

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Criminal Case No. 1:19-cr-257-WJM

UNITED STATES OF AMERICA,

Plaintiff

v.

Eric King,

Defendant

DEFENDANT'S RESPONSE TO GOVERNMENT'S MOTION IN LIMINE [ECF 118]

Defendant Eric King, through his counsel, hereby submits the following response to the government's request this Court preclude the defense from adducing evidence or argument before the jury regarding the conditions of Mr. King's confinement on or about August 17-20, 2018, to include the placement and transportation of Mr. King in a restraint chair, the five-hour use of hard four-point restraints, further use of soft restraints, and housing Mr. King in the Special Housing Unit ("SHU"). Such a request is unsupported by the law, ignores the clear evidentiary value of determining whether Mr. King committed the crime as charged, and ignores the government's burden of proof with respect to statements Mr. King made after he was so confined. *See Crane v. Kentucky*, 476 U.S. 683 (1986); 18 U.S.C. §3501; ECF 125: Stipulated Jury Instruction No. S10. For the reasons set forth below, the defense requests that they be allowed to present evidence at trial regarding the conditions of Mr. King's confinement between

August 17 until his August 20, 2018 Miranda interview with Special Investigative Service (“SIS”) officers.¹

ARGUMENT

Mr. King gave a statement to SIS Officers on August 20, 2018 that is subject to a Motion to Suppress for Fifth Amendment Miranda violations and as involuntary. Docket 114. The government has indicated that although it does not intend to introduce evidence of this statement during the government’s case-in-chief, the government will seek to use the statement as impeachment evidence if Mr. King testifies in his own defense. Docket 120. Should the Court rule that the statement was voluntarily made and is admissible before the jury, Mr. King may raise the conditions of his confinement prior to his interview as affecting the voluntariness of the statement. *Crane v. Kentucky*, (476 U.S. 683 (1986)); *United States v. Adams*, 271 F.3d 1236, 1244-45 (10th Cir. 2001)(“even after a confession is deemed voluntary, evidence concerning the physical and psychological environment that yielded the confession can also be of substantial relevance to ultimate factual issue of defendant’s guilt or innocence); 18 U.S.C. §3501(a).

In *Crane v. Kentucky*, (476 U.S. 683 (1986)), the Supreme Court held that when the defendant unsuccessfully challenges his statement on voluntariness grounds before trial, he can still challenge the voluntariness of the statement at trial. The defendant sought to introduce testimony describing the length of the interrogation and the manner

¹ The instant response to the government’s motion *in limine* [ECF 118] assumes *arguendo* that the Court will deny the Defendant’s Motion to Suppress the Statement on voluntariness grounds [ECF 114] and rule that the August 20, 2018 statement is admissible at trial for impeachment purposes. Should the Court grant the Motion to Suppress on voluntariness grounds this issue will be moot. The defense again respectfully requests that the Court make factual findings and ultimate determination of these issues at a hearing.

in which it was conducted in order to show that the statement was unworthy of belief. The Supreme Court found that the trial court's exclusion of that evidence violated the fundamental constitutional right to a fair opportunity to present a defense under the Due Process, Compulsory Process, or Confrontation Clauses. *Id.* at 690-91.

The Tenth Circuit has adopted the admissibility standards for statements set forth by the Supreme Court in *Lego v. Twomey*, holding that the voluntariness of a statement challenged as involuntary must be established before the jury by "at least a preponderance of the evidence." *United States v. McCullah*, 76 F.3d 1087, 1100 (10th Cir. 1996) (citing *Lego v. Twomey*, 404 U.S. 477). The jury is entitled to determine voluntariness based on the same totality of the circumstances examined by courts, including the characteristics of Mr. King and the details of the interrogation. *United States v. Toles*, 297 F.3d 959, 965–66 (10th Cir. 2002). *See also United States v. Glover*, 104 F.3d 1570, 1579 (10th Cir. 1997)(analysis of totality of circumstances to determine voluntariness of confession includes "(1) the age, intelligence, and education of the defendant; (2) the length of the detention; (3) the length and nature of the questioning; (4) whether the defendant was advised of her constitutional rights; and (5) whether the defendant was subjected to physical punishment...").

The above-cited cases accord with the federal statute regarding admissibility of confessions. 18 U.S.C. §3501. The statute provides that the trial court will first make determinations regarding voluntariness at a hearing, and "if the trial judge determines the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness." 18 U.S.C. §3501(a). The statute further contemplates that a trial court will take into consideration

all of the circumstances surrounding the confession, including “the time elapsing between the arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment.” 18 U.S.C. §3501(b). Subpart (c) also focuses on the time between “arrest or other detention,” the statement, and the defendant’s appearance in court. The statute’s focus on the time someone is held before they provide a statement or are presented to the trial court is crucial to the voluntariness analysis, and it should go without saying that anyone with a smattering of the history of 20th century dictatorships should understand the peril of federal agents being free to question suspects for extended periods before bringing them out into the open. *See Corley v. United States*, 556 U.S. 303, at 320 (2009).

Finally, the government’s claims regarding the minimal relevance of the restraint chair not contemplated by BOP policy, extended placement of Mr. King in hard restraints, and confinement in the Special Housing Unit ignores the evidence created and provided by the government which shows that agents’ use and duration of restraints in this matter were explicitly related to obtaining a statement from Mr. King. The Lieutenant restraint check completed by multiple staff members on August 17, 2018 notes repeatedly “IM [inmate] will remain in hard four-point restraints until rights have been read.” Exhibit A: Two-Hour Lieutenant Restraint Checks form. Should the court rule that Mr. King’s August 20 statement is admissible, evidence such as this regarding the prolonged and unnecessary use of restraints is clearly relevant to coercion and voluntariness and should be permitted before the jury.

Finally, because Mr. King will present the defense of self-defense, his physical injuries are critical to his defense. The only medical assessments Mr. King received as a

result of this altercation occurred while he was being placed and removed from four-point restraints. He received no other medical care. BOP employees repeatedly claim, based on the medical assessments that occurred in the SHU, that Mr. King was without injury. However, Mr. King contests this and asserts Lt. Wilcox gave him a black eye after striking him multiple times in the face and head. Given that the jury will weigh whether it was "...reasonable for the defendant to think that the force he used was necessary to defend himself against an immediate threat" the extent of Mr. King's injuries he sustained from Wilcox and the medical care he did or did not receive after this incident are highly relevant. Stipulated Self-Defense Jury Instruction, Docket 125. The defense must be permitted to cast doubt into the government's medical assessments that occurred during his conditions of confinement to establish his defense of self-defense. As such, evidence regarding Mr. King's confinement to the SHU is not irrelevant and instead is highly relevant to whether he committed the crime of assault.

For the foregoing reasons and any others that may appear to this Court, Mr. King requests that the Court deny the government's motion *in limine*.

Dated September 26, 2021.

Respectfully submitted,

/s/ Lauren C. Regan

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to all other counsel of record.

/s/ Lauren C. Regan

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