

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)	
)	
)	Case No. 1:02CR00045
)	
v.)	OPINION AND ORDER
)	
CHARLES ROBINSON,)	By: James P. Jones
)	United States District Judge
Defendant.)	

Eric M. Hurt, Assistant United States Attorney, Abingdon, Virginia, for the United States of America; Dennis E. Jones, Lebanon, Virginia, for the Defendant.

In this criminal case, the defendant has filed a Motion to Suppress evidence of his statements made to law enforcement officers. Having referred this matter to the magistrate judge, and having conducted a de novo review, I will accept the magistrate judge’s findings and recommendation and deny the defendant’s Motion to Suppress.

I

The defendant, Charles Robinson, is charged in a multiple-count indictment with various criminal offenses relating to the manufacture and distribution of methamphetamine, a controlled substance. These charges stem from the seizure of items and statements he made following the execution of a search warrant at his

residence by members of the Russell County, Virginia, Sheriff's Department and other state and federal law enforcement agencies.

When law enforcement officers executed the search warrant at the residence, the defendant was found in an outbuilding on the premises. Law enforcement officers restrained the defendant while they proceeded to secure the area. While in restraints, the defendant had a conversation with Bill Watson, a Russell County deputy sheriff, and stated that he wanted to "cooperate" and that he did not want to cause any trouble. During this conversation, the defendant volunteered that there was a sawed-off shotgun on the premises. Following this admission, Deputy Watson, using a *Miranda* rights warning card, advised the defendant of his *Miranda* rights, pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The defendant acknowledged that he understood each of his rights and that he wished to waive them. Subsequent to this advice, the defendant described the location of the shotgun and it was secured by law enforcement officers.

A short time later, and before any further questioning, the defendant was again advised of his *Miranda* rights by Mike Cash of the Drug Enforcement Agency. Following that advice and the defendant's acknowledgment that not only did he understand, but also that he wanted to waive his rights, the defendant was questioned

by Deputy Blake Andis of the Washington County, Virginia, Sheriff's Department, about his involvement in manufacturing methamphetamine.

Early the next morning the defendant was taken to the Russell County sheriff's office where he was interviewed by Deputy Watson and Officer A. V. Coleman of the Lebanon, Virginia, Police Department. At the beginning of that interview the defendant was introduced to the interviewers and was given a form entitled "Advise of Rights." The defendant was told that if he understood the rights described he should put a checkmark beside each one, which he did. The defendant also separately signed an "understanding of rights" clause and a "waiver of rights" clause on the form. The defendant was informed that anything he said would be relayed to the prosecuting attorney. The defendant then proceeded to discuss his involvement in the production of methamphetamine. The interview ended when the defendant stated he wanted to consult with an attorney before answering any more questions.

Following the defendant's indictment, he moved this court to suppress any statements he made pursuant to the Fifth and Sixth Amendments of the United States Constitution, on the ground that his waiver of his *Miranda* rights was not knowing, intelligent, and voluntary. The motion was referred to the Honorable Pamela Meade Sargent, United States Magistrate Judge, for report and recommendation pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 1993 & Supp. 2002). The magistrate judge, after

conducting an evidentiary hearing, determined that the defendant's waiver of rights was knowing, intelligent, and voluntary and recommended the motion should be denied. In response, the defendant has filed objections to the findings and recommendation.

Having reviewed the audio recording of the suppression hearing and the magistrate judge's findings and recommendation, I must now determine if the defendant's waiver of rights under the Fifth and Sixth Amendments was knowing, intelligent, and voluntary.

II

In criminal cases a motion to suppress evidence may be designated to a magistrate judge to conduct a hearing and to submit proposed findings of fact and a recommendation for disposition to the district court judge. *See* 28 U.S.C.A. § 636(b)(1) (West 1993 & Supp. 2002). After objections to the magistrate judge's report and recommendation have been filed, the district court judge shall

make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part the findings and recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

§ 636(b)(1). Although it is not necessary to call witnesses or conduct additional hearings, the district judge must independently consider all of the factual issues, and is required to review the entire record including any hearing by the magistrate judge. *See Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

A person subjected to custodial interrogation is entitled to the procedural safeguards prescribed by *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). *Miranda* and its progeny provide that “[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” *Id.* After an individual has been made aware of these rights, the government has a heavy burden in showing that these rights have been waived.

[T]he relinquishment of the right “must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion or deception.” Second, “the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the ‘totality of the circumstances surrounding the interrogation’ reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.”

United States v. Cristobal, 293 F.3d 134, 139-40 (4th Cir. 2002) (citations omitted).

“The determination of whether here [sic] has been an intelligent waiver of the right to counsel must depend, in each case on the circumstances surrounding that case,

including the background, experience, and conduct of the accused.” *United States v. Hayes*, 385 F.2d 375, 377 (4th Cir. 1967) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the *Miranda* case.

North Carolina v. Butler, 441 U.S. 369, 373 (1979). In demonstrating a knowing, intelligent, and voluntary waiver the defendant does not need to use any particular words or affirmation in acknowledging his understanding and waiver of his rights. *United States v. Frankson*, 83 F.3d 79, 82 (4th Cir. 1996). Even “a defendant’s ‘subsequent willingness to answer questions after acknowledging [his] *Miranda* rights is sufficient to constitute an implied waiver.’” *Id.* (quoting *United States v. Velasquez*, 626 F.2d 314, 320 (3rd Cir. 1980)).

As the Supreme Court noted in *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980), the *Miranda* safeguards apply to situations involving custodial interrogation. The term “interrogation” refers not only to express questioning, but also its functional equivalent. *Id.* Therefore, “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are

reasonably likely to elicit an incriminating response” qualify as interrogation. *Id.* at 301. Whether or not words or actions of a law enforcement officer are likely to elicit an incriminating response is determined by focusing on the perceptions of the suspect. *Id.*

In this case, the defendant made incriminating statements about the presence of a sawed-off shotgun while in casual conversation with Deputy Watson. Deputy Watson testified that the defendant’s statements were volunteered and not in response to questioning or other actions that would be reasonably likely to elicit an incriminating response. There is no evidence that this conversation subjected the defendant to “compelling influences, psychological ploys, or direct questioning,” *Arizona v. Mauro*, 481 U.S. 520, 529-30 (1987), as has been held in this circuit to indicate interrogation and implicate *Miranda*. See *Murphy v. Holland*, 845 F.2d 83, 86 (4th Cir. 1988). Because the defendant’s admissions were not the product of custodial interrogation and were voluntarily made, the statements should not be excluded.

Once the presence of the sawed-off shotgun was discussed and before any questioning, it is uncontested that the defendant was orally informed of his *Miranda* rights. Following this advice, the defendant provided the exact location of the sawed-off shotgun. A short time later, the defendant also spoke with Deputy Andis and

made incriminating statements regarding his participation in manufacturing methamphetamine. The defendant claims that these statements should be excluded because he was merely read his rights, he did not use the word “waive” to waive such rights, and he was not provided with a written waiver of rights form. Aside from the officers’ testimony, the defendant asserts that there is no corroborating evidence to prove that his waiver of rights was consistent with *Miranda* and that the lack of a written waiver makes any waiver inherently suspect.

It is uncontested that the defendant was under custodial interrogation when he made these incriminating statements. However, before any questioning of the defendant took place, with numerous officers present, the defendant was orally informed of his rights by Deputy Watson reading from a *Miranda* card. Following this advice, the defendant stated that he understood each right and that he wanted to “cooperate.” Before speaking with Deputy Andis he was again advised of his rights by Agent Cash. The defendant again stated that not only did he understand his rights, but that he also wanted to “cooperate” with law enforcement officers.

In addition, early the next morning the defendant was provided with an “Advise of Rights” form that he read and signed before being interrogated regarding his manufacturing of methamphetamine. It is significant that the substance of the defendant’s discussions with law enforcement officers was not materially different

when advised of his rights orally and when advised of his rights by the written form.¹ There is no evidence that the defendant was under the influence of any drug or alcohol or that his ability to comprehend his situation was compromised at any time during his questioning. Based on the evidence that the defendant volunteered information before being questioned, acknowledged his understanding of his rights, and willingly answered questions put to him, I find that the defendant's waiver of his *Miranda* rights was knowing, intelligent and voluntary. *See Butler*, 441 U.S. at 373 (holding that "waiver can be clearly inferred from the action and words of the person interrogated").

III

The defendant also argues that any statements made while being questioned at the Russell County sheriff's office should be suppressed. This claim is based on the contention that the waiver of his *Miranda* rights at that time was not voluntary and that the statements were compelled by suggestions of leniency by Officer Coleman.

The Fifth Amendment guarantees that no one shall be compelled "to be a

¹ The only matter that was not addressed during the questioning at the Russell County sheriff's office that had been addressed at the defendant's previous questioning was the sawed-off shotgun found at the residence. According to testimony at the hearing, the shotgun was not mentioned by either party and therefore was not a topic of discussion.

witness against himself" without the protections of due process. U.S. Const. amend. V. Where coercive police activity is alleged, the court must determine whether the defendant's will was overborne or his "capacity for self-determination critically impaired." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973). Courts look to the totality of the circumstances to make this determination. *United States v. Pelton*, 835 F.2d 1067, 1071 (4th Cir. 1987). The government bears the burden of establishing voluntariness by a preponderance of evidence. *United States v. Braxton*, 112 F.3d 777, 781 (4th Cir. 1997). The existence of police threats, promises or other coercive activity does not make a confession involuntary unless the defendant's will has been overborne or his ability to make decisions seriously impaired. *See id.* at 780-81.

There is no evidence in this case that the defendant was threatened or otherwise coerced into making statements during his interrogation at the Russell County sheriff's office. The defendant's questioning was conducted in a conference room at the sheriff's office and he was not in restraints. The defendant initialed and signed an "Advise of Rights" form before any questioning began. The defendant was not promised anything more than that Officer Coleman would inform the prosecuting attorney of any information that the defendant provided. There was no promise of leniency, consideration, or other benefit to the defendant. Finally, the interview ended immediately upon the defendant's request to speak with an attorney.

“Coercive police activity is a necessary predicate to a finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.” *Cristobal*, 293 F.3d at 140. As there has been no showing of coercive police activity at the time of the defendant’s interrogation at the Russell County sheriff’s office nor at any other time, there is no evidence to support the contention that the defendant’s waiver of his rights was involuntary.

IV

For the aforementioned reasons, it is **ORDERED** that the magistrate judge’s findings and recommendation are accepted and the defendant’s Motion to Suppress (Doc. No. 57) is denied.

ENTER: November 7, 2002

United States District Judge