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2004 U.S. Dist. LEXIS 20499, *

NEIL RAIMO, et al. Plaintiffs, v. STANLEY NORWOOD WADDY, JR., et al., Defendants.

CIVIL ACTION, NO. 03-3792

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2004 U.S. Dist. LEXIS 20499

October 8, 2004, Decided

October 8, 2004, Filed and Entered

DISPOSITION: Plaintiffs' motion to compel denied.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant truck driver drove his commercial **tractor-trailer** into plaintiffs' vehicle, causing a multi-car collision, and injuring plaintiffs. At his deposition, the truck driver refused to answer certain questions by asserting his Fifth Amendment privilege against self incrimination. Plaintiffs moved to compel the truck driver to answer questions about, inter alia, the driver logs, and his marijuana use before the **accident**.

OVERVIEW: The central standard for the privilege's application was whether the claimant was confronted by substantial and "real," and not merely trifling or imaginary, hazards of incrimination. The truck driver here faced a real risk of incrimination. Under Federal **Motor Carrier** Safety Regulations, if the truck driver used marijuana while employed as commercial trucker between May and December 2001, he could be subject to criminal prosecution. Moreover, the federal government had already indicted the truck driver once for violations of federal regulations. Thus, any further testimony by the truck driver about his drug use could lead to additional criminal charges. The truck driver also faced a real risk of future prosecution for falsifying driver's logs under 18 U.S.C.S. § 1001. In prior proceedings, the United States Attorney identified at least eighteen additional inaccuracies in his driver's log between June and November 2001. The truck driver could still be prosecuted for this alleged misconduct because the statute of limitations under § 1001 was five years. The truck driver did not waive his Fifth Amendment privilege by pleading guilty to earlier criminal charges.

OUTCOME: The court denied plaintiffs' motion to compel.


CORE TERMS: log, driver, marijuana, drug use, pled guilty, statute of limitations, self incrimination, refused to answer, guilty plea, self-incrimination, prosecuted, falsifying, motion to compel, incrimination, regulations, deposition, regularly, convicted, invoked, waive, political subdivision, tend to incriminate, refuse to answer, state proceeding, tested positive, plea agreement, state law, crimination, indictment, speculate

[Constitutional Law](#) > [Procedural Due Process](#) > [Self-Incrimination Privilege](#) 


HN1 ↓ Unlike evidentiary privileges covered by [Fed. R. Evid. 501](#), the privilege against self-incrimination is a right guaranteed by the United States Constitution. Thus, federal court interpretations of the Constitution govern a motion to compel answers. The same standards must determine whether an accused's silence in either a federal or state proceeding is justified. [More Like This Headnote](#)

[Evidence](#) > [Procedural Considerations](#)

HN2 ↓ See [Fed. R. Evid. 501](#).

[Constitutional Law](#) > [Procedural Due Process](#) > [Self-Incrimination Privilege](#) 

HN3 ↓ The self-incrimination privilege, if properly invoked in a state proceeding, is governed by federal standards. [More Like This Headnote](#)

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HN4 ↓ The Fifth Amendment guarantees that no person shall be compelled in any criminal case to be a witness against himself. U.S. Const. amend. V. In the United States Court of Appeals for the Third Circuit, the privilege against self-incrimination may be raised in civil as well as in criminal proceedings and applies not only at trial, but during the discovery process as well. The privilege extends not only to answers that would in themselves support a conviction but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant. The central standard for the privilege's application has been whether the claimant is confronted by substantial and "real," and not merely trifling or imaginary, hazards of incrimination. However, once a court determines that the answers requested would tend to incriminate the witness, it should not attempt to speculate whether the witness will in fact be prosecuted. [More Like This Headnote](#)

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[Governments](#) > [Legislation](#) > [Statutes of Limitations](#) > [Time Limitations](#) 

HN5 ↓ The statute of limitations for non-capital federal crimes is five years. [18 U.S.C.S. § 3282](#). [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Criminal Offenses](#) > [Controlled Substances](#) > [Possession of Controlled Substances](#) 

[Governments](#) > [Legislation](#) > [Statutes of Limitations](#) > [Time Limitations](#) 

HN6 ↓ Possession of marijuana in Virginia is a misdemeanor with a one-year statute of limitations. Va. Code Ann. §§ 18.2-250.1, 19.2-8. [More Like This Headnote](#)

[Constitutional Law](#) > [Procedural Due Process](#) > [Self-Incrimination Privilege](#) 

HN7 ↓ Once a court determines that the answers requested would tend to incriminate the witness, it should not attempt to speculate whether the witness will in fact be prosecuted. [More Like This Headnote](#)

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HN8 ↓ The United States Court of Appeals for the Third Circuit held that when a defendant enters a guilty plea and has been sentenced, he waives his Fifth Amendment rights solely with respect to the crime to which the guilty plea pertains. If such crime is the only one for which the defendant is potentially liable, he can be forced to testify. But if the witness is still subject to prosecution for other crimes which his testimony might tend to reveal, the privilege remains. [More Like This Headnote](#)

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JUDGES: WILLIAM H. YOHN, JR, J.

OPINIONBY: WILLIAM H. YOHN, JR.

OPINION: MEMORANDUM & ORDER

YOHN, J.

Presently before the court is plaintiffs' motion to compel defendant Stanley Waddy to respond to questions that he refused to answer at his deposition by asserting his Fifth Amendment privilege against self incrimination. After reviewing the parties' briefs, I conclude that Waddy correctly invoked his privilege and is not required to answer the questions.

I. FACTUAL BACKGROUND

This lawsuit arises out of an automobile **accident** that occurred on December 12, 2001, along Route 476, in Delaware County, Pennsylvania. (Pls.' Mot. Compel [***2**] at P 1.) Defendant Waddy drove his commercial **tractor-trailer** into plaintiffs' vehicle, causing a multi-car collision, injuring plaintiffs, and killing two other motorists. (*Id.*) At the time of the **accident**, plaintiffs allege that Waddy was under the influence of marijuana. (Pls.' Compl. at P 34.)

After the **accident**, Waddy pled guilty to two counts of involuntary manslaughter and reckless endangerment. (Pls.' Mot. Compel at P 2) Charges for driving under the influence and homicide while operating a vehicle while intoxicated were dismissed pursuant to the plea agreement. (*Id.*) In federal court, Waddy pled guilty to ten counts of falsifying driver's log entries pursuant to 18 U.S.C. § 1001. (*Id.*) A lone count for operating a commercial vehicle under the influence of marijuana was dismissed. (*Id.*) As part of the plea agreement, Waddy conceded that he regularly "prepared and maintained false driver daily log books" between May and December 2001. (*Id.* at P 22.) However, he never admitted to falsifying log entries on any instance besides the ten dates covered in the guilty plea, n1 which do not include the day of the **accident**. (Defs.' Opp. Pls. [***3**] ' Mot. Comp. at 3.) Additionally, Waddy never testified about specific drug use prior to the **accident**. (*Id.*)

- - - - - Footnotes - - - - -

n1 Waddy pled guilty for making false driver's log entries on May 21, June 26, July 7, August 28, September 25, October 3, November 2, 8, and 17, and December 8, 2001. (Defs.' Opp. Pls.' Mot. Comp. at 3.)

- - - - - End Footnotes- - - - -

On June 24, 2003, plaintiffs filed this suit against Waddy and his employers. n2, n3 (Pls.' Compl. at P 1-20.) Waddy appeared for a deposition on March 23 and April 2, 2004. (Pls.' Mot. Compel at P 7.) At the deposition, Waddy asserted his privilege against self

incrimination and refused to answer plaintiffs' questions about the contents of his driver duty status logs, his past practices and intentions on the day of the **accident** concerning a back haul, and the timing of past trips. (*Id.* at P 13-15.) Plaintiffs believe that this information will show that Waddy's employers knew that he routinely falsified his driver's log with reference to the hours he drove. (*Id.* at P 3.)

----- Footnotes -----

n2 Plaintiffs allege that at the time of the **accident**, Waddy was acting as an employee of defendants (1) George Tapscott, (2) Tapscott Trucking, (3) Virginia Trailer Rental, Inc., (4) Supervalu, Inc., (5) Richfood, Inc., (6) Supervalu Transportation, Inc., and (7) Supervalu Holdings, Inc. (Pls.' Compl. at P 15.) **[*4]**

n3 Plaintiffs also sued DMJM+Harris, a company that performed bridge inspections on Route 476 on the day of the **accident**. (Pls. Compl. at P 11, 17-18.)

----- End Footnotes-----

Waddy also invoked his Fifth Amendment privilege to bar plaintiffs from asking about his prior drug use. (*Id.* at P 16-17.) Waddy admitted that he was convicted for cocaine and marijuana possession in 1985, that he tested positive for marijuana in 1997, and that he used marijuana on December 8, 2001, four days before the **accident**. (*Id.* at P 16-17.) However, Waddy refused to answer plaintiffs' questions about drug use prior to December 8, 2001. (*Id.* at P 17.) Plaintiffs assert that Waddy regularly used marijuana while employed as a commercial trucker. (*Id.* at P 19.) Plaintiffs argue that this shows that Waddy's employers failed to test him for illegal drugs as required by federal regulations because they would have detected marijuana in his system if they tested him. (Pls.' Mem. Supp. Mot. Compel at 3.)

Plaintiffs seek to compel Waddy to answer questions about (1) the driver logs, (2) the timing of cargo hauls made between May **[*5]** and December 2001, and (3) his marijuana use before the **accident**.

II. DISCUSSION

A. Choice of Law

Plaintiffs argue that under Federal Rule of Evidence 501, n4 state law governs this motion. Consequently, plaintiffs rely on Pennsylvania case law to support their argument. However, **HNI** unlike evidentiary privileges covered by Rule 501, the privilege against self-incrimination is a right guaranteed by the United States Constitution. Thus, federal court interpretations of the constitution govern this motion. n5 See Siviglia v. Siviglia, 138 F.R.D. 452, 453 (E.D. Pa. 1991) (recognizing that the privilege against self incrimination is "a federal constitutional issue and, thus, [the court is] not bound by Pennsylvania law."); United States v. Interborough Delicatessen Dealers Ass'n, 235 F. Supp. 230, 232 (S.D.N.Y. 1964) (concluding "that federal standards must govern in determining when testimony is [privileged under the Fifth Amendment]."); see also Malloy v. Hogan, 378 U.S. 1, 11, 12 L. Ed. 2d 653, 84 S. Ct. 1489 (1964) ("It would be incongruous to have different standards determine the validity of a **[*6]** claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in a state or federal court. Therefore, the same standards must determine whether an accused's silence in either a federal or state proceeding is justified.").

----- Footnotes -----

n4 Rule 501 provides that ^{HN2}"except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law."

n5 Plaintiffs argument is fruitless because even if this case were heard in state court or I applied state law here, federal standards govern Waddy's Fifth Amendment privilege. See Commonwealth v. Carrera, 424 Pa. 551, 227 A.2d 627, 629 (Pa. 1967) ^{HN3}("The privilege, if properly invoked in a state proceeding, is governed by federal standards.")

----- End Footnotes----- [*7]

B. The Fifth Amendment privilege against self-incrimination

^{HN4}The Fifth Amendment guarantees that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In the Third Circuit, "the privilege against self-incrimination may be raised in civil as well as in criminal proceedings and applies not only at trial, but during the discovery process as well." SEC v. Graystone Nash, Inc., 25 F.3d 187, 190 (3d Cir. 1994). The privilege extends "not only 'to answers that would in themselves support a conviction . . . but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant.'" United States v. Yurasovich, 580 F.2d 1212, 1215 (3d Cir. 1978) (quoting Hoffman v. United States, 341 U.S. 479, 486, 95 L. Ed. 1118, 71 S. Ct. 814 (1951)). "The central standard for the privilege's application has been whether the claimant is confronted by substantial and 'real,' and not merely trifling or imaginary, hazards of incrimination." Marchetti v. United States, 390 U.S. 39, 53, 19 L. Ed. 2d 889, 88 S. Ct. 697 (1968) (citations omitted). However, "once a court determines [*8] that the answers requested would tend to incriminate the witness, it should not attempt to speculate whether the witness will in fact be prosecuted." United States v. Jones, 703 F.2d 473, 478 (10th Cir. 1983) (citing Yurasovich, 580 F.2d at 1215-16).

C. Waddy faces a "real" risk of incrimination

Plaintiffs argue that Waddy may not assert the Fifth Amendment to bar questions about his prior drug use because the statute of limitations for possession of marijuana in Virginia has run. n6, n7 See Brown v. Walker, 161 U.S. 591, 597-98, 40 L. Ed. 819, 16 S. Ct. 644 (1896) (holding that the privilege against self-incrimination does not apply after the relevant statute of limitations has run). However, this argument ignores the fact that Waddy could still be prosecuted under Federal **Motor Carrier** Safety Regulations, which prohibit "drivers" from performing "safety-sensitive functions" while using "any controlled substance". 49 C.F.R. § 382.121; see also 18 U.S.C. § 3282 (providing for criminal sanctions for "willful violation" of the regulations). ^{HN5}The statute of limitations for non-capital federal [*9] crimes is five years. 18 U.S.C. § 3282. Hence, if Waddy used marijuana while employed as a commercial trucker between May and December 2001, he is subject to criminal prosecution.

----- Footnotes -----

n6 Waddy is a resident of Virginia. (Pls.' Compl. at P 3.)

n7 ^{HN6} Possession of marijuana in Virginia is a misdemeanor with a one-year statute of limitations. See Va. Code Ann. §§ 18.2-250.1, 19.2-8.

----- End Footnotes-----

There are no criminal charges currently pending against Waddy. Nonetheless, ^{HN7} "once a court determines that the answers requested would tend to incriminate the witness, it should not attempt to speculate whether the witness will in fact be prosecuted." Jones, 703 F.2d at 478. Plaintiffs offer no evidence to show that Waddy's fear of incrimination is not "real" or "substantial". Moreover, the federal government has already indicted Waddy once for violations of federal regulations. Thus, any further testimony by Waddy about his drug use could lead to additional criminal [***10**] charges.

Waddy also faces a "real" risk of future prosecution for falsifying driver's logs pursuant to 18 U.S.C. § 1001. In prior proceedings, the U.S. Attorney identified at least eighteen additional inaccuracies in Waddy's driver's log between June and November 2001. n8 (Defs.' Opp. Pls.' Mot. Compel. at 3.) Waddy may still be prosecuted for this alleged misconduct because the statute of limitations under § 1001 is five years. n9

----- Footnotes-----

n8 These dates include June 5, 19, 23, August 3, 14, and 29, September 12, 19, 21, and 27, October 4, 6, 12, 18, and November 13, 15, 16, and 24. (Defs.' Opp. Pls.' Mot. Compel. at 3.)

n9 Waddy could not, of course, successfully invoke his Fifth Amendment privilege as to any trips, log entries, or drug use prior to five years before the date of his testimony.

----- End Footnotes-----

D. Waddy did not waive his Fifth Amendment privilege by pleading guilty to earlier criminal charges

Plaintiffs argue that Waddy waived his Fifth Amendment privilege for any questions about [***11**] his driver's log when he pled guilty and admitted that he regularly "falsified his commercial truck driver's daily logs". (Pls.' Mot. Compel at P 22.) In Yurasovich, the Third Circuit considered whether an earlier guilty plea causes a witness to waive his Fifth Amendment privilege. Yurasovich was indicted on four charges stemming from a scheme to burglarize mailboxes, but he only pled guilty to two counts. 580 F.2d at 1214. The other two counts were dismissed and Yurasovich never testified as to these charges. Id. at 1214, 1219. At his coconspirator's trial, Yurasovich invoked his Fifth Amendment privilege and refused to answer any questions about the dismissed charges. Id. at 1214. Yurasovich contended that such testimony could subject him to prosecution for criminal conspiracy, which was not alleged in the indictment. Id. at 1214. The trial court ordered Yurasovich to answer all questions concerning the charges in the indictment. Id. Yurasovich refused, and the court convicted him of contempt. Id. at 1215. On appeal, the Third Circuit reversed and ^{HN8} held

that when a defendant enters a guilty plea [*12] and has been sentenced, he waives his Fifth Amendment rights "solely with respect to the crime to which the guilty plea pertains. If such crime is the only one for which the defendant is potentially liable, he can be forced to testify. But if the witness is still subject to prosecution for other crimes which his testimony might tend to reveal, the privilege remains." 580 F.2d at 1218.

Here, Waddy only pled guilty to falsifying his driver's log on the ten occasions covered in the plea. He may not assert the Fifth Amendment to bar questions about these instances. However, under *Yurasovich*, Waddy need not answer any additional questions about his driver's log because he "is still subject to prosecution for other crimes which his testimony might tend to reveal". *Id.*

Plaintiffs also argue that Waddy waived his Fifth Amendment privilege for questions about his prior drug use because he admitted that he was convicted of cocaine and marijuana possession in 1985, that he tested positive for marijuana in 1997, and that he used marijuana four days before the **accident**. Waddy never testified about any other specific instances of drug use. Consequently, he may invoke the privilege [*13] against self incrimination because he faces a "real" risk that such testimony will subject him to prosecution for violation of federal Motor Vehicle Safety Regulations. See 18 U.S.C. § 3282; 49 C.F.R. § 382.121.

Plaintiffs contend that Waddy may not refuse to answer questions about his drug use because it "would open the way to distortion of the facts by permitting a witness to select any stopping place on the testimony." *Rogers v. United States*, 340 U.S. 367, 371, 95 L. Ed. 344, 71 S. Ct. 438 (1951). In *Rogers*, the Court held that a defendant could not assert the Fifth Amendment where she had already incriminated herself, but refused to testify to protect others. *Id.* The Court held that the key determination was "whether the question presented a reasonable danger of further crimination in light of all of the circumstances" *Id.* at 374. In *Yurasovich*, the Third Circuit explained an additional rationale for waiver of the Fifth Amendment privilege: "some courts have been wary of allowing witnesses to 'edit' their testimony by revealing only exculpatory matters while withholding inculpatory [*14] details of those same circumstances under the shield of the Fifth Amendment." 580 F.2d 1212, 1219. Here, unlike *Rogers*, Waddy seeks to bar *self-incriminating* testimony. Moreover, there is no suggestion that Waddy is attempting to "edit" his testimony because he made his prior admissions as part of a plea bargain and these admissions disclosed incriminating material. Finally, Waddy may refuse to answer questions about his prior drug use because such questions "present[] a reasonable danger of further crimination in light of all the circumstances." *Rogers*, 340 U.S. at 374.

III. CONCLUSION

For the above reasons, I deny plaintiffs' motion to compel. An appropriate order follows.

ORDER

AND NOW, this 8th day of October, 2004, upon consideration of plaintiffs' motion to compel defendant Stanley Waddy to answer questions about subjects to which he asserted the Fifth Amendment privilege or otherwise refused to respond (Doc. # 78), and defendants' responses and plaintiffs' reply, it is hereby ORDERED that plaintiffs' motion is DENIED.

William H. Yohn. [*15] Jr., J.