No. _____

In the Supreme Court of the United States

JAMES T. WEISS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

APPENDIX

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APPENDIX

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Appendix A
[Filed: Oct. 29, 2025]

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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Chicago, Illinois 60604

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FINAL JUDGMENT

August 28, 2025

CERTIFIED COPY
A True Copy
Teste:
/s/
Deputy Clerk
of the United States
Court of Appeals for
the Seventh Circuit

Before

ILANA DIAMOND ROVNER, *Circuit Judge*
CANDACE JACKSON-AKIWUMI, *Circuit Judge*
NANCY L. MALDONADO, *Circuit Judge*

No. 23-3094	UNITED STATES OF AMERICA, Plaintiff - Appellee v. JAMES T. WEISS, Defendant - Appellant

Originating Case Information:
District Court No: 1:19-cr-00805-2 Northern District of Illinois, Eastern Division District Judge Steven C. Seeger

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

Clerk of Court

Appendix B
[Filed: Aug. 28, 2025]

In the
United States Court of Appeals
For the Seventh Circuit

No. 23-3094

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES T. WEISS,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:19-cr-00805-2 — **Steven C. Seeger**, *Judge*.

ARGUED JANUARY 15, 2025 — DECIDED AUGUST 28, 2025

Before ROVNER, JACKSON-AKIWUMI, and MALDONADO, *Circuit Judges*.

ROVNER, *Circuit Judge*. Sweepstakes machines are a form of gambling machine. In 2018, sweepstakes machines operated in a legal gray area; they were neither clearly legal nor clearly illegal under existing Illinois law. James Weiss's company manufactured sweepstakes machines and, as a result, Weiss had an

interest in ensuring that sweepstakes machines were clearly legal under Illinois law. To accomplish this goal, Weiss attempted to bribe two state legislators, Luis Arroyo and Terrance Link, to pass legislation favorable to sweepstakes machines. Unbeknownst to Weiss, however, Link was cooperating with federal agents, ultimately leading to Weiss's conviction for wire fraud, mail fraud, and bribery after a jury trial.

On appeal, Weiss challenges statements the district court admitted at trial, one of the jury instructions given at trial, and his sentence. Because we find no error by the district court, we affirm.

I

Beginning in fall 2018, Weiss's company, Collage LLC, began making monthly payments to Arroyo's registered lobbying firm, Spartacus 3, LLC. In exchange, Arroyo became an extremely vocal supporter of sweepstakes legislation. He spoke in support of such legislation at gaming committee hearings, advocated for it during meetings with the Illinois General Assembly's leadership, and approached other legislators to encourage them to pass sweepstakes legislation. In fact, Arroyo approached State Representative Robert Rita about sweepstakes legislation so frequently that State Representative Rita began avoiding Arroyo. These efforts failed, however, and gaming legislation was passed in June 2019 without any sweepstakes-related provisions.

Undeterred, Weiss and Arroyo sought to have the gaming legislation amended through a "trailer bill," which can modify already-passed legislation. Doing

so would require the support of State Senator Link, one of the sponsors of the gaming bill.

On August 2, 2019, Arroyo and Weiss met with Link to ask him to support sweepstakes legislation during the "veto session"—which occurs in the fall—perhaps through the passage of a trailer bill. At the end of the meeting, Link asked to speak with Arroyo alone and asked Arroyo "what's in it for me?" Arroyo explained that Link could be paid the "[s]ame way" he was "getting paid." Arroyo also explained that the money could be sent to another individual, presumably to hide its intended recipient. After this meeting, Arroyo stayed in contact with Link, and a second meeting was arranged for August 22, 2019.

In advance of the second meeting, the FBI directed Link to ask that any payments be made to "Katherine Hunter," a fictious individual. Weiss drove Arroyo to the second meeting, but he remained in the car during the meeting. During the second meeting, Arroyo presented Link with a check from Collage LLC—Weiss's company—with a blank payee line. As Arroyo took out the check, he said, "this is the jackpot" and asked for whom the check should be made out. At Link's instruction, Arroyo wrote "Katherine Hunter" on the payee line. Arroyo also presented Link with a draft of the legislation and Weiss's business card. After the meeting, Weiss emailed the draft legislation to Link, and later, Weiss sent Link another check with "Katherine Hunter" named as the payee to an address that Link provided to Arroyo.

By October 2019, FBI agents had obtained a search warrant for Weiss's person and cell phone.

After watching Weiss drive away from his home, the agents pulled Weiss over by activating the lights on their vehicle.

The agents then approached Weiss's vehicle and said that they needed to speak with him, to which Weiss asked if he should get out of his car. The agent responded by asking Weiss if he would join them in the FBI vehicle and told him that he was not under arrest.

During the conversation, Weiss stated that he wanted to cooperate with the agents, but he made verifiably false statements to the agents. For example, he stated that he spoke with Katherine Hunter on the phone, and that he knew the check would ultimately go to Katherine Hunter before the August 22 meeting. This, of course, is not possible, as Link had not yet given Arroyo or Weiss Katherine Hunter's name, and they could not have learned of it independently because she was fictitious.

All told, the agents asked Weiss questions for approximately 1 hour and 40 minutes. At the end of the interview, the agents executed the warrant for Weiss's phone.

Before trial, Weiss moved to suppress the statements he made to the FBI agents, claiming that he should have been given *Miranda* warnings before the conversation. The district court denied Weiss's motion, as well as his motion for reconsideration. Also before trial, the government moved to admit Arroyo's recorded statements as coconspirator statements under Federal Rule of Evidence 801(d)(2)(E). The district court granted the government's motion.

At trial, the jury heard evidence about the alleged scheme. For example, the jury heard that Weiss's company paid Arroyo's company from November 1, 2018 until October 1, 2019. The jury also heard that, during the same time, Arroyo became a very vocal and unrelenting advocate for sweepstakes legislation. Link testified about the August 2 and August 22 meetings, and federal agents testified about the materials sent by Weiss to Link and the conversation they had with Weiss before the execution of the search warrant.

During the trial, the court held multiple jury instruction conferences. During the conferences, Weiss's counsel objected to certain jury instructions.

After about six days of trial and approximately four hours of deliberation, the jury found Weiss guilty on all charges. Weiss requested that his sentencing be delayed until after the enactment of certain changes to the Sentencing Guidelines, but the district court refused, explaining that it would apply its ordinary schedule, with a slight delay to accommodate defense counsel's schedule.

At sentencing, the district court explained that it had to "apply the guidelines as they exist today, today, the day of sentencing." Sentencing Tr. 90:21–22. The district court continued that it was "not supposed to apply future guidelines that may or may not go into effect" but it could "consider them" and it would "consider them for the Section 3553 [factors]." *Id.* at 90:23–25. Later, the district court reiterated that it was imposing the guidelines as they were written at the time of sentencing, but that it would

consider the upcoming changes when evaluating the § 3553(a) factors.

The district court calculated the guidelines range to be 51 to 63 months, based on Weiss's offense level and criminal history category. Weiss sought leniency, but the government sought a sentence at the high end of the guidelines range, arguing that Weiss had shown no remorse.

The district court asked both parties to explain Weiss's culpability compared to that of Arroyo. The government argued that they were similarly culpable, but Weiss argued that only a subset of the payments were bribes, and that Arroyo was more culpable as the public official.

Before imposing the sentence, the district court discussed each of the § 3553(a) factors. In doing so, it remarked that it was concerned that Weiss did not internalize that he had committed a crime, and that it was concerned that Weiss may commit the same crime again. The district court also noted that although Arroyo pled guilty to one crime, the jury found Weiss guilty of seven crimes. Finally, the district court reiterated that it was considering the upcoming changes to the guidelines. Ultimately, the court imposed a sentence of 66 months, which was three months above the high end of the guidelines range.

Weiss now appeals, arguing that the district court erred in admitting the statements he made to the FBI agents and Arroyo's statements to Link, using a jury instruction that defined "official act," refusing to delay his sentencing, and in imposing a sentence of

66 months. We affirm the decisions of the district court.

II

We begin with Weiss's challenge to the admission of his statements to FBI agents. Weiss argues that his statements should be suppressed because the agents did not give him *Miranda* warnings. Whether *Miranda* warnings were required depends on whether Weiss was "in custody" when he spoke with the agents. *Miranda v. Arizona*, 384 U.S. 436, 477–78 (1966). "*Miranda* warnings are not required merely because the individual questioned by law enforcement officers is a suspect or is the focus of a criminal investigation. The suspect must be both 'in custody' and subjected to 'interrogation' before the *Miranda* warning[s] are required to be administered." *United States v. Budd*, 549 F.3d 1140, 1145 (7th Cir. 2008) (alteration in original) (quoting *United States v. Barker*, 467 F.3d 625, 628 (7th Cir. 2006)). The proper inquiry for whether an individual is "in custody" is "whether a reasonable person in the defendant's position would believe that he or she was free to leave." *United States v. Lennick*, 917 F.2d 974, 977 (7th Cir. 1990). The individual's subjective belief is not relevant. *Id.*

Custody is the touchstone for *Miranda* purposes, and the mere presence or execution of a search warrant is not dispositive of the custody inquiry. *See United States v. Madoch*, 149 F.3d 596, 600–01 (7th Cir. 1998) (analyzing whether defendant was "in custody" during the execution of a search warrant for *Miranda* purposes). Indeed, even if agents anticipated executing the search warrant, "[a] police-

man's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U.S. 420, 441–42 (1984). Even the *Mittel-Carey* case, upon which Weiss relied heavily in briefing and oral argument, turned on whether the defendant was "in custody." *United States v. Mittel-Carey*, 456 F. Supp. 2d 296, 308–09 (D. Mass. 2006), *aff'd,* 493 F.3d 36 (1st Cir. 2007). Thus, we must analyze whether a reasonable individual in Weiss's position would have felt free to terminate the interrogation and leave. *Howes v. Fields*, 565 U.S. 499, 509 (2012) (citation modified).

Whether an individual was "in custody" for the purposes of *Miranda* is a mixed question of law and fact, qualifying for independent appellate review. *United States v. Borostowski*, 775 F.3d 851, 859 (7th Cir. 2014). "Relevant factors include the location of the questioning, its duration, statements made during the interrogation, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of questioning." *Id.*

After considering the relevant circumstances, we conclude that Weiss was not in custody when he spoke with the agents. Weiss points to several factors, including that the agents pulled him over, said they "needed" to speak with him, asked him to join them in their police vehicle, did not limit their questions in scope or duration, locked the car doors during the conversation (an allegation that the district court rejected), and intended to execute the search warrant

after the conversation concluded. But viewed in the broader context, a reasonable person in Weiss's position would feel free to leave. The FBI agents stopped Weiss on a public street. Importantly, after pulling him over, the agents told Weiss that he was not under arrest and that the conversation was voluntary. The agents did not order Weiss out of his car, nor did they use handcuffs or other physical restraints to detain him. At one point, Weiss even left the police vehicle for his cell phone and then returned to the police vehicle. Even though the duration of the interview was approximately one hour and forty minutes, the length is largely attributable to Weiss's cooperation with the agents. And the agents' uncommunicated intent to execute the search warrant at the end of the conversation does not affect how a reasonable person in Weiss's position would have felt. *Berkemer*, 468 U.S. at 441–42. In all, a reasonable person in Weiss's circumstances would have felt free to terminate the conversation and leave. *Howes*, 565 U.S. at 509; *see Budd*, 549 F.3d at 1146 (voluntary conversation at police station not custodial for *Miranda* purposes).

Despite Weiss's insistence to the contrary, our conclusion does not carve out an exception to *Miranda* when officers execute search warrants. The custody and interrogation determinations remain the touchstone for *Miranda*, as the cases cited by the defendant recognize. *United States v. Burns*, 37 F.3d 276, 281 (7th Cir. 1994) ("Burns was thus not in custody for purposes of *Miranda*."); *United States v. Kim*, 292 F.3d 969, 978 (9th Cir. 2002) ("We therefore hold that Kim was 'in custody' when the police interro-gated

her without providing her with *Miranda* warn-ings, and AFFIRM the district court's order granting the motion to suppress Kim's statements to the po-lice."); *Mittel-Carey*, 493 F.3d at 39–40 ("[W]e con-clude that the district court was correct that Mittel–Carey was in custody at the time of his inter-rogation and therefore should have received *Miranda* warn-ings."). If the circumstances surrounding the execu-tion of the warrant would make a reasonable person feel that he or she could not leave, then *Miranda* warnings are required. We do not doubt that circumstances exist under which a reasonable individual who is the subject of a search warrant would not feel free to leave. But under the circumstances before us here, we come to the opposite conclusion.

Weiss also challenges the stop on Fourth Amendment grounds, arguing that the stop was unreasonable because it was unduly prolonged. Before we proceed with our analysis, we must first clarify the issue before us. In his brief, Weiss argued exactly once that the "unduly prolonged detention" warranted suppression of the contents of his cellphone in addition to the statements he made to the agents. Weiss Op. Br. at 22. Aside from that singular mention of his cellphone, Weiss made no additional argument that the contents of his phone should be suppressed. Confused by the undeveloped request to suppress the contents of Weiss's cellphone made only in passing, the court asked at oral argument, "are you arguing that the contents of Mr. Weiss's phone should be suppressed?" Oral Argument at 44:59–45:05. Weiss's counsel responded, "[w]e are arguing that anything—no—we—the contents of the phone is

not really our dispute, it's the actual statements. The contents of the phone really had no evidence on it that was used at the trial, so it's not really that important to us. It's the actual statements because those statements were key[.]" *Id.* at 45:06–45:20. Weiss, therefore, has waived any argument that the contents of his cellphone should be suppressed. *See Anchor Glass Container Corp. v. Buschmeier*, 426 F.3d 872, 877 (7th Cir. 2005). ("We routinely permit parties to voluntarily abandon previously briefed issues at oral argument as a means of focusing the issues on appeal."). And, in any event, the length of the stop is directly attributable to Weiss's continuing the conversation, not unconstitutional behavior by the agents. "A consensual encounter between an individual and a law enforcement official does not trigger Fourth Amendment scrutiny." *United States v. Figueroa-Espana*, 511 F.3d 696, 702 (7th Cir. 2007). Under these circumstances, we cannot find that agents unduly prolonged Weiss's seizure.

III

We next turn to the district court's admission of Arroyo's statements under Federal Rule of Evidence 801(d)(2)(e), which allows the admission of out-of-court statements offered against a defendant that were made by the defendant's coconspirator during and in furtherance of a conspiracy. *See* Fed. R. Evid. 801(d)(2). Weiss argues that the district court improperly admitted Arroyo's statements to Link because no conspiracy existed between Arroyo and Link, nor did any conspiracy exist between Arroyo and Weiss. The district court preliminarily admitted Arroyo's statements following the government's

Santiago proffer. *See United States v. Davis*, 845 F.3d 282, 286 (7th Cir. 2016) (describing the *Santiago* proffer process). After the jury rendered its verdict, Weiss moved for a new trial on the basis that the government failed to prove that a conspiracy existed. The district court overruled Weiss's motion, finding that "Weiss and Arroyo […] worked together to attempt to purchase the support of Senator Link through corrupt means." R. 365 at 1–2.

We review the district court's decision to admit evidence for abuse of discretion. *United States v. Medrano*, 83 F.4th 1073, 1076 (7th Cir. 2023). This review is done with "great deference" to the district court. *Doornbos v. City of Chicago*, 868 F.3d 572, 579 (7th Cir. 2017). "We will reverse only if no reasonable person would agree with the trial court's ruling and the error likely affected the outcome of the trial." *Perry v. City of Chicago*, 733 F.3d 248, 252 (7th Cir. 2013). We review for clear error the district court's findings as to whether a conspiracy existed, whether the defendant and the declarant were members of that conspiracy, and whether the statement was made in furtherance of the conspiracy. *United States v. Mahkimetas*, 991 F.2d 379, 382 (7th Cir. 1993). Courts may consider the statement at issue when determining whether it is a coconspirator statement, but the statement may not be the sole basis for admission. *Medrano*, 83 F.4th at 1076. Given the inherently secretive nature of conspiracies, which do not lend themselves to the creation of direct evidence of their existence, circumstantial evidence is sufficient. *See Davis*, 845 F.3d at 288–89.

At the outset, we set aside Weiss's arguments that Link could not have been a member of the conspiracy because he was a government informant. The trial court did not admit Arroyo's statements on the basis that Weiss and Link were coconspirators. Instead, our focus is whether the district court erred in determining that Arroyo's statements to Link were made in furtherance of a conspiracy between Weiss and Arroyo. Link's status as a government informant does not control the outcome of this inquiry. "It is universally held that the fact that one party to a conversation is a government agent or informer does not itself preclude the admission of statements by the other party—if he or she is a member of a conspiracy—under Rule 801(d)(2)(E)[.]" *Mahkimetas*, 991 F.2d at 383.

A conspiracy exists when there is "an agreement to commit some illegal act" and "the alleged coconspirator knew 'something of its general scope and objective though not necessarily its details.'" *Id.* at 382 (quoting *United States v. Cerro*, 775 F.2d 908, 911 (7th Cir. 1985)). Weiss asserts that "no independent conspiracy to bribe Link existed between Arroyo and Weiss," Weiss Op. Br. at 31, but the government presented ample evidence to the contrary. After Weiss began paying Arroyo, Arroyo became extremely vocal about passing sweepstakes legislation. So vocal, in fact, that at least one other state legislator began avoiding Arroyo because of his persistence. Then, after the gaming bill was passed without sweepstakes provisions, Weiss and Arroyo approached one of the gaming legislation's sponsors, Link. As the sponsor of the gaming bill, Link's

support was necessary to pass a trailer bill that would modify the gaming bill to include sweepstakes provisions. Even though Weiss was not present when Arroyo assured Link that he would be paid for his efforts, Arroyo's assurance still furthered the aims of the conspiracy between Weiss and Arroyo. And during a conversation approximately three weeks later, Arroyo gave Link a copy of the desired legislation, Weiss's business card, and a check with a blank payee line from Weiss's company.

The evidence also demonstrated the free passage of information and coordination between Arroyo and Weiss regarding Link's involvement. At the August 2 meeting, Arroyo told Link that he was being paid $2,500 per month, and "we'll talk to each other to make sure that you're rewarded for what you do […] for what we gonna do moving forward. Same way I'm getting paid—I'm getting paid […] $2,500 dollars a month." R. 323-1. Weiss then drove Arroyo to the August 22 meeting in which Arroyo gave Link Weiss's business card, a copy of the desired legislation, and a check to be paid from Weiss's company with a blank payee line. At Link's direction, Arroyo filled out the payee line, even though the check was from Weiss's company. Later, Link asked Weiss whether Weiss had sent him another check. In response, Weiss shared a photograph of a note with an address on it and said, "this is where [Arroyo] told me to send it." Trial Tr. 611:7–612:9. And shortly after Arroyo met with Link on August 22 and assured Link that Weiss would send Link a copy of the draft legislation, Weiss emailed Link a copy of the legislation. Further, during conversations with

the FBI, Weiss demonstrated knowledge of information that could have only been obtained through the Link-Arroyo chain. Namely, that he was paying "Katherine Hunter" a fictitious individual who had been fabricated by the FBI.

Under these circumstances, we cannot say that the district court clearly erred when it concluded that Weiss and Arroyo "worked together to attempt to purchase the support of Senator Link through corrupt means," R. 365 at 1–2, nor did it abuse its discretion in admitting the statements and denying Weiss's motion for a new trial. The evidence presented demonstrated that Weiss and Arroyo were aligned on the conspiracy's scope and objective. Although Weiss was not present when Arroyo told Link that he could be paid the "same way" and that once Link gets the "legislation […] we'll talk to each other to make sure that you're rewarded for what you do for […] what we gonna do moving forward," R. 323-1, Weiss's physical absence does not preclude the admission of these statements because they furthered Arroyo and Weiss's conspiracy. "This court has repeatedly held that a statement attempting to recruit new members to the conspiracy is 'in furtherance' of the conspiracy." *United States v. Cruz-Rea*, 626 F.3d 929, 937 (7th Cir. 2010) (citing cases); *see Mahkimetas*, 991 F.2d at 384 (no error in admitting statements from one conspirator in the absence of the other conspirator when a conspiracy is demonstrated by a preponderance of the evidence). In sum, the district court's conspiracy finding was not clearly erroneous, and it did not abuse its discretion in admitting the statements.

IV

Next, we turn to Weiss's challenge to the jury instructions. Our review here is for plain error because Weiss raises objections that are substantively different from those he raised before the district court. *United States v. DiSantis*, 565 F.3d 354, 362 (7th Cir. 2009); *United States v. Thomas*, 933 F.3d 685, 690, 695 (7th Cir. 2019). Even though Weiss states that he challenged the relevant portion of the instruction in R. 302, we have failed to find anything resembling the arguments that Weiss makes here—namely that the challenged instruction is overbroad and directs the verdict on an element of the crime—within that docket entry. Perhaps recognizing the difference between the arguments that he raised before the district court and those he raises on appeal, Weiss concedes that plain error applies. Weiss Reply Br. at 15.

To show plain error, Weiss must demonstrate "that there was an actual error, that the error was plain, that the error affected [his] substantial rights, and that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings." *United States v. Javell*, 695 F.3d 707, 713 (7th Cir. 2012) (alteration in original) (citation modified). To be a plain error, the error must be "obvious, crucial, and egregious." *Id.* (citation modified). "To show that an error affected a defendant's substantial rights, he must demonstrate that [the error] affected the outcome of the district court proceedings." *United States v. Lawson*, 810 F.3d 1032, 1040 (7th Cir. 2016) (alteration in original) (citation modified).

Weiss argues that the district court should not have instructed the jury that "promoting the enactment of legislation related to the sweepstakes industry by the Illinois General Assembly is an official act" because it improperly directed the verdict on a factual element of the crime. Weiss argues that it should have been for the jury to determine not just whether Weiss induced a public official to perform an official act in exchange for something of value, but also to determine whether the requested action constituted an official act at all.

In *McDonnell*, the Supreme Court clarified the contours of the term "official act" in the federal bribery statute. *McDonnell v. United States*, 579 U.S. 550 (2016). In doing so, the Supreme Court did not refrain from opining on what actions would constitute an "official act" in McDonnell's case. *Id.* at 572 ("For example, a decision or action to initiate a research study—or a decision or action on a qualifying step, such as narrowing down the list of potential research topics—would qualify as an 'official act.' […] In addition, if a public official uses his official position to provide advice to another official, knowing or intending that such advice will form the basis for an 'official act' by another official, that too can qualify[.]"). It seems that if the Supreme Court wished for "official acts" to be a question for the jury alone, then it would not have provided examples of specific acts that could constitute official action in McDonnell's case before remanding it. Separately, we note that some other circuits have not refrained from opining that some actions are clearly "official acts" after *McDonnell*. *See United States v.*

Burnette, 65 F.4th 591, 598 (11th Cir. 2023) ("[N]o one disputes (or could) that casting or abstaining from a vote on a covered matter, or agreeing to do either, would constitute the sort of act that triggers [the federal bribery statute's] prohibition."); *United States v. Roberson*, 998 F.3d 1237, 1251 n.19, 1251–52 (11th Cir. 2021) (stating "Representative Robinson's […] vote on SJR-97 is undeniably an official act" and opining that jury could properly conclude that attendance at meetings where Representative "intend[ed] and attempt[ed] to use his position as legislator to influence […] decisions" also constituted official act); *United States v. Boyland*, 862 F.3d 279, 291–92 (2d Cir. 2017) (no plain error despite jury instruction being erroneous after *McDonnell* when official acts included administrative decisions necessary to secure grant money, award demolition contracts, and enact zoning changes).

With this context in mind, we turn to *Lindberg*, a Fourth Circuit case upon which Weiss relies heavily. In *Lindberg*, the alleged "official act" was "the reassignment of a Senior Deputy Commissioner assigned to review Lindberg's insurance companies." *United States v. Lindberg*, 39 F.4th 151, 156 (4th Cir. 2022). In instructing the jury, the district court there stated, "the removal or replacement of a [S]enior [D]eputy [C]ommissioner by the [C]ommissioner would constitute an official act." *Id.* at 157 (alterations in original). On appeal, the Fourth Circuit found that "it was the role of the jury to determine whether conduct constitutes an official act" and, thus, the district court erred by defining "official act" in the jury instructions. *Id.* at 161.

At first glance, this instruction may look quite similar to the instruction given here. But further examination yields differences that are of note. For example, the instructions differ in their granularity. The official act at issue in *Lindberg* was the removal and replacement of the Senior Deputy Commissioner. There is often little room for debate or argument about whether an individual was, in fact, formally dismissed from their job and replaced by another person. By contrast, "promotion" is comparatively more capacious, allowing the jury more latitude in determining 1) whether Weiss induced a public official to promote the passage of sweepstakes legislation in exchange for something of value and 2) whether that "promotion" was no more than "set[ting] up a meeting, host[ing] an event, or call[ing] or talk[ing] to another public official"—all acts the jury instructions made clear were not official acts. R. 320-1, at 24–25. And separately, the promotion of passing legislation—particularly when done to other legislators—is more akin to those tasks that are at the epicenter of an official's duties than hiring and firing.

But even setting these differences aside, there is an even more fundamental difference that is fatal to Weiss's argument. At Lindberg's trial, the district court specifically forbade Lindberg from arguing that his action was not an official act. *Lindberg*, 39 F.4th at 163, 163 n.10. No similar prohibition was made here, nor does Weiss explain how the allegedly erroneous instruction affected the jury considering the other instruction, and in light of the evidence presented at trial. Remember, under plain error review Weiss must articulate how this allegedly

erroneous instruction affected the outcome of the trial. *Lawson*, 810 F.3d at 1040. And, as noted, the jury instructions as given gave Weiss plenty of room to argue that his actions did not constitute "promotion" and, even if they did constitute promotion, they did not constitute an "official act" as defined by the jury instructions.

During the trial, Link testified that he understood that he was being offered money "in exchange for pushing forward legislation" and that Weiss provided him with the desired legislation. Trial Tr. 614:21–615:2, 664:22–665:8. In closing arguments, the government stated "[Weiss] and Arroyo were pushing others to use their legislative powers to amend the law. That is an official act," *Id.* at 1427:25–1428:2, and "[t]hey were trying to change the law. And that is an official act," *Id.* at 1428:12–13, and "[w]hen Arroyo uses his official position to exert pressure on another official to perform an official act or to advise another official, that is official action. That's what he did here." *Id.* at 1555:19–23; *see McDonnell*, 579 U.S. at 572 (official act includes when "a public official uses his official position to provide advice to another official, knowing or intending that such advice will form the basis for an 'official act' by another official"). And shortly after the jury heard the instruction that "[p]romoting the enactment of legislation related to the sweepstakes industry by the Illinois General Assembly is an official act," the jury also heard that "[a] public official does not" perform an official act "if he does no more than set up a meeting, host an event, or call or talk to another public official." R. 320-1, at 24–25. For his part, Weiss argued repeatedly in

closing arguments that no official acts had occurred. Trial Tr. 1489:21–1490:5, 1507:7–10, 1508:15–19, 1512:1–2, 1519:5–11.

In his briefing, Weiss does not explain how this single line in the jury instructions, in context with the other jury instruction and against the backdrop of the entire trial, affected his "substantial rights." *Javell*, 695 F.3d at 713. Weiss does not account for the arguments he made during trial, namely in arguing that no official act occurred, nor does he explain how the inclusion of the challenged sentence changed the outcome of his trial, in light of the evidence presented and the arguments made. With all the necessary components in view, it is clear that the jury could have either acquitted Weiss on the basis that Weiss paid officials to do no more than "set up a meeting, host an event, or call or talk to another public official," R. 320-1 at 24–25, or they could have convicted him on the basis that he paid officials to try to amend the gaming law to include sweepstakes provisions. Weiss does not account for much of this broader context, nor does he account for the differences between the only case he cites, *Lindberg*, and the circumstances here.

It is not our responsibility to construct arguments for litigants. Failure to adequately explain one's argument is waiver, and we are left with many holes in Weiss's argument after reading his briefs. "Undeveloped and unsupported arguments may be deemed waived." *United States v. Thornton*, 642 F.3d 599, 606 (7th Cir. 2011).

But regardless of whether Weiss's argument is waived or not, it certainly does not demonstrate plain

error. *United States v. Sloan*, 939 F.2d 499, 502 (7th Cir. 1991) ("To determine whether a jury instruction was plain error, we must examine the entire trial record to see if the instruction had a probable impact on the jury's finding."). Against the backdrop we have elucidated above, and the actions claimed to be "official acts" at trial, we cannot conclude that the challenged sentence affected the outcome of the trial. *Lawson*, 810 F.3d at 1040.

Weiss's second argument, that the challenged instruction is overbroad, fails for similar reasons. The instruction immediately following the challenged instruction stated that an official does not perform an official act "if he does no more than set up a meeting, host an event, or call or talk to another public official," which matches the requirements outlined in *McDonnell*. R. 320-1 at 25; *see McDonnell*, 579 U.S. at 578. We must read the jury instructions comprehensively. *See United States v. Erramilli*, 788 F.3d 723, 730 (7th Cir. 2015). But even if we did find error, Weiss has again failed to articulate how any potential overbreadth affected the outcome of his trial, particularly given the "official acts" alleged at trial. Absent an effect on the outcome of the trial, Weiss cannot demonstrate plain error. *Lawson*, 810 F.3d at 1040.

V

Finally, we turn to Weiss's alleged sentencing errors. We review procedural errors in sentencing *de novo*, "assuming the objections on appeal are preserved." *United States v. Wilcher*, 91 F.4th 864, 869 (7th Cir. 2024). "If the district court erred, we apply the doctrine of harmless error to determine

whether resentencing is necessary." *Id.* After we review the sentence for procedural errors, "we review the substantive reasonableness of the sentence for abuse of discretion." *United States v. Campbell*, 37 F.4th 1345, 1349 (7th Cir. 2022).

Weiss argues that it is not clear what guidelines the district court used when calculating Weiss's sentence. This is a nonstarter. The district court was clear that it was applying the guidelines in effect at the time of sentencing, and that it would consider the mitigating effect of future guidelines in considering Weiss's § 3553(a) factors. It repeated this at least four times throughout the sentencing hearing. Weiss's argument that the district court may have enhanced his sentence because of the upcoming guidelines change is fanciful. While discussing the *mitigating factors* related to sentencing, the district court addressed the upcoming guidelines change. And, indeed, before the district court imposed its sentence, it explained that it had "taken into account fully the fact that the guidelines are likely to change in a direction that would be favorable to [Weiss]." Sentencing Tr. at 180:14–16. Weiss's arguments are unsupported by the sentencing transcript, and we find no error.

Weiss next argues that his sentence of 66 months was substantively unreasonable, especially in comparison to Arroyo who received a sentence of 57 months. We find no abuse of discretion. *Campbell*, 37 F.4th at 1349. The district court went to great lengths to explain the sentence it gave to Weiss, including why it departed upward from the guidelines range. Indeed, the district court opined on

the need for specific deterrence, remarking that, at times, it seemed like Weiss was questioning whether an offense had occurred. The district court also addressed the need for general deterrence, and it expressed concern that "the status quo […] is not working." Sentencing Tr. 174:14. And even though Weiss is correct that he was sentenced for a longer term of imprisonment than Arroyo, Arroyo accepted responsibility whereas Weiss did not. And, as the government argued and the district court acknowledged, Weiss stood to gain much more from the offenses than Arroyo. The district court considered Weiss's history and characteristics and the nature of Weiss's offenses. In all, the district court considered each of the § 3553(a) factors, as well as the arguments made by both parties when imposing its sentence, and it explained the reason for its above-guidelines sentence. We see no abuse of discretion. *See United States v. Hatch*, 909 F.3d 872, 874 (7th Cir. 2018) (per curiam) (affirming an explained above-guidelines sentence).

Finally, Weiss argues that the district court abused its discretion by refusing to delay sentencing until after upcoming guidelines changes went into effect. The district court did not abuse its discretion. *Campbell*, 37 F.4th at 1349. Delaying sentencing for possible changes in the guidelines is a slippery slope, and we cannot fault the district court for refusing the invitation to do so. Guidelines may or may not go into effect for several reasons, thus opening the possibility of delaying sentencing indefinitely. Moreover, it would be difficult for us to fashion any sort of rule that would determine how soon a

Guidelines change should go into effect to warrant a delay. Finding an abuse of discretion on this ground would only create administrative headaches for district courts and run the risk of uneven application among defendants. And separately, the district court made clear that it considered the upcoming guidelines changes as a mitigating factor when evaluating the § 3553(a) factors. Under these circumstances, we find no abuse of discretion.

For the reasons above, we AFFIRM the holdings of the district court.

Appendix C

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

October 21, 2025

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 23-3094

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* *v.* JAMES T. WEISS, *Defendant-Appellant*.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:19-cr-00805-2 Steven C. Seeger, *Judge*.

O R D E R

On consideration of the petition for rehearing and rehearing *en banc* filed by Defendant-Appellant on September 11, 2025, no judge in regular active service* has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing.

The petition for rehearing and rehearing *en banc* is therefore DENIED.

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* Circuit Judge Kolar did not participate in consideration of this petition.

Appendix D
[Filed: Aug. 4, 2022]

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois –
CM/ECF NextGen 1.6.3
Eastern Division

UNITED STATES OF AMERICA	
Plaintiff,	
v.	Case No.: 1:19-cr-00805
, et al.	Honorable Steven C.
Defendant.	Seeger

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, August 4, 2022:

MINUTE entry before the Honorable Steven C. Seeger as to James T Weiss: Telephone hearing held on the motion to suppress [88]. Defendant's appearance is waived for this hearing. The defense consents to proceed via telephone. For the reasons stated on the record, the motion to suppress [88] is denied. A telephone status hearing is set for 8/17/22 at 10:00 a.m. The court excludes the time through 8/17/22 under the Speedy Trial Act to serve the ends of justice, without objection. Excluding time will give counsel the reasonable time necessary for effective preparation of the case, which includes time for the defense to consult with the client to determine how to proceed with the case. That delay outweighs the interests of the public and the defendant in a speedy trial. Parties to the case, members of the public, and

the media will be able to participate in/listen to this hearing by dialing (888) 684−8852 and using access code is 9369830. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (jjr,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

Appendix E
[Filed: Mar. 20, 2024]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
v.	)	Case No. 19-cr-805-2
JAMES T. WEISS	)	Hon. Steven C. Seeger
	)	

ORDER

Defendant Weiss's motion to reconsider the rulings about the FBI interview (Dckt. No. 330) is hereby denied.

The motion is about the interview that Weiss gave to the FBI when they pulled him over in October 2019. This Court has issued several rulings on this topic during the course of the case. On August 4, 2022, the Court denied Defendant's motion to suppress in an oral ruling. *See* 8/4/22 Order (Dckt. No. 170); 8/4/22 Tr. (Dckt. No. 193-1). On May 17, 2023, a few weeks before trial, this Court denied Defendant's motion to reconsider. *See* 5/17/23 Order (Dckt. No. 237).

Defendant Weiss now moves to reconsider a second time, based on what he views as "new facts" revealed during the trial. *See* Mtn. to Reconsider (Dckt. No. 330).

Defendant argues: "The testimony of Agent Heide during trial was a change in the facts or newly

discovered information/evidence because the Defendant's requests for an evidentiary hearing on the motion to suppress were denied and as a result [t]he Defendant could not have subpoenaed Agent Heide to obtain such testimony and had no knowledge of this information until it was revealed during the trial." *Id.* at 2.

Defendant developed the argument in greater detail in his motion for a new trial.[1] *See* Mtn. for New Trial (Dckt. No. 328). Defendant basically argues that he was under arrest at the time of the FBI interview. The idea is that Weiss was not free to leave because the FBI had a search warrant. And if he wasn't free to leave, then the interview was a custodial interrogation.

Weiss argues: "Agents Heide's testimony during trial in relation to the search and seizure of Defendant clearly admits and proves Defendant was formally arrested and/or that he or that he was subjected to restraints of freedom such that the conditions of a formal arrest were closely approximated or attained during the interview. Specifically, the FBI was conducting operational activity consisting of executing search warrants on other targets and seized Defendant to restrain and prevent Defendant from destroying evidence on his phone in case he got wind of the operational activity on the other

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[1] In his motion to reconsider, Defendant transposed the numbers in the citation, by citing docket no. 382 instead of docket no. 328. (Docket no. 382 hadn't been filed yet.) *See* Mtn. to Reconsider, at 2 (Dckt. No. 330). The Court knew what counsel meant, and points it out only to avoid confusion for any interested reader.

targets. As admitted by Agent Heide during trial, once they stopped Defendant, he was not free to leave until they executed the search warrant. Hence, from the moment Defendant was seized he was not free to leave." *Id.* at 4 (errors in original).

Defendant contends that he was not free to leave until the search was over. "[W]hile Defendant was in custody the Agents interviewed the Defendant for a period of 1 hour and 30 mins and then executed the search warrant. Defendant was only free to leave after they executed the search warrant. As a result, the Defendant was in custody during the entire interview until the search warrant was executed." *Id.*

Agent Heide's testimony at trial does not support a new trial, suppression of the evidence, or any other relief.

As this Court previously explained (Dckt. Nos. 170, 237), Defendant gave a voluntary interview to the FBI. The agents told Weiss that he was not under arrest, and that the conversation was voluntary. *See* FBI Interview, at 1 (Dckt. No. 163) ("You're not under arrest or anything like that, we just, we have a couple of things we want to chat with you about.") (quoting the agent); *id.* at 2 ("[T]his is a voluntary conversation or whatever.") (quoting the agent); *id.* at 36 ("[T]his is completely voluntary. You can go at anytime.") (quoting the agent).

Weiss willingly engaged the agents in conversation. He told them that he wanted to cooperate, and so on. *Id.* at 9 ("I'm trying to be cooperative here."); *id.* at 36 ("And I want to cooperate.").

Weiss's argument seems to be that, if the FBI agents had executed the search warrant at the beginning of the interaction, then Weiss would not have been free to leave, so therefore Weiss was in custody during the interview.

That argument is counterfactual. Again, the FBI agents pulled Weiss over. They expressed a desire to talk with Weiss, and he voluntarily agreed. The search did not take place right away. Instead, the FBI revealed the existence of the search warrant near the end of the interview. The fact that the FBI later executed a search warrant does not undermine the voluntariness of an interview that came before the execution of the search warrant.

When Weiss agreed to talk, and started talking, he had no idea that a search warrant existed. At that point, the search warrant was in the FBI's back pocket. It is not as if the FBI (1) told Weiss that they had a search warrant; (2) placed him in custody during execution of the search warrant; and (3) interrogated him in the meantime.

Instead, the FBI conducted a voluntary interview, and when the interview was done, the FBI executed the search warrant. The FBI agents announced that they had a search warrant at the end of the interview, not the beginning. *See* 6/13/23 Trial Tr., at 942 (Dckt. No. 349). Voluntary interview first; execution of search warrant second.

The government played clips from the FBI interview for the jury. The transcript of the interview is 67 pages long, and the FBI revealed the existence of the search warrant on page 48 of 67. *See* FBI

Interview, at 48 (Dckt. No. 163). All of the clips involved statements that Weiss made *before* the agents revealed the existence of the search warrant. *See* Demonstrative Exhibits (Dckt. Nos. 323-3) (Clips A to G) (Clip A ends on p.19; Clip B ends on p.22; Clip C ends on p.28; Clip D ends on p.29; Clip E ends on p.31; Clip F ends on p.43; Clip G ends on p.34). So, Weiss made the incriminating statements before he knew about the search warrant.

An objective test governs whether a person is in custody. The question is whether a reasonable person "would have felt he or she was not at liberty to terminate the interview and leave." *See Thompson v. Keohane*, 51 U.S. 99, 112 (1995).

The fact that the FBI agents had a search warrant does not mean that Weiss was in custody during the interview. Weiss did not know about the existence of the search warrant until he had done a lot of talking. A reasonable person in Weiss's shoes would not have believed that he was in custody based on the search warrant, for a simple reason: he didn't know that there *was* a search warrant.

At trial, Agent Heide engaged the hypothetical, meaning the what-would-have-happened scenario of Weiss refusing to talk. The agent made clear that, if Weiss had refused to talk, then the agents would have executed the search warrant then and there. *See* 6/13/23 Trial Tr., at 886–87 (Dckt. No. 349). "We stopped him to ultimately execute our search warrant and conduct an interview with him. If he denied speaking with us and didn't want to participate in an interview, we still would have

executed the search warrant and he would have been free to leave." *Id.* at 886. The agent testified:

> Q: You told him it was a voluntary interview?
> A: Yes.
> Q: If he had told you that he did not want to speak, would you have executed the search warrant right away?
> A: Yes.

Id. at 945.

The interview did not take too long, either. It lasted about an hour and a half. *Id.* at 892. So, the duration cuts against custody. *See, e.g.*, *Stechauner v. Smith*, 852 F.3d 708, 715–16 (7th Cir. 2017) (describing a "ninety minute[]" questioning as "relatively short") (involving habeas review); *cf. United States v. Ceballos*, 302 F.3d 679, 694 (7th Cir. 2004) (describing two "forty-five minute periods of questioning" as "relatively short" when deciding whether a confession was voluntary). Based on the transcript, Weiss made most of the statements during the first half of the interview, too.

Defendant points to a number of other facts to support the notion that he was in custody at the time of the interview. He points to a collection of old facts, not new facts, such as the fact that two officers pulled him over and invited him to the FBI's car. *See* Mtn. to Reconsider, at 5– 6 (Dckt. No. 330). Those facts aren't new, and this Court already explained why Weiss was not in custody.

Finally, the motion says that Defendant previously requested an evidentiary hearing. *Id.* at 2. But after this Court pointed out that Defendant

made no such request (Dckt. No. 334), Defendant abandoned that suggestion. *See* Def. Supp. (Dckt. No. 335); *see also* 8/16/23 Order (Dckt. No. 338).

"[U]pon further review and consultation the Defense has realized that they did not request an evidentiary hearing. The Defense honestly believed they made requests for an evidentiary hearing but were mistaken and apologize to this court." *See* Def. Supp. (Dckt. No. 335). An evidentiary hearing would not have changed the result, either, given that the interaction with the FBI was recorded, and no material facts were in dispute.

Date: October 11, 2023 /s/ Steven C. Seeger
Steven C. Seeger
United States District Judge

Appendix F
[Filed: Oct. 25, 2023]

UNITED STATES DISTRICT COURT
Northern District of Illinois

UNITED STATES OF AMERICA	)	**JUDGMENT IN A CRIMINAL CASE**
v.	)	
	)	Case Number:
JAMES T. WEISS	)	1:19-CR-00805(2)
	)	USM Number: 74459-510
	)	
	)	Sheldon M. Sorosky
	)	Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on counts 1, 2, 3, 4, 5, 6, & 7 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18 U.S.C. § 1343 and 1346 Fraud By Wire, Radio, Or Television	08/2019	1
18 U.S.C. § 1343 and 1346 Fraud By Wire, Radio, Or Television	08/2019	2
18 U.S.C. § 1343 and 1346 Fraud By Wire, Radio, Or Television	08/2019	3
18 U.S.C. § 1341 and 1326 Frauds and Swindles	08/2019	4
18 U.S.C. § 666(a)(2) Converts To	08/2019	5

Own Use Property Of Another 18 U.S.C. § 666(a)(2) Converts To Own Use Property Of Another	08/2019	6
18 U.S.C. § 1001(a)(2) Making a False Statement to Law Enforcement	08/2019	7

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this District within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

October 11, 2023
Date of Imposition of Judgment

/s/ Steven C. Seeger
Signature of Judge
Steven C. Seeger, United States District Judge

Name and Title of Judge

October 25, 2023
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: Sixty-six (66) months as to Count 1 through 6; six (6) months as to Count 7 of the amended superseding indictment to run concurently.

☒ The Court makes the following recommendations to the Bureau of Prisons: The Court recommends Defendant be placed at FPC Yankton.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at on
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - ☒ before 2:00 pm on January 5, 2024.
  - ☐ as notified by the United States Marshal.
  - ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows: _____
_____
_____
Defendant delivered on _____to _____at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

MANDATORY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C § 3583(d)

Upon release from imprisonment, you shall be on supervised release for a term of:
Three (3) years as Counts 1 through 7 of the amended superseceding indictment to run concurrently.

The Court imposes those conditions identified by checkmarks below:

During the period of supervised release:

☒ (1) you shall not commit another Federal, State, or local crime.

☒ (2) you shall not unlawfully possess a controlled substance.

☐ (3) you shall attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, if an approved program is readily available within a 50-mile radius of your legal residence. [Use for a first conviction of a domestic violence crime, as defined in **§ 3561(b)**.]

☐ (4) you shall register and comply with all requirements of the Sex Offender Registration and Notification Act **(42 U.S.C. § 16913**).

☒ (5) you shall cooperate in the collection of a DNA sample if the collection of such a sample is required by law.

☒ (6) you shall refrain from any unlawful use of a controlled substance AND submit to one drug test within 15 days of release on supervised release and at least two periodic

tests thereafter, up to 104 periodic tests for use of a controlled substance during each year of supervised release. [This mandatory condition may be ameliorated or suspended by the court for any defendant if reliable sentencing information indicates a low risk of future substance abuse by the defendant.]

DISCRETIONARY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C § 3563(b) AND 18 U.S.C § 3583(d)

Discretionary Conditions — The court orders that you abide by the following conditions during the term of supervised release because such conditions are reasonably related to the factors set forth in **§ 3553(a)(1)** and **(a)(2)(B), (C), and (D);** such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in **§ 3553 (a)(2) (B), (C), and (D)**; and such conditions are consistent with any pertinent policy statement issued by the Sentencing Commission pursuant to **28 U.S.C. 994a**.
The court imposes those conditions identified by checkmarks below:

During the period of supervised release:

☒ (1) you shall provide financial support to any dependents if you are financially able to do so.

☐ (2) you shall make restitution to a victim of the offense under **§ 3556** (but not subject to the limitation of **§ 3663(a)** or **§ 3663A(c)(1)(A)**).

☐ (3) you shall give to the victims of the offense notice pursuant to the provisions of **§ 3555**, as follows:

☒ (4) you shall seek, and work conscientiously at, lawful employment or, if you are not gainfully employed, you shall pursue conscientiously a course of study or vocational training that will equip you for employment.

☐ (5) you shall refrain from engaging in the following occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in the following specified occupation, business, or profession only to a stated degree or under stated circumstances; (if checked yes, please indicate restriction(s)) .

☒ (6) you shall not knowingly meet or communicate with any person whom you know to be engaged, or planning to be engaged, in criminal activity and shall not:

☐ visit the following type of places: .

☒ knowingly meet or communicate with the following persons: Luis Arroyo and Terry Link.

☒ (7) you shall refrain from ☐ any or ☒ excessive use of alcohol (defined as ☐ having a blood alcohol concentration greater than 0.08; or ☐), and from any use of a narcotic drug or other controlled substance, as defined in **§ 102** of the Controlled Substances Act (**21**

U.S.C. § 802), without a prescription by a licensed medical practitioner.

☒ (8) you shall not possess a firearm, destructive device, or other dangerous weapon.

☐ (9)
- ☐ you shall participate, at the direction of a probation officer, in a substance abuse treatment program, which may include urine testing up to a maximum of 104 tests per year.
- ☐ you shall participate, at the direction of a probation officer, in a mental health treatment program, and shall take any medications prescribed by the mental health treatment provider.
- ☐ you shall participate, at the direction of a probation officer, in medical care; (if checked yes, please specify: .)

☐ (10) (intermittent confinement): you shall remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling [no more than the lesser of one year or the term of imprisonment authorized for the offense], during the first year of the term of supervised release (provided, however, that a condition set forth in **§3563(b)(10)** shall be imposed only for a violation of a condition of supervised release in accordance with **§ 3583(e)(2)** and only when facilities are available) for the following period .

☐ (11) (community confinement): you shall reside at, or participate in the program of a community corrections facility (including

a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of supervised release, for a period of months.

☐ (12) you shall work in community service for hours as directed by a probation officer.

☐ (13) you shall reside in the following place or area: , or refrain from residing in a specified place or area: .

☒ (14) you shall not knowingly leave from the federal judicial district where you are being supervised, unless granted permission to leave by the court or a probation officer. The geographic area of the Northern District of Illinois currently consists of the Illinois counties of Cook, DuPage, Grundy, Kane, Kendall, Lake, LaSalle, Will, Boone, Carroll, DeKalb, Jo Daviess, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago.

☒ (15) you shall report to the probation office in the federal judicial district to which you are released within 72 hours of your release from imprisonment. You shall thereafter report to a probation officer at reasonable times as directed by the court or a probation officer.

☒ (16) ☒ you shall permit a probation officer to visit you ☒ at any reasonable time or ☐ as specified: ,

☒ at home ☒ at work ☒ at school

☒ at a community service location

☒ other reasonable location specified by a probation officer

☒ you shall permit confiscation of any contraband observed in plain view of the probation officer.

☒ (17) you shall notify a probation officer within 72 hours, after becoming aware of any change in residence, employer, or workplace and, absent constitutional or other legal privilege, answer inquiries by a probation officer. You shall answer truthfully any inquiries by a probation officer, subject to any constitutional or other legal privilege.

☒ (18) you shall notify a probation officer within 72 hours if after being arrested, charged with a crime, or questioned by a law enforcement officer.

☐ (19) (home confinement)

☐ (a)(i) (home incarceration) for a period of __ months, you are restricted to your residence at all times except for medical necessities and court appearances or other activities specifically approved by the court.

☐ (a)(ii) (home detention) for a period of __ months, you are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-

ordered obligations; or other activities pre-approved by the probation officer.

- ☐ (a)(iii) (curfew) for a period of __ months, you are restricted to your residence every day.
- ☐ from the times directed by the probation officer; or ☐ from __ to __.
- ☐ (b) your compliance with this condition, as well as other court-imposed conditions of supervision, shall be monitored by a form of location monitoring technology selected at the discretion of the probation officer, and you shall abide by all technology requirements.
- ☐ (c) you shall pay all or part of the cost of the location monitoring, at the daily contractual rate, if you are financially able to do so.

☐ (20) you shall comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by you for the support and maintenance of a child or of a child and the parent with whom the child is living.

☐ (21) (deportation): you shall be surrendered to a duly authorized official of the Homeland Security Department for a determination on the issue of deportability by the appropriate authority in accordance with

the laws under the Immigration and Nationality Act and the established implementing regulations. If ordered deported, you shall not remain in or enter the United States without obtaining, in advance, the express written consent of the United States Attorney General or the United States Secretary of the Department of Homeland Security.

☒ (22) you shall satisfy such other special conditions as ordered below.

☐ (23) You shall submit your person, property, house, residence, vehicle, papers [computers (as defined in 18 U.S.C. 1030(e)(1)), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States Probation Officer(s). Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer(s) may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

☐ (24) Other:

SPECIAL CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C. 3563(b)(22) and 3583(d)

The court imposes those conditions identified by checkmarks below:

During the term of supervised release:

☐ (1) if you have not obtained a high school diploma or equivalent, you shall participate in a General Educational Development (GED) preparation course and seek to obtain a GED within the first year of supervision.

☐ (2) you shall participate in an approved job skill-training program at the direction of a probation officer within the first 60 days of placement on supervision.

☒ (3) you shall, if unemployed after the first 60 days of supervision, or if unemployed for 60 days after termination or lay-off from employment, perform at least 20 hours of community service per week at the direction of the probation office until gainfully employed. The total amount of community service required over your term of service shall not exceed 200 hours.

☐ (4) you shall not maintain employment where you have access to other individual's personal information, including, but not limited to, Social Security numbers and credit card numbers (or money) unless approved by a probation officer.

☒ (5) you shall not incur new credit charges or open additional lines of credit without the

approval of a probation officer unless you are in compliance with the financial obligations imposed by this judgment.

☒ (6) you shall provide a probation officer with access to any requested financial information requested by the probation officer to monitor compliance with conditions of supervised release.

☒ (7) within 72 hours of any significant change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments, you must notify the probation officer of the change.

☒ (8) you shall file accurate income tax returns and pay all taxes, interest, and penalties as required by law.

☐ (9) you shall participate in a sex offender treatment program. The specific program and provider will be determined by a probation officer. You shall comply with all recommended treatment which may include psychological and physiological testing. You shall maintain use of all prescribed medications.

☐ You shall comply with the requirements of the Computer and Internet Monitoring Program as administered by the United States Probation Office. You shall consent to the installation of computer monitoring software on all identified computers to which you have access and to

which the probation officer has legitimate access by right or consent. The software may restrict and/or record any and all activity on the computer, including the capture of keystrokes, application information, Internet use history, email correspondence, and chat conversations. A notice will be placed on the computer at the time of installation to warn others of the existence of the monitoring software. You shall not remove, tamper with, reverse engineer, or in any way circumvent the software.

☐ The cost of the monitoring shall be paid by you at the monthly contractual rate, if you are financially able, subject to satisfaction of other financial obligations imposed by this judgment.

☐ You shall not possess or use at any location (including your place of employment), any computer, external storage device, or any device with access to the Internet or any online computer service without the prior approval of a probation officer. This includes any Internet service provider, bulletin board system, or any other public or private network or email system

- ☐ You shall not possess any device that could be used for covert photography without the prior approval of a probation officer.
- ☐ You shall not view or possess child pornography. If the treatment provider determines that exposure to other sexually stimulating material may be detrimental to the treatment process, or that additional conditions are likely to assist the treatment process, such proposed conditions shall be promptly presented to the court, for a determination, pursuant to **18 U.S.C. § 3583(e)(2),** regarding whether to enlarge or otherwise modify the conditions of supervision to include conditions consistent with the recommendations of the treatment provider.
- ☐ You shall not, without the approval of a probation officer and treatment provider, engage in activities that will put you in unsupervised private contact with any person under the age of 18, and you shall not knowingly visit locations where persons under the age of 18 regularly congergate, including parks, schools, school bus stops, playgrounds, and child-care facilities. This condition does not apply to contact in the course of

normal commercial business or unintentional incidental contact

☐ This condition does not apply to your family members: [Names]

☐ Your employment shall be restricted to the judicial district and division where you reside or are supervised, unless approval is granted by a probation officer. Prior to accepting any form of employment, you shall seek the approval of a probation officer, in order to allow the probation officer the opportunity to assess the level of risk to the community you will pose if employed in a particular capacity. You shall not participate in any volunteer activity that may cause you to come into direct contact with children except under circumstances approved in advance by a probation officer and treatment provider.

☐ You shall provide the probation officer with copies of your telephone bills, all credit card statements/ receipts, and any other financial information requested.

☐ You shall comply with all state and local laws pertaining to convicted sex offenders, including such laws that impose restrictions beyond those set forth in this order.

☒ (10) you shall pay to the Clerk of the Court any financial obligation ordered herein

that remains unpaid at the commencement of the term of supervised release, at a rate of not less than 10% of the total of your gross earnings minus federal and state income tax withholdings.

☒ (11) you shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the prior permission of the court.

☐ (12) you shall pay to the Clerk of the Court $ as repayment to the United States of government funds you received during the investigation of this offense. (The Clerk of the Court shall remit the funds to (list both Agency and Address.)

☒ (13) if the probation officer determines that you pose a risk to another person (including an organization or members of the community), the probation officer may require you to tell the person about the risk, and you must comply with that instruction. Such notification could include advising the person about your record of arrests and convictions and substance use. The probation officer may contact the person and confirm that you have told the person about the risk.

☐ (14) You shall observe one Reentry Court session, as instructed by your probation officer.

☐ (15) Other:

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine
TOTALS	$700.00	$.00	$62,500.00

(continued)

AVAA Assessment*	JVTA Assessment**
$.00	$.00

☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to **18 U.S.C. § 3664(i)**, all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant **to 18 U.S.C. § 3612(f)**. All of the payment options on

Sheet 6 may be subject to penalties for delinquency and default, pursuant to **18 U.S.C. § 3612(g)**.

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the .

☐ the interest requirement for the is modified as follows:

☐ The defendant's non-exempt assets, if any, are subject to immediate execution to satisfy any outstanding restitution or fine obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $63,200.00 due immediately.

☐ balance due not later than , or

☐ balance due in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal (*e.g. weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal (*e.g. weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

> You shall pay to the Clerk of the Court any financial obligation ordered herein that remains unpaid at the commencement of the term of supervised release, at a rate of not less than 10% of the total of your gross earnings minus federal and state income tax withholdings.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	**Total Amount**	**Joint and Several Amount**	**Corres-ponding Payee, if Appropriate**

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Appendix G

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	Case No. 19 CR 805
Plaintiff,	)	
-vs-	)	Chicago, Illinois
JAMES T. WEISS	)	August 4th, 2022
Defendant.	)	10:51 a.m.

TRANSCRIPT OF PROCEEDINGS - Motion
BEFORE THE HONORABLE STEVEN C. SEEGER

TELEPHONIC APPEARANCES:

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Court Reporter:
AMY M. SPEE, CSR, RPR, CRR
Federal Official Court Reporter
United States District Court

219 South Dearborn Street, Room 2318A
Chicago, IL 60604
Telephone: (312) 818-6531
amy_spee@ilnd.uscourts.gov

[Pages 3-12]

motion to suppress. But first things first, as everyone knows, a criminal defendant has a right to an in-person hearing in the courthouse. It's part of the right to a public trial. But under the CARES Act, a defendant can waive that right and can agree to do things telephonically.

Mr. Nash, does the defendant acknowledge that he's got a right to an in-person hearing and does he waive that right this morning and consent to having a telephone conference?

MR. NASH: I do, Judge.

THE COURT: All right. Very good.

All right, folks. We are here for a ruling on defendant's motion to suppress, Docket No. 88.

By way of background, we last had a hearing on July 6th -- excuse me -- July 26th, 2022, so a little over a week ago. I ruled on a number of pretrial motions at that hearing, but I did not rule on the defendant's motion to suppress, which is the last remaining motion. Again, that's Docket No. 88.

In their filings, the parties quote extensively from a transcript from a traffic stop by the FBI on October 25th, 2019, in Maywood, Illinois, but the parties did not file a copy of that transcript on the docket, so the Court didn't have a copy, and I wanted to read it.

I wanted to read it because I thought it was important to get quotations in context. I do not mean to suggest in any way that anybody took anything out of context. Again, it's not my intent to suggest that at all.

I simply like reading things. I like reading things in context. I thought I needed to get the full picture of what happened during the conversation, so I wanted to read the whole thing.

So at the hearing last week, I ordered the parties to file a copy of the transcript. You folks did that. You did it right away. You filed the transcript on July 27th, 2022. It's Docket No. 163. So thank you for that.

I have now read the entire transcript from beginning to end.

Based on my review of the record, the motion to suppress is denied.

The motion is about a conversation between Defendant Weiss and a few FBI agents on October 25th, 2019, in connection with a traffic stop.

By way of background, on October 24th -- so the day before -- on October 24th, 2019, Magistrate Judge Valdez authorized a search warrant for the iPhone of defendant. Judge Valdez also issued a warrant to search the person of Defendant Weiss to seize his cell phone. The warrants authorized law enforcement to press Weiss's finger on the iPhone to unlock it.

The very next day, on October 25th, 2019, FBI agents pulled over Weiss in Maywood, Illinois. The FBI agents invited Weiss to join them in their vehicle, which Weiss did.

Weiss then chatted at some length with the FBI agents and made a number of statements during that long conversation.

There is a transcript of the entire conversation, as I've just mentioned. Again, it's Docket No. 163.

Defendant now moves to suppress the statements made by himself to the FBI in connection with that traffic stop. In particular, defendant moves to suppress the statements that he made while inside the FBI vehicle. He also seeks to suppress any evidence obtained from a search of his iPhone.

I'll address those arguments one at a time.

First, Weiss moves to suppress the statements that he made inside the FBI vehicle under *Miranda*.

As everyone is well aware, *Miranda* requires a custodial interrogation. And here, Weiss was not subjected to a custodial interrogation.

The Court finds that Weiss was not in custody during the conversation in question.

Whether someone was in custody is an objective determination. The question is whether a reasonable person would have felt that he or she was not at liberty to end the interview and leave.

Here, the Court concludes that Weiss was not in custody. A number of reasons support the conclusion that Weiss was not in custody during the conversation with the FBI agents.

Let me summarize them for you in no particular order.

First, Weiss voluntarily accepted the FBI's invitation to join them inside their vehicle. Basically, the FBI agents pulled Weiss over and asked Weiss to talk with them inside their vehicle, and he agreed. The agents didn't force Weiss to get inside their

vehicle. The agents also didn't say anything coercive to get Weiss to come inside their vehicle.

Second, Weiss was not physically restrained in any way before he entered the vehicle, and he was not physically restrained in any way once he was inside the vehicle. So there was no physical restraint on Weiss whatsoever.

Third, the FBI agents never told Weiss that he was under arrest. In fact, one of the agents told Weiss that he was not under arrest. That statement appears on the very first page of the transcript. It is one of the very first things that the FBI agents said to Weiss.

The quote, again, appears on Page 1.

The officer said: "If you want to jump in the back and get in with us real quick. You are not under arrest or anything like that. We just -- we have a couple of things we want to chat with you about."

The FBI agent told him that the conversation was voluntarily and that he could go at any time. That comment appears on Page 2 of the transcript, which means that it was one of the very first things that the FBI agent said.

The agent said: "This is a voluntary conversation."

He repeated the point on Page 36.

The FBI agent said: "This is completely voluntary. You can go at any time."

Fourth, the doors of the FBI vehicle were unlocked.

Fifth, there is no indication in the record that Weiss ever asked to leave the vehicle.

In fact, there is no indication in the record that Weiss ever asked to leave or that the FBI agents

refused a request to leave. So he never asked to leave, and they never prevented him from leaving.

In fact, at one point Weiss did leave the vehicle to get his iPhone from his car, and he did so voluntarily. He then voluntarily walked back and reentered the FBI vehicle.

So let me say that again.

He was pulled over. He voluntarily entered the FBI vehicle. There was a conversation about his phone. He then left the FBI vehicle, went back to his car, meaning Weiss's car. Weiss got his phone from his car and then turned to the FBI vehicle and entered the vehicle again for a second time.

That colloquy appears on Page 31 of the transcript.

I will tell you as an aside, at first blush when I first read the transcript, it wasn't a hundred percent clear from the transcript that Weiss had left the vehicle, meaning the FBI vehicle, returned to his car and then came back to the FBI vehicle. I had to read it a second time. But after reading the passage a second time, that's certainly how I read the transcript.

If you look on Page 1, Weiss said that his phone was inside his car. And then a few lines later, Weiss has his phone with him. So it's pretty clear from context that Weiss didn't have his phone, that he needed to go get his phone. He then moments later had his phone, which supports the reasonable inference that he went and left his -- left the FBI vehicle, got to his car and then returned with his phone.

The government in its brief contends that Weiss left the FBI vehicle and then went to his car

and then came back, and the defendant in his submission does not deny it. So it seems pretty clear to me, based on my review of the record, that Weiss left the FBI vehicle, got to his vehicle, and then returned for a second time to the FBI vehicle.

Sixth, Weiss responded repeatedly that he wanted to cooperate. He said that to the FBI agents over and over again. A good example is the passage on Page 36.

One moment here.

(Brief pause.)

THE COURT: He said: "I'm talking with you guys because I don't feel I have anything to hide or I'm not guilty of anything wrong. I would have lawyered up right away. I have plenty of lawyers. I got seven of them on retainer."

He goes on to say: "And I want to cooperate."

He made that comment again and again during the interview. And, again, he even got his iPhone in an apparent attempt to cooperate with the FBI agents.

Seventh, Weiss repeatedly made statements that are reflective of the fact that he understood he was having a voluntary conversation, and he never asked the FBI agents to stop the interview. It was a voluntary conversation. He knew what he was doing, and he expressed to the FBI agents that he was trying to cooperate.

Simply put, Weiss was not in custody. He was not placed under arrest. He had freedom of movement. A reasonable person would have felt free to leave. The conversation was voluntary. It was not a custodial interrogation.

It's true that the conversation took place inside the FBI's vehicle, and that's an important point, but the mere fact that the conversation took place inside a government vehicle or on government property is not enough to make a conversation of custodial interrogation.

I cite to you *United States v. Patterson*, 826 F.3d 450, Seventh Circuit 2016. So the motion to suppress the statements made to the FBI agents is denied.

The motion to suppress includes a second argument. Weiss argues that the FBI agents were required to *Mirandize* him -- in other words, to give him *Miranda* warnings -- before asking for his iPhone passcode. The Court denies that motion, too, for similar reasons. Again, Weiss was not in custody and it was not a custodial interrogation. Weiss repeatedly told the FBI agents that he had nothing to hide and that he wanted to cooperate. He voluntarily retrieved his iPhone from his vehicle. He later shared information from that iPhone with the FBI agents. Later, Weiss voluntarily gave the FBI agents his passcode.

Weiss argues that the FBI agents told him that they had a search warrant and then asked for his passcode. According to Weiss, the FBI agents implicitly suggested that the search warrant required him to reveal the passcode for his phone.

So, in other words, the argument basically is that he had -- the agents had a search warrant for the phone, but before asking for a statement, they had to *Mirandize* him.

I find that he did not need to be *Mirandized* because he was not in custody. I also don't read the

transcript the same way as the defendant. I don't think there was any implicit suggestion by the FBI agents that the search warrant entitled them to know his passcode and require him to divulge that information.

The key part of the testimony -- excuse me. The key part of the conversation appears on Page 48 of the transcript. The FBI agent said that he had a search warrant for the phone and that the FBI needed to take it. The agent then asked Weiss to confirm the phone number of the phone, and the FBI agent asked him for his passcode.

Let me just read into the record what was said on Page 48.

The agent said: "So, we have a search warrant for your phone."

Weiss responded: "Okay."

The agent then said: "We need to take it."

Weiss responded: "Okay."

The agent said: "Uhm, and this is the phone number that ends in . . ." and then he read the number.

And the defendant said: "Right."

And then the agent said: "Okay. So what's the passcode for this phone?"

And then the defendant gave the passcode, and then there was a colloquy about double-checking the passcode to make sure the FBI agent had the right passcode.

So that was the colloquy about it.

The context here is important. Up to that point in the conversation, Weiss had voluntarily answered lots and lots of questions. Again, the

passage in question appears on Page 48 of the transcript.

The questions and answers at that point span almost 50 pages. So there was lots and lots of water under the bridge. There was a long give-and-take, a long history of a back-and-forth with the FBI agent asking him questions.

By that point in the conversation, Weiss had demonstrated a willingness to voluntarily provide information and answer their questions. He demonstrated a voluntary willingness to answer questions over and over again.

The agent never told Weiss that the search warrant required Weiss to reveal his passcode. The agent never suggested to Weiss that the warrant required Weiss to make a statement and reveal his passcode. The agent did not put any pressure on Weiss or tell him that they were entitled to know the passcode in light of the search warrant.

Overall, the record reveals that Weiss repeatedly said that he wanted to cooperate and that he had nothing to hide. He made that point repeatedly.

As the Court reads the transcript, Weiss voluntarily provided his passcode and was under no compulsion or pressure from the government to do so, so the motion to suppress is denied.

Okay, folks. So that is my ruling. That takes care of the last remaining pretrial motion.

[End of Page 12]

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois –
CM/ECF NextGen 1.7.1.1
Eastern Division

UNITED STATES OF AMERICA Plaintiff,	
v.	Case No.: 1:19-cr-00805
, et al.	Honorable Steven C.
Defendant.	Seeger

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, May 17, 2023:

MINUTE entry before the Honorable Steven C. Seeger as to James T Weiss: Final pretrial conference held on May 17, 2023. The conference is continued to June 1, 2023 at 2:00 p.m. For the reasons stated on the record, Defendant's motion to dismiss the indictment (Dckt. No. [219]) and the motion to reconsider (Dckt. No. [193]) are denied. By May 26, 2023, for the reasons explained at the hearing, the parties must file a short supplement about whether the doors to the FBI vehicle were locked during the interview of Defendant Weiss. By May 26, 2023, the parties must submit a revised joint final pretrial order with the proposed case statement, witness lists, exhibit lists, proposed voir dire questions, jury instructions, stipulations, and so on. Mailed notice (jjr,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	Case No. 19 cr 805-2
Plaintiff,	)	
-vs-	)	Chicago, Illinois
JAMES WEISS	)	May 17, 2023
Defendant.	)	2:24 p.m.

TRANSCRIPT OF PROCEEDINGS - Pretrial Conference
BEFORE THE HONORABLE STEVEN C. SEEGER

APPEARANCES:

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UNITED STATES OF AMERICA
NORTHERN DISTRICT OF ILLINOIS
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United States District Court
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[Pages 12-29]

function where the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." That's *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.3d -- I beg your pardon -- 906 F.2d 1185, 1191, Seventh Circuit 1992.

Motions for reconsideration also may be appropriate where there is "a controlling or significant change in law or facts since the submission of the issue to the Court."

That's again the same case, *Bank of Waunakee*, 906 F.2d at 1191.

The Court assumes familiarity with the factual background, but I'm going to provide the following high-level preview and overview for context.

On October 24th, 2019, Magistrate Judge Valdez authorized a search warrant for the iPhone of Defendant Weiss. Judge Valdez also issued a warrant to search the person of Defendant Weiss to seize his cell phone.

The next day, FBI agents pulled over Weiss while he was driving. There is no indication that the agents had reason to effectuate the stop separate and apart from the search warrants.

In other words, I'm not aware of any indication that there was a driving-related violation. And the FBI, as far as I know, typically doesn't enforce local driving ordinances anyway. I think the nexus, as I understand it -- please somebody correct me if I'm wrong, but the reason for the traffic stop had to do with the search warrant and only the search warrant.

Is that correct, Counsel?

MS. O'NEILL: Yes, Your Honor. That's correct.

THE COURT: All right. After stopping Weiss, the agents invited Weiss to join them in their vehicle, which Weiss then did.

So let me say that again.

The FBI pulls over Weiss. They talk to him. They invited him to get out of his vehicle -- turn off his vehicle, get out of his vehicle, join them in their car, which he did.

Weiss then spoke with the agents for approximately 90 minutes, give or take. I think it was an hour and 40 minutes. But about an hour and a half, give or take.

The audio from the entire interaction was recorded. A transcript is on the docket. It's at Docket No. 163. It was filed on the docket on July 27th, 2022. I read the entire transcript from beginning to end before issuing my ruling on the motion to suppress.

Incidentally, I don't know that any of you were counsel of record when I issued that ruling. Is that right? I think I have four new cases. I know defense team has come and gone and come. You're back.

I don't think you were the counsel of record at the time; is that right?

MR. SOROSKY: I was.

THE COURT: You --

MR. SOROSKY: Mr. Usharovich hadn't popped up.

MR. USHAROVICH: (Indiscernible.)

THE COURT REPORTER: Microphone, please.

MR. USHAROVICH: (Indiscernible.)

THE COURT REPORTER: Counsel, I need you near a microphone.

MR. USHAROVICH: Sorry. I didn't hear you.

Your Honor, we both were part of the defense team at the time you ruled. It was after which -- when the motion to reconsider was drafted, that there was a falling out, and I withdrew, but Mr. Sorosky stayed the whole time.

THE COURT: Okay. Fair enough. Thank you.

That was by way of an anecdote. I was just curious to know who was here because there are a number of new faces.

But I'll get back to the ruling.

I read the entire transcript from beginning to end before issuing my ruling on the motion to suppress. That's the most important point.

Toward the end of the interview, the agents executed the search warrant for the iPhone. The transcript is 67 pages long. The first mention of the search warrant appears on Page 48.

So let me say that again.

In other words, two FBI agents pulled over Defendant Weiss. They invited him to enter their vehicle. They then conducted a lengthy interview. The entire interaction lasted about an hour and a

half, a little bit more, about an hour and 40 minutes. And the transcript is 67 pages long. The first mention of the search warrant appears on Page 48.

The parties do not dispute the facts underlying the defendant's motion to suppress with one possible exception that I wanted to raise *sua sponte*, something that I had noticed when going through the motion for reconsideration.

So let me take a bit of a detour and travel down a cul-de-sac with you folks on one factual point.

In the motion for reconsideration, on Page 6, defendant said that he "was isolated from the public, placed in an FBI vehicle, which Defendant asserted was locked with armed agents." That's Docket No. 193 at Page 6.

The suggestion that the FBI vehicle was locked jumped out at me when I read the motion for reconsideration. That wasn't my understanding, and it wasn't my recollection, either.

My recollection was that the doors of the FBI vehicle were unlocked, not locked. And I remembered saying that at my ruling. So I went back to the motion to suppress, and sure enough, on Page 2, defendant's brief said that Weiss was in the FBI's vehicle "from which he could not leave without the agents unlocking the door."

I'm referring there to Docket No. 88 at Page 2.

So in the original motion to suppress, it did look like there was one sentence where the defendant said that the doors of the FBI vehicle were locked. In that motion to suppress, defendant offered no citations to the record. Defendant offered no supporting declaration. Defendant offered no supporting affidavit. Defendant did not cite any FBI

report or any 302, anything like that. Defendant didn't cite anything in the record to support the notion that the car doors were locked. But I did not see anything from the government on that, either, when I went through the docket.

In my ruling on the motion to suppress, I gave a number of reasons why I believed that the interview was consensual and voluntary. I gave a number of reasons why I thought he was not detained. I concluded the defendant was free to leave at any time.

One of my reasons was the fact that the doors for the FBI vehicle were unlocked. That's one of the reasons I gave. That's reason number four.

The fact that the doors to the FBI vehicle were unlocked was not the main reason for my ruling. And it wasn't the most important reason, it wasn't a necessary reason either, but it was a reason. It was one of the things I said.

The fact that the FBI vehicle's doors were unlocked was one of the reasons, among many others, why I thought Weiss was not in custody at the time of the interview.

Sitting here today, to be perfectly candid with all of you, I don't remember what the basis was for my ruling that the car doors were locked. I just don't remember. I haven't had enough time to go back and drill down on that.

It is possible that someone said something at one of the hearings. It's possible that there is something in the record on that that I just couldn't find when I went back through it.

It could be that it's simply an inference from the record. I do think it's a fair inference from the

record that the doors were unlocked. After all, he was in the FBI vehicle, and then he got out of the vehicle and went back to his car and then came back into the FBI vehicle without asking anyone to unlock the doors.

There is no suggestion in the transcript that the doors were locked. For example, he never said, "Hey, can you unlock the doors? I've got to go get my phone." Nothing like that. There's no reference to anyone locking the doors or unlocking the doors.

So I think the best reading of the transcript is that the doors to the FBI vehicle were unlocked. I think candidly that's probably the basis for my ruling. But I want to be fully up front with you folks and say I just don't remember. I just don't remember.

I'm in the business of trying to get things right. I want to support all my findings. And I want to drill down on it. If I need to take another look at a finding, large or small, I'll do it.

So that's why I'm raising the issue *sua sponte* out of full candor. I don't remember the basis for my ruling on that one specific point. So I do want the parties to take a look at it and circle back with me and make a short submission. You know, a couple of pages will suffice. Just look at the record. We'll talk about that when I issue my ruling here shortly at the end. But I'd like to get a little more from the parties on that.

So with that little detour on the cul-de-sac in mind, I'm going to go back to my ruling on the motion for reconsideration.

In the motion for reconsideration, Weiss basically asks the Court to issue a ruling on his argument under the Fourth Amendment. Weiss

asserts that in his original motion to suppress, he made arguments under both the Fifth Amendment and the Fourth Amendment.

As Weiss understands this Court's oral ruling on that motion to suppress, Weiss believes that the Court resolved the argument under the Fifth Amendment but did not resolve the argument under the Fourth Amendment.

As he sees it, the Court "solely considered the issue of suppression under the 5th Amendment *Patterson* standard (when no search warrant is present) and never addressed the suppression under the 4th Amendment."

So basically, in the motion for reconsideration, defendant basically asks the Court to address his argument under the Fourth Amendment.

I'll say parenthetically, judges in general don't love getting motions for reconsideration, but they do exist for a reason. And if I missed something, I'm happy to take another look at it. I'm happy to address an argument. I candidly don't think I missed anything here for reasons that I'm going to explain. I thought my ruling covered the point, but I'm happy to address it and readdress it again so that there's no issue. I don't want anyone coming away from any of my rulings and feel like they weren't heard or feel like I didn't address something. So I'm happy to go back over it.

Weiss basically argues that a Fourth Amendment violation occurred in the execution of the search warrants. According to Weiss, agents unduly prolonged his detention during the traffic stop. The argument basically is about a prolonged detention, in his view.

Weiss argues as follows: "Once Defendant was seized pursuant to the search warrant the agents then immediately began to interrogate the Defendant instead of continuing with the search of his person and for the phone. The agents were required to immediately serve Weiss with a search warrant, search him, and seize the phone. Rather, the agents unduly prolonged the detention by conducting the interrogation. In doing so, the agents exploited or unduly prolonged the detention." I'm quoting the motion for reconsideration at Page 3.

Specifically, in support of his motion, Weiss asserts that the Court did not address controlling precedent, specifically, *Michigan v. Summers*, 452 U.S. 692 at 1981 and *United States v. Burns*, 37 F.3d 276, Seventh Circuit 1994.

Weiss also points to a district court case from the District of Massachusetts from 2006. That's *United States v. Mittel-Carey*, 456 F.Supp.2d at 296.

That case is distinguishable for the same reasons that *Summers* and *Burns* are distinguishable.

I've taken a look at all the cases. They don't support the suppression of the statements at issue here. Basically, *Burns* and *Summers* and *Mittel-Carey* involved defendants who were detained during the execution of search warrants.

So let me say that again.

The law enforcement officers there were executing search warrants and people couldn't leave. That's the concept.

The question in each case involves whether the detention of the individuals was reasonable during a search under the Fourth Amendment. In each case, the Court in question upheld the

constitutionality of the pre-arrest seizures. As I said a moment ago, a key point in each case was whether the individual was free to go during the search.

In both *Burns* and *Summers*, the individuals were not free to leave while a search took place. The detentions were involuntary, and they lasted as long as the search of the premises. In other words, the people weren't free to go while the search warrant was being executed.

In *Burns*, the defendant was detained for "less than ten minutes while the search warrant was being executed."

I'm citing there Page 280 of the decision.

In *Summers*, the respondent was detained in his home while law enforcement implemented a lawful search of his home.

So *Burns*, *Summers*, and *Mittel-Carey* all involved detention. They involved an individual who wanted to go but was not free to go. The person was not free to go while the law enforcement officers carried out the execution of a search warrant.

It was important in each case that the individuals wanted to go. Specifically, in *Burns*, the defendant "asked to leave the hotel room a number of times" during execution of the search warrant, but law enforcement officers "told her that she had to stay on the bed until the search was completed." *Burns*, 37 F.3d at 278.

Something similar happened in *Summers*. In *Summers*, the respondent was leaving his home as law enforcement officers approached to search the residence, and the respondent was stopped and detained during the course of the search. So the people wanted to get out of there, and they couldn't.

In *Burns* and *Summers* as well as *Mittel-Carey*, the person was not free to go. Those cases are not on point for a simple reason. Unlike those individuals, Weiss was free to go. Weiss engaged in a voluntary interview. Weiss was free to leave the premises. He sat for an interview voluntarily. He said over and over again that he wanted to cooperate and answer the law enforcement officers' questions. He volunteered information.

Weiss never asked to leave. Weiss never asked to end the interview. Weiss never said that he didn't want to answer any more questions.

And the FBI never told him that he was under arrest. The FBI never told him that he was not free to leave.

Quite the opposite. One of the very first things that the FBI told Weiss was that he was not under arrest. That statement appears in the middle of Page 1 of the transcript. It appears only a few lines down from the very beginning of the transcript. So right off the bat the FBI told Weiss that he wasn't under arrest, he was free to go.

Officer Heide said the following to Defendant Weiss: "If you want to jump in the back and get in with us real quick, you're not under arrest or anything like that, we just -- we have a couple of things we want to chat with you about."

And Weiss responded: "Sure."

Later, the FBI agents told Weiss that the conversation was voluntary. It happened only moments later on Page 2 of the transcript when the officers said: "So one of the main things is, you know, when we have a conversation, this is a voluntary conversation."

They repeated the statement later on. At Page 36 of the transcript, the FBI said: "And this is completely voluntary. You can go at any time."

There was no prolonged detention here. Weiss voluntarily and consensually engaged in an interview with law enforcement officers. It's that simple.

As the Court observed in its earlier ruling, a number of facts underscore the voluntariness of the encounter.

First, Weiss voluntarily accepted the FBI's invitation to join them inside their vehicle. The FBI didn't force Weiss to get in the vehicle. The FBI didn't say anything coercive to get him into their vehicle.

Second, Weiss was not physically restrained in any way before he entered the vehicle or after he entered the vehicle. In other words, he wasn't in handcuffs. He wasn't locked with his hands behind his back, anything like that.

Number three, FBI agents never told Weiss that he was under arrest. In fact, they told him that he was not under arrest. They told him several times that the conversation was voluntary.

Fourth, Weiss never asked to leave the vehicle. Weiss never asked to exit the encounter. The FBI agents never prevented him from leaving. In fact, quite the opposite. At one point Weiss exited the vehicle. He went into his car and got his phone and came back.

So let me say that again.

He was pulled over. He was in his car. He left his car. He got inside the FBI car. Then he voluntarily left the FBI's car, went back to his car,

got his phone and came back inside the FBI vehicle. He did all of that voluntarily.

Fifth, Weiss repeatedly said that he wanted to cooperate with the law enforcement officers.

Sixth, Weiss repeatedly made statements that reflected the fact that he understood that he was having a voluntary conversation.

The long and the short of it is this: Law enforcement did not prolong the voluntary interview. There was no prolonged detention. Weiss consented to the entire interview, and he was free to go at any time.

It is true that the interview lasted a long time, roughly an hour and a half. So it wasn't a brief interaction. It was over an hour. But when it comes to a Q and A, it takes two to tango. Weiss kept talking. He kept answering questions. He kept providing information. He kept saying that he wanted to cooperate. And he kept cooperating from beginning to end. And he did all of that voluntarily. That's my finding.

The interview may have lasted an hour and a half, but the length of the interview is not the yardstick when it comes to constitutionality. The length of an interview standing alone does not determine its constitutionality.

A long consensual interview is still consensual. If an interview is consensual, then an interview is constitutional, even if it's long.

The simple reality is that the interview lasted that long because Weiss continued to answer their questions. He sat there voluntarily and answered questions voluntarily. The interview lasted that long

because Weiss kept talking. And from the get-go, he knew that he was free to leave.

The interview lasted that long because Weiss kept saying, over and over again, that he had nothing to hide and that he wanted to share information and answer their questions.

In other words, Weiss himself played a significant part in the length of the interview.

I also would draw attention to the fact that just because it started with a traffic stop doesn't mean it wasn't a consensual interaction. The encounter may have begun with a seizure, meaning a traffic stop, but it soon evolved into a consensual interview. The Eight Circuit put this nicely in *United States v. Munoz*, 590 F.3d 916, 921, Eight Circuit 2010.

The Eight Circuit ruled: "If the encounter becomes consensual, it's not a seizure, the Fourth Amendment is not implicated, and the officer is not prohibited from asking questions unrelated to the traffic stop or seeking consent to search the vehicle."

To summarize as part of it, unlike the people involved in the *Summers* case and the *Burns* case, law enforcement here never required Weiss to remain where he was. In short, he was not seized within the meaning of the Fourth Amendment during the entirety of the voluntary interview. A reasonable person in Weiss's situation would have felt free to leave at any time.

All of this is a long way of saying the following, folks: Weiss was pulled over. He then engaged in a consensual interview. He voluntarily answered the questions. He didn't have an obligation to do so. He

was free at any time. There was no Fourth Amendment violation.

The Court, therefore, denies the motion for reconsideration on Fourth Amendment grounds.

Weiss next argues that the Court should reconsider its ruling under the Fifth Amendment. The argument also hinges on the search warrant. Weiss essentially asserts that his traffic stop pursuant to the search warrant rendered him in custody for purposes of *Miranda* during the entire conversation that followed.

He asserts: "When combining the search warrant with the standard factors to determine custody for *Miranda* purposes absent a search warrant, it's clear Defendant was in custody because the Defendant was the target of the search warrant."

As a result, as he sees it, any questioning that followed should have been limited in scope and duration. But in his view, law enforcement officers did not limit their questioning "to routine questions" and instead "immediately subjected Weiss to excessive questioning intended to elicit incriminating information during the execution of the search warrant." I'm quoting Page 6 of the motion for reconsideration.

Hence, in his view, "*Miranda* warnings were required."

I think that I was frankly clear on this point in my original ruling. I ruled that Weiss was not in custody for *Miranda* purposes during the interview. I don't want to belabor the point more than I've already belabored the point today. I'll simply note the following: Along the way, during my original ruling, I did consider the search warrant. You can

see it in Page 10. I stated: "The argument basically is that he had -- the agents had a search warrant for the phone, but before asking for a statement, they had to *Mirandize* him." Nevertheless, the Court found that "he did not need to be *Mirandized* because he was in custody."

In other words, I acknowledged the fact that a search warrant was in play, and I still ruled that he was not in custody.

In other words, the Court considered and the Court rejected Weiss's Fifth Amendment argument in its original ruling. The Court found that Weiss was not in custody for Fifth Amendment purposes, notwithstanding the fact that he was subject to a search warrant.

As I said: "He was not placed under arrest. He had freedom of movement. A reasonable person would have felt free to leave. The conversation was voluntary. It was a custodial interrogation." I'm quoting there Page 9 of the transcript.

So, therefore, I deny reconsideration on the Fifth Amendment grounds, too.

So all of that is a long way of saying, I don't mind at all that you filed a motion for reconsideration. I want to make sure that I've addressed everything. But for the reasons that I've just explained, the motion for reconsideration is denied. Okay? So that's my oral ruling on the motion for reconsideration.

There are two other pending motions. There is a motion *in limine* filed by each side, a consolidated motion. I am also working on a write-up for that as well. I aspired to have it to you before today's hearing. I may decide to convert it to an oral ruling,

if I must. I think it's easier on people to do it in writing if I can. So I will probably stick with that plan. So just stay tuned on that. Okay? I know what it's like to try cases. You want to pin down the evidentiary lay of the land. You want to know what's fair game and you want to know what's not fair game. You want to know what the rules are going to be for what evidence can come in. And I understand that, but just stay tuned on that. Okay? That's the best I can do today.

I do want to talk about some other things that we've got for the final pretrial conference. I did get your submissions. Thank you, folks. I'm looking at Docket No. 204 and 209.

I'll say as a general matter, I'm happy to discuss today anything and everything you folks want to discuss with an eye on the fact that we're going to be reconvening before

[End of Page 29]