

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-342(1) (ECT/LIB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS**

DIONDRE MAURICE OTTO STATELY,

Defendant.

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Gina L. Allery, Special Assistant United States Attorney, hereby submits its response to defendant Diondre Maurice Otto Stately's Motion to Suppress Statements. [Dkt. No. 130.]

I. Background

The defendant is charged by Indictment with Robbery, in violation of Title 18, United States Code, Sections 2, 1151, and 1153(a), 2111. [Dkt. No. 1.] On February 5, 2020, the defendant filed pretrial motions, including Defendant's Motion to Suppress in this matter. The Court held a motions hearing on October 30, 2020, before United States Magistrate Judge Leo I. Brisbois. Special Agent Kyle Gregory of the Federal Bureau of Investigation testified at the hearing. The government also offered five exhibits into the record at the motions hearing, including the FBI advice of rights form signed by the defendant [Govt. Ex. 2] and a recording of the defendant's interview with law enforcement [Govt. Ex. 3].

II. Factual Background

On September 21, 2010, the defendant was arrested by Red Lake Law Enforcement after someone reported the defendant being outside her house causing a nuisance. That same morning a robbery was reported by G.W., who reported that the defendant and the co-defendant robbed him. The incident was reported to the FBI and Special Agent Kyle Gregory (SA Gregory) was assigned to investigate the case. As part of that investigation, the defendant was interviewed while in Red Lake custody on September 24, 2019. In conducting that interview, SA Gregory was accompanied by Red Lake Criminal Investigator (CI) Ron Leyba and FBI Special Agent (SA) Justin Montgomery. As discussed above, that interview was recorded and that recording is Government Exhibit 3.

The interview begins with small talk amongst the defendant, CI Leyba, and SA Montgomery before SA Gregory introduces himself and asks Diondre if he knows everyone and explains that they would like to talk him about the defendant being beat up and other stuff, but because the defendant is in Red Lake custody they need to advise him of his rights. [Govt. Ex. 3 at 1:20-2:00.] SA Gregory begins by reading each right [see Govt. Ex. 2] and asks the defendant to respond that he understands each right and the defendant responds to each affirmatively, indicating he understands his rights. [Govt. Ex. 3 at 1:45-2:30.] SA Gregory then asks the defendant, “[t]hat all makes sense to you?” and the defendant responds, “yeah.” [Id. at 2:30-2:40.] SA Gregory then asks the defendant to read the final paragraph on the FBI advise of rights form out loud, which states: I have read the statement of my rights and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present. [Id. at 2:40-2:50; Govt. Ex. 2 under

“Consent”.] SA Gregory asks the defendant whether that is true, that he is willing to talk without a lawyer present, and the defendant responds stating that yes, he is willing to talk to them. [Id. at 2:50-3:00.] Before they begin questioning the defendant, CI Leyba reiterates to him that if there is something he does not want to talk about, the defendant has the right not to talk about it and the defendant says that makes sense to him. [Id. at 3:30-4:00.] The defendant then signs the advice of rights form and the interview begins. At approximately thirteen minutes and thirty seconds into the interview, SA Gregory informs the defendant that they also want to ask him about the incident involving G.W. and the defendant provides law enforcement with information regarding that incident. In doing so, the defendant does not ask to talk to a lawyer or stop the questioning at that point, but rather responds to all of the questions.

III. Argument

The Court should deny Defendant’s motion to suppress his September 24, 2019, statement. The Defendant acknowledges that law enforcement advised him of his rights as required by Miranda v. Arizona, 384 U.S. 436 (1966). [Dkt. No. 130 at 2.] However, the Defendant argues that his waiver was not voluntary, knowing, and intelligent. The record before the Court in this case belies defendant’s arguments and therefore, the Court should reject those arguments.

A. Defendant Made a Voluntary, Knowing, and Intelligent Waiver of his Miranda Rights

The defendant acknowledges that SA Gregory advised him of his Miranda rights. To be sure, the government “does not need to show that a waiver of Miranda rights was

express. An ‘implicit waiver’ of the ‘right to remain silent’ is sufficient to admit a suspect’s statement into evidence.” Berghuis v. Thompkins, 560 U.S. 370, 384 (2010); accord U.S. v. Iceman, 13-CR-274 (MJD/LIB), 2014 WL 702014, at *3 (D. Minn. Feb. 24, 2014) (“Proper waiver may exist even absent express statements of waiver.”); U.S. v. Ravensborg, 13-CR-194 (MJD/LIB), 2013 WL 5565891, at *5 (D. Minn. Oct. 8, 2013) (same). “As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protections those rights afford.” Berghuis, 560 U.S. at 385; accord U.S. v. House, 939 F.2d 659, 662 (8th Cir.1991) (“[W]aiver may be inferred from the fact that the defendant responded to questions posed by the interviewer after being advised of his rights.”); U.S. v. Soto, 07-223 (PJS/JSM), 2007 WL 3120816, at *13 (D. Minn. Oct. 23, 2007) (“[A] defendant’s willingness to answer questions after acknowledging his Miranda rights is sufficient to constitute an implied waiver.”); U.S. v. Mandujano, 03-CR-178 (2) (JRT/FLN), 2003 WL 22076577, at *4 (D. Minn. Aug. 22, 2003) (“Waiver can be inferred by conduct, and a willingness to answer questions after acknowledging Miranda rights is sufficient to constitute an implied waiver.”).

When SA Gregory advised defendant of his Miranda rights and asked whether defendant understood those rights, defendant replied “yes” each time. [Govt. Ex. 3 at 1:45-2:40.] When SA Gregory asks defendant to read the final consent paragraph on the FBI advice of rights form, he does so and acknowledges he understands. [Id. at 2:40-2:50; Govt. Ex. 2 under “Consent”.] SA Gregory asks the defendant whether that is true,

that he is willing to talk without a lawyer present, and the defendant responds stating that yes, he is willing to talk to them. [Id. at 2:50-3:00.] CI Leyba and SA Gregory also inform the defendant that he can stop the interview at any time and request a lawyer and if there is something he does not want to talk about, the defendant has the right not to talk about it and the defendant says that makes sense to him. [Id. at 3:30-4:00.] SA Gregory then again asks Defendant if he is willing to talk in an effort to clarify Defendant's intent and Defendant responds "yeah" and proceeds to sign the form. (Def. Ex. 1 at 8:00-8:05.)

There is no question that defendant waived his Miranda rights. The defendant's waiver was also voluntary, knowing, and intelligent. When determining whether a waiver was made voluntarily, knowingly, and intelligently, courts must inquire whether:

First, the waiver 'must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.' Second, the suspect must have waived his rights 'with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'

United States v. Vinton, 631 F.3d 476, 483 (8th Cir.2011) (internal citations omitted)

(quoting Moran v. Burbine, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986)).

"The government has the burden of proving the validity of the Miranda waiver by a preponderance of the evidence." United States v. Haggard, 368 F.3d 1020, 1024 (8th Cir. 2004).

1. The Defendant's Waiver Was Voluntary

The defendant argues that his statement was coerced and should be suppressed [Dkt. No. 130 at 5], however the evidence in this case shows that there was no

intimidation, coercion, or threatening by any of the agents during the interview. The recording reveals that SA Gregory was calm and patient with the Defendant. Neither SA Gregory, CI Leyba, or SA Montgomery raised their voice or engaged in any deceptive conduct. Moreover, the record is clear that the investigators did not intimidate the defendant in any way. The defendant was comfortable discussing his concerns regarding the investigatory process with CI Leyba, SA Gregory, and SA Montgomery. The defendant's waiver was plainly voluntary.

B. The Defendant's Waiver was Knowing and Intelligent

The defendant expressly told SA Gregory that he understood his rights when he answered "yes" to each one and read the consent paragraph on the FBI advice of rights form. The defendant also expresses an awareness of his situation during the discussion with SA Gregory and CI Leyba before his interview began. The defendant clearly understood what was occurring and said he understood his rights and at no point during the interview did he express any reservations about continuing to answer their questions or did he assert his rights and end the interview. Because the defendant's waiver of his Miranda rights was voluntary, knowing, and intelligent, the Court should deny his motion to suppress.

Finally, in his motion the defendant complains that law enforcement did not explicitly state that they were there to ask questions about the robbery incident, but in fact the defendant was notified multiple times before the interview began that law enforcement was there to ask him questions not just about the assault on the defendant, but to ask other question as well. As the recording reflects, the defendant was asked

about his assault, the robbery, and other incidents occurring on the Red Lake Indian Reservation between rival gangs of young adults. Notably, at no point during the questioning did the defendant decline to answer questions regarding the robbery at issue here.

C. There is no basis for suppressing any statements made in tribal court proceedings.

As noted in footnote 1 of the defendant's memorandum [Dkt. No. 130], the defendant moved to suppress statements made in tribal court proceedings arising out of the same incident as this federal prosecution. However, in his memorandum the defendant provides no legal basis for suppression of those statements. As indicated by the government in its filings, at this time the government is only aware of the defendant's guilty plea, but the defendant argues that the government should be preemptively barred from offering any other statements obtained from tribal court proceedings. Again, the defendant provides no legal basis for preemptively barring the government from using statements it obtains from tribal court proceedings, if any. If the government discovers additional statements made tribal court proceedings it will certainly provide those to the defendant and the Court should consider the admissibility of those statements at that time if that should occur, but not in a vacuum with no legal support provided by the defendant.

IV. Conclusion

For the foregoing reasons, the government respectfully requests that the Court deny Defendant's motion to suppress statement.

Dated: December 14, 2020

Respectfully Submitted,

ERICA H. MacDONALD
United States Attorney

s/Gina L. Allery

BY: GINA L. ALLERY
Special Assistant U.S. Attorney
Attorney ID No. 485903 (D.C.)