

No. _____

IN THE

Supreme Court of the United States

TERRANCE PAYNE HAYES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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United States Court of Appeals
For the Eighth Circuit

No. 25-1649

United States of America

Plaintiff - Appellee

v.

Terrance Payne Hayes

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Western

Submitted: January 16, 2026
Filed: May 11, 2026

Before SMITH, BENTON, and ERICKSON, Circuit Judges.

ERICKSON, Circuit Judge.

Following a home invasion that left Terrance Hayes injured and the intruder dead, Hayes told investigators he had shot the intruder in self-defense using a firearm located in his home. Based on his admissions, Hayes was charged with being a felon in possession of a firearm and possessing a stolen firearm. Hayes moved to suppress the statements he made to law enforcement, arguing they violated his Fifth

Amendment right against self-incrimination. After the district court¹ denied Hayes's motion to suppress, he conditionally pled guilty and was sentenced to a 90-month term of imprisonment. Hayes appeals the district court's denial of his motion to suppress and the substantive reasonableness of his sentence. We affirm the denial of Hayes's motion to suppress and dismiss the appeal of his sentence.

I. BACKGROUND

In the early morning hours of July 17, 2023, Sioux City police officers responded to a 911 call from Hayes's residence indicating that an intruder had broken into the home. The intruder, armed with a knife, stabbed Hayes multiple times. Hayes managed to retrieve a firearm and shoot the intruder. When officers arrived, both Hayes and the intruder were transported to the hospital. Hayes was severely injured and required surgery, while the intruder died from his injuries. A search of Hayes's residence revealed a semiautomatic handgun underneath a couch.

Approximately an hour after the incident, Detective Justus Knudsen and another detective from the Sioux City police department interviewed Hayes at the hospital while he was awaiting surgery. During the six-minute interview, Hayes told detectives that he did not know the person who broke into his home or the reason for the attack. Hayes denied owning or possessing a gun, explaining that he shot the intruder with a gun he took from the intruder's waistband.

The next day, Detective Knudsen and two other detectives returned to conduct a follow-up interview of Hayes. When the officers arrived, Hayes was confined to a hospital bed recovering from his surgery. Hayes agreed to talk with the detectives and during the interview, which lasted an hour and twenty minutes, Hayes told the

¹The Honorable Leonard T. Strand, United States District Judge for the Northern District of Iowa, adopting the Report and Recommendation of the Honorable Kelly K.E. Mahoney, Chief United States Magistrate Judge for the Northern District of Iowa.

detectives that his wife began screaming when an intruder broke into their home. Hayes said he rushed into the living room to find a man armed with two knives. Hayes once again asserted that he was able to obtain a firearm from the intruder's waistband and shoot him while the two men struggled and the intruder was stabbing him.

The detectives were skeptical that Hayes had taken the gun from the intruder during a knife fight and pressed him to explain exactly how the gun had come into his possession. After repeated questioning, Hayes told the detectives that his friend "Mikey" had brought the gun to his house a week before the incident and that the gun was on the television stand at the time of the break-in. Over an hour into the interview detectives offered to leave and let Hayes rest, but Hayes insisted he was okay to continue talking. Detectives continued talking with Hayes about the break-in for approximately ten more minutes before leaving.

One week later, on July 24, Detective Knudsen visited Hayes at his home in Sioux City to obtain a release for Hayes's medical records. During that visit, Hayes again denied having a gun, and Detective Knudsen reminded Hayes that he had already told detectives the gun was in his home before the break-in.

On August 11, detectives transported Hayes to the Sioux City police station for another interview. Detective Knudsen read Hayes his Miranda rights and told him the detectives still considered him a victim. Hayes signed a Miranda waiver and continued talking with Detective Knudsen. During the interview, Hayes repeatedly told Detective Knudsen that the gun belonged to the intruder.

About 50 minutes into the interview, Hayes told Detective Knudsen that he had too much going on in his head and that he was "ready to go" home. Detective Knudsen left the interview room to see if Hayes's wife, who was also being interviewed by detectives, was finished and ready to leave. Hayes asked to wait in the hallway, but Detective Knudsen asked him to remain in the interview room.

Hayes then told Detective Knudsen, “That’s why I don’t like coming down here. If I’m not being detained, I would like to go.”

After a few minutes, Detective Knudsen returned to the interview room along with Detective Michael Sitzman. Detective Knudsen explained that they had a few more questions about Hayes’s prior statements about how he got the gun. Detective Sitzman told Hayes they did not believe that he took the gun from the intruder’s waistband. Detective Sitzman warned Hayes that if he continued to lie, they would shift the focus of their investigation from self-defense to murder. Hayes responded that he did not commit murder and stated, “If I’m not being detained, I would like to go.” Detective Sitzman cautioned Hayes, “Then we’re going to have to switch gears, and I’m just warning you that we’re going to probably turn this into a murder investigation.”

Detective Sitzman opened the door to the interview room and Sergeant John Sanders entered. Hayes again denied having the gun in his home. Sergeant Sanders explained to Hayes that the detectives were not trying to “jam him up” and simply needed to know where the gun was and how he got it so they could determine whether the shooting was self-defense or murder. Sergeant Sanders then left the interview room, and Hayes continued talking with Detectives Knudsen and Sitzman for another 20 minutes about the gun and how it came into his possession. After the interview concluded, Detective Knudsen drove Hayes and his wife home.

On November 16, 2023, Hayes was indicted on two counts: Count One—possession of a firearm by a felon, drug user, and person convicted of domestic violence, in violation of 18 U.S.C. §§ 922(g)(1), (3), (9) and 924(a)(8); and Count Two—possession of a stolen firearm, in violation of 18 U.S.C. §§ 922(j) and 924(a)(2). Hayes moved to suppress his statements to detectives during the July 18 interview at the hospital and the August 11 interview at the police station, arguing they were made in violation of his Fifth Amendment right against self-incrimination. The district court denied his motion, determining Hayes was not in custody during the July 18 hospital interview and his statements on August 11 were voluntary.

Hayes entered a conditional guilty plea to Count One, reserving only the right to appeal the denial of his motion to suppress. Hayes's advisory Sentencing Guidelines range was determined to be 57 to 71 months, but based on his extensive criminal history, the district court varied upward and sentenced Hayes to a 90-month term of imprisonment followed by three years of supervised release. Hayes appeals the denial of his motion to suppress and the substantive reasonableness of his sentence.

II. DISCUSSION

A. Motion to Suppress

We apply a mixed standard of review to a district court's denial of a motion to suppress. United States v. Lowry, 935 F.3d 638, 641 (8th Cir. 2019). "The trial court's findings of fact are reviewed for clear error and its denial of the suppression motion is reviewed *de novo*." Id.²

1. July 18 Hospital Interview

Hayes contends the statements he made to detectives while hospitalized should be suppressed because he was in custody but not read his Miranda rights prior to questioning. A suspect subject to custodial interrogation "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda v. Arizona, 384 U.S. 436, 479 (1966). Even

²Because district courts have discretion to permit untimely pretrial motions upon a showing of good cause, see Fed. R. Crim. P. 12(c), and the district court found good cause to allow the untimely filing, we decline the government's request to decide the issue under the abuse of discretion standard. See United States v. Hardison, 859 F.3d 585, 589 (8th Cir. 2017) (district court was within its discretion to consider a motion to suppress filed one day before trial).

so, police officers do not need to administer Miranda warnings every time they question someone. Oregon v. Mathiason, 429 U.S. 492, 495 (1977). Instead, warnings are required only when the person’s freedom is so limited as to render him “in custody.” United States v. LeBrun, 363 F.3d 715, 720 (8th Cir. 2004).

“The ultimate question in determining whether a person is in ‘custody’ for purposes of Miranda is whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” United States v. Williams, 760 F.3d 811, 814 (8th Cir. 2014) (internal quotations omitted). “To resolve this inquiry, we consider the circumstances surrounding the questioning and whether, given those circumstances, a reasonable person would have felt free to terminate the questioning and leave.” United States v. Ferguson, 970 F.3d 895, 901 (8th Cir. 2020).

We have used a nonexclusive six-factor analysis to determine whether an individual is in custody for purposes of Miranda. United States v. Griffin, 922 F.2d 1343 (8th Cir. 1990). Under the Griffin analysis, courts consider:

(1) [W]hether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning.

Id. at 1349. We do not apply the test mechanically, merely counting the factors on each side; rather, we consider the totality of the circumstances to determine whether a person was in custody. United States v. Czichray, 378 F.3d 822, 827 (8th Cir. 2004).

Applying the Griffin factors, we conclude that the district court did not err when it found that Hayes was not in custody during the July 18 hospital interview. The district court determined that the purpose of the interview was for detectives to learn the details of the home invasion. While Hayes contends the detectives should have advised him that he could decline to speak with them and could ask them to leave, this “general questioning of citizens in the fact-finding process” is not the type of custodial interrogation to which Miranda applies. Miranda, 384 U.S. at 477; see also Feltrop v. Bowersox, 91 F.3d 1178, 1182 (8th Cir. 1996) (interviews are non-custodial when the purpose is to “shed light on an unsolved crime”). Throughout the interview, detectives emphasized that they viewed Hayes as the victim and were merely trying to understand the circumstances and potential motive for the break-in. Such a fact-finding interview is not typically associated with custodial interrogation. See United States v. Jamison, 509 F.3d 623, 632 (4th Cir. 2007) (questioning was non-custodial where defendant was interviewed as a victim about the circumstances surrounding a shooting).

The district court also found that even though the detectives initiated the interview, Hayes talked freely with the detectives and even insisted that they stay and continue the interview after they offered to leave. The court described the tone of questioning as “pleasant” and noted that the detectives did not threaten to arrest Hayes on gun charges. See United States v. Axsom, 289 F.3d 496, 501-02 (8th Cir. 2002) (finding an interview non-custodial where the defendant was friendly and cooperative during the interview and voluntarily acquiesced to questioning). While the detectives suggested they did not believe Hayes’s story that the gun belonged to the intruder, they did not use deceptive questioning and “a reasonable person would expect diligent investigators to ask for clarification” when a witness’s statements revealed inconsistencies. Jamison, 509 F.3d at 631; see also United States v. Sanchez, 676 F.3d 627, 631 (8th Cir. 2012) (noting assertions that investigators believe the defendant is lying are not impermissibly coercive interview tactics).

Hayes also argues that he was in custody during questioning because his freedom of movement was severely restricted by his hospitalization and because he

was recovering from surgery. The district court determined that even though Hayes was confined to his hospital bed and unable to walk out of the interview, he was not in custody. Because “[t]he sole concern of the Fifth Amendment . . . is governmental coercion,” Colorado v. Connelly, 479 U.S. 157, 170 (1986), “[o]ur examination only relates to the restraint imposed by the [detectives],” Axsom, 289 F.3d at 503. Here, the detectives themselves placed no additional constraints on Hayes’s movement during questioning. See United States v. New, 491 F.3d 369, 373-74 (8th Cir. 2007) (concluding agents did not restrict a defendant’s freedom of movement when any physical restrictions were the result of the defendant’s hospitalization and agents did not impose additional restraints); see also Jamison, 509 F.3d at 632 (concluding the defendant was not in custody where he “was primarily restrained not by the might of the police, but by his self-inflicted gunshot wound, the medical exigencies it created, and the investigation he initiated”). Because Hayes’s immobility was caused by his medical exigencies and not by the detectives, his inability to move freely during the interview does not establish that Hayes was in custody.

Under these circumstances, a reasonable person would have felt free to terminate the questioning and ask the detectives to leave. Because Hayes was not in custody during the July 18 hospital interview, the district court did not err when it denied Hayes’s motion to suppress his hospital statements to detectives.

2. August 11 Police Station Interview

Hayes next contends his statements to detectives at the police station on August 11 were not voluntary because detectives: (1) told him at the time that they were not seeking to prosecute him on a firearms charge; (2) threatened him with a murder investigation if he did not answer truthfully about how he came into possession of the gun; and (3) continued questioning him after he invoked his right to remain silent. “A statement is involuntary when it was extracted by threats, violence, or express or implied promises sufficient to overbear the defendant’s will and critically impair his capacity for self-determination.” LeBrun, 363 F.3d at 724. When determining voluntariness, courts examine “the totality of the circumstances,

including both the conduct of law enforcement in exerting pressure . . . on the defendant and the defendant's ability to resist that pressure.” United States v. Sandell, 27 F.4th 625, 630 (8th Cir. 2022).

The detectives told Hayes they were not trying to “jam him up” on a gun charge and instead needed to know where the gun came from so they could understand why the intruder targeted Hayes’s home. The district court concluded that the detectives’ statements about not seeking to prosecute Hayes on a firearms charge were not so deceptive that they overcame Hayes’s will and rendered his admissions involuntary. Admissions obtained by making false promises during questioning do not render subsequent admissions involuntary unless “the overall impact of the interrogation caused the defendant’s will to be overborne.” United States v. Boslau, 632 F.3d 422, 428-29 (8th Cir. 2011). “Thus, it is not enough to show that the authorities’ representations were the but-for cause” of a defendant’s admissions. LeBrun, 363 F.3d at 725.

Even assuming Hayes understood the detectives’ statements as a promise, that promise failed to render Hayes’s admissions involuntary. See United States v. Brave Heart, 397 F.3d 1035, 1041 (8th Cir. 2005). At the time of questioning, detectives were merely trying to understand how Hayes came into possession of the gun used to kill a home intruder and determine whether the killing was murder or self-defense. Even though the detectives did eventually refer Hayes to federal prosecutors for possessing the gun as a felon, the district court found that considering the totality of the circumstances (“ . . . the relatively short length of the interrogation (an hour and half total) and Hayes’s familiarity with the criminal justice system”) the interrogation was not so coercive as to overbear Hayes’s will. There is no error in this factual finding, clear or otherwise, and Hayes has failed to point to any significant evidence in the record to bring this factual finding into question on appeal.

The district court also found that Hayes’s admissions were not rendered involuntary because the detectives suggested they would pursue a murder

investigation if Hayes did not tell them the truth about how he came into possession of the gun. In doing so, the district court noted that threatening a more thorough investigation is different and less concerning than threatening to bring specific charges, which this Court has said does not automatically render a suspect's admissions involuntary. See United States v. Williams, 793 F.3d 957, 963 (8th Cir. 2015) (threatening potential obstruction of justice charges did not automatically render a suspect's statements involuntary). As the district court recognized, at the time the detectives interviewed Hayes they had several theories about what had happened the night of the break-in. Given the inconsistencies in Hayes's statements about how he came into possession of the gun, investigating the incident as a homicide was not an impossibility. See Czichray, 378 F.3d at 829 ("It is appropriate for an investigator to advise a suspect of the potential course and consequences of a criminal investigation."). Under these circumstances, Hayes has not met his burden of showing that the detectives' statements about a murder investigation rendered his admissions involuntary.

Finally, Hayes challenges the district court's determination that he did not adequately invoke his Fifth Amendment right to remain silent. To invoke the right to remain silent and effectively cut off questioning, "a suspect must indicate 'a clear, consistent expression of a desire to remain silent.'" United States v. Adams, 820 F.3d 317, 323 (8th Cir. 2016) (quoting United States v. Johnson, 56 F.3d 947, 955 (8th Cir. 1995)).

Hayes's statements that he wanted to "go home" if he was not being detained are the type of "[i]ndirect, ambiguous, and equivocal statements or assertions of an intent to exercise the right to remain silent" that "are not enough to invoke that right for the purposes of Miranda." United States v. Ferrer-Montoya, 483 F.3d 565, 569 (8th Cir. 2007). This Court has held that "a statement about wanting to go home" is not a clear refusal to talk further because "[t]he prospect of going home would naturally be of great interest to any suspect undergoing interrogation." United States v. Simpson, 44 F.4th 1093, 1097 (8th Cir. 2022). "That [Hayes] reiterated the wish many times does not transform his expression of a desire to be elsewhere into an

unambiguous assertion of the right to remain silent.” Id. Even if Hayes had intended to invoke his right to remain silent, he continued talking with detectives for an additional 30 minutes, “never clarifying his earlier statement or otherwise unequivocally invoking his right to remain silent.” Adams, 820 F.3d at 323. Under these circumstances, Hayes did not clearly and unambiguously invoke his Fifth Amendment right to remain silent and terminate questioning.

Accordingly, the district court did not err when it denied Hayes’s motion to suppress.

B. Substantive Reasonableness

Hayes contends his 90-month sentence is substantively unreasonable, but, in his conditional plea agreement, he waived the right to appeal any sentencing issue unless the sentence imposed exceeded the maximum statutory penalty or was imposed in violation of his plea agreement. “An appeal waiver requires dismissal of an appeal if the plea agreement and waiver were entered into knowingly and voluntarily, if the appeal falls within the scope of the waiver, and if dismissal of the appeal would not result in a miscarriage of justice.” United States v. Scott, 627 F.3d 702, 704 (8th Cir. 2010) (citing United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc)).

Hayes does not suggest that his appeal waiver was involuntary or unknowing. At the change-of-plea hearing, the district court informed Hayes that he was waiving all appeal rights except for the right to appeal the denial of his motion to suppress. Hayes acknowledged that he had reviewed the appeal waiver with his attorney and understood its scope and effect on his right to appeal. See United States v. Valencia, 829 F.3d 1007, 1011 (8th Cir. 2016) (stating appeal waiver is knowing and voluntary where the court ensures the defendant understands the waiver and discussed the plea agreement and its contents with his attorney). Nor would enforcing the appeal waiver result in a miscarriage of justice. See Andis, 333 F.3d at 892 (an allegation that the district court abused its sentencing discretion is not a miscarriage of justice).

Because we conclude Hayes waived his right to appeal the substantive reasonableness of his sentence, we dismiss that claim.

III. CONCLUSION

The district court's denial of Hayes's motion to suppress is affirmed. Because Hayes waived his right to appeal his sentence, that claim is dismissed.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRANCE PAYNE HAYES,

Defendant.

No. CR23-4068-LTS-KEM

**ORDER ON REPORT AND
RECOMMENDATION**

I. INTRODUCTION

This case is before me on a Report and Recommendation (R&R) in which the Honorable Kelly K.E. Mahoney, Chief United States Magistrate Judge, recommends that I deny defendant Terrance Hayes' motion (Doc. 43) to suppress. *See* Doc. 56. Hayes filed timely objections (Doc. 57) and the Government filed a response (Doc. 59), along with its own objections (Doc. 59 at 3).

II. BACKGROUND

A. Procedural History

On November 16, 2023, the Grand Jury returned an indictment (Doc. 2) charging Hayes with possession of a firearm by a felon, drug user and person convicted of domestic violence, in violation of 18 U.S.C. §§ 922(g)(1), (3) and (9) (Count 1), and possession of a stolen firearm, in violation of 18 U.S.C. § 922(j) (Count 2). Judge Mahoney found good cause to extend the pretrial motions deadline, which I affirmed on appeal. Docs. 36, 47. Hayes filed his motion (Doc. 43) to suppress on May 28, 2024. The Government filed its resistance (Doc. 48) on June 12, 2024.

Judge Mahoney conducted a suppression hearing on July 1, 2024.¹ Doc. 55. The Government presented testimony from Sioux City Police Department Detective Justus Knudsen. *Id.* Judge Mahoney also received the following exhibits into evidence:

Government Exhibit 1: Detective Knudsen’s body camera video of July 17, 2023, interview;

Government Exhibit 2.1 and 2.2: Detective Knudsen’s body camera video of July 18, 2023, interview;

Government Exhibit 3: Detective Knudsen’s body camera video of July 24, 2023, interview;

Government Exhibit 4.1 and 4.2: Video recording of August 11, 2023, interview;
and

Defense Exhibit A: Hayes’ medical records (sealed) (Doc. 54).

See Doc. 58. Judge Mahoney filed the R&R on July 23, 2024.

B. Relevant Facts

Section I of the R&R contains detailed findings of fact. Doc. 56 at 2-7. Hayes has raised no objections to these facts. Doc. 57 at 1, n. 1. The Government states that it “objects to the facts found (*e.g.*, that strong arm-tactics were used by police)[].” Doc. 59 at 3. However, this objection concerns Judge Mahoney’s characterization of the facts in her analysis, not the facts set forth in the “Facts and Background” section. *See* Doc. 56 at 13 (describing the police’s tactics in Hayes’ interview as “strong arm”). As such, the “Facts and Background” section is incorporated herein. The facts described in that section will be referenced as necessary in my discussion of the parties’ objections.

¹ The hearing transcript is available at Doc. 58.

III. STANDARD OF REVIEW

A district judge must review a magistrate judge's R&R under the following standards:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1); *see also* Fed. R. Crim. P. 59(b). Thus, when a party objects to any portion of an R&R, the district judge must undertake a de novo review of that portion.

Any portions of an R&R to which no objections have been made must be reviewed under at least a "clearly erroneous" standard. *See, e.g., Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting that when no objections are filed "[the district court judge] would only have to review the findings of the magistrate judge for clear error"). As the Supreme Court has explained, "[a] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). However, a district judge may elect to review an R&R under a more-exacting standard even if no objections are filed:

Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the judge to review an issue *de novo* if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a *de novo* or any other standard.

Thomas v. Arn, 474 U.S. 140, 150 (1985).

IV. DISCUSSION

Hayes objects to the following conclusions in the R&R: (1) Hayes was not in custody during his July 18, 2023 hospital bed interview and thus was not required to be Mirandized; (2) the interrogation tactics during Hayes' August 11, 2023, police station interview were not so coercive as to overbear Hayes' will; and (3) Hayes did not invoke his right to remain silent when he stated that he wanted to leave if he was not being detained. Doc. 57. The Government objects to the following portions of the R&R: (1) Judge Mahoney's characterization of the facts that the police used strong arm tactics during Hayes' police station interview; (2) Judge Mahoney's finding that Hayes was in custody at the police station; and (3) Judge Mahoney's "dicta that it was 'clear' [Hayes] wanted to end the interview." Doc. 59 at 3.

A. The Hospital Bed Interview

Hayes first argues that he was in custody during the July 18, 2023, hospital bed interview, and thus law enforcement was required to advise him of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). Doc. 57 at 2. In *United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990), the Eighth Circuit listed six "decidedly non-exhaustive" factors to help determine whether an individual is in custody for *Miranda* purposes:

(1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning.

* * *

The first three of these factors may be fairly characterized as mitigating factors, that is to say the affirmative presence of one or more of these factors during questioning would tend to mitigate the existence of custody at the time of the questioning. Conversely, the remaining three factors may be characterized as coercive factors, which is to say that the affirmative presence of one or more of these factors during questioning would tend to aggravate the existence of custody.

Id.

The Eighth Circuit later clarified:

There is no requirement ... that the *Griffin* analysis be followed ritualistically in every *Miranda* case. When the factors are invoked, it is important to recall that they are not by any means exclusive, and that “custody” cannot be resolved merely by counting up the number of factors on each side of the balance and rendering a decision accordingly. Exploring the nuances of such vague factors as “voluntary acquiescence,” “strong arm tactics,” and “police-dominated atmosphere” in order to place them on one side or the other of a balancing scale may tend to lose sight of the forest for the trees. The ultimate inquiry must always be whether the defendant was restrained as though he were under formal arrest. And the court must consider whether the historical facts, as opposed to the one-step-removed *Griffin* factors, establish custody. The debatable marginal presence of certain judicially-created factors that ostensibly tend to “aggravate the existence of custody” cannot create the functional equivalent of formal arrest where the most important circumstances show its absence.

United States v. Czichray, 378 F.3d 822, 827-28 (8th Cir. 2004). As such, I will apply the *Griffin* factors to the July 18, 2023, hospital bed interview, but my “ultimate inquiry will ... be whether [Hayes] was restrained as though he were under formal arrest.” *Id.*; see also *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (“Although the circumstances of each case must certainly influence a determination of whether a suspect is ‘in custody’ for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.”).

Turning to the “mitigating” *Griffin* factors, under the first factor, law enforcement did not tell Hayes that the interview was voluntary or that he could ask the officers to leave. This factor supports a finding of custody. Under the second factor, Hayes may have been restrained by his injuries, but this factor only considers “the restraint imposed by the government agents.” *United States v. New*, 491 F.3d 369, 373 (8th Cir. 2007). Other courts have explained that a finding of restraint requires the police to have imposed “additional restraints” on the person being interrogated. *United States v. Jamison*, 509 F.3d 623, 629 (4th Cir. 2007) (quoting *United States v. Conley*, 779 F.2d 970, 973 (4th Cir. 1985)). Here, no such additional restraints were present. The officers arrived in Hayes’ room and calmly asked him questions, never giving the impression that Hayes could not ask them to leave. This factor weighs against a finding of custody.

Under the third factor, law enforcement initiated the interview, but this factor is less mitigating due to the fact that Hayes voluntarily acquiesced to the questioning, even asking officers to stay when they prepared to leave after about an hour. This factor neither weighs in favor nor against a finding of custody.

Turning to the aggravating *Griffin* factors, under the fourth factor, officers did not use strong arm tactics during the hospital interview, but rather spoke pleasantly with Hayes for about 90 minutes. See *United States v. Plumman*, 409 F.3d 919, 925 (8th Cir. 2005) (finding that defendant was not in custody although FBI interview “lasted a considerable period of time, an estimated three and one-half hours without intervening breaks”). Hayes argues that promising him he would not be prosecuted for a firearms charge constitutes a deceptive stratagem. Doc. 57 at 2. The officers stating that they did not want to “jam” Hayes with a firearms charge, but later referring his firearms offense to the United States Attorney’s Office for prosecution, may have been deceptive. However, the Eighth Circuit has explained that “some degree of coercion is part and parcel of the interrogation process and that the coercive aspects of a police interview are largely irrelevant to the custody determination except where a reasonable person would perceive the coercion as restricting his or her freedom to depart.” *United States v.*

LeBrun, 363 F.3d 715, 721 (8th Cir. 2004). Here, officers interviewed Hayes as a victim of an attack, and as part of that interview process were trying to get all the details from Hayes. Attempting to find out where the gun originated and implying that Hayes would not face gun charges if he was truthful would not make a reasonable person believe that he or she did not have the option to terminate the interview. As such, the officers' statements that they did not want to "jam" Hayes with a gun charge do not weigh in favor of custody.

As to the fifth factor, I find that the hospital room was not police dominated. In determining whether an interview is police dominated, the Eighth Circuit looks to the "place and length of the interrogation" as well as whether law enforcement take "full control of the scene" through actions such as "removing a suspect from the presence of third persons who could lend moral support". *Griffin*, 922 F.2d at 1352. Here, the only factor weighing in favor of police domination is the presence of three uniformed officers. The interview did not take place at a police station. Law enforcement did not remove third persons from the scene. Though a nurse who was attending to Hayes left shortly after law enforcement arrived, it does not appear that the officers asked her to do so. There is no indication that Hayes was prevented from requesting assistance from medical staff during the interview. Further, the interview was not of an exceptionally-lengthy duration and the police officers spoke to Hayes calmly. This factor weighs against a finding of custody. The sixth factor likewise weighs against a finding of custody, as Hayes was not placed under arrest at the end of the interview.²

² While Judge Mahoney correctly points out that the Eighth Circuit has deemphasized this factor, she also points out that the Supreme Court still considers whether a suspect was released at the conclusion of an interview to be an important factor in determining custody. *Compare United States v. Treanton*, 57 F.4th 638, 641 (8th Cir. 2023) (questioning why an arrest at the end of conclusion is a relevant factor when the ultimate inquiry is "how a reasonable man in the suspect's position would have understood his situation."), with *Howes v. Fields*, 565 U.S. 499, 509 (2012) (listing release after questioning as relevant factor). Because the Supreme Court still considers this to be a relevant factor, I will weigh it when considering whether Hayes was in custody.

In short, only one *Griffin* factor weighs strongly in favor of a finding of custody, while four factors weigh against a finding of custody. Of course, and as the Eighth Circuit has cautioned, the issue of “‘custody’ cannot be resolved merely by counting up the number of factors on each side of the balance and rendering a decision accordingly.” *Czichray*, 378 F.3d at 827. However, when considering the ultimate inquiry of “whether [Hayes] was restrained as though he were under formal arrest”, I find that he was not. *Id.* at 828. Three officers spoke to Hayes in a hospital room for a relatively short period of time in a calm manner, they did not assert control of the scene, they did not add any additional restraints to Hayes’ freedom of movement, they attempted to leave after about an hour but were summoned back by Hayes and no arrest was made at the conclusion of the interview. These circumstances do not bear the hallmarks of restraints that resemble formal arrest and should have led Hayes to believe that he was free to end the interview when he wished to do so. As such, Hayes’ objection to Judge Mahoney’s conclusion that he was not in custody during the July 18, 2023, hospital interview is **overruled**.

B. The Police Station Interview

Before discussing Hayes’ objections to the R&R’s conclusions regarding the August 11, 2023, police station interview, I will discuss two of the Government’s objections. First, the Government objects to Judge Mahoney’s conclusion that the police station interview became custodial after Hayes stated that he wished to leave. To determine whether the interview became custodial at that point, I will again apply *Griffin* and *Czichray*. This will also resolve the Government’s second objection, which addresses Judge Mahoney’s conclusion that the officers used strong arm tactics in the interview.

Judge Mahoney correctly identified Detective Sitzman’s entry into the room, just over 50 minutes into the interview, as the time when the tenor of the interview changed. Doc. 56 at 13. After this point, nearly every *Griffin* factor favors a finding of custody. Though Hayes was informed at the beginning of the interview that he could leave at any time, when he attempted to do so he was ordered back into the interview room and

questioning became more aggressive. He was not allowed to wait in the hallway for his wife and the officers blocked the interview room door. They also initiated the questioning after Hayes attempted to leave, even threatening to “switch gears” to a murder investigation if Hayes was not cooperative.

Further, I agree with Judge Mahoney that law enforcement used strong arm tactics. “Strong arm tactics can include confronting suspects with false or misleading witness statements, repeatedly lying to the suspect, or employing a good cop-bad cop routine.” *United States v. Peterson*, No. CRIM. 14-328 JRT/FLN, 2015 WL 1585507, at *7 (D. Minn. Apr. 2, 2015) (citing *United States v. Beraun-Panez*, 812 F.2d 578, 580 (9th Cir.1987)). Here, after Hayes stated that he wished to go home, Detective Knudsen and Detective Sitzman employed a “good cop-bad cop routine” with Knudsen playing the good cop by calmly speaking with Hayes and Sitzman playing the bad cop by raising his voice and threatening to “switch gears” to a murder investigation. At one point, there were three police officers in the room, with Sergeant Sanders blocking the door, which is made even more aggravating by the fact that Hayes had already stated that he wished to leave. Each of these facts weighs in favor of a finding that law enforcement used strong arm tactics. The Government’s objection to this finding is **overruled**.

I further find that the interview was police dominated. The Eighth Circuit has found that “Mutt and Jeff” (or “good cop-bad cop”) techniques contribute to a police-dominated atmosphere, and as discussed above, law enforcement employed such a technique here. *United States v. Carter*, 884 F.2d 368, 372 (8th Cir. 1989) (citing *Miranda*, 384 U.S. at 452, 455). Further, as discussed in the section regarding the hospital bed interview, “removing a suspect from the presence of third persons who could lend moral support” weighs in favor of a finding of custody. *Griffin*, 922 F.2d at 1352. Hayes attempted to leave the interview so that he could be with his wife but was ushered back into the interview room with multiple law enforcement officers. This supports a finding that the interview became police-dominated and thus weighs in favor of custody.

The only factor weighing against custody is that Hayes was not arrested at the end of the interview, however this is not enough to counterbalance the circumstances weighing in favor of custody. Further, I find that “[Hayes] was restrained as though he were under formal arrest.” *Czichray*, 378 F.3d at 828. After attempting to leave and find his wife, he was ushered back into the interview room on law enforcement’s schedule, the door was blocked and he faced increasingly-hostile questioning. These are not circumstances which would lead a reasonable person to believe that they are free to leave. The Government’s objection to Judge Mahoney’s conclusion that the police station interview became custodial is **overruled**.

Hayes objects to Judge Mahoney’s finding that he did not unambiguously invoke his right to remain silent when he requested to leave the interview. In arriving at this conclusion, Judge Mahoney relied on *United States v. Simpson*, 44 F.4th 1093 (8th Cir. 2022), *reh'g denied*, No. 21-2463, 2022 WL 4295416 (8th Cir. Sept. 19, 2022), and *cert. denied*, 143 S. Ct. 813 (2023). In *Simpson*, the Eighth Circuit stated:

[A] suspect's invocation of his right to remain silent must be clear and unequivocal. *Berghuis v. Thompkins*, 560 U.S. 370, 381-82, 130 S. Ct. 2250, 176 L.Ed.2d 1098 (2010); *United States v. Adams*, 820 F.3d 317, 323 (8th Cir. 2016).

Simpson's repeated statements that he wished to go home were not unambiguous invocations of his right to remain silent. “[T]he prospect of going home would naturally be of great interest to any suspect undergoing interrogation,” but like the Eleventh Circuit, we are not persuaded that a statement about wanting to go home “evidences a refusal to talk further.” *Moore v. Dugger*, 856 F.2d 129, 134 & n.1 (11th Cir. 1988). That Simpson reiterated the wish many times does not transform his expression of a desire to be elsewhere into an unambiguous assertion of the right to remain silent. Simpson was informed in the Miranda warnings that he had a right to remain silent, but he never asserted that right, and he continued to answer questions for more than fifty minutes after first stating that he wanted to go home.

Id. I agree with Judge Mahoney that *Simpson* is on point.³ Hayes may have reiterated his wish to leave the interview multiple times, but under Eighth Circuit precedent, this is not a “clear and unequivocal” invocation of his right to remain silent. As such, Hayes’ objection is **overruled**.

Relatedly, the Government objects to Judge Mahoney’s “dicta that it was ‘clear’ [Hayes] wanted to end the interview.” Doc. 59 at 3. The relevant section of the R&R reads:

To me, it seems clear that Hayes wanted to cut off questioning. But if remaining silent for two hours and forty-five minutes is ambiguous, and saying over and over again that you want to go home is ambiguous, then I feel bound by precedent to find that Hayes’s requests to leave were ambiguous.

Doc. 56 at 18. There is nothing objectionable or incorrect about Judge Mahoney’s analysis. She expressed her conclusion that, in her view, it appeared that Hayes wanted to cut off questioning. However, she then properly applied Eighth Circuit precedent and ruled in the Government’s favor. The Government’s objection is **overruled**.

Finally, Hayes objects to Judge Mahoney’s conclusion that the interrogation tactics during the police station interview were not so coercive as to overbear Hayes’ will. Doc. 57 at 3-5. Hayes argues that his incriminating statements during the police station interview were involuntary, and thus inadmissible, because he was falsely promised that he would not be prosecuted for a firearms charge, was threatened with a murder investigation when those promises failed and was not allowed to leave the interview when he requested to do so. *Id.* at 4. Under the Fifth Amendment’s right against self-incrimination and the Due Process Clause, the Government must show that a confession is voluntary before it may be used against a defendant at trial. *United States v. LeBrun*,

³ Judge Mahoney further pointed out distinguishing facts from the underlying district court opinion in *Simpson* but concluded that “*Simpson* paints with broad strokes and holds that when a suspect says he wants to go home—which would necessarily end the interview—he does *not* unambiguously indicate that he wants to end the interview.” Doc. 56 at 17. I agree.

363 F.3d 715, 719-20 (8th Cir. 2004). “[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was ‘compelled’ despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare.” *Berkemer v. McCarty*, 468 U.S. 420, 433, n. 20 (1984).

To determine whether a statement is involuntary, the Eighth Circuit has stated:

“A statement is involuntary when it was extracted by threats, violence, or express or implied promises sufficient to overbear the defendant's will and critically impair his capacity for self-determination.” *United States v. LeBrun*, 363 F.3d 715, 724 (8th Cir. 2004) (quoting *Simmons v. Bowersox*, 235 F.3d 1124, 1132 (8th Cir. 2001)). “We determine if a defendant's will has been overborne by examining the totality of the circumstances, including both the conduct of law enforcement in exerting pressure to confess on the defendant and the defendant's ability to resist that pressure.” *United States v. Brave Heart*, 397 F.3d 1035, 1040 (8th Cir. 2005). “Even assuming that a reasonable person would view [an officer's] statements as a promise, a promise made by law enforcement does not render a confession involuntary per se. It is simply one factor to be considered in the totality of the circumstances.” *Id.* at 1041 (quotations omitted).

Factors include “the degree of police coercion, the length of the interrogation, its location, its continuity, and the defendant's maturity, education, physical condition, and mental condition.” *United States v. Boslau*, 632 F.3d 422, 428 (8th Cir. 2011) (quotation omitted). “[T]actics, including claiming not to believe a suspect's explanations, making false promises, playing on a suspect's emotions, using his respect for his family against him, deceiving the suspect, conveying sympathy, and even using raised voices,” do not “render a confession involuntary ... unless ‘the overall impact of the interrogation caused the defendant's will to be overborne.’” *Brave Heart*, 397 F.3d at 1041 (quoting *Jenner v. Smith*, 982 F.2d 329, 334 (8th Cir. 1993)).

United States v. Magallon, 984 F.3d 1263, 1284 (8th Cir. 2021). I agree with Judge Mahoney that the interrogation tactics were not so coercive as to overbear Hayes’ will. Even accepting as true Hayes’ claim that the officers promised not to charge him with a firearms offense, the “overall impact” of this tactic was not enough to “cause[] [Hayes’] will to be overborne.” *Brave Heart*, 397 F.3d at 1041. Hayes is in his forties, describes

himself as “street smart” and has a long history dealing with law enforcement. Doc. 58 at 9, 47, 52; *United States v. Gallardo-Marquez*, 253 F.3d 1121, 1123-34 (8th Cir. 2001) (defendant’s average intelligence and prior contact with law enforcement weighed in favor of confession being voluntary).

While I have found that law enforcement converted a non-custodial interview into a custodial interview, the entire interview lasted a relatively short period of time, about one and a half hours, with the custodial portion lasting well under one hour. *See e.g., Jenner v. Smith*, 982 F.2d 329, 334 (8th Cir. 1993) (holding that “six or seven hour[]” questioning was not per se unconstitutionally coercive); *United States v. Makes Room*, 49 F.3d 410, 415 (8th Cir. 1995) (noting that interrogation lasting more than two hours was not coercive in duration); *Sumpter v. Nix*, 863 F.2d 563, 565 (8th Cir. 1988) (finding confession was voluntary despite a seven and one-half hour interrogation). Further, while physically keeping Hayes in the interview room weighs in favor of coercion, the fact that he had been Mirandized lessens the coerciveness of the police’s conduct. *Berkemer*, 468 U.S. at 433, n.20 (1984).

Hayes’ argument that law enforcement’s threats of a murder investigation constituted coercion sufficient to overbear his will also fails. Rather than being a coercive threat, Sitzman’s statement that they would “switch gears” to a murder investigation represented an “accurate representation[] of [Hayes’] predicament.” *Gallardo-Marquez*, 253 F.3d at 1123; Doc. 58 at 33. At the time of the police station interview, law enforcement had several theories about what had transpired the night of the shooting. Doc. 58 at 33. The fact that Hayes told inconsistent stories about the source of the gun could lend credibility to one of the theories of him as a perpetrator, leading to a murder investigation. *Id.* Thus, the truthfulness of the purported threats, when coupled with Hayes’ age, “street smart[s]” and history of police interaction, were not enough to “cause[] Hayes’ will to be overborne.” *Brave Heart*, 397 F.3d at 1041; *see also United States v. Sanchez*, 614 F.3d 876, 884 (8th Cir. 2010) (threatening to charge suspect with attempted murder and assault with a deadly weapon “was not a threat, but rather a truthful

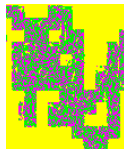
response” when suspect was later charged with assault with a deadly weapon).⁴ As such, I agree with Judge Mahoney that Hayes’ incriminating statements were voluntary. Hayes’ objection is **overruled**.

V. CONCLUSION

For the reasons set forth herein:

1. Hayes’ objections (Doc. 57) to the Report and Recommendation (Doc. 56) are **overruled**.
2. The Government’s objections (Doc. 59 at 3) to the Report and Recommendation (Doc. 56) are **overruled**.
3. The Report and Recommendation (Doc. 56) is hereby **accepted in its entirety**.

IT IS SO ORDERED this 27th day of August, 2024.



Leonard T. Strand
United States District Judge

⁴ Hayes argues that a murder investigation would have been “baseless,” however this characterization is only true with the benefit of hindsight. Doc. 57 at 3. Unlike in *Sanchez*, where the suspect was later charged with what law enforcement had threatened, Hayes was not later charged with murder. However, this does not mean that the officers’ threats of a murder investigation were baseless. Rather, this was a truthful statement at the time based on Hayes’ inconsistencies and different theories the police were investigating. *See* Doc. 58 at 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRANCE PAYNE HAYES,

Defendant.

No. 23-CR-4068-LTS-KEM

REPORT AND RECOMMENDATION

Defendant Terrance Payne Hayes moves to suppress unwarned statements he made to law enforcement while confined to a hospital bed, as well as later warned statements he made at the police station after requesting to leave. Doc. 43. The Government resists. Doc. 48. I held an evidentiary hearing on July 1, 2024, at which Sioux City Police Department Detective Justus Knudsen testified. Doc. 55. I admitted the following exhibits without objection:

- **Government Exhibit 1:** Detective Knudsen's body camera video of July 17, 2023 interview;
- **Government Exhibit 2.1 and 2.2:** Detective Knudsen's body camera video of July 18, 2023 interview;
- **Government Exhibit 3:** Detective Knudsen's body camera video of July 24, 2023 interview;
- **Government Exhibit 4.1 and 4.2:** Video recording of August 11, 2023 interview; and
- **Defense Exhibit A:** Defendant's medical records (sealed) (Doc. 54).

I recommend **denying** Hayes's motion to suppress (Doc. 43).

I. FACTS AND BACKGROUND¹

In the early morning hours of July 17, 2023, the Sioux City Police Department received a 9-1-1 call from Hayes's wife, Amanda. An intruder had kicked down the door to their house armed with knives and stabbed Hayes. Hayes shot the intruder. When law enforcement arrived, both men were seriously injured, and they were taken to the hospital.

A little over an hour later (around 5 in the morning), Detective Knudsen and another detective talked to Hayes at the hospital before he underwent surgery. Hayes stated he did not know the intruder or the reason for the attack. Hayes denied owning a firearm (he is a felon). He stated he shot the intruder with a gun taken from the man's own waistband. The interview lasted six minutes.

The next day, Detective Knudsen and two other detectives (all in plain clothes) returned to the hospital in the afternoon to talk about the attack with Hayes. Hayes lay in his hospital bed, hooked to monitors and tubes as he recovered from surgery. The detectives stood around his bed. They began by asking Hayes how he was feeling, and Hayes said not great. They then asked Hayes to describe what had happened the day before. Hayes said he heard his wife screaming from another room, and when he ran to her aid, he saw a man in their house armed with two knives. Hayes said he and his wife fought the intruder until Hayes managed to remove the firearm from the intruder's waistband and use it to shoot him.

Around thirty-two minutes into the interview, while discussing what happened during the altercation, Hayes said "you guys know what kind of person I am," that he's the kind of person who tries to deescalate situations, to which a detective said he had

¹ The facts in this section are taken from the testimony at the suppression hearing and the exhibits admitted into evidence.

spoken with Hayes “plenty of times and would agree with that.”² Around thirty-nine minutes into the interview, Hayes asked if the intruder had died from the gunshot wounds. When he learned the man had not survived surgery, Hayes looked upset and covered his face with his hospital gown. Detective Knudsen left the room to ask hospital staff for tissues, noting the interview would likely last an additional ten to fifteen minutes. When Detective Knudsen returned to the room, another detective was telling Hayes that he believed there was more to the story, noting Hayes might not know additional information, but people generally did not go around kicking down doors to random houses armed with knives.³ Law enforcement then pressed Hayes about where the gun had come from, suggesting they did not believe the gun belonged to the intruder. Under repeated questioning, Hayes admitted that a man named Mikey had brought the gun to his house about a week prior to the attack and that his shoes were there too (after law enforcement asked Hayes who Mikey was). Law enforcement continued questioning Hayes about the previous day’s events. A little over an hour into the interview, law enforcement stated they should let Hayes rest, but Hayes stated he was good. The detectives ultimately talked with Hayes for an hour and twenty minutes.

After Hayes’s discharge from the hospital, Detective Knudsen visited Hayes’s residence on July 24, 2023. He obtained a release for Hayes’s medical records and talked about the attack with Hayes and his wife Amanda in their living room for thirty minutes. Amanda said Mikey had robbed an associate of the intruder’s and led him to believe Hayes had the stolen property. Detective Knudsen said law enforcement believed Mikey had stolen a firearm. Hayes denied ever owning a gun, and Detective Knudsen reminded him that law enforcement already knew the gun had been at his house before in a shoebox.

² In addition to this indication that Hayes had previously spoken with police, the Pretrial Services Report (Doc. 17) outlines Hayes’s extensive criminal history.

³ Defendant’s brief contains a helpful transcript of this portion of the recording, from 40:05 to 47:46 (Gov’t Ex. 1).

Hayes responded Mikey brought the gun. Detective Knudsen asked whether Mikey had stolen the gun, and Hayes said he had no idea.

At the hearing, Detective Knudsen testified that Hayes had been viewed as a victim of a crime, rather than a suspect, during these interviews. But by the fourth interview in August, law enforcement had learned additional information, including that the firearm used to shoot the intruder had been stolen. Theories for the intruder's motive for coming to Hayes's house included that the attack was part of a gang initiation, that the intruder sought to recover the stolen firearm, or that Hayes had set the intruder up to rob him.

Midday on August 11, 2023, Detective Knudsen went to the Hayes residence and brought Hayes and his wife to the police station for an interview.⁴ Detective Knudsen interviewed Hayes in a separate room from his wife. At the beginning of the interview, Detective Knudsen told Hayes that he still looked at him as the victim, and Hayes started talking about what happened the night of the shooting. Detective Knudsen said that before they got too far into it, he wanted to read Hayes his rights. Detective Knudsen explained that Hayes was obviously not detained and could stop talking at any time. Detective Knudsen then read Hayes his *Miranda* rights, explaining that he informed everyone of their rights before an interview at the police station. Hayes indicated that he understood his rights. When Detective Knudsen asked if he was willing to talk to him, Hayes stated he was the victim, and Detective Knudsen agreed. Hayes then signed the *Miranda* waiver.

Detective Knudsen interviewed Hayes for fifty minutes, and Hayes repeatedly asserted the gun belonged to the intruder. As Detective Knudsen questioned Hayes on the assailant's motives for choosing his house to attack, Hayes said that there was too

⁴ Neither party elicited testimony at the suppression hearing on the interaction between Detective Knudsen and Hayes on August 11 prior to the recorded interview at the police station, beyond that Detective Knudsen went to Hayes's residence and "picked him up and transported him to the police station" and "retrieve[d] him and brought him to the police station."

much going on in his head and that he was “ready to go.” Gov’t Ex. 4.1, 51:20. Detective Knudsen said he would check to see if Amanda’s interview was finished and asked if Hayes needed a water. Hayes asked if he could wait outside in the hallway, and as Detective Knudsen said, “uh...,” Hayes got up and walked out the door, noting the interview room was hot. The video shows Hayes stepped out into the hallway for ten seconds before Detective Knudsen ushered him back into the interview room. Hayes said, “That’s why I don’t like coming down here. If I’m not being detained, I would like to go.” Detective Knudsen responded that Amanda’s interview would be done soon and then they would get him out of there. Hayes sat in the interview room by himself with the door closed for four minutes, then Detective Knudsen returned with Detective Sitzman to play “bad cop.”

The detectives sat down and told Hayes they were “almost done,” but first, they needed to go back to what Hayes said in the hospital about the gun.⁵ Detective Sitzman said video of the intruder showed he could not have had a gun in his waistband. He said he did not want a murder investigation when Hayes acted in self-defense, but if he was going to sit there and lie to them, they would switch gears. Hayes questioned law enforcement’s theory that the intruder sought to recover a stolen firearm, asking why the intruder would have come armed only with knives if he knew Hayes had a gun. Detective Sitzman asked why Hayes’s fingerprints were on the magazine then. Hayes said he did not know and did not commit murder. Detective Sitzman responded that if it was not murder, Hayes should cooperate. Hayes again said, “If I’m not being detained, I’d like to go.” Detective Sitzman said, “Then we’re going to switch gears and I’m just warning you that we’re going to probably turn this into a murder investigation.” Hayes said

⁵ Defendant’s brief contains a transcript of this portion of the recording, from 56:06 through the end of Government Exhibit 4.1, and from the beginning of Government Exhibit 4.2 through 4:24. I note that a statement from Detective Sitzman around 56:30 (Gov’t Ex. 4.1) seems to have been inadvertently omitted from the transcript.

something about acting in self-defense against an intruder who broke into his house, and Detective Sitzman said aggressively, rising from his chair, “And now he’s dead and you’re lying about the murder weapon.” Hayes responded that he was not lying about anything. Detective Sitzman said that they were giving Hayes the opportunity to explain and instead he was acting like he had something to hide.

Detective Sitzman opened the door to the interview room, and Sergeant Sanders entered. There were now three officers in the small interview room, Sergeant Sanders standing in between Hayes and the door, Detective Sitzman standing next to him, and Detective Knudsen sitting to the right of Hayes. Sergeant Sanders asked if Hayes was scared, and he said he was not. Sergeant Sanders said he understood why Hayes had the gun, since he would be dead without it. Hayes denied having the gun. Sergeant Sanders said that they were not trying to “jam [him] up” and that they did not “care where the gun came from,” but that they needed to know where the gun had been in the house prior to the shooting. Sergeant Sanders reiterated that if Hayes kept being dishonest, the self-defense case would become a murder case. Sergeant Sanders then left the room (Detectives Knudsen and Sitzman remained, both sitting down). Detective Knudsen said they needed to figure out why the intruder chose Hayes’s house, and the evidence pointed to the firearm. Detective Sitzman said they did not care that Hayes knew Mikey had left the gun at his house or that Hayes was a felon, but they had to be able to track where the gun came from to determine whether Hayes acted in self-defense or whether he called the home intruder over to rob him. Hayes then talked to the detectives (primarily questioned by Detective Sitzman) for an additional twenty minutes about the firearm and how it came to be in his possession. When Detective Sitzman said he was done with the interview, Detective Knudsen asked Hayes, “you’re ready to go, right?” Hayes said he was. Detective Knudsen said he would find Amanda, and he propped the door to the interview room open for Hayes in the meantime. Hayes waited in the interview room

for five minutes, then the detectives came back, ready to drive him and Amanda home. Law enforcement did not arrest Hayes or his wife at the conclusion of questioning.

The grand jury indicted Hayes on firearms charges in November 2023 (possession of a firearm by a felon, drug user, and person convicted of domestic violence; and possession of a stolen firearm). Doc. 3. I found good cause to reset the pretrial-motions deadline, which the district judge affirmed on appeal. Docs. 32-33, 36, 44-47. Hayes moves to suppress the statements he made from his hospital bed the day after the attack (on July 18) and after law enforcement denied his requests to leave the voluntary interview (on August 11), in which he admitted the firearm was at his house before the intruder's arrival.

II. DISCUSSION

A. Hospital Interview

Under *Miranda*, a suspect subject to custodial interrogation must first be advised that he has the right to remain silent and the right to an attorney, and he must waive these rights before the interrogation can proceed.⁶ Hayes argues that he was “in custody” for purposes of *Miranda* during the July 18 interview because he was confined to his hospital bed, but law enforcement did not advise him of his rights. “The government bears the burden of proving by a preponderance of the evidence that a defendant’s statements were not the product of a custodial interrogation.”⁷

⁶ *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966).

⁷ *United States v. Koons*, No. CR00-3041-MWB, 2001 WL 34008498, at *8 n.1 (N.D. Iowa Apr. 26, 2001) (citing *Miranda*, 384 U.S. at 475); *see also Holman v. Kemna*, 212 F.3d 413, 419 (8th Cir. 2000) (“constru[ing] the ambiguity in the record in favor of [the defendant to] . . . conclude that [the defendant] was subject to interrogation); *United States v. Sepulveda-Sandoval*, 729 F. Supp. 2d 1078, 1097-98 (D.S.D. 2010) (adopting report and recommendation) (noting that district courts are split regarding the burden of proof and that the Eighth Circuit has not addressed the issue).

A suspect is in custody for purposes of *Miranda* upon “formal arrest, or restraint on freedom of movement of the degree associated with a formal arrest.”⁸ The test is not subjective but rather, depends on “how a reasonable [person] in the suspect’s position would have understood [the] situation.”⁹ The totality of the circumstances must be considered, including the following (nonexhaustive) factors:

- (1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest;
- (2) whether the suspect possessed unrestrained freedom of movement during questioning;
- (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions;
- (4) whether strong-arm tactics or deceptive stratagems were employed during questioning;
- (5) whether the atmosphere of the questioning was police dominated; or,
- (6) whether the suspect was placed under arrest at the termination of the questioning.¹⁰

These factors are not “dispositive,” however, and are “merely one means of analyzing” the ultimate question¹¹—“whether a reasonable person in that position would have felt free to end the interview.”¹²

⁸ *United States v. Black Bear*, 422 F.3d 658, 661 (8th Cir. 2005) (citing *California v. Beheler*, 463 U.S. 1121, 1125 (1983)).

⁹ *United States v. Carter*, 884 F.2d 368, 370 (8th Cir. 1989) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 429 (1984)).

¹⁰ *United States v. Duggar*, 76 F.4th 788, 793 (8th Cir. 2023) (cleaned up) (quoting *United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990)); *see also Howes v. Fields*, 565 U.S. 499, 509 (2012) (relevant factors to determining custody include “the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of questioning” (citations omitted)).

¹¹ *United States v. Rezac*, No. 3:16-CR-30051-RAL, 2017 WL 2536540, at *3 (D.S.D. June 9, 2017) (adopting report and recommendation).

¹² *United States v. Aldridge*, 664 F.3d 705, 711 (8th Cir. 2011); *see also United States v. New*, 491 F.3d 369, 373 (8th Cir. 2007) (noting that when defendant was confined to a hospital bed

Here, law enforcement did not inform Hayes that he could decline to be interviewed or ask them to leave (the first factor). And law enforcement came to Hayes and initiated questioning (the third factor). But the other factors weigh against a finding of custody. Although Hayes was immobile as the result of his physical condition, in weighing the third factor, the court “focus[es] on the restraint imposed by the government agents.”¹³ “[T]o the extent [Hayes] felt constrained by his injuries, the medical exigencies they created (e.g., the donning of a hospital gown and the insertion of an I.V. line), or the routine police investigation they initiated, such limitations on his freedom” would not have affected a reasonable person’s view that he could decline the interview and ask the officers to leave.¹⁴ Three officers were present for the interview, but they talked to Hayes in measured tones and did not threaten to investigate Hayes for murder if he was noncooperative (as with the later interview). Law enforcement did repeatedly question Hayes’s story that the gun belonged to the intruder, suggesting that they would discover his fingerprints on the interior magazine or bullets and that Hayes’s story did not align with other witness statements. They also suggested Hayes would not be arrested on gun charges, repeatedly stating their focus was on the intruder’s motive for the attack (which law enforcement believed might have been to recover the stolen firearm). But when officers readied to leave about an hour into the interview, Hayes encouraged them to stay. Overall, I do not find that the atmosphere was police dominated. Law enforcement did not place Hayes under arrest at the conclusion of questioning. A reasonable person in Hayes’s position would have believed that law enforcement was

and physically unable to leave, the ultimate question was whether a reasonable person would have felt free “to terminate the interrogation and cause the agent to leave”).

¹³ *New*, 491 F.3d at 373.

¹⁴ *United States v. Jamison*, 509 F.3d 623, 629 (4th Cir. 2007).

investigating the armed break in (and that they perhaps knew the break in was targeted), but not that he was under arrest or anything other than a victim at that point.

I recommend finding that Hayes was not in custody during the interview in his hospital bed and that *Miranda* warnings were therefore not required.

B. Police Station Interview

In his original motion, Hayes argued that “[b]y threatening [Hayes] with the prospect of a trumped-up murder prosecution, detectives were able to coerce [Hayes] into confirming prior *un-Mirandized* statements from his hospital bed, made upon the promise that he would not be prosecuted for a firearms offense.” Doc. 43-1. At the hearing, Hayes additionally argued that he invoked the right to silence when he stated he wanted to leave the interview.

The Fifth Amendment right against self-incrimination and the Due Process Clause requires the government to prove a confession is voluntary before it can be used against the defendant at trial.¹⁵ “A statement is involuntary when it was extracted by threats, violence, or express or implied promises sufficient to overbear the defendant’s will and critically impair his capacity for self-determination.”¹⁶ In *Miranda*, the Supreme Court recognized the “inherent[ly] compulsi[ve]” nature of custodial interrogations, as police frequently employ interrogation techniques designed to psychologically pressure suspects into confessing.¹⁷ To combat these pressures and ensure confessions are made voluntarily, the Court required *Miranda* warnings prior to interrogating a suspect in custody, and a violation of the *Miranda* rule requires suppression of the statement. But the corollary is that in the absence of a *Miranda* violation, it is “rare” (although not

¹⁵ *United States v. LeBrun*, 363 F.3d 715, 719-20 (8th Cir. 2004) (en banc).

¹⁶ *Id.* at 724 (quoting *Simmons v. Bowersox*, 235 F.3d 1124, 1132 (8th Cir. 2001)).

¹⁷ 384 U.S. at 448-55, 467.

impossible) to find the defendant's will overborne and a statement involuntary.¹⁸

The court “determine[s] if a defendant's will has been overborne by examining the totality of the circumstances, including both the conduct of law enforcement in exerting pressure to confess on the defendant and the defendant's ability to resist that pressure.”¹⁹ Relevant “[f]actors include ‘the degree of police coercion, the length of the interrogation, its location, its continuity, and the defendant's maturity, education, physical condition, and mental condition.’”²⁰ Interrogation “[t]actics, including claiming not to believe a suspect's explanations, making false promises, playing on a suspect's emotions, . . . deceiving the suspect, conveying sympathy, and even using raised voices,’ do not ‘render a confession involuntary unless “the overall impact of the interrogation caused the defendant's will to be overborne.”’”²¹

Here, Hayes received *Miranda* warnings at the beginning of the police station interview and agreed to talk. He argues that his confession was involuntary because when he said he wanted to leave, he was threatened with murder charges. He also argues that law enforcement promised not to charge him with being a felon in possession. Threatening criminal charges if a suspect does not talk or promising leniency if he does

¹⁸ *Missouri v. Seibert*, 542 U.S. 600, 609 (2004) (plurality opinion) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984)).

¹⁹ *United States v. Magallon*, 984 F.3d 1263, 1284 (8th Cir. 2021) (quoting *United States v. Brave Heart*, 397 F.3d 1035, 1040 (8th Cir. 2005)).

²⁰ *Id.* (quoting *United States v. Boslau*, 632 F.3d 422, 428 (8th Cir. 2011)).

²¹ *Id.* (cleaned up) (quoting *Brave Heart*, 397 F.3d at 1041); see also *Miranda*, 384 U.S. at 448-55 (*Miranda* rule implemented to combat common interrogation tactics of isolating suspect in interview room; positing guilt as a fact; offering a legal excuse for the suspect's acts, such as self-defense; questioning suspect for hours with breaks only to avoid duress charges; using a good cop/bad cop routine; tricking the suspect with fake evidence suggesting guilt; and acknowledging the right to silence when invoked but suggesting exercising that right would make it look like the suspect had something to hide).

are relevant factors, but neither render a confession per se involuntary.²² And here, law enforcement threatened a murder *investigation*, rather than a murder *charge*, which somewhat lessens the coercive nature of the statement. In addition, the statement was truthful in that law enforcement were already investigating Hayes for murder (believing he might have lured the intruder to his home to rob him).²³ Law enforcement did not outright promise Hayes would not face firearms charges, although they did suggest they did not care that he possessed a gun as a felon and that they were not interested in bringing gun charges against him (Hayes is currently charged with being a felon in possession and possessing a stolen firearm). Overall, here, considering the totality of the circumstances—including the relatively short length of the interrogation (an hour and a half total) and Hayes’s familiarity with the criminal justice system—I do not find the interrogation tactics so coercive as to overbear Hayes’s will.²⁴ I recommend finding that Hayes’s confession was voluntary.

²² See *United States v. Englehart*, 811 F.3d 1034, 1043 n.3 (8th Cir. 2016) (“[A] promise made by law enforcement not to arrest or prosecute does not render a confession involuntary.” (quoting *United States v. Thunderhawk*, 799 F.3d 1203, 1206 (8th Cir.2015))); *United States v. Williams*, 793 F.3d 957, 962-63 (8th Cir. 2015) (holding that even if officer “threaten[ed] to charge [defendant] with obstruction of justice if [defendant] refused to speak with police, . . . such a threat would not automatically render [defendant’s] statement involuntary”); *United States v. Mendoza*, 85 F.3d 1347, 1351 (8th Cir. 1996) (“statement that [defendant] would be arrested immediately if she did not cooperate . . . was not so coercive as to deprive [defendant] of her ability to make an unconstrained decision to confess”).

²³ Cf. *United States v. Sanchez*, 614 F.3d 876, 884 (8th Cir. 2010) (rejecting factual finding that officers “threatened [suspect] with charges of attempted murder and assault with a deadly weapon” when defendant was later charged with the latter offense; the court held “[t]his was not a threat, but rather a truthful response” to a question about why defendant would be going to jail (quoting *United States v. Murdock*, 491 F.3d 694, 699 (7th Cir. 2007))).

²⁴ See also *United States v. Simpson*, 44 F.4th 1093, 1097-98 (8th Cir. 2022) (confession voluntary despite “repeated requests to go home”).

A closer issue is whether Hayes was in custody and invoked his right to silence. Up until the point Hayes stated he wanted to leave, he was not in custody. The court has no information on how Hayes came to be at the police station—other than that Detective Knudsen “retrieved” him from his house and transported him there. But at the beginning of the interview, Detective Knudsen told Hayes he was not being detained and could stop the interview at any time. Hayes was not in handcuffs. His path to the door was not blocked. And the interview at first consisted of a single officer (Detective Knudsen) asking Hayes questions in a congenial tone as a victim of a crime.

But a reasonable person would have felt differently once Detective Sitzman entered the room. By that point, Hayes had told Detective Knudsen he wanted to go and had even tried to leave the interview room, only for Detective Knudsen to gesture him back inside.²⁵ Instead of allowing him to leave, Detective Knudsen retrieved another detective, and the tone of questioning shifted to suggest Hayes had committed murder rather than been a victim acting in self-defense. When Hayes reiterated that he wanted to leave if he was not being detained, Detective Sitzman responded they would “switch gears” and the investigation would become one for murder. He also repeatedly accused Hayes of lying about the murder weapon and stood up so that Hayes would have had to pass him to reach the door. And shortly thereafter, a third officer (Sergeant Sanders) entered the room and stood in between Hayes and the door.

Almost all the *Griffin* factors weigh in favor of a finding of custody. Strong arm tactics were used and the atmosphere became police-dominated. Despite being told at the beginning of the interview he was free to leave at any time, law enforcement ignored Hayes’s requests to leave and even ordered him back into the interview room; this is not a case in which law enforcement reminded him he could leave any time in response to

²⁵ Detective Knudsen also perhaps told him to wait in the interview room; the recording does not capture what was said during the ten seconds Hayes was in the hallway.

his request to leave²⁶ or ended the interview within minutes of the request.²⁷ Although not handcuffed, Hayes did not have freedom of movement, since he was not allowed to wait in the hallway (or lobby or parking lot) for his wife. Law enforcement initiated the interview. Hayes was not arrested at the conclusion of the interview, but the Eighth Circuit has recently recognized this factor does not weigh heavily in favor of a finding of custody:

It is not clear why [an arrest at the end of questioning should be an indicium of custody] when the suspect does not know that an arrest is forthcoming: custodial status depends on whether a reasonable person would feel free to leave during the interview. As *Griffin* itself explained [quoting a Supreme Court case], “[t]he rule is that ‘a policeman’s unarticulated plan has no bearing on the question of whether a suspect is in custody at a particular time; the one relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.’”²⁸

²⁶ Cf. *United States v. Simpson*, No. 8:18CR333, 2020 WL 7130589, at *4-5, *10-11 (D. Neb. Aug. 27, 2020) (*Simpson R&R*) (defendant was not in custody when he came in for a voluntary interview then later repeatedly said he wanted to go home; officers told him multiple times he was free to leave any time in response to his statements about wanting to go home, defendant rose to leave multiple times but then sat back down again to continue the interview, and defendant was interviewed by one officer in an environment that was not police dominated), *report and recommendation adopted*, 2020 WL 5835134, at *2 (Oct. 1, 2020) (“Because [d]efendant was informed numerous times that he was free to leave and waived his *Miranda* rights; was not handcuffed or physically restrained and allowed to leave the interview room for bathroom and cigarette breaks; agreed to meet [the agent] at the police department; was not deceived or coerced into responding to questions; and was not arrested at the termination of the questioning, he was not in custody.”), *aff’d*, 44 F.4th at 1097 (declining to consider custody question).

²⁷ Cf. *United States v. Sharkey*, No. 3:22-CR-30045-RAL, 2023 WL 3495385, at *5, *7-8 (D.S.D. May 17, 2023) (when defendant came to police station for voluntary polygraph test and was told he could stop questioning any time, he was not in custody for duration of hour-long post-polygraph interview by two detectives, despite “use of strong-arm tactics or deceptive stratagems”; “[s]hortly after” (four minutes) defendant “finally said he wanted to go home, questioning ceased and [defendant] left”).

²⁸ *United States v. Treanton*, 57 F.4th 638, 641 (8th Cir. 2023) (quoting *Griffin*, 922 F.2d at 1356); *but see Howes*, 565 U.S. at 509 (listing release after questioning as relevant factor).

Here, a reasonable person would not have felt free to end the interview and leave once requesting to leave and being prevented from leaving the interview room, despite earlier assurances the interview was voluntary.

Hayes argues that his requests to leave amounted to an invocation of the right to silence. “During an interrogation, ‘if the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.’”²⁹ “A suspect invokes his right to remain silent by making ‘a clear, consistent expression of a desire to remain silent.’”³⁰ “To say that a person must clearly and consistently assert his desire to remain silent does not mean that he must repeat his clearly asserted desire to remain silent in order to halt continued questioning.”³¹ “Indirect, ambiguous, and equivocal statements or assertions of an intent to exercise the right to remain silent are not enough to invoke that right for the purposes of *Miranda*.”³² The court “consider[s] the defendant’s statements as a whole to determine whether they indicate an unequivocal decision to invoke the right to remain silent,”³³ but “may not construe a defendant’s assertion of *Miranda* rights to be ambiguous by looking only to subsequent responses to police questioning.”³⁴

²⁹ *United States v. Adams*, 820 F.3d 317, 322-23 (8th Cir. 2016) (cleaned up) (quoting *Miranda*, 384 U.S. at 473-74).

³⁰ *United States v. Ferrer-Montoya*, 483 F.3d 565, 569 (8th Cir. 2007) (per curiam) (quoting *United States v. Thompson*, 866 F.2d 268, 272 (8th Cir. 1989)).

³¹ *Simmons*, 235 F.3d at 1132 n.3.

³² *Ferrer-Montoya*, 483 F.3d at 569; see also *Berghuis v. Thompkins*, 560 U.S. 370, 381-82 (2010) (invocation of right to silence must be unambiguous).

³³ *United States v. Johnson*, 56 F.3d 947, 955 (8th Cir. 1995).

³⁴ *Simmons*, 235 F.3d at 1132 n.3 (citing *Smith v. Illinois*, 469 U.S. 91, 97-99 (1984) (per curiam)).

There are no magic words that must be spoken to constitute an invocation of the right to silence.³⁵ “Although a suspect need not ‘speak with the discrimination of an Oxford don,’ he must articulate his desire to” remain silent “sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be” an invocation.³⁶ For example, “say[ing] that he wanted to remain silent or that he did not want to talk with the police” are “simple, unambiguous statements” that invoke the “right to cut off questioning.”³⁷ On the other hand, the Supreme Court has held that remaining silent for the first two hours and forty-five minutes of a three-hour interrogation does not invoke the right to silence.³⁸ And the Eighth Circuit has held no invocation when a defendant said, “I don’t want to talk, man. I mean, I,” because “[t]he phrase ‘I mean’ signaled that [defendant] intended to clarify the statement, ‘I don’t want to talk, man,’” rendering it ambiguous.³⁹

In *United States v. Simpson*, the Eighth Circuit held that when defendant came to the police station for a voluntary interview, his “repeated statements that he wished to go home were not unambiguous invocations of his right to remain silent.”⁴⁰ The court reasoned that “[t]he prospect of going home would naturally be of great interest to any

³⁵ See *Seibert*, 542 U.S. at 611 (“[N]o talismanic incantation is required to satisfy *Miranda*’s strictures” (cleaned up) (quoting *California v. Prysock*, 453 U.S. 355, 359 (1981) (per curiam))).

³⁶ *Davis v. United States*, 512 U.S. 452, 459 (1994) (citation omitted) (quoting *id.* at 476 (Souter, J., concurring)) (discussing right to an attorney); see also *Berghuis*, 560 U.S. at 381 (“[T]here is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel at issue in *Davis*.”).

³⁷ *Berghuis*, 560 U.S. at 382.

³⁸ *Id.* at 375-76, 382.

³⁹ *United States v. Adams*, 820 F.3d 317, 320, 323 (8th Cir. 2016).

⁴⁰ 44 F.4th at 1097.

suspect undergoing interrogation,’ but . . . a statement about wanting to go home [does not] ‘evidence[] a refusal to talk further.’”⁴¹ The court relied on an Eleventh Circuit case in which the court held defendant did not invoke the right to silence by asking, “When will you all let me go home?”⁴² The Eleventh Circuit reasoned that defendant was requesting “information about when, in the future, [he] would be allowed to leave,” rather than “attempt[ing] to cut off questioning.”⁴³

Simpson could perhaps be distinguished as involving a request to go home, rather than a more general request to leave. In addition, the underlying district court opinion sets forth distinguishing facts based on the entire interaction between the defendant and the interrogating officer, including that the interviewing officer responded to an early request to go home by saying he was not blocking the door and reminding defendant he was free to leave any time; and that defendant rose from his chair to leave several times, only to sit back down again to continue the conversation.⁴⁴ But the Eighth Circuit opinion does not mention these facts. Neither does it seem to rely on (or mention) the “clear error” standard of review.⁴⁵ The Eighth Circuit’s opinion in *Simpson* paints with broad strokes and holds that when a suspect says he wants to go home—which would necessarily end the interview—he does *not* unambiguously indicate that he wants to end the interview. As the Ohio Supreme Court has explained:

Obviously, if [defendant] had gone home, he would also have stopped talking to the police. What is not clear, however, is whether his readiness to stop talking was independent of his desire to go home. What [defendant]

⁴¹ *Id.* (quoting *Moore v. Dugger*, 856 F.2d 129, 134 & n.1 (11th Cir. 1988)).

⁴² *Moore*, 856 F.2d at 134 & n.1.

⁴³ *Id.* at 134.

⁴⁴ *Simpson R&R*, 2020 WL 7130589, at *5, *11.

⁴⁵ *United States v. DeMarce*, 564 F.3d 989, 993 (8th Cir. 2009) (“Whether a person invoked his right to remain silent is a factual question for the district court, reviewed for clear error.”).

appears to have wanted was to be released. Talking to the police was a means to that end; he was trying to persuade them that he was innocent. Thus, his words did not necessarily mean that he wanted to stop talking, no matter what. If the police were not ready to let him go, he may well have wanted to keep trying to persuade them of his innocence.⁴⁶

Here, law enforcement told Hayes he was at the police station for a voluntary interview as a victim and could leave any time (so the Ohio Supreme Court's reasoning does not necessarily apply—to Hayes or the *Simpson* defendant). Detective Knudsen read Hayes his *Miranda* rights as a formality. After an hour, Hayes said there was too much going on in his head and he was ready to go. He tried to exit the interview room but was made to wait, to which he said, "If I'm not being detained, I would like to go." And when another officer came in and accused him of murder, rather than self-defense, Hayes again said, "If I'm not being detained, I'd like to go." To me, it seems clear that Hayes wanted to cut off questioning. But if remaining silent for two hours and forty-five minutes is ambiguous, and saying over and over again that you want to go home is ambiguous, then I feel bound by precedent to find that Hayes's requests to leave were ambiguous. Distinguishing *Simpson* as involving a request to go home, rather than a request to leave, end stop, would be disingenuous; the reasoning underlying *Simpson* applies with equal force to Hayes's request here.⁴⁷

⁴⁶ *State v. Murphy*, 747 N.E.2d 765, 779 (Ohio 2001).

⁴⁷ See also *Delap v. Dugger*, 890 F.2d 285, 290-93 (11th Cir. 1989) (when officer testified at suppression hearing that defendant said during interview "he wanted to know how much longer that he would be detained or would be there answering questions," and "said that his wife was home alone with the children, . . . expecting him home," and "he wanted to go," the court held that defendant's "questions" did not invoke right to silence, as "the context . . . was not whether or not [defendant] wished to terminate or delay questioning, but rather whether or not [defendant] felt like he was free to go home"), *abrogated on other grounds*; see also *Berghuis*, 560 U.S. at 411 & n.9 (Sotomayor, J., dissenting) (collecting cases in which courts have "rejected as ambiguous an array of statements whose meaning might otherwise be thought plain," including a Kansas Supreme Court case in which defendant said, "and since we're not getting anywhere I just ask you guys to go ahead and get this over with and go ahead and lock me up and let me go

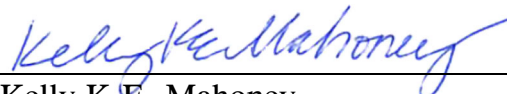
I recommend finding that Hayes did not unambiguously invoke the right to silence.

III. CONCLUSION

I respectfully recommend **DENYING** Hayes's motion to suppress (Doc. 43).

Objections to this Report and Recommendation, in accordance with 28 U.S.C. § 636(b)(1), Federal Rule of Criminal Procedure 59(b), and Local Criminal Rule 59, must be filed within fourteen days of the service of a copy of this Report and Recommendation; any response to the objections must be filed within seven days after service of the objections. A party asserting such objections must arrange promptly for the transcription of all portions of the record that the district court judge will need to rule on the objections.⁴⁸ Objections must specify the parts of the Report and Recommendation to which objections are made, as well as the parts of the record forming the basis for the objections.⁴⁹ Failure to object to the Report and Recommendation waives the right to de novo review by the district court of any portion of the Report and Recommendation, as well as the right to appeal from the findings of fact contained therein.⁵⁰

DATED July 23, 2024



Kelly K.E. Mahoney
Chief United States Magistrate Judge
Northern District of Iowa

and deal with Sedgwick County, I'm ready to go to Sedgwick County, let's go" (cleaned up) (quoting *State v. Speed*, 961 P.2d 13, 24 (Kan. 1998))).

⁴⁸ **LCrR 59.**

⁴⁹ *See Fed. R. Crim. P. 59.*

⁵⁰ *United States v. Wise*, 588 F.3d 531, 537 n.5 (8th Cir. 2009).

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 25-1649

United States of America

Appellee

v.

Terrance Payne Hayes

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Western
(5:23-cr-04068-LTS-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 08, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler