

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	:	
	:	NO: 16-CR-130-JJB-EWD
<i>Versus</i>	:	
	:	
	:	
JORDAN HAMLETT	:	

**HAMLETT’S POST-HEARING MEMORANDUM
IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE**

Pending before the Court is Jordan Hamlett’s motion to suppress. The Government opposes the motion. An evidentiary hearing was held on March 9, 2017. As an aid to the Court’s consideration of the facts and the law, Hamlett submits the following post-hearing memorandum in support of his motion to suppress.

I. FACTS ADDUCED AT THE EVIDENTIARY HEARING

The accused, Jordan Hamlett, is charged in a one count indictment with violating 42 U.S.C. § 408(a)(7)(B), false representation of a social security number. The charge arises from Hamlett’s allegedly unauthorized attempts on September 13, 2016, to obtain a copy of tax returns belonging to then-presidential candidate, Donald J. Trump.

On March 9, 2017, the Court held an evidentiary hearing. At that hearing, Hamlett presented evidence that on October 27, 2016, he was tricked into appearing for an interrogation at an Embassy Suites hotel in Baton Rouge by Special Agents of the U.S. Treasury Inspector General for Tax Administration (TIGTA) and the Federal Bureau of Investigation (FBI).

During the interrogation, Hamlett made certain admissions to Government agents

regarding an aborted attempt to obtain the federal tax information of then-presidential candidate Trump from the U.S. Department of Education and Internal Revenue Service using the web application Federal Student Aid –Datashare.

It is undisputed that Hamlett, who made his living as a private investigator, was tricked into his meeting with federal agents. According to Hamlett’s testimony, agents posed as potential clients to lure him to the lobby of the Embassy Suites:

“[Hamlett]: . . . I had gotten a call from someone who wanted me to do an investigation on their husband. It was some sort of domestic investigation. I had spoken with them a couple of times before that, and they were arranging a meeting for that morning.

[Fiser]: And was this meeting for the purpose of being retained on the case?

[Hamlett]: Yes, it was.

[Fiser]: And where was this meeting to take place?

[Hamlett]: It was at the—I believe it was the Embassy Hotel, The Embassy Suites.” Tr. 42-43.

The testimony of the two Special Agents appearing at the March 9 evidentiary hearing—Samuel Johnson (TGTA) and Glenn Methvyn (FBI)—does more than suggest that the true purpose for interrogating Hamlett at the Embassy Suites was to surprise Hamlett with search warrants and get him to make damaging admissions.

SA Johnson testified that at the end of his interrogation of Hamlett, he told Hamlett “that he [Hamlett] had violated federal law.” Tr. 21. SA Johnson further testified that he had a search warrant authorizing agents to take Hamlett’s cell phone away from him, and if “he [Hamlett] did not return—turn over the phone, we would have looked to detain him for a second to obtain the phone from him.” Tr. 28. Lastly, sometime toward the end of Hamlett’s interrogation, agents demanded that Hamlett produce his house key. They said they needed the key because a search

warrant was going to be executed on Hamlett's home. Tr. 34. Hamlett complied but later discovered that agents had kicked-in the door of his home anyway. Tr. 46.

Indeed, federal agents already believed Hamlett had violated federal law well before tricking him into meeting with them at the hotel. When asked why the agents chose to lure Hamlett to the interview by posing as potential clients, SA Johnson stated:

“Well, there were a number of factors at play at this time, and the sensitivity of the investigation with him being a private investigator and the election that was going on at the time, there was thoughts this could be something that would affect the election if the information had been received and the—he had the actual personal identifying information of President Trump at that time and had attempted the accesses of it. In addition to that, he was a private investigator. He had the cellular device, he had potential computers, things of that nature, and we wanted to ensure that we captured all of that stuff.” Tr. 26.

So, even though every Government agent had already concluded that Hamlett was the bull's-eye of their Trump tax return hacking investigation, Hamlett was never warned that he had a right to remain silent or consult with a lawyer prior to being sandbagged by agents armed with search warrants. It was clearly established in the testimony of SA Methvyn that Hamlett was never Mirandized prior to or during his surprise interrogation:

“[Fiser]: You said it was very easy to obtain admissions from [Hamlett] during this interview?

[SA Methvyn]: Yes, sir.

[Fiser]: And would you agree with me it's easy to obtain admissions when an attorney is not present for the client, right?

[SA Methvyn]: I would say, I mean, I guess for argument sake, I'm sure it would be. I don't think—he didn't ask for an attorney.

[Fiser]: And you all certainly didn't tell him that he might need one?

[SA Methvyn]: We did not provide him with his Miranda warnings, no, sir.” Tr. 38-39.

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the Supreme Court held that “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self incrimination.” *Id.* at 444. Absent other fully effective procedures, an individual in custody must receive certain warnings before any official interrogation, including warnings that he has a “right to remain silent” and that “anything said can and will be used against the individual in court.” *Id.* at 467-69.

Miranda provided that “the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves.” 384 U.S. at 467.

Because a suspect is entitled to Miranda warnings only if he or she is interrogated while “in custody,” the Government justifies its failure to follow Miranda procedures in Hamlett’s case by arguing that Hamlett’s admissions did not result from “custodial” interrogation—rather, all statements resulted from a “friendly” conversation with armed agents in the Embassy Suites lobby. The Government’s attempt to paint Hamlett’s interrogation as a friendly Kumbaya campfire singalong is betrayed by the actions of the agents themselves.

SA Johnson greeted Hamlett with a firearm on his hip and a belt badge identifying himself as a law enforcement officer. Tr. 13. Hamlett testified that, based on his experience as a private investigator, he assumed that both agents who greeted him were armed because he could see their badges and the corner of holsters. Tr. 44.

Although the majority of the interrogation occurred in a public place, Hamlett had no way

of knowing which members of the “public” were agents and which members were not. An unknown number of plain clothes agents blended in with hotel patrons. Tr. 30.

Hamlett further testified that he felt compelled to surrender his phone to agents at their request without being advised they already had a search warrant for it:

“[Fiser]: Did you ultimately give them your phone?

[Hamlett]: Yes, I did.

[Fiser]: Why did you do that?

[Hamlett]: Because I assumed I kind of had to at that point. I was doing whatever they were telling me to do.

[Fiser]: Were you afraid?

[Hamlett]: I was afraid I was going to jail, that was—

[Fiser]: You did not feel free to leave?

[Hamlett]: Oh, no, absolutely not. I was under the impression as soon as we were done talking, I was going to jail.” Tr. 45.

During the two hour plus interrogation at the Embassy Suites, Hamlett had to ask permission if he wanted to take a break.¹ In addition to having to ask permission to take a break, Hamlett was required to be accompanied by an agent if he stepped outside of the hotel or approached his car. Tr. 29. According to Hamlett, two agents accompanied him to his car when he asked permission to get his phone charger. Tr. 45. Significantly, one agent physically stopped

¹ SA Johnson testified, “We had advised Mr. Hamlett that if he wanted to take any breaks, he was welcome to take a break or use the restroom or whatnot.” Tr. 18.

Hamlett from getting in his car.²

In sum, the Government agents' interactions with Hamlett can be fairly characterized as the functional equivalent of formal arrest and were indeed coercive.

II. CONCLUSION

Being tricked into an interrogation by Government agents under circumstances in which it is not clear whether one is free to leave is its own subtle form of compulsion. In their zeal to prevent the hacking of a presidential candidate—a candidate who himself, ironically, openly encouraged Russia to hack his opponent³—agents breached Miranda procedures in failing to administer Miranda warnings before initiating Hamlett's interrogation at the Embassy Suites. This breach may have been the result of confusion by agents as to whether this lengthy interrogation qualified as "custodial interrogation" or it may have reflected agents' reluctance to provide a warning that would have removed all ambiguity for Hamlett regarding whether he should cooperate or invoke his right to remain silent. Whatever the reason for the agents' failure to provide Miranda warnings, the incident had all the attributes of psychological coercion. Hamlett was never given the opportunity to make an informed or intelligent choice whether to waive or invoke his rights. Consequently, the Government should not be permitted to exploit

² "[AUSA Rezaei]: They [the agents] didn't put their hands on you at any point?

[Hamlett]: The agent stopping me from getting in my car did, but that was—he was the only one." Tr. 52.

³ "Trump asks Russia to hack Hillary's emails". [July 27, 2016, Florida news conference]. YouTube video, 00:49. Posted [July 27, 2016]. <https://www.youtube.com/watch?v=gNa2B5zHfbQ>

Hamlett's unwarned admissions at trial. Jordan Hamlett's motion to suppress should be granted.

RESPECTFULLY SUBMITTED:

s/ Michael A. Fiser
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CERTIFICATE OF SERVICE

I hereby certify that, on June 4, 2017, a copy of the foregoing Memorandum was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to AUSA Ryan Rezaei by operation of the Court's electronic filing system.

s/ Michael A. Fiser