

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIGUEL ANGEL MARTINEZ,

Defendant.

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Case No. 17-20126

SENIOR U.S. DISTRICT JUDGE  
ARTHUR J. TARNOW

U.S. MAGISTRATE JUDGE  
ANTHONY P. PATTI

**ORDER GRANTING DEFENDANT’S MOTION TO SUPPRESS STATEMENTS [33]**

Before the Court is Defendant Miguel Martinez’s Motion to Suppress Statements [33] filed on June 2, 2018. The Court held a hearing on the Motion on September 5, 2018. Because FBI agents interrogated Mr. Martinez while he was in custody, but failed to advise him of his constitutional rights under *Miranda*, the Court **GRANTS** Defendant’s Motion to Suppress Statements.

**FACTUAL AND PROCEDURAL BACKGROUND**

Mr. Martinez is a 53-year-old police officer who has worked for the Detroit Police Department for over thirty years. In September 2016, an officer of the Washoe County Sheriff’s Office in Reno, Nevada, acting undercover, signed into a BitTorrent peer-to-peer file sharing program to investigate suspected criminal activity. Sergeant Dennis Carry of Washoe County identified a computer using an

IP address which had downloaded child pornography videos. The IP address was assigned to Mr. Martinez.

On February 21, 2017, a federal search warrant was executed at Mr. Martinez's residence in Trenton, Michigan. That morning, without knowledge that officers were searching his home, Mr. Martinez was ordered by his supervisor, Sergeant John Kennedy, to report to Detroit Public Safety Headquarters ("Headquarters") to help transport a sick or injured police officer. Although Mr. Martinez did not know it at the time, there was no sick or injured officer at Headquarters who was in need of assistance. In other words, this was a ruse set up between the FBI and Sergeant Kennedy to ensure that Mr. Martinez would appear at Headquarters, instead of at his usual work station in the 10th Precinct.

Mr. Martinez and his partner arrived at Headquarters and headed to the medical unit where they were greeted by Sergeant Kennedy. After telling Mr. Martinez that the officer was in pretty bad shape, Sergeant Kennedy instructed Mr. Martinez to follow him and leave his partner behind. He then led Mr. Martinez, alone, to FBI Agents Michael Fitzgerald and Raymond Nichols, both of whom were dressed in plain clothes. The Agents told Mr. Martinez that they needed help with a case from Trenton, but didn't mention that the case involved him. They led Mr. Martinez to the Michigan State Police area, which is located on a different floor of the building and requires key-card access for entry.

Once inside the Michigan State Police area, Mr. Martinez was taken into a private conference room. Prior to entering the room, he had to secure his pistol in a lockbox. The two Agents, armed with their pistols, closed the door to the conference room and requested that Mr. Martinez turn off his police radio. The Agents positioned themselves between Mr. Martinez and the door. Mr. Martinez testified that, initially, he had tried to sit on the side of the table closest to the door, but the Agents directed him to sit on the other side of the table.

The Agents turned on an audio recording device at the start of their interrogation. Within the first few minutes of sitting down with Mr. Martinez, the Agents informed him that he was the subject of a child pornography investigation and that federal officers were currently executing a search warrant at his home.

The Agents interrogated Mr. Martinez for one hour and twenty minutes regarding his alleged receipt of child pornography. They started by asking Mr. Martinez to “share his side of the story,” which elicited Mr. Martinez’s admission to using Aeres, a filing sharing program, for downloading music and videos. He further acknowledged that if any videos containing child pornography had popped-up on his computer, he would have deleted them right away. Audio CD: Interview with Miguel Martinez (Feb. 21, 2017) at 05:00-05:10; 05:45-05:50.

The Agents told Mr. Martinez that he was there voluntarily and was not in custody. Still, they refused to accept his repeated denials of involvement in the

alleged conduct, telling him not to lie to them, asserting that his story didn't make sense, and even calling bullshit. *Id.* at 11:25; 38:38; 39:20; 53:08. This exchange went on for over one hour.

Throughout the interview, Mr. Martinez told the Agents that he wanted to leave and return to work his shift more than twelve times. *Id.* at 08:49-08:52; 11:45-11:48; 12:27-12:34; 16:34-16:36; 17:38; 21:00-21:05; 21:46-21:50; 32:07-32:14; 45:10; 47:04-47:15; 49:28; 1:00:56. Halfway through the interview, the Agents told him that he was not going to finish his shift. *Id.* at 40:58. And when he asked whether he could leave now and go home, Mr. Martinez was told that someone else may want to speak with him. *Id.* at 49:10-49:17. Ultimately, Mr. Martinez concluded that he couldn't go anywhere until the officers executing the warrant finished searching his computer. *Id.* at 55:28-55:35.

Furthermore, Mr. Martinez repeatedly asked about whether he should have an attorney present and expressed fear that if he did ask for a lawyer, the Agents would immediately formally arrest him. *Id.* at 08:15-08:25; 12:23-12:28; 28:55; 48:18-48:35. At one point Mr. Martinez even stated: "I was looking at these history articles about how people used to torture people to death and I feel like that's what's happening right now." *Id.* at 39:40-39:48.

At no time during the 80-minute interrogation did the Agents read Mr. Martinez his *Miranda* rights. When the Agents terminated the interview, Mr. Martinez was told that he was under arrest.

On February 28, 2017, the Government filed an Indictment [14] charging Mr. Martinez with Distribution of Child Pornography in violation of 18 U.S.C. § 2252A(a)(2) (Count I); Receipt of Child Pornography in violation of 18 U.S.C. § 2252A(a)(2) (Count II); and Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) (Count III).

On June 2, 2018, Mr. Martinez filed this Motion to Suppress Statements [33]. The Government filed its Response [36] on June 22, 2018. Mr. Martinez filed a Reply [40] on July 5, 2018. The Court held a hearing on September 5, 2018 at which Agent Fitzgerald and Mr. Martinez testified.

#### ANALYSIS

Statements made by a defendant, which are derived from custodial interrogation, are inadmissible unless the Government demonstrates use of procedural safeguards to ensure the protection of the defendant's Fifth Amendment privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436 (1966); *see also United States v. Salvo*, 133 F.3d 943, 948 (6th Cir. 1998) (“[I]ncriminating statements elicited from suspects in custody cannot be admitted at trial unless the suspect was first advised of his or her *Miranda* rights.”). These procedural

safeguards, widely-known as *Miranda* warnings, include informing the defendant prior to questioning that he has the right to remain silent, that any statement he makes may be used against him at trial, and that he has the right to an attorney, either retained or appointed. *Id.* Law enforcement's obligation to administer *Miranda* warnings attaches, however, only when a suspect is in custody and subject to interrogation. *Loza v. Mitchell*, 766 F.3d 466, 475 (6th Cir. 2014).

Because the Government concedes that the Agents interrogated Mr. Martinez, at issue here is solely whether Mr. Martinez was in custody. To determine whether a person is in custody for purposes of triggering *Miranda*, the Court asks whether, in light of the totality the circumstances, a reasonable person would have felt free to terminate questioning and leave. *J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2011).

The Sixth Circuit considers several factors to assess whether an interrogation was custodial in nature, including: "(1) the location of the interview; (2) the length and manner of the questioning; (3) whether there was any restraint on the individual's freedom of movement; and (4) whether the individual was told that he or she did not need to answer the questions." *United States v. Hinojosa*, 606 F.3d 875, 883 (6th Cir. 2010).

These factors weigh in favor of a finding of custody. First, the interview took place at Headquarters, a location with which Mr. Martinez was unfamiliar and

had only visited a couple of times. *See Beckwith v. United States*, 425 U.S. 341, 346 n.7 (1976) (observing that central to the custodial interrogation inquiry is whether the suspect was isolated in unfamiliar surroundings). The Agents began their questioning in a conference room in the Michigan State Police area of the building. To enter that area, employees must use a key-card, which Mr. Martinez did not possess. Notably, Mr. Martinez was not questioned in his home or at his place of employment at the 10th Precinct, though surely the Agents could have conducted the interview in one of those places. *See Coomer v. Yukins*, 533 F.3d 477, 486 (6th Cir. 2008) (explaining that interrogation in one's home "is usually indicative of the absence of the isolation inherent in custodial interrogations."). Instead, he was separated from his partner and thrust into an unfamiliar space secured by a locked door in a police station.

More importantly, Mr. Martinez did not voluntarily appear at Headquarters. *See Oregon v. Mathiason*, 429 U.S. 492, 495 (1977); *United States v. Malcolm*, 435 F. App'x 417, 421 (6th Cir. 2011) (noting that the fact that the defendant voluntarily appeared for the interview weighed against a finding of custody). His supervisor, Sergeant Kennedy, directed him to go to Headquarters to assist an officer in need of medical attention. Concerned for his fellow officer, Mr. Martinez arrived at medical only to discover that no one was sick or hurt, but that the entire story was a ploy to secure his appearance.

Turning to the length and manner of questioning, the Court notes that the length of the interview—an hour and twenty minutes—is consistent with other encounters that this Circuit has found to be non-custodial. *See United States v. Panak*, 552 F.3d 462, 467 (6th Cir. 2009) (internal citations omitted). However, one need only listen to the recording to determine that the Agents’ manner of questioning, albeit “cordial,” was relentless and accusatory. They repeatedly called Mr. Martinez’s story bullshit and failed to inform him that he did not need to answer their questions.

Mr. Martinez’s freedom of movement was also restricted. That Mr. Martinez was not handcuffed is not dispositive of this inquiry. *See id.* at 466. He was confined to a conference room in which two armed FBI agents were seated between him and a closed door. *See Casnave v. Lavigne*, 169 F. App’x 435, 443 (6th Cir. 2006) (considering the fact that the defendant was seated near the door). When he asked if he could get water, Mr. Martinez testified that the two Agents looked at each other, Agent Fitzgerald shook his head “no,” and Agent Nichols went to retrieve the water on his behalf.

While the aforementioned factors are helpful to its analysis, the Court need not go any further than listen to the audio recording to determine that no reasonable person in Mr. Martinez’s situation would have felt free to terminate the questioning and walk out the door. At least **twelve times**, Mr. Martinez told the



Agents that he wanted to leave and go work his shift. Agent Fitzgerald repeated phrases like “you’re here voluntarily” and “we never said you can’t leave.” But he doth protest too much. Anyone who listens to even a few minutes of the recording can hear the desperation in Mr. Martinez’s voice, signaling that he was there against his will. *See* Audio CD: Interview with Miguel Martinez at 32:07-33:10; 45:02-45:23.

Mr. Martinez explained that he neither ended the interview nor asked for the assistance of counsel because he feared that if he did, he would be placed under arrest. Unsurprisingly, his suspicions were confirmed by his formal arrest immediately after the interview.

The circumstances surrounding the interrogation establish that Mr. Martinez was in custody and therefore should have been given *Miranda* warnings prior to questioning. His thirty years of experience with the Detroit Police Department do not undermine this finding. *See Yarborough v. Alvarado*, 541 U.S. 652, 667-68 (2004) (reaffirming that the custody inquiry is an objective test). The evidence presented brings this Court to the conclusion that Agents Fitzgerald and Nichols consciously chose not to give *Miranda* warnings to Mr. Martinez in order to prevent him from unambiguously invoking his Fifth Amendment rights. This type of deliberate and coercive behavior thwarts the purposes of *Miranda*. Because the Agents subjected Mr. Martinez to custodial interrogation and failed to advise him

of the constitutional protections to which he was entitled, the Court must suppress his statements.

**CONCLUSION**

For the reasons stated above,

**IT IS ORDERED** that Defendant's Motion to Suppress Statements [33] is **GRANTED**. Defendant's February 21, 2017 statement to law enforcement cannot be used at trial against him.

**SO ORDERED.**

Dated: September 26, 2018

s/Arthur J. Tarnow  
Arthur J. Tarnow  
Senior United States District Judge