

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7461
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUFUS MORRIS,

Defendant-Appellant.

Appeal from the United States District Court for
the Southern District of Mississippi
(CR-3:93-7-2(W)(C))

(February 10, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Defendant Rufus Morris appeals from the trial court's refusal to suppress statements Morris made to law enforcement officers in relation to his drug arrest. We find no error and affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

On September 23, 1992, Federal Express unsuccessfully attempted to deliver a package in Jackson, Mississippi. Federal Express employees became suspicious when the package was refused a second time and contacted the Jackson Police Department. A narcotics dog brought in by the police sniffed the package and alerted that it contained drugs. A search warrant was then obtained and executed, and the package was found to contain 81 grams of crack cocaine. The package was taken back to Federal Express with the instructions to call Detective Iles at the Jackson Police Department if someone came to pick it up.

On September 8, 1993, Morris was arrested after he appeared at the Federal Express office to claim the package. Richard Seavy of the Jackson Vice and Narcotics Division testified that he was called to the scene, where he saw Detective Iles and another detective arresting Morris. Seavy testified that he read Morris his *Miranda* rights from a *Miranda* card after securing the defendant in Seavy's vehicle. Seavy further testified that Iles later approached and read Morris his rights, and that Morris told the officers that he wished to fully cooperate. It is unclear whether Morris may have been *Mirandized* a total of three times, because there was testimony that Iles (who was not available to testify at the hearing) may have also read Morris his rights *before* Seavy approached.

After Morris was informed of his rights, Seavy told him that if he wanted to cooperate, the officers "would make it known

to the prosecutor." According to Seavy, that was the extent of any "promises" made to Morris, who explained that he was just picking up the package and wanted to cooperate. DEA agent Scott Walters testified that he later approached and witnessed another DEA agent ask Morris if he had been read his rights, and that Morris replied affirmatively. Seavy testified that after Morris was asked if he knew what was in the package, Morris said he did not know how much *cocaine* it contained. Prior to that, cocaine had not been mentioned.

The DEA agents then drove Morris to the DEA office. Morris subsequently agreed to help the agents by contacting his drug source, Lawrence Walker. Morris told the DEA agents Walker's page number, dialed the number, and proceeded to talk to him. Walker was later arrested after making incriminating statements into a transmitter which had been installed in Morris's car. After Walker was arrested, Morris was incarcerated and placed under a \$50,000 bond, which was later reduced to \$5,000.

Morris voluntarily met with Agent Walters on October 19 (pursuant to the advice of his attorney) while on bond from state charges, and was given no further *Miranda* warning. Morris did not give Walters any additional incriminating information, only telling him that there was supposed to be nine ounces of cocaine in the package and that Lawrence Walker knew the package contained cocaine. Walters attempted to engage Morris as an informant, but Morris refused. Walters claims he notified the

District Attorney that Morris had cooperated previously but was not going to cooperate further.

Morris's attorney, Richard Rehfeldt, testified at the suppression hearing that Walters had previously indicated to him that if Morris fully cooperated with the DEA, Walters would recommend that the U.S. Attorney's office not return a federal indictment against him. Rehfeldt stated that Walters did not make any promises, however, and was going to leave the question of a federal indictment "strictly up to the U.S. Attorney's office." Walters testified that he only informed Rehfeldt that if Morris acted as an informant for other cases, Walters would relay that "cooperation" back to the prosecutor. Walters unequivocally denies telling Rehfeldt that Morris would not be indicted in federal court for "cooperating." The Rankin County district attorney's office subsequently returned an indictment against Morris.

In preparation for trial Morris filed a motion to suppress those statements given to the law enforcement officers and Agent Walters. Morris challenges the district court's denial of his motion, claiming: (1) he was not given a *Miranda* warning at any time; (2) the Government illegally coerced him to confess; and (3) his confession was involuntary because he was not taken before a magistrate within six hours of his arrest in violation of 18 U.S.C. § 3501(c). We disagree and affirm the district court's denial of Morris's motion.

DISCUSSION

Morris claims that he was not advised of his *Miranda* rights by law enforcement officers when he was arrested. As this court has stated, "[t]he government bears the burden of proving by a preponderance of the evidence that both the waiver of *Miranda* rights and the confession were voluntary." United States v. Raymer, 876 F.2d 383, 386 (5th Cir.) cert. denied, 493 U.S. 870 (1989). We must accept the district court's factual findings and credibility determinations unless they are clearly erroneous. Id.

Morris argues that we should accept his testimony (that he was not advised of his rights) over the law enforcement officers' testimony because they expressed some confusion at the suppression hearing as to whether Morris had been read his rights once or twice by Officer Iles. Because Officer Iles was not present at the suppression hearing, however, it is understandable why it was unclear to the testifying officers exactly what Iles' actions were. Furthermore, it is largely irrelevant since Officer Seavy unequivocally testified that *Miranda* rights were read to Morris *twice* in his presence. Agent Walters also testified that he heard Morris tell another agent he had been advised of his rights. Therefore, the district court's finding that Morris was properly advised of his *Miranda* rights before he made incriminating statements was not clearly erroneous.

Although Morris was not given a *Miranda* warning after he was immediately driven to the DEA office, this does not render

his statements made there inadmissible. Officer Seavy had given a *Miranda* warning to Morris ten to fifteen minutes prior, and the DEA agents were informed of this fact and questioned Morris in an uninterrupted sequence of events. See United States v. Hopkins, 433 F.2d 1041, 1045 (5th Cir. 1970), cert. denied, 401 U.S. 1013 (1971) (change from state to federal officer does not require new warnings when there is no significant time lapse, questions concern same subject matter, second officer does not "dilute the efficacy of the warning," and there is an uninterrupted sequence of events).

Morris also argues that any statements made should have been suppressed because he was coercively told it would be to his "benefit" to cooperate in catching his drug source, Lawrence Walker, and to later become an informant. He also claims Walters promised him he would not be indicted in Federal court if he cooperated. A promise of immediate release or that any statement will not be used against a defendant can render a confession involuntary. Streetman v. Lynaugh, 812 F.2d 950, 957 (5th Cir. 1987). Furthermore, a confession which is induced by an assurance that there will be no prosecution (or indictment) is not voluntary. United States v. Menesses, 962 F.2d 420, 428 (5th Cir. 1992). But, "depending on the totality of the circumstances," not all representations made by law enforcement officers render a confession involuntary. Hawkins v. Lynaugh, 844 F.2d 1132, 1140 (5th Cir.), cert. denied, 488 U.S. 900 (1988).

Here, the district court did not err in determining that no improper assurances or promises were made. The district court was entitled to believe the testimony of both Agent Walters and Officer Seavy that they did not promise Morris anything. Even Morris's lawyer, Rehfeldt, testified that Walters stated whether Morris was indicted would be strictly up to the U.S. Attorney. The officers' comments that Morris should "cooperate" does not render Morris's confession involuntary.

Next, Morris claims that Walters solicited and received incriminating statements from him on October 19, without advising him of his rights. Morris voluntarily met with Walters on the advice of his attorney, however, and a Miranda warning was not required because he was not in custody. See United States v. Bengivenga, 845 F.2d 593, 597-98 (5th Cir.), cert. denied, 488 U.S. 924 (1988). Furthermore, Morris did not make any additional inculpatory statements that Walters was not previously aware of regarding the cocaine received at Federal Express.

Morris also argues that the district court erred in failing to suppress all statements he made after his arrest because he was not taken promptly before a magistrate. Morris contends that by working on a joint task force assignment, the DEA circumvented the federal rule requiring arrestees be brought before a magistrate within six hours of arrest or detention. The district court found that "at no time was the defendant exclusively in federal custody so as to trigger any requirements of the federal officials to take this defendant before a federal magistrate."

Regardless of whether or not Morris should have been brought before a magistrate, the delay in arraignment did not render his confession invalid because the delay occurred *after* the confessions. See United States v. Rojas-Martinez, 968 F.2d 415, 418 (5th Cir.), cert. denied sub nom., 113 S. Ct. 828 (1992), 113 S. Ct. 995 (1993)(a delay which occurs after a confession could not have affected the voluntariness of that confession). Morris "confessed" within minutes of his arrest and does not suggest the delay tainted his confession or that there was a causal connection between the two. See United States v. Bustamante-Saenz, 894 F.2d 114, 120 (5th Cir. 1990).

As to Morris's statements made on October 19, (more than six hours after his arrest) they were not prejudicial because they did not provide any new information. Therefore, Morris's 5 confession was not involuntary due to a delay in bringing him to a magistrate.

Finally, Morris argues for the first time on appeal that the prosecuting attorney should have been allowed to maintain his "promise" of a five level downward departure. A refusal to depart downward is unreviewable unless the refusal was in violation of the law. United States v. Mitchell, 964 F.2d 454, 462 (5th Cir. 1992). Morris cannot show such a violation, and only claims that the "prosecuting attorney should be in a better position to value the worth of a defendant's cooperation." For the foregoing reasons, we affirm the district court's denial of Morris's motion to suppress.

Affirmed.