

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 v.)
) Criminal No. 03-70-B-W
 CLEMMIETTE JORDAN,)
)
 Defendant)

RECOMMENDED DECISION ON MOTION TO SUPPRESS

This matter was before the court for hearing on June 14, 2004, on Defendant Clemmienne Jordan's Motion to Suppress Oral Statements. (Docket No. 71.) The motion was filed on February 13, 2004, but was continued at Jordan's request pending the sentencing of Sarah Bellows, Jordan's co-defendant, former girlfriend, and chief witness on this motion. Bellows was sentenced on May 21, 2004, and this hearing was then scheduled on the first available date. I now recommend that the court **DENY** the motion to suppress.

Proposed Findings of Fact

On June 6, 2003, a team of law enforcement personnel went to 148 Carver Street in Waterville, Maine, to execute a search warrant issued by a state court judge. The team consisted of several United States Drug Enforcement Administration (DEA) agents, Waterville Police Department officers, a Maine State probation officer, and others, totaling between ten and twelve members. The no-knock warrant authorized entry by force if need be, but the door was unlocked and the officers proceeded inside. They

promptly secured Sarah Bellows in the kitchen area and Clemmienne Jordan in one of the apartment's two bedrooms. Both individuals were placed in handcuffs for officer safety.

DEA Special Agent Katherine Barnard, along with Detective David Caron of the Waterville Police Department, took charge of Sarah Bellows and removed her from the kitchen area to an unmarked police cruiser parked outside the residence. Jordan remained in the residence, seated on a bed in one of the two bedrooms. DEA agent Paul Buchanan was generally in charge of Jordan, but various officers were in and out of the bedroom as the search of the residence unfolded. Buchanan observed Jordan sitting on the bed with his hands cuffed behind him. At some point in the search the officers needed to search the bedroom, so Jordan was taken into the living room and placed on the couch. Agent Buchanan accompanied him, as Agent Barnard was still outside the residence with Bellows. Once Jordan was brought into the living room his handcuffs were readjusted so that he had his arms in front rather than behind his back. At Jordan's request Buchanan got him a glass of water. Buchanan then obtained biographical information from Jordan in order to complete his paperwork.

After approximately fifteen minutes, Agent Barnard returned to the residence with Bellows and took her into the second bedroom to wait. Agent Barnard then joined Agent Buchanan who was still speaking with Jordan. At this point in time Agent Barnard advised Jordan of his Miranda rights and Jordan indicated that he would speak with the officers. Agent Buchanan began substantively questioning Jordan about the case after he had been advised of his Miranda rights.¹ Agent Barnard remained in the living room with

¹ I realize that Jordan's motion to suppress was premised in part upon the contention that he was confronted with the cocaine seized from the second bedroom and asked about it prior to receiving a Miranda warning. However, I do not find that there was any evidence at the suppression hearing that

Buchanan for a short time, approximately five minutes. During that time Jordan admitted that the cocaine that had been found in the other bedroom was his. Agent Barnard heard Jordan say that he had found the cocaine on the ground near a Big Apple store in Fairfield, Maine, and that Bellows did not have anything to do with the drugs. Barnard already knew from what Bellows had said while outside in the car that the Big Apple story was probably not true. Therefore she decided her time would be better spent if she went outside and continued with the search, leaving Jordan in Buchanan's custody. However, before Barnard went back outside to continue her search, Jordan asked to speak with Bellows and she was brought out of the bedroom and seated on the couch beside Jordan.

Once Bellows came to sit with Jordan, the two of them conferred privately and the officers were not able to overhear the conversation. Eventually Agent Barnard went back outside. During the time she was gone Bellows did most of the talking and told Buchanan that she and Jordan had jointly gone down to Portland and met with an unnamed Hispanic man from whom they purchased the drugs. During this time period Buchanan tried to convince Jordan to "come clean" about the drug transaction for Bellows's sake and for the sake of their unborn child. (The officers had learned while questioning Bellows that she was pregnant with Jordan's child.) Buchanan did a lot of talking about "damage control" and how Jordan and Bellows were both in serious trouble and that the best alternative for them would be to cooperate with the Government.

At about this time Barnard returned to the living room with a shopping bag filled with a cache of drugs. According to both officers, when Bellows and Jordan became

would support that version of the facts. Agents Buchanan and Barnard both testified that Buchanan asked only identification questions prior to Miranda.

aware that the drugs had been found outside the residence, the wind was taken out of their sails. Bellows began weeping. Jordan continued with the interview, but eventually it was Bellows who did most of the talking with Jordan nodding his assent. Ultimately the story emerged that Bellows and Jordan had gone to New York to get the drugs.²

Throughout the conduct of this interview Agent Buchanan raised his voice on a number of occasions. He also advised both defendants of how federal sentencing guidelines operate. Buchanan informed them of the possibility of sentence reduction under certain circumstances and he also advised them that he would pass on to the prosecutor any helpful information they gave him. Buchanan and Barnard were in close proximity to Bellows and Jordan throughout the interview because the living room was a relatively small space. Upwards of eleven other police officers were milling about the house in connection with the execution of the search warrant. Other than generally admonishing Jordan that he should “be a man and take care of [his] family” there were no threats or promises directed at either defendant. Both Buchanan and Barnard did emphasize that it would be better for the family if both defendants cooperated.

Discussion

Jordan raises two principal contentions in this motion to suppress. First he argues that the initial statement that he made regarding the drugs was the product of an unwarned custodial interrogation. Jordan argues that placing the crack cocaine discovered in the bedroom in front of him was the functional equivalent of interrogation and that since he was clearly in a custodial setting, Miranda warnings should have been administered prior to the questioning. See Rhode Island v. Innis, 446 U.S. 291 (1980). I

² At the suppression hearing Bellows testified that she did not go to New York with Jordan and that what she told the Government during her proffer about Jordan’s involvement was inaccurate. I have not credited this version of events in my proposed findings of fact.

agree with Jordan on the law, but he loses on the facts. Both officers testified that Jordan was not confronted with the drugs until after Miranda warnings had been administered. In light of all the circumstances presented at the hearing, I found their testimony to be credible and I therefore have no reason to recommend that the initial statement claiming that the drugs from the bedroom were Jordan's be suppressed.

Jordan's contention regarding the later statements, made in conjunction with Bellows, after she had been brought into the living room, is the more serious issue in this case. It is well established that statements of a suspect that are involuntary or coerced must be excluded from the defendant's trial. Colorado v. Connelly, 479 U.S. 157 (1986). Jordan maintains that the police engaged in active misconduct in two ways: (1) by lying to him about Bellows being released from custody on the following Monday if he cooperated with them and (2) by repeatedly threatening him and Bellows with the loss of their unborn child if they did not cooperate. These sorts of threats and/or promises, if true, could rise to the level of impermissible police coercion, especially if they misrepresented the actual facts, and could render the statements made by Jordan involuntary. See Lynumn v. Illinois, 372 U.S. 528, 534 (1963).

However, once more Jordan's facts do not match his theory. Barnard and Buchanan admitted to speaking loudly and becoming exasperated with Jordan. Barnard also agreed that she heard Buchanan advise Jordan he should think about his "family" and about what he could do to help them now. Buchanan denied that he said anymore than that and, in fact, Bellows could not remember exactly what was said about this subject except that she remembered Buchanan exhorting Jordan to do what was right for his family. In these circumstances I do not find any evidence of the sort of threat that

would result in a finding that Jordan's statements or his adoption of Bellows's statements was an involuntary act.

Bellows was adamant that the officer promised her that she would spend the weekend in jail and be released. I do not find that such a statement was ever made. Both officers deny it and furthermore, Bellows was on state probation and her state probation officer participated in the execution of this search warrant. It therefore appears incredulous that anyone would have told her that she would be released from custody forthwith. As the officers suggested, they may have told Jordan and Bellows that things would go easier for them if they cooperated. However, neither Bellows nor Jordan was promised that Bellows would be released the following Monday.

Conclusion

Based upon the foregoing, I recommend that the Court **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, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge 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.

Dated June 22, 2004

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Case title: USA v. BELLOWS et al

Other court case number(s): None

Magistrate judge case number(s): 1:03-mj-00033- **Date Filed:** 09/10/03

MJK

Assigned to: JUDGE JOHN A.
WOODCOCK JR.

Referred to:

Defendant(s)

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aka
T (2)

Pending Counts

21:841A=ND.F - NARCOTICS -
SELL, DISTRIBUTE, OR
DISPENSE COCAINE -
21:841(a)(1) and 841(b)(1)(A),
18:2
(1)
CRIMINAL FORFEITURES
(2)

Disposition

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

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None

Complaints

POSSESSION WITH INTENT
TO DISTRIBUTE A QUANTITY
OF SCHEDULE II
CONTROLLED SUBSTANCE
COCAINE BASE AND AIDING
AND ABETTING COMMISSION
OF THAT OFFENSE

Disposition

Plaintiff

USA

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