

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 24-302 (PJS/LIB)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	<b>GOVERNMENT’S RESPONSE</b>
	)	<b>TO DEFENDANT’S</b>
v.	)	<b>OBJECTION TO REPORT AND</b>
	)	<b>RECOMMENDATION</b>
MASON ALEXANDER BULLHEAD,	)	
	)	
Defendant.	)	

The United States of America, by and through its attorneys Joseph H. Thompson, Acting United States Attorney for the District of Minnesota, and Rachel L. Kraker, Assistant United States Attorney, hereby submits its Response to the Objection filed by Defendant Mason Bullhead (ECF No. 63) to the Report and Recommendation (“R&R”) (ECF No. 60).

INTRODUCTION

Magistrate Judge Brisbois denied Mr. Bullhead’s motion to suppress statements made to FBI Agent Bradley Klag and Red Lake Criminal Investigator Ron Leyba while in custody at the Red Lake Jail on May 15, 2024. Mr. Bullhead maintains that these statements are barred because of two constitutional violations. First, Mr. Bullhead claims his statements were illegally procured because he invoked his right to remain silent by telling a correctional officer, “I don’t want to talk to anybody,” prior to his *Mirandized* interrogation. Second, Mr. Bullhead asserts that he did not voluntarily waive his right to

remain silent thereafter despite acknowledging his *Miranda* rights aloud and in writing and subsequently speaking freely to law enforcement for nearly 90 minutes.

Mr. Bullhead's objections largely restate arguments already presented to and considered by Magistrate Judge Brisbois and they are unsupported by the facts and applicable law. The District Court should reject the arguments set forth in the Objection as they have already been considered and rejected by Magistrate Judge Brisbois in a well-reasoned R&R. For the reasons set forth below, and for the reasons stated in the government's prior briefing (ECF No. 59), incorporated here by reference, this Court should overrule Mr. Bullhead's Objection and adopt the R&R in its entirety.

#### STANDARD OF REVIEW

In reviewing a party's objections to an R&R, the District Court "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also* Local Rule 72.2. However, where the defendant has not identified any specific objections to the reasoning or conclusions in the R&R the Court should review the R&R for clear error. *United States v. Diallo*, No. 20-cr-233(9) (JRT/DTS), 2023 WL 3815695, at \*3 (D. Minn. June 5, 2023) ("Objections which are not specific but merely repeat arguments presented to and considered by a magistrate judge are not entitled to de novo review but rather are reviewed for clear error."). *But see, United States v. Danielson*, No. 22-CR-299 (MJD/LIB), 2023 WL 5288049, at \*1 (D. Minn. Aug. 17, 2023) (noting judges in this District are divided as to whether clear error should apply as the Eighth Circuit has not considered the issue); *United States v. Chopra*, No. 19-CR-305 (NEB/BRT), 2021 WL 347415, at \*1 (D. Minn. Feb. 2, 2021) ("err[ing] on the side of

caution” and reviewing the R&R de novo, finding under either standard the defendant’s motion to suppress failed). Regardless of the standard of review applied by this court – de novo or clear error – Defendant’s arguments fail.

### ARGUMENT

At bottom, Mr. Bullhead’s objections to the R&R rest on his insistence that his statement to a jailer that he didn’t want to talk to anyone constituted an invocation of his right to remain silent, and that the jailer’s response that Bullhead had “no choice,” was so compelling and influential that Mr. Bullhead’s statements thereafter were coerced and involuntary. Neither the facts in the record nor the applicable law support this interpretation.

**I. Mr. Bullhead’s statement, “I don’t want to talk to anyone,” was not an invocation of his right to remain silent.**

The R&R correctly found that that Mr. Bullhead did not invoke his rights under *Miranda* by “simply telling Red Lake Jail staff that he did not wish to see any visitors.” (R&R at 9.) Mr. Bullhead asserts the court’s of the use of the word “visitors” in place of “anyone” is fatal to the court’s conclusion, but the reasoning of the R&R prevails regardless of word choice. Mr. Bullhead never stated that he did not wish to speak to police. Even if he had made such a statement to the jailer, there is no evidence in the record to support a finding that the Red Lake Correctional Officer coordinated or collaborated with FBI Agent Brad Klag and Criminal Investigator Dan Lasley in interrogating the defendant. To the contrary, the record supports the finding that the jailer simply escorted Mr. Bullhead from

one area of the jail to another for the purposes of making him available to investigators and once Bullhead was in their custody, he excused himself from the interrogation. This reflects the fact that he was not involved in any way with the interrogation of Mr. Bullhead. Agent Klag was not made aware by the jailer or Mr. Bullhead that Mr. Bullhead stated he didn't want to speak with law enforcement prior to arriving in the interview room, and once in the room, Mr. Bullhead never stated he wished to invoke his right to remain silent. The R&R evaluated these facts, applied the law, and reasonably concluded that Mr. Bullhead did not invoke his 5<sup>th</sup> Amendment right to remain silent. (R&R at 10, citing *United States v. Johnson*, 56 F.3d 947, 955 (8th Cir. 1995) which states “[t]o invoke this right and effectively cut off questioning, a suspect must make ‘a clear, consistent expression of a desire to remain silent.’”).

**II. Even if Mr. Bullhead invoked his right to remain silent with the corrections officer, he subsequently waived that right and provided a voluntary statement.**

Mr. Bullhead was read his *Miranda* rights, stated aloud that he understood those rights, and then signed a written waiver reiterating the same. Even if his prior statement to the jailer could be considered an invocation of his right to remain silent, his subsequent statements indicate a voluntary waiver of that right. “Statements to law enforcement authorities are voluntary if they are the product of an essentially free and unconstrained choice by [their] maker. A statement is not considered involuntary unless the police extorted it from the accused by means of coercive activity.” *United States v. Vinton*, 631

F.3d 476, 482 (8th Cir. 2011) (alteration in original) (citation and internal quotation marks omitted).

To determine whether a statement is voluntary, courts must consider “if the totality of the circumstances shows the defendant's will was overborne.” *United States v. Jimenez*, 478 F.3d 929, 932–33 (8th Cir. 2007) (citation omitted); *see also United States v. Mattox*, 27 F.4th 668, 675 (8th Cir. 2022) (“We determine if a defendant's will has been overborne by examining the totality of the circumstances, including both the conduct of law enforcement in exerting pressure to confess on the defendant and the defendant's ability to resist that pressure.”) (quoting *United States v. Brave Heart*, 397 F.3d 1035, 1040 (8th Cir. 2005)). The R&R undertakes a painstaking evaluation of the totality of the circumstances in the instant case providing ample support for the conclusion that Mr. Bullhead’s will was not overborne by police tactics and his statements to investigators were voluntary. (R&R pp. 11-15). The court should adopt the reasoning of the R&R and find that Mr. Bullhead’s statements were voluntarily made.

### **III. Mr. Bullhead’s right to counsel was not violated.**

Mr. Bullhead argues his Fifth and Sixth Amendment rights to counsel were violated because he was represented by a lay Tribal advocate on his Tribal charges at the time he was interviewed by the FBI regarding a federal investigation of the same underlying event. As stated in the R&R, this district “has previously concluded that the Red Lake Tribal Court appointment of a lay advocate to represent a defendant in Tribal court proceedings does not cause the Sixth Amendment right to counsel to attach.” (R&R at 16). Even so,

the R&R explains that “[t]he defendant may waive the [Sixth Amendment counsel] right whether or not he is already represented by counsel,” and that “the decision to waive need not itself be counseled.” (R&R pp. 16-17, quoting *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009). Where a defendant is read his *Miranda* rights and makes a knowing, voluntary, and intelligent waiver of those rights, the waiver of the right to counsel is applicable to presently appointed counsel. (R&R at 17, citing *Montejo*, 556 U.S. at 786).

Mr. Bullhead did not have a Sixth Amendment right to the presence of his lay Tribal advocate during his interrogation and even if such a right did exist, he knowingly, voluntarily and intelligently waived his right to have previously appointed counsel present during his interrogation when he acknowledged his *Miranda* rights, stated he understood them, and chose to speak with law enforcement without counsel. Accordingly, no constitutional violation occurred.

### CONCLUSION

Mr. Bullhead’s Objection amounts to a general disagreement with the R&R. Defendant reasserts the arguments already presented to and rejected by Magistrate Judge Brisbois. For this reason, the Government asserts that the opinion should be reviewed for clear error and, since no clear error exists, the R&R should be affirmed and adopted. However, even if this Court determines a de novo review is warranted, the sound logic and well-supported reasoning of the R&R should stand. For the reasons set forth in the Government’s previous briefing (ECF No. 59) and the R&R (ECF No. 60), the Court

should adopt the R&R in its entirety and deny Defendant's motions to suppress.

Dated: October 2, 2025

Respectfully Submitted,

JOSEPH H. THOMPSON  
Acting United States Attorney

*s/ Rachel Kraker*

RACHEL KRAKER  
Assistant U.S. Attorney

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 72.2(c)(3), the undersigned hereby certifies that the foregoing Response to Defendant's Objection to the R&R was prepared in size 13-point Times New Roman proportional font and contains 1536 words, as calculated by the word count feature of Microsoft Word 365.

*s/ Rachel L. Kraker*

RACHEL L. KRAKER  
Assistant U.S. Attorney