

Matthew Sedillo - Direct Examination - January 14, 2020

1 Your Honor, I don't know as far as timing-wise goes, but I plan
2 to object to another thing that I think the Court is going to
3 want to review later.

4 THE COURT: Okay.

5 MR. STALLINGS: So I didn't know if the Court wanted
6 to go ahead and --

7 THE COURT: What's that?

8 MR. STALLINGS: Two things. The first thing being
9 his statement.

10 THE COURT: Who is "he"?

11 MR. STALLINGS: I'm sorry. Mr. Williams, my client.

12 THE COURT: Government's Exhibit 11, the audio?

13 MR. STALLINGS: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. STALLINGS: We're going to be objecting to that
16 on Miranda grounds, basically the language of Miranda in that.
17 We're also going to be objecting to anything past the
18 two-minute mark as under 404(b) being more prejudicial than
19 probative.

20 And then lastly it also comes up during the
21 interview, we're going to be objecting to the consent for the
22 cell phone download and the form in which that consent was
23 allegedly obtained.

24 THE COURT: Okay. All right. We'll take that up
25 when it's offered.

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1 Is it going to be offered up through
2 Detective Sedillo?

3 MR. HARWOOD: Yes, Your Honor. And the government --
4 that's the exhibit the government only planned to play the
5 two minutes and 20 seconds. In fact, that portion has the
6 Miranda warning in it, and the government planned to stop that
7 publication after he says, you know, the 4 zips or 4 ounces,
8 whatever he says in that.

9 THE COURT: Okay. And that's Government's
10 Exhibit 11.

11 MR. HARWOOD: 11, Your Honor.

12 THE COURT: Okay. All right. Very well. With those
13 assurances then, then I'll overrule the objection because
14 you're not getting into what Mr. Stallings is referring to as
15 404(b).

16 MR. HARWOOD: No, Your Honor. What I plan to do is
17 publish that portion where he says 4 zips, and then just ask
18 follow-on questions about does he discuss where he got the
19 drugs from, who he got the drugs from --

20 THE COURT: Okay.

21 MR. HARWOOD: -- you know, how much he purchased and
22 leave it at that.

23 THE COURT: Okay. You have a consent form, I guess,
24 for the cell phone?

25 MR. HARWOOD: I don't have a form, Your Honor.

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1 THE COURT: Okay.

2 MR. HARWOOD: It's discussed later on in the
3 interview. We didn't prepare a suppression motion because he
4 granted consent. He gave the password for the phone and the
5 phone was, in fact, downloaded. The government would also
6 argue inevitable discovery based on the fact that the phone was
7 seized at the same time as the drugs. So if that had been an
8 issue that had been raised at the time, the government
9 certainly could have, with probable cause, sought out a search
10 warrant. But we didn't brief a suppression motion on the phone
11 because that's the first this has been raised.

12 THE COURT: And so, Mr. Stallings, you have -- you
13 don't believe he gave consent.

14 MR. STALLINGS: We do not, Your Honor, not based on
15 the way in which consent was asked for, Your Honor.

16 THE COURT: Okay. So if y'all could in the meantime
17 narrow down where on the audio that is as well.

18 MR. STALLINGS: I've got it, Your Honor.

19 THE COURT: You do?

20 MR. STALLINGS: Yes, sir, I wrote it down yesterday.

21 THE COURT: Where would that be? Is there a mark?

22 MR. STALLINGS: I've got at 9:58 during the
23 defendant's statement. Instead of really asking for any type
24 of consent, the detectives just say, Give us your passcode. At
25 that point I don't think it is evident to him, you know,

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1 whether or not he has the right -- and I understand they don't
2 have to say those words. You have the right to, you know, not
3 consent to this. But I think that under the circumstances, it
4 certainly seems to Mr. Williams that he had no other option.

5 THE COURT: And he's Mirandized early in the
6 recording, obviously.

7 MR. HARWOOD: He's Mirandized early because at the
8 time it's a custodial interview. Later on in the evening, he's
9 actually released with an agreement that he was going to
10 cooperate. So they did ask him. They had his cell phone.
11 They say, Give me your password. Him gave them the password,
12 something along those lines.

13 THE COURT: So let's go ahead and play the first
14 two minutes and 20 seconds or thereabouts of Government's
15 Exhibit 11 that you wish to introduce as Government's
16 Exhibit 11 and then let's go to 9:58 and let me listen to that
17 too.

18 MR. STALLINGS: Your Honor, just before you hit
19 start, our objection to the Miranda is going to be the
20 inclusion of the phrase, basically the additional Miranda,
21 "...or if your case ever goes to court or trial..." as being
22 not included in Miranda and further laying on to Mr. Williams
23 that essentially a quid pro quo. He does what they want him to
24 do. He's got a pretty good feeling that, you know, he can get
25 himself out of this.

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1 THE COURT: You think there is some deception there?

2 MR. STALLINGS: That's what we would argue, Your
3 Honor.

4 THE COURT: Is there some rule against deception --
5 when officers are using deception?

6 MR. STALLINGS: Well, obviously, they're allowed to
7 lie to them; but I don't think they're allowed to change the --
8 I mean, there is a reason why officers read the Miranda
9 warnings directly from a card usually, because Miranda is
10 obviously very important how it's presented to them. And I
11 think the inclusion of "...or if your case ever goes to court
12 or trial..." certainly kind of changes the warnings that are
13 given, Your Honor.

14 THE COURT: All right.

15 Let's listen to it.

16 (Audio played)

17 THE COURT: Okay.

18 MR. HARWOOD: That's the two-minute, 20-second mark,
19 Your Honor.

20 THE COURT: Thank you. Then if you'll go ahead and
21 go around the 9:58 mark like Mr. Stallings said. Maybe go to
22 9:40 or something like that and let's listen to that.

23 MR. STALLINGS: It ends about 10:10 or so.

24 THE COURT: Okay. So it's pretty quick after that.

25 (Audio played)

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1 THE COURT: Mr. Harwood, is there anything else that
2 goes with the consent?

3 MR. HARWOOD: No, Your Honor. Just to note that that
4 whole time they're talking about contacts in the phone.
5 They're by numbers, not names. They're talking about photos of
6 firearms that were on the phone.

7 THE COURT: He's explaining that.

8 MR. HARWOOD: He's explaining the phone -- he says,
9 Don't look at some of those videos because they might be some
10 pornos, or something like that. So their discussion is about
11 what they're reviewing on the phone together at the time.

12 THE COURT: Okay. So the Court will overrule the
13 objection as to the first two minutes and 27 seconds
14 thereabouts to where he gets to the 4 zips. The Miranda
15 warnings were given. There's nothing wrong with the way the
16 Miranda warnings were given. In fact, Detective Sedillo does
17 state, in fact, that it will be held against you in a court of
18 law or if your case even goes to court or trial. I don't even
19 find that deceptive as in the ordinary listening to it. He's
20 apparently adding that in, but at the same time he's giving
21 the -- not only the gist, but he's reading the Miranda rights
22 to him, you can tell. And so I overrule that.

23 The rest of the audio is not being offered, and so
24 any objection to the rest of it is denied as moot and certainly
25 the Court finds that the probative value is not outweighed by

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1 the prejudicial effect. The consent is given -- he's not told
2 he has the right not to, but this is well after he's already
3 been Mirandized correctly, and there has been about almost ten
4 minutes of give and take in a conversation where it's apparent
5 that the defendant is never asked to -- or never invoked any of
6 his rights under Miranda. And then goes on after giving the
7 passcode, which is I guess humble -- the word humble to the
8 phone that's being discussed, goes on to describe in great
9 detail what the officers are going to find on the phone.

10 So, you know, the Court finds that the defendant did
11 consent for the cell phone -- to the cell phone download, even
12 though at least at this point, that portion of the audio is not
13 being offered, the Court does find and will also state that
14 under inevitable discovery, I think, you know, they would have
15 gotten to it anyway. But I believe there is nothing wrong with
16 the way that it was taken care of to begin with.

17 Mr. Stallings, anything else?

18 MR. STALLINGS: Your Honor, just after conferring
19 with co-counsel, I just want to make it clear for the record
20 that the term of art I was looking for -- and I agreed with the
21 Court earlier when I said "deception" -- I think the term I was
22 really looking for, Your Honor, was overbearing his will by --
23 what we allege to be improper Miranda warnings. And so I would
24 just ask the Court to rule when it comes to Miranda as it
25 relates to overbearing as well, Your Honor.