

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	
<b>v.</b>	)	<b>Case No. 1:13cr00019-001</b>
	)	<b><u>REPORT AND</u></b>
<b>DANIEL CHRISTOPHER CYR,</b>	)	<b><u>RECOMMENDATION</u></b>
<b>Defendant</b>	)	
	)	
	)	

This matter is before the court on the defendant Daniel Christopher Cyr’s Motion To Suppress Statements, (Docket Item No. 66), and Supplemental Motion To Suppress Statements, (Docket Item No. 85), ("the Motions"). The Motions were referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B). An evidentiary hearing was held before the undersigned on September 5, 2013. For the reasons set forth below, I recommend that the court deny the Motions.

*I. Facts*

Daniel Christopher Cyr and co-defendants, Heather Sandra Blevins and Nehemiah Shem Meredith, are charged in a nine-count Indictment, which includes charges for conspiracy to manufacture methamphetamine, manufacturing methamphetamine, distribution of methamphetamine, possession of firearms by an unlawful user of a controlled substance and use of firearms during a drug trafficking crime. The Motions seek to suppress Cyr’s statements made subsequent to a search of his and Blevins’s residence on February 23, 2013, pursuant to a

search warrant, as well as previously undisclosed discovery materials.<sup>1</sup> Brian Snedeker, a Special Agent with the Drug Enforcement Agency; Joel Early, an Investigator with the Saltville, Virginia, Police Department; and Cyr, testified at the evidentiary hearing.

Special Agent Snedeker testified that upon entering the residence at approximately 5:45 a.m. on February 23, 2013, Cyr was leaving the hot water heater area, approaching the kitchen area. Snedeker stated that Cyr was wearing a blue nitrile glove on one hand. He testified that he spoke with Cyr briefly upon entering the house, but Cyr did not provide any statements at that time. Snedeker stated that Cyr was alert, coherent and responsive to instructions, and he detected no odor of alcohol about him. Snedeker took photos of Cyr, which he admitted appeared to show somewhat droopy eyes, but which Snedeker attributed to the flash on the camera. Snedeker admitted that he did not ask Cyr about his recent alcohol or drug use. Cyr was placed in the back of Officer Jackson's police cruiser while the search of the residence was executed. The search yielded methamphetamine manufacturing items, including cook bottles, which were removed from the downstairs bathroom, and ingredients to make methamphetamine, which were removed from the hot water heater area. Snedeker stated that open containers of alcohol were scattered throughout the residence, mostly in an unused upstairs bedroom, but there was one open can and bottle of alcohol found in the living room.

Snedeker testified that he interviewed Cyr in the back of a methamphetamine lab disposal truck, which he described as resembling a small office, at 9:21 a.m., subsequent to the execution of the search warrant. At the time

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<sup>1</sup> Cyr and Blevins are husband and wife.

of the interview, Cyr's hands were cuffed in front of his body. After being given *Miranda* warnings by Investigator Joel Early, Snedeker asked specific questions of Cyr, which Cyr answered specifically. In particular, Cyr stated that he was in the process of "gassing off" the methamphetamine when the search warrant was executed. Snedeker typed Cyr's statements, asked Cyr to review them and advised him to initial each one and sign the statement in its entirety if he agreed. Cyr did so. According to Snedeker, the entire interview lasted approximately 10 minutes. He testified that Cyr's answers were coherent and specific, he never asked to delay or stop the interview, he never dozed off, he walked normally, his speech was not slurred, his mannerisms were not shaky, and he had no smell of alcohol on his breath.

Investigator Early testified that he was not present during the search of Cyr's residence, but he was present during the subsequent interview. He did not ask Cyr if he had consumed any alcohol or used any drugs the previous night. Early testified that he orally advised Cyr of his *Miranda* rights while Cyr was in the back of Officer Jackson's patrol cruiser prior to the interview, but he did not remember the exact time this occurred. Early further testified that Cyr executed a waiver of rights form at the same time he was orally advised of his rights.<sup>2</sup> Early testified that Cyr did not make any statements at the time he was given his *Miranda* warnings. Early testified that Cyr exited the patrol car without assistance and that

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<sup>2</sup> Early's testimony regarding this form was the first time counsel was made aware of its existence. The hearing was recessed so the Government could obtain a copy of the form. However, a search for this *Miranda* waiver form proved fruitless. Nonetheless, during the search for the waiver form, additional items were discovered that should be turned over to defense counsel, including video recordings and a written summary of interviews. These items were made available to defense counsel, and the court left the record open until September 10, 2013, in the event that defense counsel wished to submit any additional evidence. This deadline was subsequently extended, and on September 17, 2013, counsel for Cyr filed the Supplemental Motion to Suppress, along with additional evidence.

he was not unsteady on his feet. Early also testified that Cyr was coherent and answered the specific questions asked by Snedeker, including stating that he was gassing methamphetamine at the time the search warrant was executed. He stated that there was no indication that Cyr was overwhelmed, there were no threats made toward him, he observed no outward signs of intoxication, such as slurred speech or odor of alcohol, and he did not shake when he was signing the statement. Early further testified that Cyr never asked for anything, nor was he ever deprived of anything.

Cyr testified that he remembers only “bits and pieces” of the search and that the entire incident was a “blur.” He testified that he had been awake for three to four days using methamphetamine and Lortab and consuming alcohol, to include half a case of beer the night of February 22 and morning of February 23. Cyr stated that such alcohol consumption was consistent with his normal use, stating “I had a beer with me everywhere I went.” He testified that he used methamphetamine only to stay awake. He also testified that he took five to 10 of his wife’s prescribed Lortab the previous night. Cyr testified that he does not recall signing any forms and does not remember speaking to anyone other than Officer Jackson. He stated that all he remembers was “them taking everything off of [me] and putting a white suit on [me].” Although he admitted that the initials and signature on the statement are, in fact, his, he testified that he does not recall signing or initialing the statement.

Despite his testimony that he does not remember the vast majority of the morning’s events, Cyr testified that he never told Snedeker that he was gassing methamphetamine. At the hearing, Cyr denied making methamphetamine, stating that he was wearing the blue nitrile glove because he was preparing to tattoo

someone. He stated that he does not remember informing Snedeker that he never sold any methamphetamine. Cyr testified that he was questioned extensively by Officer Jackson in the patrol cruiser prior to the interview, including questions such as why he had never sought help and what happened during one incident when he woke up underneath a bridge.

## *II. Analysis*

The Fifth Amendment guarantees that no one shall be compelled "to be a witness against himself" without the protections of due process. U.S. CONST. amend. V. The United States Supreme Court has held that the Constitution requires that certain warnings be given to a person before he may be interrogated while in custody. *See Dickerson v. United States*, 530 U.S. 428, 444 (2000). These so-called "Miranda warnings" or "Miranda rights" include:

[T]hat he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

*Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The Court has further held that, if such warnings are not provided, a defendant's statements resulting from a custodial interrogation may not be used in the prosecution's case-in-chief. *See Dickerson*, 530 U.S. at 443-44. However, the Court also has held that a suspect may waive his Fifth Amendment right against self-incrimination, provided the waiver is made voluntarily, knowingly and intelligently.

Cyr does not dispute that he was given *Miranda* warnings. However, he alleges that his February 23, 2013, statements to Special Agent Snedeker should be

suppressed because they were involuntary, given his decreased mental state due to lack of sleep and intoxication. The voluntariness of a statement is to be determined from the “totality of the circumstances,” including the characteristics of the defendant, the setting of the interview and the details of the interrogation. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *United States v. Braxton*, 112 F.3d 777, 781 (4<sup>th</sup> Cir. 1997); *United States v. Pelton*, 835 F.2d 1067, 1071 (4<sup>th</sup> Cir. 1987); *United States v. Wertz*, 625 F.2d 1128, 1134 (4<sup>th</sup> Cir. 1980). Such relevant factors include the defendant’s age, education, level of intelligence, the duration of questioning, the use of physical coercion or deprivation, the defendant’s experience with the criminal justice system, his mental state and whether the defendant has been advised of his *Miranda* rights. *See Arizona v. Fulminante*, 499 U.S. 279, 286 n.2 (1991); *United States v. Leonard*, 1998 U.S. App. LEXIS 6816, at \*11 (4<sup>th</sup> Cir. 1998). The test for the voluntariness of a statement is whether the defendant’s will has been “overborne” or his “capacity for self-determination critically impaired.” *Pelton*, 835 F.2d at 1071 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973)). In *Colorado v. Connelly*, 479 U.S. 157 (1986), the Supreme Court held that statements made during a custodial interrogation and while intoxicated are not per se involuntary or inadmissible. Instead, the test is whether, by reason of the intoxication, the defendant’s “will was overborne” or whether the statements were “the product of a rational intellect and a free will.” *Townsend v. Sain*, 372 U.S. 293, 307 (1963) (overruled on other grounds); *see also Boggs v. Bair*, 892 F.2d 1193, 1198 (4<sup>th</sup> Cir. 1989). “The Government bears the burden of proving by a preponderance of the evidence that the statement was voluntary.” *Braxton*, 112 F.3d at 781 (citing *Lego v. Twomey*, 404 U.S. 477, 489 (1972)).

Here, I find that Cyr’s statements to Special Agent Snedeker were voluntary. Most critical to this determination is Cyr’s lack of testimony that he

was, in fact, intoxicated or that he was in such a condition that he could not voluntarily waive his Fifth Amendment privilege and give a statement. Instead, Cyr testified that the events of the morning were a “blur” and that he remembered only “bits and pieces.” While Cyr testified that he had consumed half a case of beer the prior night and early morning leading up to the search of his residence, he also testified that this was normal consumption for him, noting that he “had a beer with [him] everywhere [he] went.” Furthermore, Cyr did not testify that he did not give the statements at issue; he merely alleges that he does not remember giving these statements. Likewise, he did not testify that he did not sign or initial the completed typewritten statement; he merely stated that he does not remember doing it. He fully admitted that the smoothly written initials and signature were, in fact, his.

Additionally, Cyr’s memory of the morning of February 23, 2013, was very selective at the hearing. He testified in some amount of detail that he remembered being questioned by Officer Jackson while being held in his patrol cruiser, even testifying to particular questions asked, but he testified that he did not remember being interviewed by Special Agent Snedeker, which occurred some time subsequent to the questioning by Officer Jackson. Nor could he remember initialing or signing the completed statement. He also remembered why he was wearing a blue nitrile glove upon officers’ initial entry into the residence -- namely, because he was preparing to tattoo someone.

Equally important to this determination is the testimony by Investigator Early and Special Agent Snedeker, both law enforcement officers with multiple years of experience, that Cyr displayed no signs of intoxication. Upon initial entry into the residence, Cyr was alert, coherent and responsive to instructions, and no

odor of alcohol was detected about his person. While photographs of Cyr showing apparent droopy eyes have been admitted into evidence, Special Agent Snedeker attributed this to the flash on his camera. Later, Cyr was able to exit Officer Jackson's patrol cruiser without assistance and was steady on his feet. During the interview, Cyr answered the questions specifically and coherently, he did not ask to delay or stop the interview, he never dozed off, his speech was not slurred, his mannerisms were not shaky, and he had no odor of alcohol about his person. Lastly, I also find worth mentioning the time lapse between the initial entry into the residence and the interview. Initial entry was made at 5:45 a.m., and the 10-minute interview concluded at 9:21 a.m. Therefore, the 10-minute interview began at approximately 9:11 a.m. Even assuming that Cyr had consumed alcohol or used drugs just prior to the execution of the search warrant, there still was a greater than three-and-one-half hour period during which Cyr could have consumed no alcohol or drugs prior to being questioned by Snedeker.

The additional evidence provided by Cyr's counsel subsequent to the September 5, 2013, hearing, includes Incident Reports completed by Investigator Early and Officer Jackson, relaying events that occurred surrounding the execution of the search warrant at issue, as well as a video recording of a conversation between Officer Jackson and Cyr that occurred in Jackson's patrol cruiser. Counsel for Cyr argues that this new evidence further bolsters Cyr's contention that his mental state was so diminished due to intoxication and sleep deprivation that any statements made to law enforcement were involuntary and must be suppressed. In particular, Cyr emphasizes that the video recording and the Incident Report completed by Officer Jackson reflect that he informed Officer Jackson that his "mind was going in circles and everything was just a lot to take in. ...". According to the Incident Report, Cyr proceeded to explain that his wife had been

diagnosed with cancer the previous day. However, Cyr informed Officer Jackson that he wanted to have a “no bull shit conversation with [Jackson]” about what led him to his current circumstances.

I find that Cyr’s statement that his mind was going in circles, and everything was a lot to take in, coupled with his wife’s recent cancer diagnosis, simply do not amount to a showing that Cyr was so intoxicated or in such a mental state that his will was overborne and he did not know what he was doing. After reviewing the video recording of Cyr’s discussion with Officer Jackson, it is clear to the court that Cyr, in fact, was not of such a diminished mental state that his statements to law enforcement were involuntary.<sup>3</sup> While the audio quality of Cyr’s voice on the recording is not clear at all times, making it difficult to discern everything he is saying, several things are quite obvious from this video recording. First, Cyr’s speech is neither slurred nor slowed. He is able to speak with Officer Jackson in a normal rate and tone, and the conversation is consistent, with no lulls. Also clear, is the fact that Cyr is answering questions posed by Officer Jackson with no delayed response, and he provides Jackson with details regarding past events that one would not expect an individual who was so intoxicated and sleep deprived that his will was overborne would be able to do. At one point in the discussion, Officer Jackson asks Cyr how often he used methamphetamine, to which Cyr responds once a month. Cyr advised Jackson that methamphetamine allowed him to get things done, and he stated that it would keep him awake for three or four days at a time. When Officer Jackson asks how his body was able to withstand such sleep deprivation, Cyr simply responds that he was used to it. I find that this directly undercuts Cyr’s argument that his mental state was diminished at the time Agent

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<sup>3</sup> This video recording is from the inside of Officer Jackson’s patrol cruiser with a view out the front windshield. Neither Officer Jackson nor Cyr can be seen on the video.

Snedeker procured the statement from him, at least partially, due to sleep deprivation from methamphetamine.

It is for all of these reasons that I find that the Government has met its burden of showing by a preponderance of the evidence that Cyr's will was not overborne, and the statements made to Special Agent Snedeker on February 23, 2013, were, in fact, voluntary. Therefore, I recommend that the court deny the Motions.

Cyr's counsel further argues that Officer Jackson's Incident Report reflects that it was Officer Jackson, not Special Agent Snedeker, who actually interviewed Cyr. Therefore, Cyr argues that both Investigator Early and Snedeker were inadequate witnesses to Cyr's demeanor during the interview. I am not persuaded by this argument. First, Agent Snedeker testified under oath that he interviewed Cyr in the back of a methamphetamine lab disposal truck, he typed Cyr's statements, and Cyr initialed and signed the completed statement. Cyr does not deny that he was, in fact, so interviewed by Snedeker, and, although he testified that he did not specifically remember doing so, the initials and signature contained on the written statement were, indeed, his own. Investigator Early also testified under oath that he witnessed Snedeker interview Cyr. I find that the mere fact that Officer Jackson's Incident Report states that Snedeker took "basic information" from Cyr, asked Cyr to remove his jewelry to be placed inside a bag inside the residence and informed Cyr that he must change into a "white suit," does not discredit Snedeker's and Early's testimony that Cyr was interviewed by Snedeker and that such interview was witnessed by Early. I find both Agent Snedeker's and Investigator Early's testimony credible. I also have no reason to find the information contained in Officer Jackson's Incident Report incredible. However,

these two findings are not inconsistent. Officer Jackson did not say that Agent Snedeker did not interview Cyr. Instead, he likely merely included some of the things that Agent Snedeker did, while not providing a complete list. Moreover, for the reasons already stated herein, I find that the video recording of Officer Jackson's discussion with Cyr, coupled with the Incident Report he completed, show that Cyr's demeanor was such that any statements made to law enforcement were not involuntary. Thus, even setting aside Agent Snedeker's and Investigator Early's testimony concerning Cyr's demeanor, I find that the video and the Incident Report constitute sufficient evidence of Cyr's mental capability to make voluntary statements to law enforcement.

While Cyr's counsel asks that the Incident Reports and video recorded discussion between Cyr and Officer Jackson also be suppressed given their untimely disclosure, I recommend that the court deny that request. While the court recognizes the tardiness of the Government's disclosure of this discovery, and does not condone such conduct, I also find that Cyr has not been prejudiced by the untimely disclosure. In particular, counsel has requested and received a continuance of the jury trial in this matter in light of this newly discovered evidence from September 25 and September 26, 2013, to December 16 and December 17, 2013. (Docket Item No. 83).

### **PROPOSED FINDINGS OF FACT**

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Cyr's will was not overborne when he made statements to Special Agent Snedeker on February 23, 2013;

2. Cyr's statements were voluntary; and
3. Cyr has not been prejudiced by the untimely filing of previously undisclosed discovery materials.

### **RECOMMENDED DISPOSITION**

For the reasoning set out above, the undersigned recommends that this court deny the Motions.

#### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations could waive appellate review.

The Clerk is directed to send certified copies of this Report and Recommendation to all counsel of record at this time. At the conclusion of the 14-

day period, the Clerk is directed to transmit the record in this matter to the Honorable James P. Jones, United States District Judge.

ENTER: October 8, 2013.

/s/ Pamela Meade Sargent  
UNITED STATES MAGISTRATE JUDGE