

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ADEDAYO ILORI,

Defendant.

20 Cr. 378 (LJL)

**MEMORANDUM OF LAW OF THE UNITED STATES OF AMERICA
IN RESPONSE TO DEFENDANT ADEDAYO ILORI'S MOTION TO SUPPRESS**

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Introduction

The Government respectfully submits this memorandum of law in response to the defendant Adedayo Ilori's motion to suppress his post arrest statements made to law enforcement on March 4, 2020, after his invocation of his right to counsel. The Government concedes that those post arrest statements are inadmissible in the Government's case-in-chief. However, in the event Ilori testifies at trial, Ilori's post arrest statements are admissible to impeach Ilori on cross-examination or in rebuttal.

Defendant Adedayo Ilori's Post Arrest Statements Are Admissible Impeachment Evidence

A. Applicable Law

Statements obtained in violation of a defendant's *Miranda* rights may be used to impeach the defendant on cross examination or in rebuttal. *Oregon v. Hass*, 420 U.S. 714, 722 (1975) ("[I]t does not follow from *Miranda* that evidence inadmissible against [the defendant] in the prosecution's case in chief is barred for all purposes . . . Again, the impeaching material would provide valuable aid to the jury in assessing the defendant's credibility); *United States v. Douglas*, 525 F.3d 225, 248 (2d Cir. 2008) ("[S]tatements taken from a defendant in violation of his *Miranda* rights, though they may not be introduced by the government during its case-in-chief, are nonetheless admissible to impeach statements made by the defendant in the course of his testimony"). "[A]ssuming that the exclusionary rule has a deterrent effect on proscribed police conduct, sufficient deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief." *Hass*, 420 U.S. at 721 (quoting *Harris v. New York*, 401 U.S. 222, 224, (1971)). "[I]nadmissibility would pervert the constitutional right into a right to falsify free from the embarrassment of impeachment evidence from the defendant's own mouth." *Id.* at 723. "[T]he shield provided by *Miranda* is not to be perverted to a license to testify

inconsistently, or even perjurally, free from the risk of confrontation with prior inconsistent utterances.” *Id.* at 722.

Statements obtained in violation of a defendant’s *Miranda* rights are admissible to impeach the defendant “provided that ‘the trustworthiness of the evidence satisfies legal standards.’” *Hass*, 420 U.S. at 722 (citing *Harris*, 401 U.S. at 224). Such statements are “trustworthy” when they are voluntary, and the mere fact that the statements were obtained in violation of *Miranda* does not make the statements involuntary. *Id.* (holding that statements obtained in violation of *Miranda* were admissible for the purpose of impeachment where there was no evidence that the statements were involuntary or coerced); *Parsad v. Greiner*, 337 F.3d 175, 184 (2d Cir. 2003) (“The mere fact that police officers improperly question a suspect after he invokes his right to remain silent during a custodial interrogation does not render his subsequent statements the product of coercion.”). Whether a defendant made statements voluntarily depends on the totality of the circumstances in which the defendant made the statements. *United States v. Valdez*, 16 F.3d 1324, 1329 (2d Cir. 1994). “Three factors are relevant to this inquiry: (1) the conduct of the law enforcement officers; (2) the conditions under which the interrogation occurred; and (3) the accused’s background.” *Id.*

B. Discussion

Ilori’s post arrest statements are admissible for impeachment purposes if Ilori testifies. Based on the totality of the circumstances, and as made clear in the recorded post arrest statements, Ilori’s post arrest statements were clearly voluntary; nor does Ilori challenge the voluntariness of his statements. Ilori was questioned by law enforcement agents after his arrest while being transported in the law enforcement agents’ vehicle and while in the offices of the Federal Bureau of Investigation. The law enforcement agents neither threatened nor used

physical force against Ilori. On the contrary, the law enforcement agents were professional and courteous throughout the questioning, and Ilori at one point even expressed his appreciation of the agents' respectfulness. Ex. A at 20:18-20:25 ("I appreciate the courtesy that you guys are affording me").¹ Although the law enforcement agents confronted Ilori with some incriminating evidence, namely a photograph of him, his co-defendant Herode Chancy, and the confidential source meeting together, as well as purported information provided by Chancy implicating Ilori, *see, e.g.*, Ex. A at 14:40-14:55, Ex. B 34:20-35:33, "officers routinely confront suspects with incriminating evidence," and that conduct alone, unless excessive, does not render a defendant's statements involuntary. *Parsad*, 337 F.3d at 185. Moreover, there is no indication that Ilori's personal background rendered the statements involuntary. On the contrary, Ilori is 41 years old, has multiple prior arrests and convictions, and is therefore familiar with the criminal justice system. *See, e.g., United States v. Jenkins*, No. 02 CR. 1384 (RCC), 2003 WL 1461477, at *4 (S.D.N.Y. Mar. 21, 2003) (finding defendant's post arrest statements made in violation of *Miranda* were nevertheless voluntary and admissible for impeachment purposes where defendant was not subject to lengthy, coercive questioning or physical punishment, defendant was not physically or mentally unwell, and defendant was 26 years old and had prior felony convictions).

Conclusion

For the foregoing reasons, the Government concedes that the defendant's post arrest statements made after the defendant invoked his right to counsel are inadmissible in the

¹ The referenced exhibits are the recordings included as exhibits with Ilori's suppression motion.

Government's case-in-chief, but the statements are voluntary and therefore admissible for the purpose of impeachment on cross-examination or rebuttal in the event Ilori testifies at trial.

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Respectfully submitted,

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