



**The Sixth Circuit upholds a Defendant's conviction  
after agreeing with the District Court that the  
Defendant's Sixth Amendment rights were not  
violated when he made inculpatory statements to  
law enforcement officers**



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In *United States v. Woodley*, 2017 WL 5033707 (6th Cir. Nov. 2, 2017), the United States Court of Appeals for the Sixth Circuit was asked to review Defendant Bijan Woodley's convictions for carjacking and for use of a firearm during and in relation to a crime of violence. Woodley's convictions were based in large part upon inculpatory statements that he gave to law enforcement officers. On appeal, Woodley argued that his confessions—and the evidence that was uncovered as a result of those confessions—were obtained in violation of his right to counsel guaranteed by the Sixth Amendment to the United States Constitution. Woodley also argued that the Government's failure to bring him before a magistrate judge "without unnecessary delay" should have led the District Court to suppress the incriminating evidence obtained prior to his court appearance. The relevant facts are as follows.

On January 8, 2015, a federal grand jury indicted Woodley for a December 30, 2014, carjacking and for using a firearm during and in relation to that crime of violence. Four days later, Detroit Police Department Detective Moises Jimenez, armed with an arrest warrant, found Woodley in a residence, cuffed him, informed him that he was being arrested for a carjacking incident, and arranged for Woodley to be transported to police headquarters.

Woodley arrived at police headquarters at approximately 8:00 p.m. on January 12, and at 8:13 p.m., he initialed and signed a notification-of-rights form that, in pertinent part, provided that he understood that: (1) he had a right to remain silent and that he did not have to answer any questions put to him or make any statements; (2) any statement that he made or anything that he said would be used against him in a court of law; (3) he had the right to have an attorney present before and during the time that he answered any questions or made any statement; (4) if he could not afford an attorney, one would be appointed for him without cost by the Court prior to any questioning; and (5) he could decide at any time to exercise his rights and not answer any questions or make any statement. Finally, the form that Woodley initialed and signed confirmed that he understood these rights, that he had not been threatened or promised anything in exchange for signing the form and waiving his rights, and that he wanted to answer questions or make a statement. At that time, however, neither Detroit Police Department Detective Richard Houser nor Officer Lori Dillon informed Woodley that he already had been indicted for the carjacking for which he was arrested. In fact, as he was signing the waiver-of-rights form, Woodley asked, "What am I here for?" and later, when Houser stated, "You know why you're here," Woodley replied, "I really don't."

Over the next two hours, the officers were recorded questioning Woodley about his acquaintances and asking him to identify individuals in various photographs, including a photograph of Kanee Goode, an individual indicted with Woodley for the December 30 carjacking. At 10:05 p.m., the officers showed a surveillance video taken in the parking lot of Lou's Coney Island, a 24-hour restaurant where the carjacking under investigation had occurred, to Woodley and asked him whether he was one of the people shown in the video. Three times, Woodley denied that he was involved in the carjacking, the last time after Dillon had informed him, "You've

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been indicted for this carjacking.... [Y]ou're going to go through the federal system." For approximately 30 more minutes, Woodley continued to deny any participation in the carjacking, and at 10:50 p.m., Houser offered Woodley the opportunity to take a cigarette break.

When the interrogation resumed ten or so minutes later, only one of the two cameras recording the questioning was operational, and so, although there was video, there was not audio recording of the last 51 minutes of the interrogation. However, both Officer Dillon and Officer Jimenez, who was present during the questioning after the cigarette break, offered written summaries of what Woodley purportedly said during those 51 minutes—approximately three to four hours after his arrest. According to Dillon, Woodley confessed to being involved in the carjacking but denied knowing the other two involved in the crime. Likewise, Jimenez stated in his report that Woodley confessed to the crime but did not know the other two individuals involved.

The next morning, Woodley was taken to FBI headquarters, was advised again of his Miranda rights, and, after waiving those rights a second time, was interviewed by FBI Special Agent Michael FitzGerald. According to Agent FitzGerald, Woodley told him that he (Woodley) had been at a bar with his girlfriend during the early morning hours of December 30, 2014. When his girlfriend left to meet another individual, Woodley obtained a ride in a Dodge Durango from an individual Woodley claimed that he did not know. The two occupants of the Durango and Woodley eventually drove to the parking lot of the Coney Island restaurant where Woodley grabbed an assault rifle from the backseat of the Durango, approached the passenger side of a white Chrysler 300, and tapped on the window of the Chrysler with his weapon so that the driver of the Chrysler would lower the passenger window. Then, Woodley and another individual from the Durango forced the Chrysler's driver from the vehicle, got into the Chrysler, and drove it away. Later, Woodley met up with an individual named D.J., exchanged the Chrysler for D.J.'s BMW, and drove the BMW to Woodley's girlfriend's home.

By the time that the FBI concluded its interrogation of Woodley, it was too late in the day to have him arraigned. Accordingly, Woodley did not appear before a magistrate judge until January 14, 2015, two days after his arrest and six days after the return of the initial indictment against him. Eventually, the grand jury returned a first superseding indictment against Woodley. In that subsequent charging instrument, the Government re-alleged the two crimes with which Woodley originally had been charged but also charged Woodley with two additional carjackings, each of which involved his use of a firearm.

Prior to trial, Woodley filed numerous motions including a "Motion to Suppress Statements and Evidence Taken in Violation of Defendant's Sixth Amendment Right to Counsel." The District Court denied that motion, and Woodley proceeded to trial where the Government introduced into evidence his confessions as well as cellphone-tracking information that placed Woodley at the scene of the December 30 carjacking at the time of the crime. The Government eventually moved to dismiss all counts of the first superseding indictment against Woodley except for the two counts relating to the December 30 carjacking. Those motions were granted, and after the jury convicted Woodley of the two remaining counts, the District Court sentenced Woodley to a sentence of 24 months on the carjacking count to be served consecutively with an 84-month sentence for the use of a firearm during and in relation to a crime of violence.

Woodley timely appealed and raised two issues: (1) Woodley asserted he that he could not have knowingly waived his Sixth Amendment right to counsel without first being informed that he already had been indicted for the carjacking crime; and (2) Woodley argued that the Government's failure to bring him before a magistrate judge "without unnecessary delay" rendered inadmissible any incriminating statements or evidence elicited from him during his later confession to the FBI agent. The Sixth Circuit rejected both of Woodley's arguments.

As for his right to counsel argument, the Sixth Circuit explained that "a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been

initiated against him”—“whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” Kirby v. Illinois, 406 U.S. 682, 688-89 (1972). Therefore, “once adversary proceedings have commenced against an individual, he has a right to legal representation when the government interrogates him.” Brewer v. Williams, 430 U.S. 387, 401 (1977).

In this case, the Sixth Circuit stated that the issue was whether law enforcement officers had violated Woodley’s Sixth Amendment right to counsel by questioning Woodley after he had been indicted, even though he waived that right, because they did not inform Woodley that he had been indicted. In other words, the key inquiry became: Was Woodley, who waived his Sixth Amendment rights during post-indictment questioning, made sufficiently aware of his right to have counsel present during the questioning, and of the possible consequences of a decision to forgo the aid of counsel? The Sixth Circuit found that Woodley had been sufficiently apprised of his rights and relied upon the United States Supreme Court’s opinion in Patterson in reaching that conclusion. In Patterson, the Supreme Court opined: “As a general matter, then, an accused who is admonished with the warnings prescribed by this Court in Miranda has been sufficiently apprised of the nature of his Sixth Amendment rights, and of the consequences of abandoning those rights, so that his waiver on this basis will be considered a knowing and intelligent one.” Patterson v. Illinois, 487 U.S. 285, 296 (1988).

Although the Sixth Circuit was empathetic to Woodley’s argument, the Sixth Circuit ultimately rejected it because it was bound by Supreme Court precedent, and the Sixth Circuit determined that the Supreme Court’s pragmatic approach regarding the waiver of counsel issue determined the outcome of this appeal. Nothing before the Sixth Circuit showed that Woodley’s waiver of counsel was not voluntarily or knowingly made. Therefore, the Sixth Circuit rejected Woodley’s claim that the District Court erred in denying his motion to suppress based upon the alleged denial of his right to counsel.

As for Woodley’s argument that the District Court erred in denying his motion to suppress because law enforcement officials had failed to present him before a magistrate judge “without unnecessary delay,” the Sixth Circuit explained that the waiver of one’s Miranda rights also constitutes a waiver under McNabb-Mallory (i.e., the principle that generally rendered inadmissible confessions made during periods of detention that violated the prompt presentment requirement of Federal Rule of Criminal Procedure 5(a)), meaning that a valid Miranda waiver also waives the prompt judicial warning of one’s constitutional rights. Accordingly, the Sixth Circuit held that the District Court’s admission of Woodley’s pre-arraignment FBI confession could not be considered plain error despite the Government’s failure to bring Woodley before a magistrate judge within six hours of his arrest as Woodley argued that they should have done. As a result, the Sixth Circuit affirmed the District Court’s denial of Woodley’s motion to suppress and affirmed Woodley’s convictions and sentence.