

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA, )  
)  
v. ) Crim. No. 01-74-B-S  
)  
SHANE L. TURCOTTE, )  
)  
Defendant )

**RECOMMENDED DECISION  
AND PROPOSED FINDINGS OF FACT**

Shane L. Turcotte has filed a motion to suppress statements (Docket No. 6) alleging that the statements were involuntary and further alleging that the statements were obtained in violation of the rule set forth under Miranda v. Arizona. Finding absolutely no basis for either of Turcotte's contentions, I now recommend that the court **DENY** the motion to suppress.

**Proposed Findings of Fact**

Turcotte, in the company of family members, presented himself to the emergency room at Mayo Regional Hospital in Dover-Foxcroft, Maine on September 14, 2001, for treatment of injuries to his hand and face caused by an explosion. Robert Wright, a physician's assistant in the emergency room, was the initial responding caregiver. Wright observed Turcotte's bandaged hand, and as he unwrapped the hand, said to Turcotte, "What happened to your hand? Did a pipe bomb explode in it?" Turcotte responded in the affirmative. Wright then examined the hand, noting that the injuries were "serious," and consistent with the a pipe bomb explosion.

Wright commenced his treatment of Turcotte. He noted that the patient was not agitated, appearing calm and collected and fully orientated to time, place, and person. Turcotte had some relatively minor lacerations of the face and ear, but his hand had suffered substantial damage and Wright determined that the on-call orthopedic surgeon, Dr. Swett, had to be notified. Wright also directed that the nurse give Turcotte 2mg. of morphine intravenously. The dose of morphine was minimal in order to take the edge off Turcotte's pain, but not to impair his responses. Wright was fully cognizant that the surgeon would want to evaluate Turcotte's responses to stimuli and make his own assessment regarding the injuries. Wright observed Turcotte's behavior both before and after the administration of medication and he did not see any impairment caused by the morphine.

Turcotte arrived at the emergency room at approximately 2:50 p.m. Wright spent the first twenty to thirty minutes working with various nurses to treat the wounds. Turcotte was placed on an examination stretcher in the large emergency room containing various cubicles for examination. There was a large door at the entryway that apparently remained opened throughout Turcotte's stay and his family remained in the waiting room. A fabric curtain separated Turcotte's stretcher from others in the room, but was only drawn on one side, leaving the bottom of his stretcher and the other side open to the larger room where there were no other patients at the time.

While Wright was working with Turcotte apparently someone from the Mayo Regional Hospital notified the Piscataquis County Sheriff's Department that an individual injured in a pipe bomb explosion that had taken place in Cambridge, Maine was being treated at the hospital. The sheriff's department, in turn, notified a state fire marshal,

Scott Richardson, of the incident. Richardson was investigating a fire scene in Lincoln, Maine, approximately forty minutes distant from the hospital. Because he could not respond immediately he contacted Lt. Scott Arno, a police officer with the Dover-Foxcroft police department, and requested that Arno go to the emergency room and investigate the situation. At this point in time neither Richardson nor Arno knew whether Turcotte was the victim of a pipe bomb explosion or the fabricator of a pipe bomb.

Arno arrived at the emergency room as Wright was completing his initial evaluation and treatment. After obtaining authorization from Wright, Arno entered the examination area to speak with Turcotte. Wright informed Arno of what Turcotte had related about the pipe bomb, but Arno did not request the medical staff to solicit that information. Arno talked with Turcotte in the examination area for approximately fifteen to twenty minutes. Officer Jeff Weatherbee, a police officer from Dover-Foxcroft, accompanied him. Weatherbee was in uniform, Arno in plain clothes. Arno identified himself as a police officer and asked Turcotte for his name, date of birth, and address. Weatherbee did not ask any questions. Turcotte was responsive and did not appear to Arno to be under the influence of nor impaired by any substance. Turcotte outlined what happened with the pipe bomb. Arno did not close any doors or curtains and the medical staff continued to move through the area during the course of Arno's conversation with Turcotte. Arno never arrested, cuffed, nor restrained Turcotte in anyway. Arno did not advise Turcotte of rights under Miranda. After speaking with Turcotte, Arno spoke with Turcotte's mother in the waiting room and remained at the hospital waiting for Richardson's arrival.

Approximately twenty minutes later Scott Richardson of the State Fire Marshal's Office arrived at the scene. Arno briefed Richardson and then the two officers reentered the examination area to speak further with Turcotte. The physical layout of the examination stretcher, the curtain, and the doorway remained the same when Richardson entered. After identifying himself as a law enforcement agent, Richardson spoke with Turcotte for approximately five minutes. Turcotte described in detail how he constructed the pipe bomb and had no difficulty remembering the details of what had happened. Turcotte had no visible signs of mental impairment in that his speech was not slurred, he appeared to understand questions, and his answers were all responsive. While Turcotte told Richardson that his face and hand hurt, he did not appear to be overwhelmed by pain. Richardson learned from Turcotte that there were two more explosives devices at the residence in Cambridge. He also informed Richardson how to get to the residence. Richardson went to Cambridge and found that Turcotte's directions and descriptions given to him at the hospital were all accurate and he found the scene to be consistent with Turcotte's description.

Sometime after Arno's interview, according to Wright Dr. Swett arrived at the hospital to conduct his evaluation. Swett indicated that the extensive soft tissue damage to Turcotte's hand and finger would have to be treated at a larger hospital, either Eastern Maine Medical Center in Bangor or Maine Medical Center in Portland. Wright was present during the discussion, but the police officers were not there. After rationally discussing his options, Turcotte decided to go to the Maine Medical Center in Portland because his wife lived in the Portland area. Wright informed him that under federal law the hospital would transfer him by ambulance to Portland. Turcotte chose not to take

advantage of the ambulance transport, electing to have a family member transport him. Turcotte was then given two percocet tablets to alleviate pain during the ride to Portland. Turcotte left the hospital at 5:10 p.m. in the company of family members. He had no further contact with law enforcement personnel.

## **Discussion**

Turcotte maintains that his statements to the police officers should be suppressed because they were involuntary and not the product of his free will and rational choice. He also argues that the statements should be suppressed because they were obtained in violation of Miranda v. Arizona. His arguments fail on both scores.

### ***I. Voluntariness of Statements***

In assessing the voluntariness of a defendant's statements the court must look to both the characteristics of the accused and the details of the interrogation. Dickerson v. United States, 530 U.S. 428, 434 (2000)(citations omitted). Even a defendant who suffers from a significant mental impairment can make a voluntary statement. United States v. Santos, 131 F.3d 16, 18-19 (1<sup>st</sup> Cir. 1997)(confession voluntary despite defendant's chronic paranoid schizophrenia where police conduct not coercive). A statement is voluntary unless the defendant's will is overborne by police taking advantage of a weakened mental condition or some other evidence of coercive police conduct. Colorado v. Connelly, 479 U.S. 157, 170 (1986). The government has the burden of proving by a preponderance of the evidence that the statement was voluntary. Lego v. Twomey, 404 U.S. 477, 482-487 (1972).

In this case the government has shown not only the absence of coercive police conduct, but also that Turcotte's mental state was rational and unimpaired. Both officers

were low key and polite while speaking with Turcotte. They assured themselves that the medical care providers had no objection to the interviews and they remained with Turcotte for a relatively brief period. Neither officer raised his voice nor threatened arrest or physical restraint. The officers did not solicit admissions from Turcotte by means of any trickery or deception. Furthermore, they did not engage the medical care providers to solicit information on their behalf. The case is simply devoid of even a hint of police coercion or other misconduct. There is nothing in the details of this interrogation that would lead to the conclusion that statements were involuntary.

Turning to the characteristics of the accused, there is nothing about Turcotte's mental condition that suggests his statements should be suppressed. While everyone concedes Turcotte was experiencing some pain, he was completely rational and totally in control of his faculties. The amount of medication he received was minimal and in the opinion of a qualified, disinterested medical witness, Turcotte was not in any way impaired by that small dose of morphine. I must consider the totality of the circumstances to determine if the statements were voluntary, and in this case all of those circumstances support the conclusion that Turcotte's statements were voluntary.

## **II. *Applicability of Miranda v. Arizona***

Miranda warnings must be given whenever the police conduct a custodial interrogation, the custody determination being described as the "touchstone" of a Miranda inquiry. United States v. Ventura, 85 F.3d 708, 710 (1<sup>st</sup> Cir. 1996). The court must determine "whether there was a formal arrest or restraint of freedom of movement of the degree associated with a formal arrest." United States v. Trueber, 238 F.3d 79, 93 (1<sup>st</sup> Cir. 2001)(citation omitted). This inquiry, in turn, requires a two-part analysis, the

first step involving an assessment of the circumstances surrounding the interrogation and the second step applying an objective “reasonable person” standard to those circumstances to determine if a reasonable person in Turcotte’s position would have believed he was actually in police custody and constrained to a degree associated with formal arrest. Id. A hospitalized defendant is not necessarily “in custody” for purposes of Miranda. See United States v. Caldwell, No. 94-310-10, 1995 WL 461224 (E.D.Pa. Aug. 2, 1995) (defendant who voluntarily checked himself into hospital after gunshot was not in custody during police questioning).

The circumstances surrounding Turcotte’s interrogation were benign. The police went to the hospital because they were alerted by hospital personnel to a person suffering from injuries inflicted by a pipe bomb. The interview took place under circumstances, discussed above, best described as nonthreatening and noninvasive. None of the police officers suggested at any point in time that Turcotte’s freedom would be restrained in any fashion. Medical personnel were freely coming and going during the course of both police interviews. As the government notes, “[t]he hospital was a neutral setting, over which the police exercised no control.” No reasonable person in Turcotte’s position would have believed that he was in custody under these circumstances and therefore no Miranda warnings were required.

### **Conclusion**

Based upon the foregoing, I recommend that the court adopt the proposed findings of fact and **DENY** the motion to suppress.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Margaret J. Kravchuk  
U.S. Magistrate Judge

Dated February 22, 2002

CJACNS

U.S. District Court

District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 01-CR-74-ALL

USA v. TURCOTTE

Filed: 11/13/01

Dkt# in other court: None

Case Assigned to: Judge GEORGE Z. SINGAL

SHANE L TURCOTTE (1)

PERRY H. O'BRIAN, ESQ.

defendant

[COR LD NTC cja]

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Pending Counts: 26:5861F.F UNLAWFUL TO MAKE A FIREARM IN VIOLATION; manufacture of destructive device (pipe bomb); 26:5861(f)

(1)

26:5861D.F UNLAWFUL TO RECEIVE A FIREARM NOT REGISTERED; possession of destructive device (pipe bomb); 26 USA 5861(d)

(2)

Offense Level (opening): 4

Terminated Counts: NONE

Complaints: NONE

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