

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
ANTHONY ANTONIO JONES,)
)
)
)
 Defendant.)

No. 02-20380-B

REPORT AND RECOMMENDATION ON
DEFENDANT ANTHONY JONES'S MOTION TO SUPPRESS

Anthony Jones was indicted on October 9, 2002, in connection with an armed robbery that occurred on or about June 25, 2002, at the Empire Pawn Shop, 640 South Highland, Memphis, Tennessee. Jones is charged in the indictment with one count of robbing a business engaged in interstate commerce in violation of 18 U.S.C. § 1951 and one count of using a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c). Jones seeks to suppress statements, including a confession, he made during a custodial interrogation at the City of Memphis Robbery Bureau offices. As a basis for his motion to suppress, Jones argues that his statements to the police were obtained in violation of his *Miranda* rights. The motion was referred to the United States Magistrate Judge for an evidentiary hearing and a report and

recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and (C).

An evidentiary hearing was duly held on May 1, 2003. The government called two witnesses, Detective Sgt. Joseph Pearlman and Lt. Darren Goods, both of the Memphis Police Department Robbery Bureau. At the time of the incident, Lt. Goods was a sergeant in the Memphis Police Department serving on the Safe Streets Task Force. The defendant, Anthony Jones, testified on his own behalf.¹ For the reasons that follow, this court recommends that Jones's motion should be denied.

PROPOSED FINDINGS OF FACT

Most of the testimony at the hearing was uncontroverted.

The afternoon of June 25, 2002, law enforcement officers were called to a robbery at the Empire Pawn Shop, 640 South Highland, in Memphis, Tennessee. Two black males, one wearing a camouflage mask and the other wearing a wig, had robbed the store at gunpoint. They absconded with jewelry, handguns, cash from the store safe, and other items including jewelry and wallets taken from customers inside the store. They departed in a dark Ford Taurus, which was abandoned about one mile away. Children on the scene had seen two men leave the Taurus and enter a green Ford Explorer. When responding officers reported the incident to their colleagues, the

¹ The defense had scheduled Jones's aunt and Jones's mother as additional witnesses, but both failed to appear.

Safe Streets Task Force responded that the perpetrators sounded like individuals the Task Force had under investigation in association with recent armored car robberies in the area. The Safe Streets Task Force directed the responding officers to an address on Humber Street in Memphis, and marked cars were dispatched there.

At about 4:00 p.m., while waiting for a search warrant, uniformed officers surrounded the Humber Street property, a fenced home owned by Donna Smith, who is Jones's aunt and the wife of co-defendant Michael Smith. Hearing noise outside, Jones exited through the back door of the Humber Street house carrying guns concealed under his shirt and a bag with jewelry in it. Upon seeing the officers surrounding the property, he discarded both the guns and the bag. Seeing the gun, one officer shouted, "He's got a gun," and the other officers immediately pointed their weapons at Jones. At the officers' instruction, he turned himself in, climbing over the fence, without injury, to do so. Officers secured Jones and walked him over to a squad car; Jones testified that they did not "rough him up" at all but merely escorted him. He was initially held in the squad car without handcuffs and with the car door open. An officer briefly questioned him.² Jones then

² The results of that questioning apparently were not recorded and are not at issue in the evidentiary motion.

was secured with handcuffs and held inside the squad car for one to one and a half hours before being transported to the police station at 201 Poplar Avenue at about 5:30 p.m. Jones testified that two uniformed officers were with him at all times.

After Jones was transported, the officers who remained at the Humber Street house conducted a search of the house pursuant to the consent of the homeowner, Donna Smith.³ In and around the house, officers recovered the guns and the jewelry Jones had dropped in the yard; a camouflage mask; a wig; bulletproof vests; and assorted cash, jewelry, and other items identified as the fruits of the Empire Pawn Shop robbery.

On arrival at 201 Poplar Avenue, Jones was placed in a holding room with a mirror or window for about half an hour. Jones testified that he was frightened, but that no officer threatened him. He was then moved to an interview room adjacent to Sergeant Pearlman's desk in the Robbery Bureau. En route, he walked past his aunt, Donna Smith, who was present by that time. Once inside the interview room, Jones could hear Patsy Cathey, his girlfriend, crying in a nearby interview room. (See Ex. 3 at 4 (identifying Cathey)). Jones heard someone ask, "Can you shut her [Cathey] up?" and heard someone respond humorously, "I'd let him [Jones] do it,

³ Neither the validity of Ms. Smith's consent nor the validity of the search are challenged in this motion.

but I can't." Jones said he laughed at that remark.

The interview room was about eight feet by fifteen feet, and contained a computer, a table, and padded chairs. The door had no interior lock and did not require a key to enter or exit. The room had a video feed, but Sgt. Perlman testified that the machine was not recording that evening and did not routinely record, but rather provided a closed-circuit television feed so that supervisors could watch interviews. Jones was seated in a chair at one end of the table and cuffed at the arm and the ankle. His arm was cuffed to the arm of the chair.

Sgt. Pearlman arrived at 201 Poplar Avenue at about 8:45 p.m., after staying at Humber Street through the search of the house and then stopping to pick up pizza and soft drinks. Sgt. Pearlman entered the room and asked Jones if he was hungry or thirsty and if he wanted a cigarette. Jones responded that he was a little hungry but not thirsty. Sgt. Pearlman brought Jones pizza and a soft drink, and Jones ate and drank. Sgt. Pearlman then left the room, and Jones could hear Donna Smith talking outside.

Lt. Goods then entered the room. At the hearing, Jones repeatedly referred to Lt. Goods as "Sergeant Howell," but confirmed that the man who testified at the evidentiary hearing, Lt. Goods, was the one who entered the room at this time. Here, the defendant's testimony and the officers' testimony diverges. Lt.

Goods claims the interview lasted about five minutes and that Jones said nothing but his name. Lt. Goods testified that he merely informed Jones about the nature of other crimes Goods was investigating (i.e., armored car robberies) in which Jones was a possible suspect and informed Jones that he would be talking to Jones again after Sergeant Pearlman had finished the Robbery Bureau's interview. While Lt. Goods was in the interview room, the door remained opened and Sgt. Pearlman was seated outside the door.

Jones claims that Lt. Goods angrily informed him, "I don't have time for this shit; my mother's in the hospital," then proceeded to tell Jones that Jones could get thirty-five years to life⁴ and that they knew Jones had committed the robbery. Jones further claims that Lt. Goods threatened him by saying someone would "come for him," i.e., put Jones in jail that evening, if Jones did not give a statement. Jones also testified that Lt. Goods was writing on a legal pad while they spoke and that the interview lasted fifteen minutes. Jones claims that he was afraid of Lt. Goods's threats, and, but for the threats, he would not have made any subsequent statements. Jones claims that Lt. Goods slammed the door on his way out. Jones testified that although he

⁴ Jones's testimony on this point is not clear; at one time he claimed he was threatened with "thirty-five years to life" and at another he said "eighty years to life."

was frightened, he was not crying, shaking, or outwardly exhibiting fear.

Lt. Goods denies making any statement to Jones about his mother's hospitalization, although he confirms that his mother was in the hospital at the time and that he may have told other officers because he had to come and go. He further denies making any statements to Jones about potential sentences Jones faced or the likelihood of Jones's going to jail if he failed to give a statement, and he denies slamming the door. While Lt. Goods was with Jones, Jones gave no responses and made no incriminating statements.

Sgt. Pearlman then entered the interview room, accompanied by Sgt. Howell, who did not testify at the hearing. Sgt. Pearlman seated himself at the other side of the table and commenced to interview Jones, asking Jones about his age and level of education, his reading ability, and whether Jones was under the influence of drugs. Jones responded that he was twenty years old and had a ninth-grade education, could read "a little," and that although he frequently smoked marijuana, he was not under the influence of any drugs at that particular time.⁵ Sgt. Pearlman knew, from looking

⁵ Jones testified at the hearing that he had been smoking marijuana all day. He recalled that he had been under the influence when he arrived at 201 Poplar Avenue, but in the course of the evening his marijuana high "went down." Jones didn't

up Jones's criminal history beforehand, that Jones had been arrested once before.

Sgt. Pearlman then read aloud to Jones an Advice of Rights form, admitted into evidence as Exhibit 1. In pertinent part, the form reads as follows:

Before answering my questions, you should know: (1) you have the right to remain silent; (2) anything you say may be used against you; (3) you have the right to a lawyer; (4) if you cannot afford a lawyer, one will be appointed free.

I understand my rights and I am willing to talk to you now.

(Ex. 1.) Sgt. Pearlman explained the form to Jones and asked Jones to explain the provisions back to him, which Jones did. Jones then signed the Advice of Rights form. Sgts. Pearlman and Howell signed the form as witnesses at 10:10 p.m.

After the form was signed, Sgt. Pearlman told Jones that they had seen him leave the Humber Street house and had recovered evidence from the house. According to Sgt. Pearlman, Jones then willingly "gave all the details of who did what." Jones confirmed, during his testimony, that he voluntarily and truthfully spoke about the Empire Pawn Shop robbery. Sgt. Pearlman testified that

remember what he told the police officers that day about smoking marijuana, but he did admit that if he had been smoking marijuana the day of the arrest, then he would not have been afraid of the police officers.

he was the primary interviewer, although Sgt. Howell probably prompted Jones with one or two questions.

After this oral interview, Sgt. Pearlman prepared the interview room computer to take a written statement. He inserted a diskette that contained a statement template. When the template appeared on the screen, Sgt. Pearlman read it aloud, asking for Jones's background information including his age, address, social security number, and educational level. Sgt. Pearlman typed the answers into the computer template. The next paragraphs of the template contained an advice of rights provision, which Sgt. Pearlman read aloud to Jones:

Anthony Jones, you are under arrest and will be charged with Aggravated Robbery . . . We are going to ask you some questions regarding the above complaint. You have the right to remain silent and anything you say can be used against you in a court of law. You have a right to have a lawyer, either of your own choice, or court appointed if you are unable to afford one, and to talk with your lawyer before answering any questions, and to have your lawyer with you during questioning if you wish.

Q: Do you understand each of these rights I have explained to you?

A: Yes. [Here Anthony Jones's initials appear on the printout.]

Q: Having these rights in mind to you wish to make a statement at this time?

A: Yes. [Here Anthony Jones's initials again appear on the printout.]

(Ex. 2, ¶¶ 3-6.) Jones orally answered "Yes" to both questions.

Thus, Jones was advised of his *Miranda* rights twice and waived them orally twice and once in writing.

Sgt. Pearlman then commenced to question Jones about the Empire Pawn Shop robbery, typing both questions and answers into the computer template. Sgt. Pearlman printed the finished statement, and he and Sgt. Howell witnessed Jones's signature. Jones was given a red pen and an opportunity to edit the statement before signing; Sgt. Pearlman believed, but was not certain, that Sgt. Howell also read the final statement aloud to Jones.

At no time did Jones refuse to speak, request a lawyer, ask to see his aunt or girlfriend, or request a telephone call. The officers and Jones both testified that at no time during this interview did Sgts. Pearlman or Howell threaten, coerce, or make promises to Jones. Sgt. Pearlman candidly admitted that he used profanity when speaking to Jones, but only in an attempt to connect with Jones by mirroring Jones's tone and style of speech. Neither officer shouted at Jones or raised their voices to him. Jones was calm, cooperative, polite, and non-argumentative throughout the process. Overall, the written statement took about forty-five minutes: Sgt. Pearlman began to set up the computer template at 10:14 p.m.; questioning commenced at 10:25 p.m.; and the statement was printed and signed at 10:58 p.m.

The court finds the testimony of both officers to be credible

and corroborated by each other's testimony. The court further finds that Jones's testimony was inconsistent in places and less than credible. The court finds as fact that Lt. Goods did not threaten Jones with a lengthy sentence.

PROPOSED CONCLUSIONS OF LAW

The sole issue is whether the statements Jones made during his interview should be suppressed because of *Miranda* violations or as the product of unlawful coercion by law enforcement officers. The only inquiries, therefore, are 1) whether Jones was adequately advised of his rights and knowingly and voluntarily waived them, and 2) whether the confession was voluntarily given in light of the totality of the circumstances.

The Constitution's Fifth Amendment privilege against self-incrimination prohibits the introduction of statements made during custodial interrogations unless the defendant was advised of his constitutional rights and subsequently waived them. *Miranda v. Arizona*, 384 U.S. 436 (1966). In this case, the parties do not dispute that Jones was in custody from the time he was placed in a squad car at Humber Street and at all times at 201 Poplar Avenue. See *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (noting that *Miranda* applies to situations in which the interviewee is not free to depart). Nor do the parties dispute that Jones was interrogated within the meaning of *Miranda*. See *United States v. Knox*, 839 F.2d

285, 295 (6th Cir. 1988) (noting that express questioning is interrogation for purposes of *Miranda*) (citing and quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

This court submits as proposed findings of fact that Sgt. Pearlman twice advised Jones of his constitutional rights. First, an Advice of Rights form was read aloud to Jones, and Jones signed the form without protest. Second, Sgt. Pearlman read *Miranda* warnings aloud from the computer template. Jones, orally and in writing, answered "yes" to two template-based inquiries asking whether he understood his rights and was willing to speak. Jones did not request an attorney at any time, nor did he refuse to speak. Based on the foregoing facts, it is submitted that Jones was adequately advised of his constitutional rights.

In addition, it is submitted that, under the totality of circumstances of this case, Jones's waiver of his constitutional rights and his confession were the voluntary product of a rational intellect. *Miranda* warnings themselves are prophylactic mechanisms to safeguard against the inherently coercive effect of custodial interrogation, which threatens the Fifth Amendment privilege. *New York v. Quarles*, 467 U.S. 649, 654 (1984); *Michigan v. Tucker*, 417 U.S. 433, 444 (1974). A defendant's confession must be voluntary to be constitutionally valid under the Fifth and Fourteenth Amendments. *Colorado v. Connelly*, 479 U.S. 157, 163 (1986). The

burden is on the prosecution to prove by a preponderance of the evidence that a confession was voluntary. *Id.* at 168. The test is whether, under the totality of circumstances, the accused's free will was overborne. *Townsend v. Sain*, 372 U.S. 293, 307 (1963). See also *McCall v. Dutton*, 863 F.2d 454 (6th Cir. 1988); *Ledbetter v. Edwards*, 35 F.3d 1062, 1067 (6th Cir. 1994). Factors to be considered include the age, education, and intelligence of the accused; whether the accused was informed of his constitutional rights; the length of the questioning; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as the deprivation of food or sleep. *Ledbetter*, 35 F.3d at 1067.

In this case, Jones was an adult with a ninth grade education. His prior arrests as an adult and as a juvenile, which Jones admitted during his testimony, indicate some familiarity with the criminal justice system. When he acknowledged difficulty with reading, the officers read his rights aloud to him and asked him to explain them back. Sgt. Pearlman testified that Jones appeared non-agitated and "very streetwise," with solid intellectual ability and good recollection. He detailed Jones's ability to relate the types of guns and radios used, the types of jewelry taken, and Jones's displeasure that his co-defendant had claimed "the good stuff." Jones admits that he was informed of his constitutional rights, and there is no dispute on this point. The questioning

lasted approximately one hour, with a written statement beginning at 10:10 p.m. and concluding at 10:58 p.m.⁶ Although Jones had been in police custody for approximately six hours since being placed in the squad car on Humber Street, he had received both food and drink, was allowed to use the restroom, and did not claim any physical strain such as sleep deprivation. He represented to Sgt. Pearlman that he was not under the influence of any drug or narcotic. Despite Jones's testimony about his possible use of marijuana that day, no witness testified to anything in Jones's demeanor or actions that would indicate to an objective observer that Jones was under the influence of marijuana during questioning.

All the witnesses agreed that Sgts. Pearlman and Howell did not shout at Jones, raise their voices to him, nor make any promises or threats to him. The court has previously found as fact that Lt. Goods did not make statements concerning possible jail time. Accordingly, it is submitted that under the totality of the circumstances, the officers did not coerce Jones into making the statement about the Empire Pawn Shop and Jones' will was not overborne.

Even if Jones's testimony as to Lt. Goods's demeanor and

⁶ Jones made subsequent statements that evening, apparently concerning other crimes, but the motion to suppress and the evidentiary hearing were limited to statements concerning the Empire Pawn Shop robbery.

statements concerning possible jail time is accepted as truth, it is submitted that such acts were not sufficiently coercive to overbear the will of Jones. Jones testified that irrespective of Lt. Goods, Jones would have made a statement about the Empire Pawn Shop robbery, and that his statement was voluntary.

CONCLUSION

For the foregoing reasons, it is submitted that Jones' custodial interrogation was lawful, he voluntarily and knowingly waived his *Miranda* rights, and his confession was lawfully obtained. Accordingly, it is recommended that the motion to suppress be denied.

Respectfully submitted this 5th day of May, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE