

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 11-20342

Javon Journe-Durr,

Honorable Sean F. Cox

Defendant.

OPINION & ORDER
DENYING DEFENDANT'S MOTION TO SUPPRESS AND
DENYING DEFENDANT'S MOTION FOR ADDITIONAL DISCOVERY

This matter is currently before the Court on two pretrial motions filed by Defendant Javon Journe-Durr ("Defendant"). The first motion asks the Court to suppress a written statement made by Defendant on April 19, 2011. In the second motion, Defendant requests additional discovery. The parties have briefed the issues and the Court held an evidentiary hearing on August 5, 2011. For the reasons set forth below, both motions shall be DENIED.

BACKGROUND

In this action, Defendant is charged in a four-count indictment with: 1) being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (Count One); 2) possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) (Count Two); 3) maintaining a drug premises, in violation of 21 U.S.C. § 856(a)(1) (Count Three); and 4) possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Count Four). The charges stem from the execution of a search warrant at a one-bedroom apartment in Pittsfield

Township, Michigan on April 19, 2011.

A. Defendant's Motion To Suppress:

On June 17, 2011, Defendant filed a Motion to Suppress. Defendant contends that when he was questioned by the police on April 19, 2011, he wrote on a yellow legal pad that he did not live at the residence and wanted an attorney. Although Defendant was read his rights and signed a waiver of rights form on April 19, 2011, Defendant contends that the written statement he signed on April 19, 2011 was not truly voluntary because he had requested an attorney prior to giving that written statement. He contends that the officers continued questioning him after he requested an attorney and thereby violated his constitutional rights. Defendant asks the Court to suppress the written statement.

In response, the Government asserts that Defendant was advised of his rights and thereafter signed a form, indicating he had been advised of his rights. (*See Ex. A to Govt.'s Brief*). The Government asserts that Defendant then waived his rights and agreed to provide a written statement to the officers, wherein he admitted that the drugs and firearms recovered during the search were his and that he sells "weed." (*Govt.'s Br. at 2*). The Government contends that Defendant did not request an attorney at any time on April 19, 2011. The Government states that there is no evidence to support Defendant's contention that he requested an attorney, but agrees that the Court should hold an evidentiary hearing given Defendant's assertions.

B. Defendant's Motion For Additional Discovery:

Defendant also filed a motion requesting additional discovery. Defendant's Motion for Additional Discovery requests a copy of the alleged yellow sheet of paper on which Defendant

wrote, when he was interviewed during the search, that he did not live at the residence and that he wanted an attorney. Defendant contends that he is entitled to a copy of any and all *Brady* materials, including “the missing sheet where he requested an attorney.” (Def.’s Motion at 2).

In response, the Government states that the requested “yellow sheet” on which Defendant allegedly requested an attorney simply does not exist. Thus, it contends there is no such document to turn over. In addition, the Government states that it recognizes its ongoing disclosure obligations under Rule 16 and *Brady* and it is therefore unnecessary to issue an order requiring the Government to turn over such materials.

EVIDENTIARY HEARING

With the issues having been so framed by the parties, the Court held an evidentiary hearing on August 5, 2011. The following witnesses testified at that evidentiary hearing: 1) Detective Mark Bessner; 2) Detective James Meade; 3) Detective Jason Hayes; and 4) Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having heard and observed the witnesses who testified at the evidentiary hearing, allowing for this Court to assess credibility, having considered the exhibits submitted by the parties, having reviewed all matters of record in this case, having considered the arguments presented by counsel, and having applied the governing legal principles, the Court makes the following findings of fact and conclusions of law.¹

FINDINGS OF FACT

¹To the extent that a finding of fact is more properly a conclusion of law, and the to the extent that a conclusion of law is more properly a finding of fact, it should be so construed.

After consideration of the testimony and exhibits presented at the evidentiary hearing, drawing inferences as appropriate, weighing the evidence and **assessing the credibility of the witnesses**, the Court finds as follows.

Detective Mark Bessner is a police officer employed by the Canton Township Department of Public Safety, and is currently assigned to the Western Wayne Narcotics Task Force. Detective James Meade is a police officer employed by the Redford Police Department and is currently assigned to the Western Wayne Narcotics Task Force. Detective Jason Hayes is a police officer employed by the Plymouth Township Police Department and is currently assigned to the Western Wayne Narcotics Task Force.

On April 19, 2011, Detective Bessner, Detective Meade, and Detective Hayes, while working for the Western Wayne Narcotics Task Force, participated in the execution of a search warrant at a residential apartment in Pittsfield Township, Michigan.

When the officers arrived at the apartment, they knocked and announced their presence. After receiving no response, the officers attempted a forced entry, using a ram to open the apartment door. Upon hearing the ram strike the door, Defendant opened the apartment door and the officers entered.

Defendant was in the one-bedroom apartment with a woman named Alicia Randall when the officers entered. Upon entering the apartment, officers began executing the search warrant, while Defendant remained in the livingroom.

Defendant was later interviewed by officers in the bedroom, while Ms. Randall remained in the living room. Detective Bessner and Detective Meade were present during the entire interview with Defendant in the bedroom. Detective Hayes was present for a portion of the

interview. Detective Bessner took the lead during the interview.

Defendant was calm and cooperative while he was with the officers. Defendant did not appear to be under the influence of either drugs or alcohol.

Detective Bessner read Defendant his rights, as stated on a Michigan State Police Advice of Rights form that he had with him. Defendant then told the officers that he understood his rights.

The form that Detective Besser had read from contains an acknowledgment section which states “I have been informed by” Detective Mark Bessner as follows:

That *I* have a right to remain silent, that anything *I* say can and will be used against me in a court of law; that *I* have the right to talk to a lawyer and have him present with me before or during any questioning; that if *I* want a lawyer but cannot afford one, one will be appointed to represent me at public expense; that if *I* waive my right to remain silent and later wish to stop answering questions, the questions will stop; and that if *I* waive my right to have a lawyer present and later change my mind, the questioning will stop until *I* have talked with a lawyer.

(Govt.’s Ex. A-1 at 1) (emphasis in original). After hearing Detective Bessner read him his rights, Defendant signed the acknowledgment section of the form, acknowledging that Detective Bessner had informed him of the above rights.

After having read Defendant his rights, and having Defendant acknowledge in writing that he had done so, Detective Bessner then spoke with Defendant about the drugs, the handgun, and the currency that had been found in the apartment during the search. After speaking with Defendant for some time, Detective Bessner wrote out a statement based on Defendant’s responses to his questions, in question and answer format, on the form on which Defendant had earlier acknowledged his rights. At the beginning of the statement section of the form, Defendant filled in blanks on the form, confirming his identity and stating that he is 22 years old.

The form then states:

I understand each of the rights explained above and I am willing to give up those rights and answer questions at this time. No threats or promises of any nature have been made to me by anyone. The following statement is the truth to the best of my knowledge.

(Govt.'s Ex. A-1 at 1) (emphasis in original). Following that paragraph, Detective Bessner then wrote out the statement in question and answer format as follows:

- Q. Were you inside Apt. 2C at 4432 Hunt Club Drive, Pittsfield Twp, MI, on April 19, 2011?
- A. Yes.
- Q. And Detectives w/ Western Wayne Narcotics served a search warrant at that location on that date?
- A. Yes.
- Q. Inside that apartment, did Detectives discover multiple pounds of weed?
- A. Yes.
- Q. And a handgun?
- A. Yes.
- Q. Was the weed yours?
- A. Yes.
- Q. Was the gun yours?
- A. Yes.
- Q. Was there money in the apartment?
- A. Yes.
- Q. How much, ballpark?
- A. Five or six grand, somewhere in there.
- Q. Was the money yours?
- A. Yeah.
- Q. And did you earn it selling marijuana?
- A. No. I earned it at the casino.
- Q. Did you earn that money with bet money earned selling weed?
- A. Yeah.
- Q. Are you now under the influence of drugs or alcohol?
- A. No.

(Govt.'s Ex. A-1 & A-2). Defendant then signed the bottom of the completed statement form, and initiated next to each of the above answers. The officers did not say or do anything to coerce Defendant into waiving his rights. The officers did not make any threats or promises to

Defendant before he waived his rights.

Defendant did not write or sign any other statement in the presence of the officers on April 19, 2011 (ie., any statements other than the statement submitted as the Government's Exhibits A-1 and A-2).

Defendant did not ask for an attorney at any time on April 19, 2011. At no point during the interview did Defendant tell any of the officers that he did not wish to answer any questions.

CONCLUSIONS OF LAW

Statements made by a defendant in response to interrogation while in police custody are not admissible unless the defendant has first been apprised of the constitutional right against self-incrimination and has validly waived this right. *United States v. Cole*, 315 F.3d 633, 636 (6th Cir. 2003) (citing *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966)).

The government bears the burden of showing the waiver by a preponderance of evidence. *Colorado v. Connelly*, 479 U.S. 157, 168-69 (1986). The Court concludes that the Government has met its burden of establishing, by a preponderance of the evidence, that Defendant's waiver of rights was knowing and voluntary.

"The inquiry as to whether there was a valid waiver has two components." *United States v. Wilkerson*, 76 Fed.Appx. 657, 658 (6th Cir. 2003). "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *Id.* (citing *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

Here, the Government established that Defendant's waiver of rights was the product of a

free and deliberate choice. Defendant was not under the influence of either drugs or alcohol. Defendant did not request an attorney either before or after he was read his *Miranda* rights. The officers did not say or do anything to Defendant to coerce him into waiving his rights. The officers did not make any threats or promises to Defendant to induce him into waiving his rights.

The Government also established that Defendant made the waiver with a full awareness of the nature of the rights being waived and the consequences of that waiver. After having been informed of his rights, Defendant verbally told the officers that he understood his rights. Defendant also signed a statement indicating that he had been read his rights and understood those rights. Moreover, it is undisputed that Defendant has had prior experience with the criminal justice system and has served time in prison. Defendant's prior experience with the criminal justice system further supports this Court's conclusion that Defendant's waiver was knowing.

Accordingly, the Court shall DENY Defendant's Motion to Suppress seeking to suppress his written statement.

The Court shall also DENY Defendant's Motion for Additional Discovery. In that motion, Defendant seeks an order requiring the Government to produce a written statement on yellow paper that Defendant claims he gave to the officers on April 19, 2011. Following the evidentiary hearing, this Court concludes that no such statement exists. In addition, given that the Government recognizes its ongoing obligation under Rule 16 and *Brady*, and its affirmative representation that the alleged sheet of yellow paper with a statement by Defendant requesting an attorney does not exist, this Court agrees that no order from the Court is necessary.

CONCLUSION & ORDER

For the reasons above, **IT IS ORDERED** that Defendant's Motion to Suppress Evidence and Defendant's Motion for Additional Discovery are **DENIED**.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: August 10, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 10, 2011, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager