

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA)
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)
MR. DEFENDANT.)

v.

DEFENDANT’S MOTION TO SUPPRESS STATEMENTS

COMES NOW Mr. Defendant by and through his undersigned attorney, and files this his Motion to Suppress Statements as follows:

Statement of Facts

Based upon the interview reports provided by the government the time of the arrest of the Defendant was approximately 7:00 a.m. on November 13, 2008. Some seven and a half hours later the FBI Agent interviewed Mr. Defendant at the county jail without having first brought Mr. Defendant before a Magistrate Judge pursuant to 18 U.S.C. § 3501.

ARGUMENT AND CITATION OF AUTHORITY

Mr. Defendant's statements on November 13, 2008 were the product of an unconstitutionally prolonged detention without presentation to a judicial officer in violation of 18 U.S.C. 3501. Failure to comply with the federal rule requiring prompt presentation before a magistrate after arrest requires suppression of the statement.

Mr. Defendant was in police custody for a period of 7 and one half hours before he was interrogated by police, and was in custody for a period of two days before he was taken before a federal magistrate.

In McNabb v. United States, 318 U. S. 332 (1943) and Mallory v. United States, 354 U. S. 449 (1957), the Supreme Court set forth the rule that a confession by an arrested person, even if made voluntarily, is

inadmissible if made after an unreasonable delay in bringing the person before a judge. The McNabb/Mallory rule was acknowledged in the framing of Federal Rule of Criminal Procedure 5 in 1966, which provides, in part, that “[a] person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer...” Fed.R.Crim.P. 5(a)(1)(A). However, in 1968, Congress enacted 18 U.S.C. § 3501, in reaction to Miranda v. Arizona, 384 U. S. 436 (1966). Section 3501 (c) provides, in relevant part:

In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate ... if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is to be left to the jury and if such confession was made or given within six hours immediately following his arrest or other detention: Provided, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate ... beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate or other officer.

In United States v. Corley, -- S.Ct. -- , 2009 WL 901513 (U.S.), the Supreme Court finally considered the issue of whether Congress intended § 3501 to eliminate the McNabb/Mallory exclusionary rule, or whether it merely intended § 3501(c) to immunize confessions given within 6 hours of a person’s arrest. Id. *7.

Federal and state officers in Pennsylvania arrested Johnnie Corley on suspicion of bank robbery at

8 a.m. on September 17, 2003, following a struggle and chase. Id. at *6. FBI agents kept Corley at a police station while they questioned witnesses, and then took him to a hospital late that morning. Id. The agents then took Corley to the FBI office in Philadelphia and proceeded to question him, despite the fact that the office was in the same building as the chambers of the nearest magistrate judge. Id. At 5:27 p.m., nine-and-a-half hours after his arrest, Corley gave an oral confession to having robbed a bank. Id. The following day, Corley signed a written confession. He was not presented to a magistrate until 1:30 p.m. the following day—more than 29 hours after his arrest. Id.

Corley was charged with armed bank robbery, conspiracy to commit bank robbery and using a firearm in the commission of a crime, and moved to suppress his oral and written confessions under McNabb/Mallory and Rule 5(a). Id. The district court denied the motion, holding that Corley’s confession was made within 6 hours pursuant to § 3501(c), if the time he received medical treatment was excluded. Id. Corley’s confession was admitted into evidence and he was convicted at trial. The Third Circuit Court of Appeals affirmed and the Supreme Court granted certiorari to resolve a division among the Circuits as to the reach of section 3501. Id. at *7.

The government argued that section 3501(a), which provides that any confession “shall be admissible in evidence” in federal court “if it is voluntarily given,” meant that the unreasonable delay exclusionary rule of McNabb/Mallory was inapplicable, if the confession was voluntary. Id. at *7. Corley argued that section 3501(a) was meant to overrule Miranda, and that section 3501(c) only limited the application of the exclusionary rule of McNabb/Mallory in cases of confessions made within 6 hours of presentment to a magistrate. Id.

The majority sided with Corley, holding that the government’s interpretation rendered section 3501(c)

nonsensical and superfluous, since any voluntary confession would be admissible regardless of whether presentment was delayed beyond 6 hours, relying on the canon of statutory construction that a statute should be construed in a manner which gives effect to all its provisions and renders none superfluous. *Id.* at *8 (citing *Hibbs v. Winn*, 542 U. S. 88, 101 (2004); quoting 2A N. Singer, *Statutes and Statutory Construction*, § 46.06, pp.181–186 (rev. 6th ed. 2000)). The majority further held that reading section 3501(a) broadly to hold that any voluntary confessions are admissible would create a conflict not only with §3501(c), but with other provisions such as Federal Rules of Evidence. *Id.* at *8. The Court also examined the legislative history of section 3501 and confirmed that Congress intended for §3501(a) to overrule *Miranda*, and not *McNabb/Mallory*. *Id.* at *9. The majority also observed that the government’s interpretation would leave Rule 5 without any teeth. *Id.* at *11. The majority persuasively wrote that, “In a world without *McNabb-Mallory*, federal agents would be free to question suspects for extended periods before bringing them out in the open, and we have always known what custodial secrecy leads to.” *Id.* (citing *McNabb*, 318 U. S. 332). The majority reversed Corley’s conviction and remanded, holding that:

§ 3501 modified *McNabb-Mallory* without supplanting it. Under the rule as revised by § 3501(c), a district court with a suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was “reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate]”). If the confession came within that period, it is admissible, subject to the other Rules of Evidence, so long as it was “made voluntarily and . . . the weight to be given [it] is left to the jury.” [Cit.]. If the confession occurred before presentment and beyond six hours, however, the court must decide whether delaying that long was unreasonable or unnecessary under the *McNabb-Mallory* cases, and

if it was, the confession is to be suppressed.

Id. at *12.

Similarly, under the facts present in this case, Mr. Defendant's statements should be suppressed. Like the defendant in Corley, Mr. Defendant was in custody more than six hours before he was interrogated and he was not taken before the nearest federal magistrate until 2 days after his arrest. The delay in taking Mr. Defendant before the magistrate was unreasonable, therefore, all statements given to the FBI should be suppressed.

CONCLUSION

WHEREFORE, for the foregoing and such other reasons as may appear to the Court, Mr. Defendant respectfully requests that the statements obtained from him be suppressed.

This the 9th day of April, 2009.