

Toward that end he set out on his bicycle during the daylight hours of August 14, 2001, traveling first to the Airport Mall, located relatively close to his apartment building. He visited at least three stores at the Mall, buying relatively inexpensive and useless items like cards, slate welcome signs, and various knickknacks. Pike used counterfeit currency to make these purchases, keeping the change in order to amass enough cash to make his next heroin purchase. After the Airport Mall visit Pike returned to his apartment to leave some of his purchases before starting off again toward Main Street in Bangor.

During the course of his sojourn on Main Street, Pike visited Mr. G's Convenience Store. While there he passed a counterfeit \$10.00 bill and left the store. The store clerk realized the bill was bogus and called the Bangor Police Department. Officer Steve Jordan responded to the complaint. While Jordan was interviewing the clerk, she happened to look outside and observe the individual who had passed the counterfeit bill peddling a bicycle out on the street. As he came into the vicinity of the store where the officer and his cruiser were plainly visible, Pike began peddling much faster toward downtown Bangor. Officer Jordan got into his cruiser and gave pursuit, eventually overtaking Pike and bringing him to a halt. Jordan observed Pike did not have any difficulty making turns or peddling fast and that he was not in any apparent distress. Jordan is a certified drug recognition technician and has observed individuals experience heroin intoxication symptoms.

Jordan spoke with Pike and explained the store clerk's complaint. Pike told Jordan that he worked as a tattoo artist and that people paid him in cash. Pike's story was that he must have received a counterfeit \$10.00 bill from a customer. Jordan asked to

search Pike's wallet and Pike consented. All of the cash contained within the wallet appeared genuine to Jordan. Pike then offered to return to the convenience store and trade the \$10.00 bill he had "mistakenly" given the clerk for a genuine one. Pike peddled his bicycle back to the store and Jordan returned in his cruiser. While at the convenience store Jordan received a call from dispatch indicating that a woman on Walter Street (another street in the immediate area) had some information about the investigation. Jordan advised Pike to remain at the convenience store and he proceeded to Walter Street to speak with the woman.

The woman on Walter Street informed Jordan that she and her daughter saw someone ride by their house on a bicycle. They indicated that as the man peddled by their driveway he threw something into the yard. They had gone outside to investigate and discovered a bundle of United States currency. Jordan took possession of the bundle. He returned to the convenience store and placed Pike under arrest for passing the counterfeit currency. Jordan transported Pike to the Penobscot County Jail. During this entire exchange Pike did not vomit, shake uncontrollably, or show any visible signs of intoxication or heroin withdrawal.

At the Penobscot County Jail Pike met with Tim Dearing, a Penobscot County corrections officer. Dearing conducted the initial processing but had no further contact with Pike during his incarceration at the jail. In completing the detailed medical history required at the time of admission to the facility, Pike reported a history of asthma but did not report any other medical problems. Dearing did not observe any visible indications of heroin withdrawal. Pike remained in jail for approximately one and one-half days and during that time there is no record that he received any medical care or treatment. Upon

his release from jail Pike acknowledged that he returned to his apartment without seeking medical attention, although according to his version of these events he was deathly ill the entire period of his incarceration. Pike reports that he vomited frequently, did not eat anything, and slept on a bare metal bunk throughout the period he spent in jail.

Shortly after Pike arrived at the Penobscot County Jail around 8:30 p.m., and while he was still located in the intake area, Brad Johnston, a Bangor police officer, learned of his arrest. Johnston had been sent to the Airport Mall earlier in the day to take complaints from three different stores which had received counterfeit currency in trade. The various clerks described the person who passed the currency as a male, approximately 5'11" with an earring and wearing a black t-shirt. When Johnston walked into the jail he observed that the male individual sitting behind the intake window waiting to be fingerprinted and photographed matched the description of the person with the counterfeit currency at the Airport Mall.

Johnston introduced himself to Pike and explained that he was investigating a counterfeiting complaint. Pike asked if it was the same complaint as the one for which he had been arrested. Johnston informed him that he was investigating a different matter. Johnston took Pike to a private interview room at the jail, informed him of his rights pursuant to Miranda, and proceeded to question him about the incidents at the Airport Mall. Pike waived his Miranda rights and spoke freely with the officer. Johnston learned that Pike lived at 303 Griffin Road and, further, Pike admitted to Johnston that he had used a photocopier to make the counterfeit currency. Pike also told Johnston that certain of the items he purchased at the Airport Mall were inside the apartment. Throughout this conversation Pike appeared to be in control of his faculties and did not exhibit any signs

of heroin withdrawal. Johnston took custody of the \$124.00 in cash that Pike had in his wallet at the time of the arrest. Johnston learned through subsequent investigation one of the real twenty dollar bills in Pike's wallet had a serial number identical to a counterfeit twenty dollar bill Jordan recovered earlier.

The next morning, August 15, 2001, at approximately 8:15 a.m., Paul Kenison, a Bangor police detective, became involved in the investigation. Kenison met with Pike at the Penobscot County Jail. They spoke in the juvenile holding area and no one else was present. Pike was again advised of his Miranda rights, appeared to waive them, and spoke with the officer. Kenison obtained some further details about Pike's counterfeiting operation. Pike took pains to exculpate his roommate Darrell Doliver, who according to Pike, knew nothing about his counterfeiting activity.

Relying upon the information that Johnston uncovered the prior evening, Kenison sought and obtained a state search warrant for 303 Griffin Road. Among the items recovered were three baggies containing heroin residue. At approximately 3:00 p.m. on August 15, Kenison returned to the jail for a second interview with Pike. During this conversation Pike denied that the heroin in the baggies had been his property and claimed that an ex-roommate left them there. According to Kenison, Pike did not exhibit any visible signs of heroin withdrawal during either of the two visits he made to the county jail. According to Pike, he had to leave the interview room and go to the bathroom during one of these various interviews. He says the officer escorted him and must have observed that he threw up "in his mouth." Pike maintains that he has only the dimmest recollections of the time spent at the Penobscot County Jail and that most of the time he was either asleep or trying to get to sleep.

Kathryn Thomas, a Ph.D. psychologist, provided some insight into substance abuse, particularly heroin addiction. She noted that heroin rarely impacts physical coordination and one's ability to conduct oneself appropriately, especially during the first and middle stages of heroin ingestion. Thomas explained that initially the addict experiences a two to three hour rush after which there is the middle stage that can linger for up to twenty-four hours. During the middle stage the addict's anxiety level increases, he experiences mild pain, and becomes restless. During the third and final stage of heroin withdrawal the anxiety level is greatly increased and symptoms become more visible. Thomas also opined that while heroin does not impact one's ability to behave, it does influence one's judgment. In other words, even though in Thomas's opinion Pike was an experienced criminal who fully understood his rights and knew it was important not to make damaging admissions, Thomas believes that Pike's judgment was so impaired by heroin on August 14 and 15 that he could not stop himself from making statements to the police. In her words his thinking may have been clouded by the heroin.

Thomas noted that Pike's test scores revealed he had a high drug dependency. She believed that the symptoms he described as "dope sick" probably kicked in sometime on August 15. Thomas agreed that the story Pike initially told to Jordan about a tattoo customer giving him the counterfeit bill was pretty good evidence that Pike was thinking rationally and using "good judgment" at that point in time. Thomas conceded that different people react to heroin withdrawal differently, but in her opinion Pike's behavior from the time of arrest forward to the next afternoon was symptomatic of an addict experiencing increasing heroin withdrawal induced anxiety and poor judgment.

Discussion

Pike's sole challenge to this evidence is based upon his assertion that the statements he made to the police were not voluntary. The burden is on the government to prove that the defendant's statements were voluntary by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477, 489 (1972). The government must show that, based on the totality of the circumstances, the investigating agents neither "broke" nor overbore the defendant's will, Chambers v. Florida, 309 U.S. 227, 240 (1940), and that his statements were "the product of a rational intellect and a free will," Blackburn v. Alabama, 361 U.S. 199, 208 (1960). See also Lynumn v. Illinois, 372 U.S. 528, 534 (1963). As this language suggests, "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary'." Colorado v. Connelly, 479 U.S. 157, 167 (1986). Coercive police activity may include either the creation of a susceptible psychological state in the person interrogated, Townsend v. Sain, 372 U.S. 293, 307-308 (1963) (concerning alleged administration of "truth serum" to quell heroin addict's withdrawal symptoms), or the exploitation of an existing psychological condition, Blackburn, 361 U.S. at 207-208 ("[A] most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane.")

The First Circuit has noted that because a suspect is in a weakened condition because of his heroin withdrawal symptoms, it does not necessarily follow that his post-arrest statements are involuntary. United States v. Palmer, 203 F.3d 55, 61-62 (1st Cir. 2000) ("In the context of the voluntariness of a confession, a defendant's mental state by itself and apart from its relation to official coercion never disposes of the inquiry into

constitutional voluntariness.”). In the context of the present case, Pike’s heroin addiction may have been a motivating factor in his choice to cooperate with officials, but heroin withdrawal symptoms did not overwhelm him or prevent him from making an independent and rational choice. In fact, at the time the defendant made the first two sets of statements, he most certainly was not suffering from heroin withdrawal. His first explanation given to Jordan convincingly persuaded the officer that he had simply been the victim of a tattoo customer’s criminal scheme. It was only when Johnston confronted him with the additional evidence uncovered by Jordan and by Johnston’s own investigation at the Airport Mall that Pike made any inculpatory statement.

The police conduct in this case was exemplary in that they fully informed the defendant of his Miranda rights. There is no evidence that their behavior was unduly coercive. Johnston and Kenison between them had three relatively brief sessions with Pike. Even when Kenison went back for the third and final time after the search warrant had been executed, Pike remained coherent and in control. Pike was able to deny that the heroin found in the apartment was his, claiming instead that the baggies had been left there by a departed roommate. His ability to exculpate himself suggests that his rational process, while perhaps impacted by the heroin withdrawal, was still relatively intact. He never exhibited any visible symptoms in the presence of any of these officers. His own statements reveal that his thought process had not deteriorated beyond all reason.

The agents did not unreasonably exploit the fact of Pike’s addiction. There is no evidence that the agents exploited any weakened mental state experienced by the defendant. In fact, they asked him straightforward questions and received what appeared to be straightforward responses. Based upon the totality of the circumstances, I am

satisfied that the statements made by Pike were voluntary acts under applicable federal precedent.

Conclusion

Based upon the foregoing, I recommend that the Court adopt the proposed findings of fact and **DENY** the motion as it relates to the four separate statements made by the defendant.

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.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: March 4, 2003

CJACOUNSEL

**U.S. District Court
District of Maine (Bangor)
CRIMINAL DOCKET FOR CASE #: 1:02-cr-00071-GZS-ALL
Internal Use Only**

Case title: USA v. PIKE

Date Filed: 09/17/02

Other court case number(s): None
Magistrate judge case number(s): 1:02-mj-00045

Assigned to: Judge GEORGE Z.
SINGAL
Referred to:

Defendant(s)

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Pending Counts

18:471.F UTTERS
COUNTERFEIT
OBLIGATIONS;
COUNTERFEITING US
CURRENCY
(1)

18:472.F PASSES
COUNTERFEIT OBLIGATIONS
OR SECURITIES; PASSING
COUNTERFEIT US CURRENCY
(2-6)

Disposition

Highest Offense Level (Opening)

Felony

Terminated Counts

Disposition

None

**Highest Offense Level
(Terminated)**

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None

Complaints

Count I: Counterfeiting US
Currency in violation of title 18
USC 471; Counts II-VI: Passing
Counterfeit Currency in violation
of title 18 USC 472 [1:02-m -45]

Plaintiff

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