

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | CASE NO. 1:21-CR-00679-JEB |
| | : | |
| ROBERT WAYNE DENNIS, | : | |
| | : | |
| Defendant. | : | |

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION TO
SUPPRESS STATEMENTS**

On November 7, 2022, the defendant, Robert Wayne Dennis, filed a motion to suppress statements he made before and after he was arrested in the instant case. Because he voluntarily made those statements before his arrest and signed a waiver of his rights after his arrest, his motion should be denied.

FACTUAL AND PROCEDURAL HISTORY

Defendant Robert Wayne Dennis, a 62-year-old male from Garland, Texas, traveled from his home in Texas by car and arrived in Washington, D.C. on January 6, 2021, where he attended the Stop the Steal rally. After the rally he went to the U.S. Capitol, where he joined violent rioters near the Upper West Terrace. While near the stairs to the Upper West Terrace, Dennis approached a line of Metropolitan Police Department Officers (MPD) who was busy trying to control the growing crowd of rioters. Dennis was wearing a black jacket, black beanie hat, dark glasses, a tan face covering, blue jeans, and gloves. Once near the stairs, he gathered other rioters, walked toward MPD officers, violently struggled with MPD officers, grabbed an officer’s baton, took an officer to the ground, and knocked the baton out this officer’s hands. Officers tried to take control of the Dennis’s arms, but Dennis continued to roll and kick his legs towards officers. He then verbally

refused to give his hands to officers when ordered to do so. Dennis was ultimately handcuffed. Once removed from the vicinity, Dennis was informed that because he needed medical treatment (there was visible blood from his head) that could not be provided during the riot, he would be released and a warrant for his arrest would be applied for in the future. Dennis responded to MPD Officers that he understood what was said to him. Dennis gave his identification information to the officers. Soon after, Dennis was uncuffed and MPD officers observed him exiting the area. This is all captured on body worn camera.

On July 8, 2021, two agents from the Federal Bureau of Investigation (FBI), arrived at Dennis's home to speak with him about his involvement in the attack at the U.S. Capitol on January 6. At this point, Dennis was not under arrest and there was no active arrest warrant. Agents explained that they wanted to understand what happened from Dennis's point of view if he was willing to share. Dennis agreed to share his version of what occurred at the U.S. Capitol. During this interview, Dennis made incriminating statements: He admitted that he (1) traveled to the Stop the Steal Rally in Washington D.C by car because he was waiting for the "Kraken" to be released; (2) was being disappointed by Trump's speech but followed his instructions and walked towards the U.S. Capitol; (3) wanted to see "the real deal" as he saw a surge of people trying to head into the U.S. Capitol; (4) saw a line of officers and saying, "this is a constitutional republic, we are here to make our voices heard....who is with me?"; (5) charged at the police line and grabbing a baton from an officer's hand, and then had what he termed a "Rodney King" moment where he was beaten and sprayed by officers; (6) resisted arrest and was eventually handcuffed and taken away by police, who gave him water to clean his face; (7) was released to seek medical attention but was informed that a warrant would be applied for at a future date; (8) believed the police knew he was not a threat; and (9) "felt God knew why he went to Washington, D.C., and that going was a

righteous thing to do.” *Id.* See FBI Report of 7/8/2021 Dennis Interview, attached as Exhibit 1. This interview was not recorded, but one of the agents wrote a report of the interview.

Dennis was arrested on October 20, 2021, at his home in Garland, Texas. After being advised of his rights, he signed an “Advice of Rights” Form, which was witnessed by two FBI agents, *See* Dennis Advice of Rights Form, attached as Exhibit 2. During the interview, Dennis again made incriminating statements. Agents also searched his home pursuant to a search warrant issued in the Northern District of Texas.

On November 17, 2021, the Grand Jury returned an indictment charging the defendant, Robert Wayne Dennis, with various offenses resulting from his conduct at the United States Capitol on January 6, 2021. ECF No. 13. Dennis is charged with the following offenses: civil disorder, in violation of 18 U.S.C. § 231(a)(3) (Count 1); assaulting, resisting, or impeding certain officers, in violation of 18 U.S.C. § 111(a)(1) (Counts 2, 3, and 4); entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count 5); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count 6); engaging in physical violence in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(4) (Count 7); disorderly conduct in the capitol grounds or buildings, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count 8); and an act of physical violence in the Capitol ground or buildings, in violation of 5104(e)(2)(F) (Count 9). ECF No. 13.

Dennis now seeks to suppress those statements in advance of trial. ECF No. 36. He claims that he was compelled to speak to FBI agents in July 2021 because of an arrest warrant. He also claims that the custodial interview in October 2021 was tainted fruits of the interview in July 2021 and statements from both interviews should therefore be suppressed. For the reasons stated below, the defendant’s motion is without merit and should be denied.

LEGAL STANDARD

The Fifth Amendment’s prohibition against compelling a person to incriminate himself requires a law enforcement officer to provide that person with certain warnings after “be[ing] taken into custody or otherwise deprived of his freedom in any significant way.” *Miranda v. Arizona*, 384 U.S. 436, 444. But the officer’s obligation to administer *Miranda* warnings attaches “only where there has been such a restriction on a person’s freedom [of movement] as to render him ‘in custody.’” *Stansbury v. California*, 511 U.S. 318, 322 (1994) (per curiam) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam)). Custody for purposes of the Fifth Amendment is a “term of art” that refers to circumstances generally thought “to present a serious danger of coercion.” *Howes v. Fields*, 565 U.S. 499, 508-09 (2012).

Determining whether an individual is in custody, and therefore entitled to *Miranda* warnings, requires two “discrete inquiries.” *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). The first inquiry asks “whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave.” *Howes*, 565 U.S. at 509 (citations, quotation marks, and brackets omitted). Because not every restraint on movement amounts to custody, however, courts also undertake a second inquiry: “whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” *Id.* Both inquiries are objective—*i.e.*, “from the perspective of a reasonable person in the suspect’s position,” *United States v. Crawford*, 372 F.3d 1048, 1059 (citing *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984))—and underscore the “ultimate” inquiry: “was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.” *J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2011) (quoting *Thompson*, 516 U.S. at 112)). Mere “presence of the officer as a figure of governmental authority

does not, by itself, constitute the ‘show of authority’ necessary to make a reasonable person feel unfree to leave.” *Goddard*, 491 F.3d 457, 461 (quoting *Gomez v. Turner*, 672 F.2d 134, 142 (D.C. Cir. 1982)).

If the defendant is considered to be “in custody,” to overcome a motion to suppress, the government must prove by a preponderance of evidence that a defendant’s waiver of Miranda rights was voluntary, knowing, and intelligent. *See Colorado v. Connelly*, 479 U.S. 157, 168 (1986). A waiver of Miranda rights is voluntary if it was “the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). A waiver is knowing and intelligent if it is “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran*, 475 U.S. at 421. However, “[t]he Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege.” *Colorado v. Spring*, 479 U.S. 564, 574 (1987).

An implied waiver can be found from the particular facts and circumstances of the accused and the interrogation. *Berghuis v. Thompson*, 560 U.S. 370, 381 (2010); *North Carolina v. Butler*, 441 U.S. 369 (1979). Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent. *Berghuis*, 560 U.S. at 384. “An express written . . . 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.” *Butler*, 441 U.S. at 373.

ARGUMENT

I. Defendant's Statements Given to FBI Agents in July 2021 Were Voluntary and Did Not Trigger Miranda Warnings

When FBI agents knocked on Dennis's front door, FBI agents identified themselves, and asked if he would be willing to talk to them about what occurred on January 6, 2021. Dennis responded yes and invited the agents to speak with him in his backyard. Dennis then closed his door and walked through his house to meet FBI agents in the backyard of his house. FBI agents waited on Dennis to come outside and speak with them. Both agents were dressed in suits and had their weapons concealed. Once in the backyard, the agents told Dennis why they were there—to discuss Dennis's conduct at the U.S. Capitol on January 6, 2021. They reminded Dennis of the conversation he had with MPD officers on the January 6, 2021, in which he was advised that an arrest warrant would be applied for at a future date. The agents advised Dennis that they were continuing the investigation. The agents asked if they could get Dennis's version of events before this matter moved forward. Dennis indicated that he understood and would speak to the agents about what happened. Dennis stated in his Motion to Suppress that on the day of this interview, he was "alert and awake." ECF No. 36. Dennis's Motion to Suppress did not indicate that Dennis had any issues understanding or comprehending what occurred that day.

Dennis invited the agents into his backyard, when he could have simply declined. Dennis also walked through his house to meet the agents in his backyard. He had the freedom to say no, to close the door, to stay in his house, but he did not choose those options. Instead, he voluntarily chose to speak with the agents. Dennis could have stopped the interview at any point and asked them to leave but did not. He also could have returned inside his house, but he did not. Dennis did not indicate that the FBI agents used any violence or threat of violence before or during the interview.

In *Robinson*, the court found the defendant had “the opportunity to decline to be interviewed and walk away, but opted not to” and his statements were therefore voluntary. *United States v. Robinson*, 256 F.Supp.3d 15, 19 (D.D.C. 2017). Officers were in the process of executing a search warrant inside the building. *Id.* at 18. Individuals who tried to enter the building during the search, were stopped, asked to identify themselves, and asked if they would agree to be interviewed and photographed. *Id.* Defendant was working within the building and was asked if he “didn’t mind being interviewed,” to which he responded, “no problem.” *Id.* at 19-20. This combined with the facts that there was no arrest warrant, the defendant was outside during the interview, and the officers made it clear that they were conducting an investigation, led the court to conclude that a reasonable person in the defendant’s position would have understood that he was not subject to a formal arrest. *Id.* at 25. Near the end of the interview, an officer asked the defendant whether he would voluntarily surrender his DEA registration. *Id.* at 26. The officer explained that if Defendant did not voluntarily surrender his registration, a show cause order would be issued, and an administrative process would be initiated by the DEA to revoke his registration. *Id.* This Court did not interpret the conversation as presenting any “threats” or “promises,” but merely informing defendant of the options before him. *Id.*

Based on the facts above, there was no restriction on Dennis’s ability to move such that the situation could objectively be viewed as being custodial for purposes of invoking *Miranda* warnings. FBI agents had no obligation to administer *Miranda* warnings because it attaches “only where there has been such a restriction on a person’s freedom [of movement] as to render him ‘in custody.’” *Stansbury v. California*, 511 U.S. 318, 322 (1994) (per curiam) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam)). There was no active arrest warrant at the time

of the July 2021 interview and, similar to officers in *Robinson*, agents indicated that fact to Dennis at the time of the interview. The interview was conducted in Dennis's backyard and this environment could not present "the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes*, 565 U.S. at 509. Similar to the officer's conduct in *Robinson*, the FBI agents informed Dennis of why they were at his home; they did not threaten him with the potential of an arrest warrant in order to retrieve his statements. Dennis indicated that he understood that these agents were following up on an investigation concerning his violent actions on January 6, 2021, at the U.S. Capitol and Dennis spoke freely about his involvement.

II. Defendant's Statements Given to FBI Agents in October 2021 Were Given After Defendant Voluntarily, Knowingly, and Intelligently Waived His Miranda Rights

FBI Agents entered Dennis's home on October 20, 2021, to execute a search warrant and arrest warrant. Defendant concedes in his motion that following his arrest, he waived his *Miranda* Rights and agreed to give a recorded statement. ECF No. 36. Defendant notes that "he attempted to read the rights but could not without his glasses," but also notes that an officer fetched his glasses so he could clearly read the form. ECF No. 36. After advising him of his rights via a standard FBI Advice of Rights form, agents uncuffed Dennis and he signed his name acknowledging that he not only understood his rights under *Miranda* but consented to waiving them. *See* Dennis Advice of Rights Form. Dennis contends that during the time of his waiver he was "groggy" and not fully awake. ECF No. 36. However, Dennis also states that agents arrived at his home around 6:00 a.m. and the waiver was not signed until around 6:26 a.m. ECF No. 36.

One of the agents wrote a report of the interview. *See* FBI Report of 10/20/2021 Dennis Interview, attached as Exhibit 3. At the beginning of the report, the authorizing agent noted that Dennis was provided with and signed the FD-395 "Advice of Rights: form the prior to the start of the interview. *Id.* During the interview, Dennis admitted to being at the U.S. Capitol on January 6,

2021. *Id.* Dennis admitted that he charged the police line at the U.S. Capitol. *Id.* Dennis also admitted that he convinced three other people to go with him when he charged the police line. *Id.*

This chain of events more than satisfies the requirements of *Miranda* and forecloses Dennis's suppression claim. Dennis was informed of his rights, and he voluntarily, knowingly, and intelligently waived them by signing the Advice of Rights form. He does not dispute the authenticity of his signature or the form itself.

Finally, Dennis's claim that this interview was a fruit from a coerced statement in July 2021 lacks merit. As described above, the valid waiver of his rights by signature of the Advice of Right Form in October 2021, indicates that Dennis knew and voluntarily waived his Fifth Amendment rights on the second interview. *See Butler*, 441 U.S. at 373.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the defendant's motion be denied.

Respectfully submitted,
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