a woman whose gun purchases warranted some follow-up investigation. *Cf. United States v. Leese*, 176 F.3d 740, 744 (3d Cir. 1999) (“The record presented to us is one of postal inspectors conscientiously interviewing a woman, who was under considerable suspicion.”). Law enforcement suspicions are not what create custodial circumstances. *See Beckwith v. United States*, 425 U.S. 341, 347 (1976) (focus of investigation on defendant at time of interview did not render the interrogation custodial and therefore require advising defendant of *Miranda* rights). Law enforcement behavior is, and here there was nothing coercive or custodial about the circumstances, at least not before the Defendant was advised of her rights.

As previously discussed (*see supra* at pp. 3-4), there came a point when the Defendant’s unlawful behavior was sufficiently clear as to warrant law enforcement efforts beyond a simple interview about multiple gun purchases. When that point came and the agents determined to seize the controlled substances that had been seen, Agent Hnat advised the Defendant of her *Miranda* rights. The Defendant asserts that her statements after she had been read her rights were not the product of a knowing and voluntary waiver. (D.I. 17 at 6-7.) Determining whether a waiver of *Miranda* rights is knowing and voluntary requires

a two-pronged inquiry. We must first ask whether the waiver was voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. Second, we must inquire whether the waiver was made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.

*United States v. Sriyuth*, 98 F.3d 739, 748 -749 (3d Cir. 1996) (internal quotation marks and citations omitted).

As to the first point, the record is again un rebutted that the circumstances were not coercive, deceptive, or intimidating. Every indication is that the Defendant was comfortable with the behavior of the agents and their mode of questioning and that her decision to continue speaking with the police and ATF agents was voluntary. (See *supra* at pp. 2-3.) As to the second point too, there is nothing to indicate that the Defendant's decision to discuss her illegal activities was anything less than knowing and voluntary. There is no requirement, as the Defendant implies (see D.I. 17 at 7), that a waiver of rights be memorialized in writing or otherwise corroborated. Agent Hnat's clear and unequivocal testimony established that the Defendant was fully advised of her rights after the marijuana was found in her apartment and that the Defendant stated she understood her rights and wished to cooperate with the authorities. (See *supra* at p. 4.) The Defendant has provided nothing to undermine the import of that testimony. All she has advanced is rank speculation about people being generally nervous and distracted when law enforcement officers speak to them. (D.I. 17 at 6-7.) If that line of argument were accepted, every waiver of rights would wrongly be open to after-the-fact revocation by a defendant who has developed "buyer's remorse" over his or her decision to cooperate.

*Conclusion*

For the foregoing reasons, it is hereby ORDERED that the Defendant's Motion to Suppress Statements (D.I. 10) is DENIED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

May 18, 2004  
Wilmington, Delaware