

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	Criminal No. 92-56-P-C
)	
LISA M. BURNS,)	
)	
Defendant)	

RECOMMENDED DECISION ON MOTION TO SUPPRESS

On August 26, 1992 the defendant was charged in a two-count indictment with embezzlement by a Postal Service employee of mail and the contents thereof in violation of 18 U.S.C. ' 1709. A superseding indictment, to the same effect, was filed on October 15, 1992. The defendant seeks the suppression of all statements made by her to postal inspectors. An evidentiary hearing was held on November 4, 1992. I recommend that the following findings of fact be adopted and that the motion to suppress be denied.

I. Proposed Findings of Fact

At approximately 10:00 a.m. on March 26, 1992 U.S. Postal Service Inspector Robert Bethel approached the defendant, a Postal Service employee, as she prepared to exit the parking lot adjacent to the Naples, Maine post office. After identifying himself, Bethel asked the defendant if he could talk with her and if she would park her car in the lot. After she parked her car, Bethel communicated to her that she was suspected of mail theft and explained that she should not make any statements until

his partner arrived and he was able to explain her rights to her. He also explained that she was not under arrest and that he would like to keep things "low key." The two were soon joined by Inspector Donald Howd whereupon the three of them entered the post office through a rear door.

The Naples post office consists of one large room. The defendant and the two inspectors sat at a table in a work area located in the center rear portion of the building. The only other Postal Service employee present was Postmaster Grant who during the ensuing interview was waiting on patrons at the customer window some distance away.²

As the first order of business, Inspector Bethel placed on the table, so that the defendant could see and read it, Postal Service Form 1067 titled "United States Postal Inspection Service Warning and Waiver of Rights." See Govt. Exh. 1. He then explained to the defendant that he was going to go through the form with her and that she should stop him if she did not understand any portion of it. Next, he proceeded to read the "Warning" section of the form detailing each of the defendant's *Miranda* rights printed thereon. After reading each right aloud he asked the defendant if she understood it, she indicated she did and he then asked her to place her initials next to each statement. After the last right was read and initialed, the defendant dated and signed the "Warning" section. The defendant next read, dated and signed the "Waiver" provision indicating that she was willing to talk and answer questions, did not want a lawyer at that time, understood and knew what she was doing

¹ Contrary to the defendant's testimony, I find that inspector Bethel did not tell her that if she cooperated and told the truth she would not be arrested.

² Various postal equipment was located between the customer window area and the table and blocked Grant from sight during most of the interview.

and that no promises or threats had been made to her and no pressure or coercion of any kind had been used against her.

Inspector Bethel next proceeded to ask the defendant a series of questions concerning her receipt and negotiation of two checks which are in evidence as Government Exhibits 2 and 3. In the course of the interview the defendant made several incriminating oral statements effectively admitting to the embezzlement of the mail in which these two checks were contained and of the checks themselves. Although the defendant, who describes herself as a recovering alcoholic, explained to the inspectors that she had been drinking heavily during the period when she removed these checks from the mail and cashed them, by her own testimony she had ceased drinking by the time the interview occurred. Inspector Bethel detected no odor of liquor on her breath.

At the conclusion of the interview, Bethel explained to the defendant that he would be submitting a report to the United States Attorney for prosecution and asked her if she was willing to give a statement in writing. She agreed to do so. He then gave her a form, which in its completed form is in evidence as Government Exhibit 4. After reading aloud from it, he confirmed that the defendant understood it. She then proceeded to write the statement which appears on the completed form in her own words.³ She then signed it and swore to it before inspectors Bethel and Howd.

The defendant then consented to a search of her automobile which was conducted by Inspector Howd. It yielded no incriminating information. Inspector Bethel proceeded to take handwriting exemplars. The inspectors next asked the defendant if she would consent to a search of her 50-cent-piece coin collection. She agreed. The inspectors then followed her to her home in Denmark, some miles distant from the Naples post office. That search also yielded no incriminating

³ Although Bethel did not dictate the contents of the defendant's statement, he did ask her to add the last paragraph which makes clear that corrections were made by her and that the statement is the

information. Throughout this entire episode the defendant appeared coherent and rational. Bethel described her demeanor as ``serious" and ``businesslike."⁴ At no time did she appear to be upset. Nor did she ask any questions or inform the inspectors that she wished to speak to a lawyer or anyone else.

That afternoon the defendant consulted an attorney. The next day she attempted to contact inspector Bethel by phone but he was not in. He did speak with her on the following Monday, March 30, 1992. The defendant told him that she wanted to add to her written statement. When Bethel explained that she could not alter that statement because it was sworn to, she said she would send him a letter. The letter, the envelope in which it came and the referenced enclosure are in evidence as Government Exhibit 5.

II. Legal Discussion

truth.

⁴ The defendant is an intelligent woman. She attended college for 2 years as a pre-veterinary medicine major. She has also taken some night courses in business administration. She has worked for the Postal Service for 10-1/2 years.

The defendant seeks to suppress her oral and written statements of March 26, 1992 and her March 27 and March 30 letters arguing that the former were improperly coerced and the latter are fruits of the poisonous tree. The defendant has made unmistakably clear that her claim is premised on her assertion that while talking to her in the parking lot before she and the inspectors entered the post office Inspector Bethel told her that he had the power to arrest her but would not do so if she cooperated and told the truth.⁵

Of course, if the defendant's will was overborne, as she asserts, by a threat to arrest her if she did not cooperate and tell the truth, then her confession was involuntary and must be suppressed. *See, e.g., Schneekloth v. Bustamonte*, 412 U.S. 218, 223-26 (1973). A court must assess "the totality of all the surrounding circumstances" in determining the voluntariness of a confession.⁶ *Id.* at 226. The defendant argues that on March 26th she was vulnerable because she was in the early stages of sobriety on the road to recovery from alcoholism and that this circumstance, coupled with Inspector Bethel's threat, put her in fear of arrest causing her to accede to his demands in order to prevent that from happening.

⁵ The defendant has conceded that the fact the interview took place at her place of work is not sufficient to sustain a coerced-confession claim.

⁶ The defendant defines voluntariness by reference to a passage in *Bram v. United States*, 168 U.S. 532, 542-43 (1897) (confession cannot be obtained by "any direct or implied promises, however slight, nor by the extraction of any improper influence"). As the Supreme Court has recently noted, this passage does not reflect the current standard (totality of the circumstances) for determining voluntariness. *Arizona v. Fulminante*, 111 S. Ct. 1246, 1251 (1991).

I have found that Bethel did not threaten to arrest the defendant in the manner described by her or in any other way. Instead, Bethel did no more than assure the defendant that she was not under arrest. That statement may well have implied that he had the power to arrest, but it was in no respect threatening. On the basis of this finding alone, the defendant's claim must fail. In all other respects, it is apparent that the defendant was fully informed of her *Miranda* rights, that she understood them and that she freely and voluntarily consented to waive her rights and provide statements to the inspectors. The defendant does not argue otherwise.

III. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to suppress be *DENIED*.

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 after 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.

Dated at Portland, Maine this 5th day of November, 1992.

*David M. Cohen
United States Magistrate Judge*