

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-2996

Henry Dailey

Plaintiff - Appellant

v.

United States of America

Defendant - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:18-cv-00948-SRB)

JUDGMENT

Before COLLTON, GRUENDER, and KELLY, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

January 22, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

1(a)

HENRY DAILEY, Movant, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN
DIVISION
2019 U.S. Dist. LEXIS 138613
Civil No. 18-cv-00948-SRB, Criminal No. 16-cr-00337-02-SRB
August 16, 2019, Decided
August 16, 2019, Filed

Counsel {2019 U.S. Dist. LEXIS 1}For Henry Dailey, Movant: Richard L. Carney, LEAD ATTORNEY, Kansas City, MO.
For USA, Respondent: Teresa A. Moore, LEAD ATTORNEY, United States Attorney's Office-KCMO, Kansas City, MO.
Judges: STEPHEN R. BOUGH, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: STEPHEN R. BOUGH

Opinion

ORDER

Before the Court is Movant Henry Dailey's *pro se* Motion to Vacate, Set Aside, or Correct Sentence (Doc. #1). For the following reasons the motion is denied.

I. Background

Beginning on October 13, 2016, state and federal agencies conducted "Operation Cross Country X," an undercover law enforcement effort in the Kansas City, Missouri, metropolitan area aimed at stopping prostitution and sex trafficking. This undercover operation took place at a hotel in Independence, Missouri, which is in the Western District of Missouri. During this undercover operation, Movant was detained, transported to Independence Police Headquarters, and *Mirandized*. Then, during a recorded interview on October 16, 2016, Movant made several statements to law enforcement officers, including that he participated in a commercial sex ring. Both parties refer to these statements as Movant's "confession."

On October 18, 2016, Movant was charged by complaint with one count of {2019 U.S. Dist. LEXIS 2} sex trafficking of an adult by force, fraud, or coercion, in violation of 18 U.S.C. §§ 1594 and 1591. On October 19, 2016, United States Magistrate Judge John T. Maughmer appointed Lance Sandage to be Movant's counsel. On November 2, 2016, a federal grand jury returned an indictment charging Movant with sex trafficking of an adult by force, fraud, or coercion, in violation of 18 U.S.C. §§ 1591(a), (b)(1), and 1594(a) and (c) (Count One); and with two counts of interstate transportation for prostitution, in violation of 48 U.S.C. § 2142 (Counts Two and Three). On June 26, 2017, Movant pleaded guilty to Count Two of the indictment pursuant to a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C), which contained a factual basis for Movant's guilty plea. On April 11, 2018, this Court sentenced Movant to eighty-four (84) months imprisonment. Movant did not appeal. On November 29, 2018, Movant filed the present *pro se* motion under 28 U.S.C. § 2255. The

DISHOT

1

© 2019 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

Government does not dispute that the motion is timely under § 2255(f)(1). On April 1, 2019, after Movant had filed the present motion, Judge Maughmer appointed Richard Carney to be Movant's counsel.

In his *pro se* motion, Movant asserts seven grounds for relief: (1) this Court's lack of jurisdiction over Movant's criminal proceedings; (2) ineffective assistance^{2019 U.S. Dist. LEXIS 3} of counsel for "lack of due diligence"; (3) ineffective assistance of counsel for failure to challenge the lawfulness of Movant's arrest and detention; (4) ineffective assistance of counsel for failure to file motions to suppress evidence, including his confession; (5) ineffective assistance of counsel for failure to have Movant evaluated for competency; (6) unreasonable seizure of Movant's person; and (7) deprivation of Movant's liberty without due process. (Doc. #1). On August 7, 2019, this Court held an evidentiary hearing.

II. Legal Standard

A person in custody under a federal sentence "claiming the right to be released upon the ground that the sentence was imposed in violation of" federal law "or that the court was without jurisdiction to impose such sentence . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. § 2255(a). The purpose of § 2255 is "to afford federal prisoners a remedy identical in scope to federal habeas corpus." *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (internal quotation marks omitted) (quoting *Davis v. United States*, 417 U.S. 333, 343, 94 S. Ct. 2298, 41 L. Ed. 2d 109 (1974)). "Like habeas corpus, this remedy 'does not encompass all claimed errors in conviction and sentencing.'" *Id.* (quoting *United States v. Addonizio*, 442 U.S. 178, 185, 99 S. Ct. 2235, 60 L. Ed. 2d 805 (1979)). Beyond "provid[ing] a remedy for jurisdictional and constitutional^{2019 U.S. Dist. LEXIS 4} errors," the scope of a § 2255 motion "is severely limited; an error of law does not provide a basis for collateral attack unless the claimed error constituted a fundamental defect which inherently results in a complete miscarriage of justice." *Id.* (internal quotation marks omitted) (quoting *Addonizio*, 442 U.S. at 178). "In a § 2255 proceeding, the burden of proof with regard to each ground for relief rests upon the" movant. *Kress v. United States*, 411 F.2d 16, 20 (8th Cir. 1969) (internal citations omitted).

III. Discussion

A. Jurisdiction

Movant argues this Court was without jurisdiction to preside over his criminal prosecution. (Doc. #1, p. 3). "The district courts of the United States shall have original jurisdiction . . . of all offenses against the laws of the United States." 18 U.S.C. § 3231. "[S]ubject-matter jurisdiction in every federal criminal prosecution comes from" § 3231, which is "the beginning and the end of the jurisdictional inquiry." *United States v. White Horse*, 316 F.3d 769, 772 (8th Cir. 2003) (internal quotation marks omitted) (quoting *Hugi v. United States*, 164 F.3d 378, 380 (7th Cir. 1999)). This Court had subject-matter jurisdiction over Movant's criminal proceedings. Movant was charged through a federal grand jury's indictment with violating federal criminal laws. Movant's arguments that he was detained in excess of the time period allowed by Mo. Rev. Stat. § 544.170 and Fed. R. Crim. P. 5(a) (Doc. #2, p. 3) may be relevant to a motion^{2019 U.S. Dist. LEXIS 5} to suppress, but they are not relevant to this Court's subject-matter jurisdiction over Movant's criminal prosecution. Movant's motion to vacate, set aside, or correct his sentence on jurisdictional grounds is denied.

B. Ineffective Assistance of Counsel

Movant alleges four grounds for ineffective assistance of counsel. An ineffective assistance of counsel claim requires a movant to satisfy a two-prong test by showing: (1) his counsel's performance was deficient, and (2) the deficiency prejudiced his defense. *Deltoro-Aguilera v. United*

States, 625 F.3d 434, 437 (8th Cir. 2010). As to prong one, deficient performance is that which "falls below the 'range of competence demanded of attorneys in criminal cases.'" *Theus v. United States*, 611 F.3d 441, 446 (8th Cir. 2010) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). A movant satisfies this prong by showing that counsel "failed to exercise the customary skills and diligence that a reasonably competent attorney would [have] exhibit[ed] under similar circumstances." *United States v. Apfel*, 97 F.3d 1074, 1076 (8th Cir. 1996) (citations omitted). Courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

Prong two, prejudice, requires the movant to "demonstrate that there is a reasonable probability that the outcome would have been different but for counsel's deficient performance." {2019 U.S. Dist. LEXIS 6} *Theus*, 611 F.3d at 447. To satisfy prong two in the guilty plea context, the movant "must show 'that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" *United States v. Frausto*, 754 F.3d 640, 643 (8th Cir. 2014) (quoting *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985)). Both prongs must be satisfied for a movant to prevail on an ineffective assistance of counsel claim. *Apfel*, 97 F.3d at 1076.

I. "Lack of Due Diligence," Failure to Challenge Lawfulness of Movant's Arrest and Detention, and Failure to File Motions to Suppress

Movant claims ineffective assistance of counsel for Lance Sandage's "Lack of Due Diligence" resulting from Sandage's alleged failure to "investigate and research the case in a timely manner," to "recognize the Constitutional issues surrounding [Movant's] arrest and detention," and to "bring [these issues] to the Court[']s attention." (Doc. #2, p. 4). Movant also bases his claim on Sandage's failures to challenge the lawfulness of Movant's arrest and detention and to file corresponding motions to suppress his confession. (Doc. #2, pp. 4-5). The Government argues Movant does not meet the *Strickland* standard. The Government argues Sandage did not fail to exercise due diligence because Movant "and defense counsel had discussed{2019 U.S. Dist. LEXIS 7} issues surrounding [Movant's] detention at the Independence Police Department and his videotaped confession prior to making the strategic decision to enter into the plea agreement with the Government." (Doc. #13, p. 23). Addressing the "prejudice" prong in particular, the Government argues that, even if Movant's "detention and his subsequent confession may have provided the ground for an at least potentially colorable suppression motion[,] . . . a successful challenge to the confession would have been irrelevant, because the other evidence was more than sufficient to convict [Movant] at trial." (Doc. #13, p. 21). The Government also points to Sandage's affidavits and argues they "demonstrate[] that the advice to plead guilty was a strategic decision . . . made by [Movant] himself, after weighing the advantages and disadvantages of moving to suppress the evidence." (Doc. #13, p. 31).

Movant has not made the showing required under *Strickland*. First, Movant has not shown that Sandage's performance as an attorney was "deficient" for Sixth Amendment purposes because Movant has not "overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Theus*, 611 F.3d at 446-47{2019 U.S. Dist. LEXIS 8} (quoting *Strickland*, 466 U.S. at 689). In one of his affidavits attached to the Government's brief, Sandage attests that he met with Movant five times prior to Movant's change of plea on June 26, 2017, and that during these meetings he and Movant discussed "potential legal issues related to [Movant's] detention at Independence Police Department," "the issue of a motion to suppress his videotaped confession," "that filing motion practice while also seeking a plea agreement that involved cooperation could jeopardize the plea agreement," and "the strength of the government's case without the videotaped confession." (Doc. #13-2, p. 3). "Based upon these conversations, it was decided not to file pretrial motions and to continue with the change of plea." (Doc. #13-2, p. 3).

Sandage further attests that "after Movant entered his change of plea on June 26, 2017," Sandage and Movant "had numerous meetings" during which they discussed "the possibility of setting aside his guilty plea so that motions could be filed related to the unlawful detention by Independence Police Department and the possible suppression of his videotaped confession." (Doc. #13-2, p. 4). Sandage attests that during these meetings he "informed [Movant] of the benefits and risks associated with filing a motion to set aside a guilty plea" and that Movant "made the decision not to file" such a motion. (Doc. #13-2, p. 4). Movant has not satisfied prong one of *Strickland*.

Second, even had Movant demonstrated deficient performance on Sandage's part, Movant has not shown prejudice because he has not demonstrated "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Frausto*, 754 F.3d at 643 (internal quotation marks omitted) (quoting *Hill*, 474 U.S. at 58). Even if Movant's confession had been suppressed, the other potential witnesses and evidence against Movant undercut the probability, if any, that Movant would have decided not to plead guilty and instead to insist on going to trial. Moreover, it is undisputed that Movant faced a potential sentence of life imprisonment if convicted of Count One at trial and that his plea of guilty to Count Two limited his sentencing exposure to a maximum of eighty-four months (seven years). Movant has not demonstrated prejudice under *Strickland*. Accordingly, Movant's motion is denied insofar as he claims ineffective assistance of counsel for lack of due diligence, failure to challenge the lawfulness of his arrest and detention, and failure to file motions to suppress.

ii. Failure to Have Movant Evaluated for Competency

Movant claims ineffective assistance of counsel{2019 U.S. Dist. LEXIS 9} "due to [Sandage's] failure to have the Movant evaluated by Medical Professionals, to deem [Movant's] level of understanding, reasoning and comprehension was up to normal standards and to stand trial or to take a plea." (Doc. #2, p. 6). Movant argues Sandage knew that Movant "had undergone two brain surgeries, and had suffered a stroke and several seizures," "that Movant was under care of brain specialists," and that Movant "must continuously undergo medical procedures due to [his] health issues." (Doc. #2, p. 6). Movant argues Sandage's "failure to have Movant medically evaluated and cleared to continue the legal proceedings, shows a blatant and reckless disregard for Movant's cause" (Doc. #2, p. 6). The Government argues that "both defense counsel's observations and the transcripts of the proceedings in this case show that [Movant] was able to assist in his defense and competent to proceed." The Government concludes that "[t]here was simply no reason to move for a competency hearing, and [Movant] cannot show that his attorney was ineffective for not doing so." (Doc. #13, p. 19).

Movant has not carried his burden under *Strickland*. It was not deficient performance for Sandage{2019 U.S. Dist. LEXIS 10} not to have Movant's competency evaluated. "A defendant is competent to be tried if he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him." *United States v. Robinson*, 253 F.3d 1065, 1067 (8th Cir. 2001) (internal quotation marks omitted) (quoting *Wise v. Bowersox*, 136 F.3d 1197, 1201 (8th Cir. 1998)). Sandage attests-and Movant does not dispute-that "[d]uring all in-person meetings" between them, Movant "was alert and eager to assist in his defense," "asked appropriate questions and engaged in meaningful conversation with [Sandage] regarding this case," "was able to provide the defense with factual details surrounding the offense conduct," "was very engaged in plea negotiations," "had very specific questions about sex offender registration," "made inquiries about defense strategies," and "appeared to understand the benefits and drawbacks to different defense strategies." (Doc. #13-1, p. 2). Accordingly, Sandage's failure to have Movant's competence evaluated is not performance that "falls below the 'range of competence demanded of attorneys in criminal cases.'" *Theus*, 611 F.3d at

446 (quoting *Strickland*, 466 U.S. at 687). Because Movant fails the first prong of *Strickland*, Movant's motion is denied insofar as{2019 U.S. Dist. LEXIS 11} he claims ineffective assistance of counsel for Sandage's failure to have Movant evaluated for competency. See *Apfel*, 97 F.3d at 1076.

C. Unreasonable Seizure and Violation of Due Process

Movant also challenges the lawfulness of his arrest and detention. Movant argues his arrest was an unreasonable seizure of his person in violation of the Fourth Amendment and that his detention violated Missouri statute, Fed. R. Crim. P. 5(a), and the Due Process Clause of the Fourteenth Amendment. (Doc. #1, pp. 6-7). By making a valid guilty plea, however, Movant has waived these challenges. "A valid guilty plea . . . waives a defendant's 'independent claims relating to the deprivation of constitutional rights that occurred prior to' pleading guilty." *United States v. Pierre*, 870 F.3d 845, 848 (8th Cir. 2017) (quoting *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973)). "Stated differently, a valid guilty plea forecloses an attack on a conviction unless 'on the face of the record the court had no power to enter the conviction or impose the sentence.'" *Walker v. United States*, 115 F.3d 603, 604 (8th Cir. 1997) (quoting *United States v. Vaughan*, 13 F.3d 1186, 1188 (8th Cir. 1994)). Moreover, when Movant pleaded guilty he expressly agreed to waive his right to collaterally attack his conviction or his sentence except on grounds of ineffective assistance of counsel, prosecutorial misconduct, or an illegal sentence. Movant does not dispute that his guilty plea was "knowing and voluntary." See *id.* at 605 (citing *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969)). To the extent Movant bases{2019 U.S. Dist. LEXIS 12} his motion on the illegality of his arrest or detention, his motion is denied.

D. Certificate of Appealability

A Certificate of Appealability will be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). For the reasons set forth above, this case does not present issues that are deserving of appellate review under the standard. Accordingly, a Certificate of Appealability is denied.

IV. Conclusion

For the above reasons Movant Henry Dailey's *pro se* Motion to Vacate, Set Aside, or Correct Sentence (Doc. #1) is denied.

IT IS SO ORDERED.

/s/ Stephen R. Bough

STEPHEN R. BOUGH, JUDGE

UNITED STATES DISTRICT COURT

DATE: August 16, 2019

DISHOT

5

© 2019 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

6 a

31865045

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-2996

Henry Dailey

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:18-cv-00948-SRB)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

March 23, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

SANDAGE

To: Lance Sandage
From: Sarah Hess
CC: Henry Dailey
Date: 11/14/17
Re: Dailey Timeline and Research

Memo

- 10/14/16: Undercover sting/contact with V1
- 10/15/16: Interview of V1
 - early morning hours
 - mentions "Cerius's cousin"
 - no mention of Dailey by name or description
 - Shows LEOs photos of V2 and V3 on Backpage.com
 - IDs V2 as the "baby faced girl" who came with Miller's cousin
- 10/15/16: Dailey detained and arrested at Staybridge Suites after being seen in the lobby with V2 (officers identified V2 based on Backpage.com ad shown by V1):
 - @ 2:50 a.m. (one report lists 2:45 a.m.)
 - By Independence Police Department (IPD): Det. Burris, Det. Young, Det. Knox
 - For violation of § 566.209.1 RSMo.
 - Transported to IPD for 24-hour investigative hold.
- 10/15/16: V2 detained at Staybridge Suites while exiting lobby with Dailey (identified based on Backpage.com ad shown by V1).
 - Told officers she wanted to get away from the group.
- 10/15/16: V3 interviewed
 - @ Staybridge Suites
- 10/15/16: Dailey booked into IPD
 - @ 5:06 a.m.
- 10/15/16: V2 interviewed by Homeland Security Investigation (HSI) Special Agents at IPD
 - @ 7:25 a.m.
 - Talks about Dailey
- 10/16/16: Dailey interrogated by HSI Special Agents at IPD
 - @ 2:00 a.m.-5:00 a.m.
 - video recorded/written statement
- 10/16/16: Dailey transported to Centerpoint Medical Center for headache (told officers that since brain surgery, all headaches needed medical attention).
 - @ around 6:00 a.m. (at hospital for 2 hrs and 45 mins)
 - IPD report indicates that since Federal charges are pending, they will not file a "GOS for city charges."
- 10/17/16: IPD ran Global Subject Activity Report on Dailey
 - @ 11:25 a.m.
- 10/18/16: Federal Complaint Filed
 - Initial appearance before Judge Maughmer

24-hour hold period (§ 544.170
RSMo) expires during interrogation

No state charges were ever filed. Case was never referred to Prosecutor. (per SGH conversation with Asst. Jackson County Prosecutor on 11/14/17). No city charges were ever filed in Independence Municipal Court per phone conversation with Court on 11/15/17.

Fed. R. Crim. P. 5(a) states, “[a] person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides ...” Rule 5(c) further provides that if arrest occurred in the district where the offense was allegedly committed, such initial appearance must be made in that district to either a magistrate judge or before a state or local judicial officer.

18 U.S.C. § 3501(c) states, “In any criminal prosecution by the United States ... a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate [magistrate judge] or other officer ... if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention.” Put simply, any confessions given within six hours of arrest are presumed to be attained without unnecessary delay.

While there was some debate over whether congress’s enactment of § 3501(c) abrogated the Court’s decisions under the *McNabb-Mallory* cases dealing with presentment delay, the Court held in *Corley v. United States*, 556 U.S. 303 (2009), that § 3501(c) merely revised the *McNabb-Mallory* rule:

“[A] district court with a suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was ‘reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate judge]’). If the confession came within that period, it is admissible, subject to the other Rules of Evidence, so long as it was ‘made voluntarily and ... the weight to be given [it] is left to the jury.’ *Ibid.* If the confession occurred before presentment and beyond six hours, however, the court must decide whether delaying that long was unreasonable or unnecessary under the *McNabb-Mallory* cases, and if it was, the confession is to be suppressed.”

Corley, 556 U.S. at 222. Thus, the remedy for a violation of the presentment rule (Fed. R. Crim. P. 5(a)) is not dismissal of the case, but rather suppression of the confession obtained in violation of said rule.

The Eighth Circuit, along with others, has long held that there is “no hard and fast rule” that governs “what constitutes unnecessary delay and each case must be determined on its own facts and circumstances.” *Holt v. United States*, 280 F.2d 273, 274 (8th Cir. 1960). In so doing, judges are to determine the voluntariness of a confession, taking into account all of the surrounding circumstances including “(1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.” *United States v. Jackson*, 712 F.2d 1283, 1286-87 (8th Cir. 1983) (quoting 18 U.S.C. § 3501(b)). However, “delay for the purpose of interrogation is the epitome of ‘unnecessary delay.’” *United States v. Casillas*, 792 F.3d 929, 930 (8th Cir. 2015) (quoting *Corley*, 556 U.S. at 308). Courts have generally also held that weekend delays are reasonable. See *United States v. Stinnett*, 2015 U.S. Dist. LEXIS 52210, *15 (W.D.Mo. 2015).

The Eighth Circuit has also been clear that § 3501(c) applies only to arrests and detention based on federal charges. See *United States v. Pugh*, 25 F.3d 669, 674 (8th Cir. 1994).

“the ‘arrest or other detention’ of which [§ 3501(c)] speaks must be an ‘arrest or other detention’ for a violation of federal law. ... If, instead, the person is arrested and held on state charges, § 3501(c) does not apply, and the safe harbor is not implicated. This is true even if the arresting officers (who, when the arrest is for a violation of state law, almost certainly will be agents of the State or one of its subdivisions) believe or have cause to believe that the person also may have violated federal law ... As long as the person is arrested and held only on state charges by state or local authorities, the provisions of § 3501(c) are not triggered.”

United States v. Alvarez-Sanchez, 551 U.S. 350, 358 (1994). There are circumstances under which a state detention can invoke § 3501(c), but such is rare and generally requires a showing that the “state and federal officers colluded to deprive a person of his right to a prompt presentment. *United States v. Stinnett*, 2015 U.S. Dist. LEXIS 52210, *14 (W.D.Mo. 2015). The same is true with application to Rule 5(a): “when there is a working arrangement between state police and federal agents for the purpose of aiding and abetting the federal officers in carrying on interrogation of the suspect in violation of Federal Rule 5(a) requiring prompt presentment before a judge, the delay is measured from the time of detention.” *United States v. Roberts*, 928 F. Supp. 910, 938 (W.D.Mo. 1996).

Fed. R. Crim. P. 5(a) states, “[a] person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides ...” Rule 5(c) further provides that if arrest occurred in the district where the offense was allegedly committed, such initial appearance must be made in that district to either a magistrate judge or before a state or local judicial officer.

18 U.S.C. § 3501(c) states, “In any criminal prosecution by the United States ... a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate [magistrate judge] or other officer ... if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention.” Put simply, any confessions given within six hours of arrest are presumed to be attained without unnecessary delay.

While there was some debate over whether congress’s enactment of § 3501(c) abrogated the Court’s decisions under the *McNabb-Mallory* cases dealing with presentment delay, the Court held in *Corley v. United States*, 556 U.S. 303 (2009), that § 3501(c) merely revised the *McNabb-Mallory* rule:

“[A] district court with a suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was ‘reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate judge]’). If the confession came within that period, it is admissible, subject to the other Rules of Evidence, so long as it was ‘made voluntarily and ... the weight to be given [it] is left to the jury.’ *Ibid.* If the confession occurred before presentment and beyond six hours, however, the court must decide whether delaying that long was unreasonable or unnecessary under the *McNabb-Mallory* cases, and if it was, the confession is to be suppressed.”

Corley, 556 U.S. at 222. Thus, the remedy for a violation of the presentment rule (Fed. R. Crim. P. 5(a)) is not dismissal of the case, but rather suppression of the confession obtained in violation of said rule.

The Eighth Circuit, along with others, has long held that there is “no hard and fast rule” that governs “what constitutes unnecessary delay and each case must be determined on its own facts and circumstances.” *Holt v. United States*, 280 F.2d 273, 274 (8th Cir. 1960). In so doing, judges are to determine the voluntariness of a confession, taking into account all of the surrounding circumstances including “(1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment; (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.” *United States v. Jackson*, 712 F.2d 1283, 1286-87 (8th Cir. 1983) (quoting 18 U.S.C. § 3501(b)). However, “delay for the purpose of interrogation is the epitome of ‘unnecessary delay.’” *United States v. Casillas*, 792 F.3d 929, 930 (8th Cir. 2015) (quoting *Corley*, 556 U.S. at 308). Courts have generally also held that weekend delays are reasonable. See *United States v. Stinnett*, 2015 U.S. Dist. LEXIS 52210, *15 (W.D.Mo. 2015).

The Eighth Circuit has also been clear that § 3501(c) applies only to arrests and detention based on federal charges. See *United States v. Pugh*, 25 F.3d 669, 674 (8th Cir. 1994).

“the ‘arrest or other detention’ of which [§ 3501(c)] speaks must be an ‘arrest or other detention’ for a violation of federal law. ... If, instead, the person is arrested and held on state charges, § 3501(c) does not apply, and the safe harbor is not implicated. This is true even if the arresting officers (who, when the arrest is for a violation of state law, almost certainly will be agents of the State or one of its subdivisions) believe or have cause to believe that the person also may have violated federal law ... As long as the person is arrested and held only on state charges by state or local authorities, the provisions of § 3501(c) are not triggered.”

United States v. Alvarez-Sanchez, 551 U.S. 350, 358 (1994). There are circumstances under which a state detention can invoke § 3501(c), but such is rare and generally requires a showing that the “state and federal officers colluded to deprive a person of his right to a prompt presentment. *United States v. Stinnett*, 2015 U.S. Dist. LEXIS 52210, *14 (W.D.Mo. 2015). The same is true with application to Rule 5(a): “when there is a working arrangement between state police and federal agents for the purpose of aiding and abetting the federal officers in carrying on interrogation of the suspect in violation of Federal Rule 5(a) requiring prompt presentment before a judge, the delay is measured from the time of detention.” *United States v. Roberts*, 928 F. Supp. 910, 938 (W.D.Mo. 1996).