

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v-

No. 20-cr-378-3 (LJL)

ADEDAYO ILORI,

Defendant.

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MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT’S MOTION TO SUPPRESS

Defendant Adedayo Ilori, by and through counsel, respectfully submits this memorandum of law in support of his motion to suppress. Mr. Ilori seeks suppression of any and all statements made to law enforcement on or about March 4, 2020, after his express and repeated invocations of his right to counsel.¹

I. Statement of Facts

At approximately 6:00 a.m. on March 4, 2020, Federal Bureau of Investigation (“FBI”) Special Agent Luke B. Hardison (“Agent Hardison”) arrested Mr. Ilori at his residence in Queens, New York. Following the arrest, Mr. Ilori was placed in a vehicle and transported to the FBI’s New York office. During the car ride, Agent Hardison read Mr. Ilori his *Miranda* rights and questioned him about the subject of the arrest.² Mr. Ilori, however, repeatedly and unambiguously

¹ As noted below, Mr. Ilori made certain short statements to law enforcement before invoking his right to counsel. We do not seek suppression of those statements.

² Agent Hardison created an audio-recording of his conversation with Mr. Ilori, a copy of which has been submitted to the Court as Exhibit A to this motion.

told Agent Hardison that he wanted to speak with a lawyer before answering Agent Hardison's questions. Mr. Ilori's first attempt to cut off Agent Hardison's questioning by invoking his right to counsel is both dispositive of this motion and illustrative of Agent Hardison's refusal to respect that right. Approximately thirteen minutes into the recording—after Mr. Ilori asked a few clarification questions and listened to Agent Hardison briefly describe the subject of the government's investigation—Agent Hardison asked Mr. Ilori whether he knew anything “at all” about the “fraudulent documents” and “business loans” he had just described. The following colloquy ensued:

Mr. Ilori: Look, right, I am saying, I would like, ummm, *I would like to speak to a lawyer, okay, in regards to this case*, because like I said, I'm not trying to be an asshole, but honestly speaking, I have absolutely no loans. So, if somebody is trying to put, if somebody is trying to put in my name or trying to, and knows my situation, and my past and trying to bring me down for, for this shit? And I'm not going down for anybody, anybody. I'm not going down for anybody. I'm not. I'm not going down for anybody. *So I will speak to a lawyer, and we can take it from there.* But in regards to loans? No. And I did not, and I did not provide a guy or anybody or send anything about a loan [INDISCERNIBLE]. *But when I speak to a lawyer everything is going to be sorted out.* Because my name has to be taken care of and taken out of this shit.

Agent Hardison: *So, what you're saying is that you want to, I think you want to speak to a lawyer so that you can explain, you can sort it out.*

Mr. Ilori: Yes.

Agent Hardison: I think you know who’s probably saying that you did all this, right?

Mr. Ilori: Who’s that?

Agent Hardison: Herode.

Ex. A at 12:56–14:52 (emphasis added). Notably, Agent Hardison acknowledged Mr. Ilori’s request to speak with counsel but then immediately changed the subject to ask Mr. Ilori a question relating to the government’s investigation. A mere five-and-a-half minutes later, Mr. Ilori again asked to speak to a lawyer. *See id.* at 20:34–20:40 (“I would really like to speak to a lawyer.”). And another fourteen minutes later, Mr. Ilori stated: “I appreciate you being able to talk to me, but at this point I would rather just talk to a lawyer.” *Id.* at 34:30–34:45. Agent Hardison once again acknowledged Mr. Ilori’s request—saying “we will get you one”—but he did not cease his questioning. *Id.* at 34:49–35:00.

Indeed, later that day, Agent Hardison interviewed Mr. Ilori at the FBI’s New York office.³ Agent Hardison once again read Mr. Ilori his *Miranda* rights, and Mr. Ilori immediately indicated that he wished to speak with a lawyer before answering Agent Hardison’s questions. *See* Ex. B at 4:25–4:50 (Agent Hardison: “Okay, so, I’ll ask you to sign this. This is what we do. If you don’t want to sign it that’s fine. I’ll just put refused. All this is saying is that you received your *Miranda* warning.” Mr. Ilori: “*Miranda* warning. Oh, okay, so you know what? I can sign it but, you know, in that case I’ll just leave all the questioning to the lawyer then.” Agent Hardison: “Okay.”). Agent Hardison then proceeded to question Mr. Ilori for nearly two hours about the subject of the

³ The interview was video-taped in two parts, copies of which have been submitted to the Court as Exhibits B and C to this motion.

arrest. Throughout the interview, Mr. Ilori continued to ask to speak with a lawyer, to no avail. *See, e.g.*, Ex. B. at 33:45–34:15 (“[T]his is just too much for me, I’m sorry. I just, yeah, I’m going to I need to speak to a lawyer.”); Ex. B at 50:33–50:40 (“[T]hat is the thing that I would like to speak to my lawyer about.”); Ex. C at 4:15–4:30 (“I want to—I really need to—speak to my lawyer about this.”).

Mr. Ilori now moves to suppress the statements he made to law enforcement in violation of his right to counsel.

II. Discussion

“[A]n accused’s request for an attorney is *per se* an invocation of his Fifth Amendment rights, requiring that all interrogation cease.” *Fare v. Michael C.*, 442 U.S. 707, 719 (1979); *see also Miranda v. Arizona*, 384 U.S. 436, 474 (1966) (“If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.”). The Supreme Court has held that, once an accused invokes the right to counsel, he may not be “subject to further interrogation by the authorities until counsel has been made available to him unless the accused himself initiates further communication, exchanges, or conversations with the police.” *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981); *see also id.* at 485 (“it is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel.”). This “rigid prophylactic rule . . . requires courts to determine whether the accused actually invoked his right to counsel.” *Davis v. United States*, 512 U.S. 452, 458 (1994) (internal quotation marks omitted). The inquiry is “objective” and “requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.” *Id.* at 459 (internal quotation marks and citations omitted). That is, “[a]lthough a suspect need not speak with the discrimination of an Oxford don, he must articulate his desire to

have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” *Id.* (internal quotation marks and citations omitted).

As detailed above, Mr. Ilori’s repeated requests for counsel clearly meet this standard. Mr. Ilori unambiguously told Agent Hardison that he wished to speak with a lawyer on at least seven occasions. Moreover, although the test is objective, it is notable that Agent Hardison acknowledged Mr. Ilori’s request for counsel on at least two occasions, repeating Mr. Ilori’s request and later telling Mr. Ilori that he would get him a lawyer. In light of the recordings, there can be no doubt that Mr. Ilori “articulate[d] his desire to have counsel present sufficient clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” *Davis*, 512 U.S. at 459.

Nor is this a case where Mr. Ilori “himself initiate[d] further communication, exchanges, or conversations with the police” after invoking his right to counsel. *Edwards*, 451 U.S. at 485. Although Mr. Ilori admittedly continued to *respond* to Agent Hardison’s questions in between his frequent requests to speak with an attorney, it was Agent Hardison who repeatedly *initiated* further communication by continuing to ask the questions. Indeed, when Mr. Ilori first invoked his right to counsel, Agent Hardison first clarified that Mr. Ilori wanted to speak with a lawyer and then immediately changed the subject—telling Mr. Ilori that co-defendant Herode Chancy had implicated him as an alleged co-conspirator—in what appears to be a blatant attempt to get Mr. Ilori riled up and willing to talk.⁴ See Ex. A at 12:56–14:52. Accordingly, Mr. Ilori’s post-arrest statements, following his initial, unambiguous request for counsel, should be suppressed.

⁴ The fact that Agent Hardison later re-Mirandized Mr. Ilori at the FBI office does not somehow negate his prior invocations of his right to counsel. Compare *Michigan v. Mosley*, 423 U.S. 96, 104–05 (1975) (holding that law

III. Conclusion

For the foregoing reasons, Mr. Ilori requests that the Court grant this motion and suppress the statements he made to law enforcement following his invocation of his right to counsel.

Respectfully submitted,

/s/ Brooke Cucinella

Brooke Cucinella
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
T: +1-212-455-3070
brooke.cucinella@stblaw.com

Mark Stein
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
T: +1-212-455-2310
mstein@stblaw.com

enforcement may re-*Mirandize* and resume questioning of an accused who invokes his *right to silence* if they “scrupulously honor” the original invocation by immediately “cut[ting] off questioning”) *with Edwards*, 451 U.S. at 484–85 (holding that, after an accused invokes his *right to counsel*, he may not be “subject to further interrogation by the authorities *until counsel has been made available to him*”) (emphasis added). His first request for a lawyer is therefore entirely dispositive of this motion and would be sufficient, on its own, for the Court to suppress all of Mr. Ilori’s subsequent statements.