

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04-20081-1
)	
BILLY T. PHILLIPS,)	
)	
Defendants.)	

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

This cause is before the Court on the motion of Defendant, Billy Thomas Phillips, to suppress a statement made by Defendant to agents of the Federal Bureau of Investigation on February 5, 2004. Defendant filed his Motion to Suppress Evidence on September 29, 2004. The government responded in opposition on October 15, 2004.

A hearing was held by the Court regarding this matter on November 5, 2004. Three witnesses testified: Special Agent Steven Lies, an agent with the Federal Bureau of Investigation; Special Agent Joseph Rinehart, an agent with the Federal Bureau of Investigation; and Defendant, Billy Thomas Phillips, who testified for the limited purpose of the pending motion to suppress. Three exhibits were introduced at the hearing: a Consent to Search form signed by Defendant and dated January 6,

2003;¹ an Advice of Rights form including a waiver of rights signed by Defendant and dated February 5, 2004, at 11:23 a.m.; and a statement signed by Defendant and dated February 5, 2004, at 12:40 p.m.

Defendant initially filed a motion to suppress regarding statements he made on January 6, 2004, and February 5, 2004. During the November 5, 2004, hearing, counsel for Defendant stated that the statement from January 6, 2004, was made freely and voluntarily and that Defendant was only seeking to suppress the statement made on February 5, 2004. Because the motion to suppress as to the statement made on January 6, 2004, was withdrawn, the Court will consider only the statement made on February 5, 2004.

I. BACKGROUND

This matter concerns statements taken by Federal Bureau of Investigation agents in connection with the investigation of a videotape of the molestation of a twelve year old girl and the subsequent indictment of Defendant. Defendant was charged along with a co-defendant, Jamie Forrester.²

¹ Though the form is dated January 6, 2003, testimony indicated that the actual date on which the form was signed was January 6, 2004.

² Ms. Forrester has since plead guilty to the charges against her.

Defendant spoke with Federal Bureau of Investigation agents and other members of the Innocent Images Task Force on January 6, 2004, and February 5, 2004. On January 6, 2004, Defendant was interviewed at his home in Martin, Tennessee. Prior to the conclusion of the interview, Defendant signed a consent to search form allowing the Federal Bureau of Investigation to search for child pornography on computers in his possession and internet accounts in his name. On February 5, 2004, Defendant was interviewed at the Federal Bureau of Investigation offices in Memphis, Tennessee. Defendant was interviewed for approximately one hour and forty minutes and left the Federal Bureau of Investigation offices at approximately 1:10 p.m.

An Advice of Rights form, including a waiver of rights, consistent with Miranda was signed by Defendant on February 5, 2004, at 11:23 a.m. The parties do not dispute that Defendant was informed of his rights and Defendant admits that the Advice of Rights form was signed freely and voluntarily.³ Defendant signed a substantive statement regarding child pornography found on his computer on February 5, 2004, at 12:40 p.m. Defendant seeks to suppress this statement. A chronicle of the interviews and the circumstances surrounding the statement given by

³ Defendant admits that he signed the Advice of Rights form before the interview began and the time marked on the Advice of Rights form indicates that it was signed at around the time when the interview began.

Defendant follows, as provided by testimony at the November 5, 2004, hearing.

II. TESTIMONY

On November 5, 2004, the Court heard the testimony of Special Agent Steven Lies, Special Agent Joseph Rinehart, and Defendant.

A. Special Agent Steven Lies

Steven Lies, a special agent with the Federal Bureau of Investigation, is currently assigned to the Innocent Images Task Force ("Task Force") on the Crimes Against Children Cyber Squad. Special Agent Lies testified about the interviews of Defendant conducted on January 6, 2004, and February 5, 2004. Special Agent Lies testified to the following facts.

On January 6, 2004, Special Agent Lies met with Defendant at Defendant's residence in Martin, Tennessee. Special Agent Lies was accompanied by Officer Dallas Dallosta from Shelby County and Officer Brett Davis from Weakley County. After Special Agent Lies identified himself to Defendant, Defendant agreed to speak with him and invited the officers into his home. Special Agent Lies testified that Defendant was not under arrest, that his cooperation was voluntary, and that Defendant signed a Consent to Search form. The officers were at Defendant's home approximately fifty to fifty-five minutes and left the residence after Defendant's children arrived home. During the meeting on January

6, 2004, Defendant stated that he would be willing to make another statement to agents in the future.

Special Agent Lies testified that by February 5, 2004, Defendant was a target of the investigation and that the agents wanted to speak with Defendant about child pornography because child pornography had been found on his computer. On February 5, 2004, Defendant met with Special Agent Lies at the Federal Bureau of Investigation offices in Memphis, Tennessee. Also present during the interview were Officer Dallosta and Special Agent Rinehart.

Special Agent Lies testified that Defendant participated of his own volition in an interview that lasted approximately one hour and forty minutes. Defendant was advised that he was not under arrest and that his cooperation was voluntary. In addition, Defendant was advised of his right to remain silent and his right to counsel. Moreover, Defendant signed and executed an Advice of Rights form dated February 5, 2004, in the presence of Special Agent Lies. The Advice of Rights form listed Defendant's rights under Miranda and indicated that Defendant understood his rights and was willing to answer questions without a lawyer present. After Defendant signed the Advice of Rights form, Defendant agreed to talk with him. Defendant was not questioned until after the Advice of Rights form was completed. According

to Special Agent Lies, Defendant was free to leave during the interview and at no time was Defendant under arrest.

During the February 5, 2004, interview, Defendant signed a statement.⁴ The statement indicated that Defendant had bought a Packard Bell computer in December of 1996 and set up an internet account in approximately January of 1997. The statement further indicated that Defendant received child pornography on the computer which was then placed on a zip disk. The disks were later destroyed, but "left over" pornographic images were found on the computer. In addition, Defendant hand wrote onto the statement that he had never told Ms. Forrester about seeing any child pornography.

⁴ The statement given by Defendant on February 5, 2004, reads as follows:

I bought the Packard Bell in December of 1996 and got an AOL account approximately in January 1997. I received child pornography via e-mail through going to various rooms and putting myself on mailing lists. Any child pornography that I had, to my knowledge was all put on a zip disk and to my knowledge was all destroyed and burned. I kept all of my sexual pictures on a zip disk so that my kids would not look at them since they also used the computer. I do not know if any of this could be left from that. If the child porn on my laptop is left over from when I got it through AOL then it is very possible that I am responsible for it. At the time I got on the computer when I first started using computers I did not know what child pornography was. The child porn pictures were pictures I stumbled on by getting on the list.

Hand written on the statement and initialed by Defendant is the following:

I never told Jamie about seeing any child porn.

Special Agent Lies testified that Defendant was not threatened in any way before making the statement. However, Special Agent Lies testified that Special Agent Rinehart made a statement to Defendant to the effect that the Federal Bureau of Investigation would track Defendant down. According to Special Agent Lies, the statement was made out of frustration because the agents did not believe Defendant. In addition, Special Agent Lies testified that the statement was made after Defendant made his signed statement in an effort to make Defendant leave because he was giving the agents more information than they wanted.

B. Special Agent Joseph Rinehart

Joseph Rinehart, a special agent with the Federal Bureau of Investigation, is currently the coordinator of the Innocent Images Task Force. Special Agent Rinehart testified about the interview of Defendant conducted on February 5, 2004.

Special Agent Rinehart testified that Defendant was advised of his rights by Special Agent Lies and voluntarily agreed to speak with the agents. According to Special Agent Rinehart, Defendant was not under arrest and was free to leave the interview. The interview lasted nearly two hours and the primary interviewers were Special Agent Lies and Officer Dallosta.

Special Agent Rinehart testified that during the interview he made a "flippant statement" that was not his "finest moment in an interviewing process" by which he stated that Defendant "would

be better off just, you know, taking off." (November 5, 2004, Hearing Transcript at 38:6-24.) Special Agent Rinehart made the statement because he was "frustrated with the way the interview was going" and he "didn't feel like Mr. Phillips was really answering the questions[.]" (Id.) Special Agent Rinehart testified that his statement was made subsequent to Defendant's written statement. Special Agent Rinehart explained that the statement he made to Defendant occurred toward the end of the interview and that Defendant left at around 1:10 p.m.

C. Defendant Billy Thomas Phillips

Defendant Billy Thomas Phillips testified for the limited purpose of the motion to suppress. Defendant has a tenth grade education. According to Defendant, he was told during the first interview on January 6, 2004, that the Task Force was investigating Ms. Forrester and he believed that the interview on February 5, 2004, served the same purpose. Defendant brought with him to the February 5, 2004, interview materials which he believed would assist the Federal Bureau of Investigation in the investigation of Ms. Forrester.

Defendant testified that he signed the Advice of Rights form, including the waiver of rights, freely and voluntarily. Defendant testified that after the form was signed, the tone of the interview changed and he did not feel that he was free to leave the interview. Specifically, Defendant claims that after

he signed the Advice of Rights, the questions from the agents became more harsh and the agents wanted specific answers. Defendant further stated that he felt threatened during the interview.

In particular, Defendant felt threatened when Special Agent Lies referred to him as a "monster" and upon becoming frustrated told Defendant that he "should leave the country and go to Bolivia before walking out of the room." (Tr. at 47:7-10.) Defendant later clarified that it was actually Special Agent Rinehart who told Defendant that he should leave the country and then left the room. Defendant testified that these events occurred before Defendant signed his statement. After reviewing the signed statement, Defendant testified that parts of the statement are untrue, but that he felt forced to sign it because after he was told that he should leave the country he felt that the agents were "capable of anything[.]" (Tr. at 48:4-24.) Defendant testified that absent the statement of Special Agent Rinehart he would not have made his signed statement.

III. ANALYSIS

Due process dictates that the admissibility of a confession depends on whether the confession was given freely and voluntarily. Confessions that are obtained involuntarily, or by coercion, must be excluded from a defendant's trial. See Colorado v. Connelly, 479 U.S. 157, 163 (1986); Dickerson v.

United States, 530 U.S. 428, 434 (2000). The burden is on the prosecution to show by a preponderance of the evidence that a confession sought to be introduced into evidence was made voluntarily. Lego v. Twomey, 404 U.S. 477, 489 (1972).

Defendant contends that his statement made on February 5, 2004, was taken in violation of his rights because it was obtained through duress and coercion and, therefore, should be suppressed. The government contends that the statement is admissible because it was made freely and voluntarily. While the parties dispute whether Defendant was in custody at the time the statement was made, both Defendant and the government agree that Defendant received Miranda warnings prior to his statement being taken.⁵ Miranda v. Arizona, 384 U.S. 436 (1966). The parties further agree that Defendant freely and voluntarily signed the Advice of Rights form which plainly states the rights afforded Defendant under Miranda.

Notwithstanding Miranda warnings, evidence deemed to have been coerced from a defendant must be excluded from the

⁵ Even if Defendant was not subject to a custodial interrogation, the Supreme Court has recognized that "noncustodial interrogation might possibly in some situations, by virtue of some special circumstances, be characterized as one where 'the behavior of ... law enforcement officials was such as to overbear petitioner's will to resist and bring about confessions not freely self-determined...'" Beckwith v. United States, 425 U.S. 341, 347-48 (1976)(quoting Rogers v. Richmond, 365 U.S. 534, 544 (1961)). The Court, however, does not find that such special circumstances arise from the present situation.

defendant's trial. Dickerson, 530 U.S. at 434; Connelly, 479 U.S. at 163. For a statement to be admissible at trial, the government must demonstrate that the statement was not obtained as the result of coercion. Id. at 478 (citing Jackson v. Denno, 378 U.S. 368 (1964) ("[A]criminal defendant who challenges the voluntariness of a confession made to officials and sought to be used against him at his trial has a due process right to a reliable determination that the confession was in fact voluntarily given and not the outcome of coercion which the Constitution forbids.")).

Specifically, the test for voluntariness of a confession involves three factors: (1) whether the confession was extorted by means of a coercive activity, (2) whether the coercion was sufficient to overbear the will of the accused, and (3) whether the coercive activity is causally related to the confession in such a way that coercion was the motivating factor behind the defendant's decision to confess. McCall v. Dutton, 863 F.2d 454, 459 (6th Cir. 1988). In order to determine whether a confession was obtained by coercion, courts look at the totality of the circumstances and whether the statement was obtained by overbearing the will of the defendant. Connelly, 479 U.S. at 163-64; Haynes v. Washington, 373 U.S. 503, 513-15 (1963).

As previously noted, the burden is on the prosecution to show by a preponderance of the evidence that the statement made

on February 5, 2004, was made freely and voluntarily. In particular, the prosecution must show that the statement was not obtained by the use of coercion. Defendant testified that he was called a monster during the interview and that he felt threatened because, after Special Agent Rinehart told him that he should leave the country and left the room, Defendant believed that the agents were capable of anything. However, such allegations alone do not give rise to a claim that the actions of the agents rose to the level of coercion. Indeed, on February 5, 2004, Defendant arrived at the Federal Bureau of Investigation offices of his own volition and freely and voluntarily signed a form indicating that he understood the rights afford him under Miranda. Though Defendant contends that he did not feel free to leave the interview, the record shows that Defendant was not under arrest at any time during the interview and, in fact, following the interview, which lasted less than two hours, Defendant left the Federal Bureau of Investigation offices.

Nonetheless, Defendant contends that the statement he made to the agents on February 5, 2004, should be suppressed because he felt threatened by the agents. However, the evidence does not indicate that the actions of any agent involved in the interview at issue amounted to coercion. Rather, the evidence shows only that Agent Rinehart directed a disparaging remark toward Defendant and then left the room in

which the interview was taking place. Further there is no evidence that the agents acted in a way that was intended to extort a confession. Moreover, the evidence fails to demonstrate that any actions at issue were sufficient to overbear the will of Defendant. In view of the totality of the circumstances, the Court does not find that the environment created during the interview was coercive. Because the government has met its burden to demonstrate that the statement was not obtained as the result of coercion, the Court finds that the statement made on February 5, 2004 is admissible.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES Defendant's Motion to Suppress Evidence.

So ORDERED this ____ day of January, 2005.

JON P. McCALLA
UNITED STATES DISTRICT JUDGE