

Memorandum of Law

Introduction

This memorandum addresses whether GANDY, prosecuted in federal court in Texas, has a basis to suppress the testimony of VICTIM, who agreed to testify against GANDY only after the FBI communicated to him information that was illegally obtained from GANDY following a clear invocation of his right to counsel.

Governing Principles

1. Right to Counsel (5th & 6th Amendments)

Once GANDY unequivocally invoked his right to counsel during custodial interrogation, questioning should have ceased. *Edwards v. Arizona*, 451 U.S. 477 (1981). Any statements obtained thereafter are inadmissible. Further, under the fruit of the poisonous tree doctrine, derivative evidence is also subject to suppression. *Wong Sun v. United States*, 371 U.S. 471 (1963).

2. Derivative Evidence

The exclusionary rule reaches not only the illegally obtained statement itself but also evidence derived therefrom. Courts inquire whether the evidence was obtained 'by exploitation of that illegality' or by means sufficiently distinguishable to purge the taint. *Brown v. Illinois*, 422 U.S. 590 (1975).

3. Witness Testimony as Fruit

The Supreme Court has recognized that live witness testimony may in some cases constitute fruit of an illegal interrogation. *United States v. Ceccolini*, 435 U.S. 268 (1978). In *Ceccolini*, the Court set out a framework for evaluating whether witness testimony should be suppressed, emphasizing attenuation and the witness's free will. However, courts apply a more lenient standard to live witness testimony, and suppression is disfavored.

Application to the Present Facts

Here, GANDY invoked his right to counsel but was nonetheless questioned. This constitutes a clear *Edwards* violation. The FBI then conveyed to VICTIM information derived from this unlawful interrogation. Prior to receiving this information, VICTIM had indicated he had 'no beef' with GANDY. Only after learning of the unlawfully obtained information did VICTIM 'flip' and agree to testify.

Thus, VICTIM's testimony was not the product of an independent decision but rather a direct consequence of the government's exploitation of an *Edwards* violation. The causal

connection is particularly strong because VICTIM had explicitly declined to implicate GANDY until exposed to the tainted information.

United States v. Scios, 590 F.2d 956 (D.C. Cir. 1978)

In *United States v. Scios*, the D.C. Circuit confronted a similar issue: whether witness testimony derived from an illegal interrogation should be suppressed. Applying *Ceccolini*, the court recognized that live witness testimony can indeed be suppressible fruit of an illegality if the government's exploitation of the violation was the but-for cause of the testimony. The case was remanded for further factual findings on attenuation.

Scios is directly helpful here. Unlike *Ceccolini*, where the witness was predisposed to cooperate, VICTIM had disavowed any intention to testify until unlawfully influenced by the FBI. This strengthens the argument that his decision was not an act of independent free will but the product of the government's misconduct.

Fifth Circuit Considerations

While the Fifth Circuit has generally been reluctant to suppress live witness testimony, emphasizing that such testimony ordinarily involves free will, the facts here present a stronger case for suppression. The FBI's direct exploitation of an Edwards violation to induce VICTIM's testimony is precisely the type of scenario where the taint is not attenuated. The argument is uphill but viable.

Conclusion

GANDY has a legitimate basis to move to suppress VICTIM's testimony as fruit of an Edwards violation. Although suppression of live testimony is disfavored under *Ceccolini* and Fifth Circuit precedent, the unique facts — VICTIM's explicit prior refusal to implicate GANDY and the FBI's exploitation of tainted information to secure his cooperation — provide a compelling argument for suppression. *United States v. Scios* offers persuasive authority supporting this position.