United States Court of Appeals
For the Eighth Circuit

No. 23-3519

United States of America,

Plaintiff - Appellee,

v.

Douglas Turner,

Defendant - Appellant.

Appeal from United States District Court
for the Eastern District of Arkansas - Central

Submitted: September 27, 2024
Filed: January 14, 2025

Before COLLOTON, Chief Judge, LOKEN and SHEPHERD, Circuit Judges.

COLLOTON, Chief Judge.

Douglas Turner was convicted of possession of child pornography. On appeal, Turner challenges the district court's[1] denial of his motion to suppress evidence. We conclude that there is no reversible error, and therefore affirm the judgment.

[1]The Honorable D.P. Marshall, Jr., then Chief Judge, now United States District Judge for the Eastern District of Arkansas.

I.

Turner argues on appeal that statements he made during an interrogation in May 2018 should have been suppressed. At the time, Turner was an inmate at a correctional facility. He contends that investigators subjected him to custodial interrogation without warnings in violation of the rule set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966).

In October 2017, Turner was serving a term of imprisonment after a previous conviction for possession of child pornography. A prison guard caught Turner with a cell phone in his bunk. Inmates were forbidden to possess a cell phone in the prison.

Several months later, in May 2018, prison officials summoned Turner to an interview with Special Agent Johnson of the FBI and Lieutenant Flint, an investigator with the Bureau of Prisons. Prison guards escorted Turner from his housing unit, through a series of gates and doors, to the meeting location. The interview took place in a medium- to large-sized conference room with a long table, windows, and comfortable chairs. Turner was seated at the table without restraints. Agent Johnson wore plain clothes and did most of the questioning. Neither Johnson nor Flint was armed.

Agent Johnson began by telling Turner that he did not have to answer any of Johnson's questions and that he was not in Johnson's custody. Johnson had a "soft spoken" and "gentle" demeanor during the interview, and did not use deception. Johnson and Flint sought to determine where Turner obtained the cell phone that was found in his bunk and to learn what they could about the circumstances related to the phone. Turner told the investigators that he received the cell phone from another inmate and used it to view child pornography. After the interview, prison guards escorted Turner back to his housing unit.

A grand jury charged Turner with possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). Turner moved to suppress statements that he made during the interview with Johnson and Flint on the ground that the agents subjected him to custodial interrogation without *Miranda* warnings. The district court concluded that Turner was not in custody during the interview, and denied the motion to suppress. A jury convicted Turner of possession of child pornography, and the district court imposed sentence. We review the district court's factual findings for clear error, and its legal determination on "custody" *de novo*. *United States v. Axsom*, 289 F.3d 496, 500 (8th Cir. 2002).[2]

II.

The facts surrounding the interview are largely undisputed. Turner does argue on appeal that the district court clearly erred in finding that Agent Johnson had a "gentle" demeanor during the interview, and that Johnson told Turner that he did not have to answer any questions. The findings, however, were based on Johnson's testimony, and the court found that Johnson's testimony was credible. Credibility findings are virtually unreviewable on appeal, *United States v. Hernandez*, 281 F.3d 746, 748 (8th Cir. 2002), and Turner points to nothing that would justify declaring Johnson's testimony so implausible that it could not be credited. Although Lieutenant Flint did not recall hearing Agent Johnson tell Turner that he was not required to answer questions, the court permissibly credited Johnson's testimony

[2]At trial, Turner objected to admission of his statements on the ground that they were not made voluntarily, and the district court overruled the objection. Turner did not raise involuntariness as a basis to suppress statements before trial as required by Federal Rule of Criminal Procedure 12(b)(3)(C). His brief on appeal lists the voluntariness of his confession as an issue, but the brief does not develop an argument that statements were involuntary or that it was permissible to raise the issue for the first time during trial. We therefore decline to consider the issue further. *See United States v. Ruzicka*, 988 F.3d 997, 1006 (8th Cir. 2021).

about what he said during the interview. *See United States v. Johnston*, 353 F.3d 617, 625 (8th Cir. 2003).

Turner maintains that the district court erred by concluding that he was not "in custody" for purposes of *Miranda* when he was interrogated at the prison. Ordinarily, "[t]he ultimate question in determining whether a person is in 'custody' for purposes of *Miranda* is 'whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" *United States v. Czichray*, 378 F.3d 822, 826 (8th Cir. 2004) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). The custody inquiry turns on whether, under the totality of the circumstances, an objectively reasonable person in the suspect's position would have felt free to terminate the interrogation and leave. *United States v. Vinton*, 631 F.3d 476, 481 (8th Cir. 2011); *United States v. Sanchez-Velasco*, 956 F.3d 576, 580 (8th Cir. 2020).

That Turner was incarcerated at the time of the questioning does not mean that he was automatically "in custody" for purposes of *Miranda*. *United States v. Chamberlain*, 163 F.3d 499, 502 (8th Cir. 1998). In the prison context, we consider whether the circumstances of the interview "are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave." *Howes v. Fields*, 565 U.S. 499, 515 (2012) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004)). An inmate is considered free to leave for purposes of *Miranda* if he is free to "return to his normal life within the prison." *United States v. Arellano-Banuelos*, 912 F.3d 862, 868 (5th Cir. 2019) (internal quotation and alteration omitted).

Turner emphasizes that he was required to abide by the orders of the prison officials who summoned him to the interview room. He asserts that his movement under guard through a series of locked doors to a "foreign" location that he could not leave without assistance shows that he was in custody. But as the district court pointed out, these circumstances are primarily a function of Turner's incarceration

rather than the circumstances of the questioning. For a person like Turner who had served two years in prison, such restrictions, "while no doubt unpleasant, are expected and familiar and thus do not involve the same 'inherently compelling pressures' that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station." *Fields*, 565 U.S. at 511 (quoting *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010)). The focus of the *Miranda* custody inquiry concerns whether the inmate under interrogation was free to return to his normal prison life, not whether he was summoned to the location of the interview in the first place.

Turner next alleges that Agent Johnson employed deceptive stratagems that would "prevent a reasonable person from terminating the interview," *United States v. Ollie*, 442 F.3d 1135, 1139 (8th Cir. 2006), by influencing his "perception of his freedom to depart." *United States v. Laurita*, 821 F.3d 1020, 1026 (8th Cir. 2016). Turner relies, however, on Johnson's private thinking that was not communicated to Turner. That Johnson strategically decided not to recite *Miranda* warnings and took into account that Turner had no defense to the cell phone infraction does not amount to deception bearing on custody. An investigator's "beliefs are relevant only to the extent that they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action." *Stansbury v. California*, 511 U.S. 318, 325 (1994) (per curiam) (internal quotation omitted).

The district court found that Agent Johnson informed Turner that he was not in Johnson's custody and was not required to answer any questions. "The absence of a formal arrest and the advice of freedom to decline to answer, while not conclusive, are indicative of noncustodial interrogation." *United States v. Jones*, 630 F.2d 613, 616 (8th Cir. 1980); *see United States v. Williams*, 760 F.3d 811, 814 (8th Cir. 2014). Turner stresses that the officers never told him that he was free to leave. But "the absence of an explicit statement that an interviewee is free to leave does not compel

a finding of *Miranda* custody." *United States v. Arellano-Banuelos*, 927 F.3d 355, 361 (5th Cir. 2019); *see Sanchez-Velasco*, 956 F.3d at 580. By informing Turner that he did not have to answer questions, Johnson plainly implied that Turner could decline the interview and return to his normal life in the prison. A reasonable inmate in Turner's position would have understood that he was free to discontinue the interview and go back to his housing unit.

The remaining circumstances do not establish that Turner was in custody. The questioning was conducted in a soft-spoken manner by two unarmed investigators in a comfortable conference room. Turner was not restrained during the interview, and prison guards returned him to his normal living environment at the conclusion of the meeting. Considering the totality of the circumstances, the district court did not err in concluding that Turner was not "in custody" and that there was no violation of the *Miranda* rule.

For these reasons, the district court correctly denied Turner's motion to suppress evidence. The judgment of the district court is affirmed.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 4:19CR00622 DPM

September 13, 2022
Little Rock, Arkansas
9:02 AM

DOUGLAS TURNER,

Defendant.

TRANSCRIPT OF SUPPRESSION HEARING
BEFORE THE HONORABLE D.P. MARSHALL, JR.,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

MS. KRISTIN BRYANT, Assistant U.S. Attorney
U.S. Attorney's Office
425 West Capitol Avenue, Suite 500
Post Office Box 1229
Little Rock, Arkansas 72201-1229

On Behalf of the Defendant:

MR. GRANT BALLARD, Attorney at Law
Ark Ag Law, PLLC
Post Office Box 224
Clarendon, Arkansas 72029

Proceedings reported by machine stenography; transcript prepared utilizing computer-aided transcription.

Karen Dellinger, RDR, CRR, CCR
United States Court Reporter
Karen_Dellinger@ARED.uscourts.gov (501)604-5125

I'd ask the Court to deny the motion to suppress.

THE COURT: Thank you. I think we're kind of wandering into why the Supreme Court may be on to something and the Court of Appeals on how fact intensive this is and how there can really be no bright line rule. Many, many, many things need to be considered and the slight differences in fact might make a legal difference. With that said by way of preface, Mr. Ballard, last word.

MR. BALLARD: Very briefly, Judge. *Howes v. Fields* has been talked about a lot today and the government cites some of the facts that are similar in the present case to the situation that Inmate Fields was placed in, but they overlook the dissimilarities which are clear. He was told he was free to leave. The government says they were abusive and they cussed at Fields. They cussed at Fields telling him he could leave if he didn't want to cooperate. There's nobody that's more free to leave than Fields, and that's not the case we have right here. I want to point out in the *Howes v. Fields* case, some of those factors that they discuss.

The opinion states they indicate custody. But they were undercut by the fact that Fields was free to leave. This is a case where my client was not free to leave. He was in custody for all practical purposes, and we'd appreciate you grant the motion to suppress. Thank you.

THE COURT: Thank you, Mr. Ballard. Counsel, I

appreciate your work all around the briefing getting ready and the handling of the hearing, dealing with the witnesses and each other and with the Court. All material things considered, the motion to suppress is denied. Mr. Ballard, you have made a valiant effort and well argued the case. But I believe that the totality of the circumstances, which is, as we all know, the law that I have to apply. In my mind, the totality of the circumstances indicate that Mr. Turner was not in custody when this questioning took place with custody being a legal term of art.

The cases, of course, made close because Mr. Turner's incarcerated. He's in prison and his liberty is limited. No question about it. And some of the factors that the courts have identified weigh in favor of this being a custodial interrogation, but most of them do not. In my view, they predominate in terms of more voluntariness, and I believe that Mr. Turner could have either not answered questions or stopped the questioning, and necessarily that would have -- I just believe the whole of it is that there's, of course, hydraulic pressure for him to answer and to cooperate. I think most of that hydraulic pressure though is being created by the circumstance of incarceration. So to go through the nonexclusive factors that the cases identify, and I'm drawing on the *Laurita* case, as I said, 821 F.3d 1020, 1024, an Eighth Circuit decision from 2016.

Mr. Ballard, I just disagree with you. I may be wrong on the law, but I disagree with you about the conjunctive/disjunctive thing. And so I think I credit and believe Agent Johnson. In general, I found you a credible witness and a careful witness and a truthful witness, so I believe you when you tell me that you began by saying Mr. Turner, you are not in my custody. I'd like you to answer some questions, but you don't have to or words to that effect. Officer Johnson was clear that he did not say that Mr. Turner was free to leave but he did tell him that he was not in -- Officer Johnson did -- Agent Johnson that Mr. Turner was not in his custody. So that's a bit of a mixture, Mr. Ballard, on that issue. But a tilt of the balance toward no custody.

So next is the freedom of movement. Again, there are some things that tilt in favor of Turner but it predominates in favor of no custody. No cuffs, we don't have anyone secured to a chair or in leg irons. It's just unclear about whether officers were present inside the room. They were certainly outside if not inside because it is clear that Turner couldn't just wander about on his own, that he was brought to that conference room. So there's freedom of movement, I think, in the sense of being able to move around in the chair, but not -- I don't think that Mr. Turner could have gotten up and walked out into the world, but he could never get up and walk out into the world when he is talking to officers, correctional officers

within the prison.

So to the extent -- I guess what I'm wandering to and not saying well is to the extent that there was restraint there on movement, I believe that it's primarily a function of the incarceration rather than the circumstances of the questioning. That's your point, Ms. Bryant, about the oddity of talking about custody in the prison context but I believe the law requires us to. Next on who started all this, Mr. Ballard, you're right, that one weighs in favor of Mr. Turner. Mr. Turner didn't come to folks and say he wanted to talk. He was fetched, no question about it. So that one weighs for him.

Strong arm tactics or deceptive strategies employed during questioning, no. A hard no. And the lawyers here gathered and law enforcement, y'all are experienced enough to have seen and heard about strong arms and deception. And I didn't -- there's no evidence of any of that. Here again, Agent Johnson's demeanor weighs in my mind. You are a soft spoken and I say -- I mean this as a compliment, you are gentle in your manner, strong in substance beneath that gentleness but you are gentle in manner, Agent Johnson, and I conclude that you -- that is the manner that you went about the questioning of Mr. Turner that day, so it's the opposite of -- it was a gentle arm and you identified yourself and your purpose and I didn't hear anything about any deceptive stratagem, any kind of lie or shading of things.

Next, whether the atmosphere was police dominated or not. This is a very close call in my mind because if you put those two correctional officers in the room, no question that it is. If they're not there, there's still a sense of domination because you've got Agent Flint and you've got Agent Johnson there with Mr. Turner. Agent Johnson is not in uniform, he doesn't have a side arm, he's not -- he doesn't have a badge on, he doesn't have an embroidered badge or anything like that. I did not hear any proof that I recall about whether Officer Flint was in uniform or how he appeared that day. I do believe I heard that he was unarmed. So officials are certainly there and they are in charge. That one tilts slightly in favor, Mr. Turner, of you.

If the two correction officers were there, it definitely tilts in your favor, because corrections officers have uniforms on and belts and often some thing on the belt. And if there are two officers in full regalia at the door, then it was dominated, but I'm not sure that I can go all that way because of the uncertainty about exactly where they were.

Last factor, Mr. Turner was not placed under arrest. He was sent back. The physical circumstances we've talked about and y'all know my view on that. I think, Mr. Ballard, it weighs in your favor that Mr. Turner's in the pod in the low unit with lots of freedom and has to make his way through various gates and doors before he gets to the conference room.

And that's a special place. It's like getting called to the principal's office, and it's not a good thing when you get called to the principal's office. Generally you're not getting good news. I remember getting good news on one occasion in middle school when I got called to the principal's office, but that was the exception. Normally it's not a good thing.

On the other hand, the circumstances of the conference room itself as you point out, Ms. Bryant, it's not a -- it's not an 8 by 8 room with a camera up in the corner and the formica table and two chairs and the paradigm interrogation room. It's bigger than half the gallery of this courtroom. There's a long table, windows, comfy chairs, and in fact, as Agent Flint testified, it was the place utilized by one of my colleagues to -- has been utilized by one of my colleagues to hold court at the prison from time to time. I believe that would have been one of our magistrate judges in the prohibited object cases where the Court sometimes goes on the road and does those over there. So it was a space capable of being used as a courtroom, albeit an informal courtroom.

It is a mixed bag of circumstances that point in different directions, but I believe it preponderates in favor of no custodial interrogation. And as I said, I tried to avoid it all, but particularly heavy in my view is Agent Johnson and my conclusion as to how he conducted this questioning and what he told Mr. Turner at the beginning. We might envision if we

were being creative an entirely different legal regime here that created some kind of presumption that if you're incarcerated and you're questioned, you're in custody unless the United States proves or whoever proves that you're not. That's not the legal framework that we are all bound to follow. There is no presumption and, instead, I'm supposed to look at everything, and I've tried to do so.

Mr. Ballard, your record is preserved on behalf of Mr. Turner. And y'all know the cases that I'm relying on. In addition to *Laurita*, it's the much cited Howes against Fields. That's the Supreme Court's decision and Judge Richard Arnold's opinion in the *Chamberlain* case, the case that I mentioned about burden, *Jorgensen*. And I've benefited from the other authorities that were cited in the briefs. Mr. Ballard, you're right about *Stanberry*, my law clerk found me a copy of it and what's in the officer's mind can matter though it doesn't always matter, but if certain conditions are met, it can matter. And I have tried to consider that too.

There was some testimony about that, but both Agent Johnson and Officer Flint knew that they had Mr. Turner dead to rights on having a cell phone which is a prohibited object, and they were trying to get confirmation from him about that, get him to fess up and see what else they could learn about where he got that phone and all the circumstances. So that's in their mind, but I don't believe that it led to a kind of a

domineering atmosphere where Mr. Turner was subjected to a custodial interrogation as our law understands that concept.

Mr. Ballard, any request for clarification on the Court's ruling?

MR. BALLARD: No, Your Honor.

THE COURT: Ms. Bryant, any request for clarification on the Court's ruling?

MS. BRYANT: No, Your Honor.

THE COURT: I will enter a one-sentence order that says for the reasons stated on the record at the conclusion of this hearing, the motion to suppress is denied. Counsel, I thank you for your work. My reasoning is not as clear and beautiful as I would like if I had put it on a printed page, but your good work allowed me to rule and to get it done so that we can move on in the case to trial or plea as the case may be. We're in recess.

(Proceedings adjourned at 12:11 PM.)

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript of proceedings in the above-entitled matter.

/s/ Karen Dellinger, RDR, CRR, CCR
United States Court Reporter

Date: January 2, 2023

Karen Dellinger, RDR, CRR, CCR
United States Court Reporter
Karen_Dellinger@ARED.uscourts.gov (501)604-5125

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA — PLAINTIFF

v. — No. 4:19-cr-622-DPM

DOUGLAS TURNER — DEFENDANT

ORDER

For the reasons stated from the bench at the conclusion of the 13 September 2022 hearing, Turner's motion to suppress, *Doc. 51*, is denied.

So Ordered.

D.P. Marshall Jr.
United States District Judge

13 September 2022