

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL NO. 07 CR 30109 WDS
vs.)	
)	
LAMORRIS T. WILFORD,)	
)	
Defendant.)	

**GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS**

Comes now, Randy G. Massey, United States Attorney for the Southern District of Illinois, and Jennifer Hudson, Assistant United States Attorney, and moves this Court to deny the Defendant's Motion to Suppress Statements, Document 28. More specifically the Government offers the Court the following information:

FACTS

The Government anticipates presenting evidence that on July 26, 2007, law enforcement officers interviewed LaMorris Wilford. The statement was video taped. Initially, Wilford was presented with his *Miranda* warnings. The officer who administered those warnings moved his chair so that he was within a foot of Wilford. Wilford provided some indication that he is uncertain of the rights and those rights were reviewed with him a second time. Ultimately, Wilford agreed to waive his *Miranda* rights and speak with law enforcement.

During the interview, Wilford asked for and receives a bathroom break. Wilford asked for and receives a cigarette. Wilford indicated that he has kidney stones. During the interview, one of the officers remained within two feet of Wilford. Wilford provided no indication that he is in

immediate need of medical assistance or that he was intoxicated from taking illegal and prescription medication. Wilford was able to communicate to officers. At the conclusion of the interview, officers asked Wilford if they had been unpleasant. Wilford responded that the officers have "been very nice to me." Officers also asked if Wilford felt that he had been mistreated. Wilford responded, "no."

Subsequently, Wilford has been indicted and presently seeks to exclude his statement. Wilford asserts that impairment caused him to lack the capacity to waive his rights and that he was coerced into waiving his rights because the police withheld necessary medical treatment.

ANALYSIS

In essence, the defendant asserts four means by which he claims his confession was coerced. When reviewing his claim of coercion, the Court must look at the totality of the circumstances. *Watson v. DeTella*, 122 F.3d 450, 453 (7th Cir. 1997); *United States v. Watson*, 87F.3d 927, 930 (7th Cir. 1996), *appeal after remand*, 189 F.3d 496 (7th Cir. 1999). The factors the Court should consider include the nature and duration of the questioning, sleep deprivation, lack of food, consumption of drugs or alcohol, the defendant's age, intelligence, education, and prior law enforcement contact. *Watson*, 122 F.3d at 453.

Even if the defendant was intoxicated and was suffering from a medical condition, a violation only occurs if law enforcement coerced Wilford. *Colorado v. Connelly*, 479 U.S. 157, 170 (1986) and *United States v. Lawal*, 231 F.3d 1045, 1048-1049 (7th Cir. 2000).

1. The Defendant's alleged intoxication did not render his Miranda Warnings invalid.

The affects of alcohol or other mind altering substances do not de facto invalidate a *Miranda* Waiver. Thomas Walker and others robbed a bank. *United States v. Walker*, 272 F.3d 407 (2001). Just prior to committing the robbery at 4:30 p.m. on October 8, 1999, Walker used heroin. *Walker*,

272 at 410. Law enforcement arrested Walker on October 19, 1999 around 4:00 pm. *Id.* at 410. By 9:00a.m. the next morning, Walker was taken to the hospital for heroin withdrawal. *Id.* at 410. Walker's symptoms included diarrhea, vomiting, and stomach pain. *Id.* at 410. Walker was treated with morphine and other medications and discharged around 11:05 a.m. *Id.* at 410. Walker's treating physician said that Walker's health was "good" and that he was "alert and oriented." *Id.* at 410. At 12:45, agents read Walker his *Miranda* warnings and, interspersed with vomiting, Walker waived his rights and confessed. *Id.* at 410, 411

Walker filed a motion to suppress his confession based upon his heroin withdrawal, and promises of bathroom breaks, visits with children, medical care, and leniency from a judge. *Id.* at 412. On appeal, the Seventh Circuit upheld the District Court's finding that Walker never requested visitation with his children or a bathroom break. Further, "[W]e have consistently held that promises to bring the defendant's cooperation to the attention of the prosecutor do not render a confession involuntary. See *United States v. Westbrook*, 125 F.3d 996, 1005 (7th Cir. 1997); *United States v. Rutledge*, 900 F.2d 1127, 1130 (7th cir. 1990). Finally, the trial court determined and the appellate court upheld the finding that the Defendant's physical discomfort was not enough under these facts to render his confession involuntary. *Walker*, 272 at 413. The Court reaffirmed the holding in *United States v. Schwensow*, 151 F.3d 650, 659 (7th Cir. 1998) that "physical pain or drug use does not make a confession involuntary as a matter of law." *Id.* at 413.

Henry Baltrunas was indicted and convicted for robbing a bank. *United States v. Baltrunas*, 957 F.2d 491 (7th Cir. 1992). Prior to trial, Baltrunas alleged that "his confession was tainted because his use of heroin made him constitutionally incapable of waiving his rights." *Id.* at 496. The Seventh Circuit found that Baltrunas was informed of his *Miranda* rights, appeared to understand the interviewer, and, otherwise, did not appear to be impaired during the interview. *Id.* at 496.

Therefore, despite the fact that Baltrunas had ingested heroin that day, the *Miranda* waiver and confession were valid.

The Government anticipates that the evidence will show that an interviewing detective sat within feet of the defendant during the duration of the interview. The Government anticipates that the detective will testify that the defendant did not appear to be impaired. The detective will also testify and the Court will be able to see that the defendant's answers related logically to the questions asked. The specific facts of this case do not even rise to the level displayed in *Walker*, therefore, the Government asserts that Mr. Wilford's motion to suppress his confession based up intoxication should be denied.

2. The Defendant's health concerns were not abused and, therefore, did not cause an invalid *Miranda* waiver.

Early within the video taped interview, the Defendant indicated that he had kidney stones. The Defendant did not ask for medical treatment and, in the video tape, did not appear to be distracted by the kidney stones. While seemingly callous, it is important to note that the Defendant did not cry out in pain. Unlike Walker, the Defendant did not vomit repeatedly throughout the interview. *United States v. Walker*, 272 F.3d 407, 410 (2001). The *Walker* court reaffirmed the holding in *United States v. Schwensow*, 151 F.3d 650, 659 (7th Cir. 1998) that "physical pain or drug use does not make a confession involuntary as a matter of law." *Id* at 413. Looking at the individual facts of this case, nothing within these facts demonstrate an involuntary waiver of *Miranda* rights

Furthermore, nothing concerning the manner with which law enforcement treated Wilford is indicative of coercion. In fact, Wilford indicated that the officers have "been very nice to me" and had not mistreated treated him. *Colorado v. Connelly*, 479 U.S. 157, 170 (1986) considered whether or not a defendant who was later deemed mentally ill could voluntarily confess to a murder.

Connelly approached an officers and confessed his involvement in an unsolved murder. *Id* at 160. Despite testimony which clearly demonstrated that the defendant's mental illness impacted his free will, the Court found that "[a]bsent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." *Id.* at 164. The Seventh Circuit follows *Connelly*. The Court found in *United States v. Lawal*, 231 F.3d 1045, 1048-1049 (7th Cir. 2000) that a confession was valid despite the defendant's paranoia because there was no evidence of law enforcement paranoia.

WHEREFORE, the Government respectfully requests that the Court allow the Government to supplement its response once medical records have been received. The government also respectfully requests that the Court deny the Defendant's Motion to Suppress.

Respectfully submitted,

RANDY G. MASSEY
United States Attorney

s/Jennifer Hudson
JENNIFER HUDSON
Assistant United States Attorney
Nine Executive Drive
Fairview Heights, IL 62208
(618) 628-3700
Fax: (618) 628-3720
E-mail: Jennifer.Hudson2@usdoj.gov

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Certificate of Service

I hereby certify that on **September 21, 2007**, I caused to be electronically filed **Government's Response to Defendant's Motion to Suppress Statements** with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

Robert Herman - Email: bherman@621skinker.com

and I hereby certify that on **September 21, 2007** I caused to be mailed by United States Postal Service, the document(s) to the following non-registered participants:

None

Respectfully submitted,

RANDY G. MASSEY
United States Attorney

s/Jennifer Hudson
JENNIFER HUDSON
Assistant United States Attorney
Nine Executive Drive
Fairview Heights, IL 62208
(618) 628-3700
Fax: (618) 628-3720
E-mail: Jennifer.Hudson2@usdoj.gov