

Proposed Findings of Fact

On February 27, 2000, U.S. Customs Inspector Patricia Scull was on duty at the Port of Entry in Fort Fairfield, Maine. The configuration of roadways at the Port of Entry allows for some distance between the U.S. Customs Office and the Canadian Customs Office across the border. Inspector Scull observed a black pick-up truck proceed across the border but fail to report to Canadian Customs, instead turning to the right down a side road. The vehicle disappeared from her view, returned in a few minutes, stopped, and then proceeded back down the main road into the United States. Rather than stop at the Port of Entry office the vehicle proceeded down the road, only stopping and backing up after a siren was sounded by one of the customs agents.

Agent Scull approached the vehicle and identified the Defendant as the operator and the passenger as Michael Norton. She asked the Defendant where he was going and he replied "To the United States." She then asked the Defendant why he did not stop at the Customs office. The Defendant first indicated that he did not need to stop because he was a U.S. citizen and then indicated that he did not realize that he had left the United States. Agent Scull obtained Defendant's driver's license and then asked him to step into the customs office where she conducted what is known as a "routine Customs secondary exam." That exam included a computer inquiry based upon the driver's license to ascertain both the driver's license status and to determine if there was any past history with U.S. Customs.

While in the customs office, Agent Scull performed a "pocket check" which involves an examination of the contents of the individual's pockets. She then asked the occupants if there were any weapons, firearms, alcohol, tobacco or large sums of money in the vehicle. The

Defendant responded that there were none and Agent Scull proceeded to conduct a routine search of the vehicle. There were three bags in the vehicle and in one of the bags she found a loaded .22 caliber handgun in a tan leather holster. She also found a Walther CP-88 air pistol and five air cartridges for the air pistol on the floor of the vehicle. She eventually located in the glove compartment a box of eighty-two rounds of .22 ammunition.

After finding the handgun and the air pistol Agent Scull went back into the office with those items and asked the Defendant and his passenger “Whose are these?” When the Defendant responded that they were his, she asked him if he had ever been arrested. The Defendant responded that he had been arrested once in Florida, approximately sixteen years ago. Agent Scull ran a criminal history check and produced a voluminous arrest report. As the report was printing she inquired whether there were any other arrests and the Defendant responded in the affirmative, describing other convictions.

Based upon the record, Agent Scull requested the assistance of a Maine State Police canine in order to search the vehicle for narcotics. After the canine searched the vehicle, Agent Scull again questioned the Defendant and his passenger about the ownership of the weapons. At this point MacNeil stated that the weapons belonged to his father. Later in the process, while awaiting the arrival of Special Agent Saylor, when there were State Troopers and a local police officer present, MacNeil, not in response to any questioning, volunteered that his father was dead and the weapons did not belong to him. Defendant went on to state that he had thrown the gun into the bag during the period when he was stopped prior to crossing back into the United States and that a hitchhiker must have left the gun in the vehicle. Agent Scull asked the Defendant and the passenger questions about the gun’s ownership on two occasions and the Defendant

spontaneously offered the information about the hitchhiker during the third discussion surrounding the gun's ownership, not in response to her questioning.

At no time did Agent Scull advise the Defendant of his *Miranda* rights. In fact both Special Agent Saylor and Scull's supervisor advised her not to provide the warnings in accordance with customs procedure. The process at the customs office, up until Special Agent Saylor's arrival, was informal and casual and the Defendant and his passenger were permitted to have seats in the public areas of the customs office and go outside for cigarette breaks with the officers. No questioning took place after Agent Scull inquired of the Defendant on the second occasion about gun ownership because at that point in time she had been advised that Special Agent Saylor was in route and that prosecution was anticipated. Saylor placed the Defendant under arrest and transported him to the Aroostook County Jail in Houlton, Maine.

On Monday morning, February 28, Special Agent Saylor and U.S. Customs Special Agent Michael Marshall went to the jail to pick up Defendant and transport him to the U.S. District Court in Bangor. The Defendant and Marshall were seated in the backseat of the vehicle and Saylor was driving. Shortly after the departure from the county jail, Marshall advised the Defendant of his rights pursuant to the *Miranda* decision. MacNeil informed the officers he did not wish to speak with them and that he wanted a lawyer. The parties engaged in small talk for the rest of the ride. As they approached the intersection of Harlow and State Streets in downtown Bangor, Special Agent Marshall remarked that they were almost at the courthouse. At that point the Defendant said something like, "See how much trouble you get by trying to help a friend who isn't allowed to possess firearms".

Discussion

The statement made on February 28th can be addressed first. It goes without saying that *Miranda* warnings need only be given to someone who is subject to custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436 (1966). Although the Defendant was firmly in custody on February 28, 2000, there simply was no interrogation nor did the functional equivalent of interrogation occur. (“But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.” See, *Rhode Island v. Innis*, 446 U.S. 291, 302 (1980). Neither the officers nor the Defendant had any reason to believe that a simple comment regarding proximity to the courthouse would produce an incriminating response from the Defendant.

Turning to the statements made on February 27th at the Fort Fairfield Port of Entry Customs Office, it is helpful to analyze them in three separate stages. The initial questioning of the Defendant took place while he was still in the vehicle and was limited to obtaining identification from the Defendant and his passenger. The first responses challenged by Defendant were the result of Agent Scull’s questioning the Defendant after she located the firearms in the vehicle and brought them into the Customs Office. The second responses were elicited after questioning by Agent Scull after both the “pocket search” and the canine search of the vehicle. The third set of responses occurred after the call had been placed to Special Agent Saylor when the Defendant made exculpatory statements suggesting that the gun was not his and had somehow gotten into the vehicle without his knowledge.

The first two sets of statements were clearly the product of interrogation by Agent Scull during the secondary customs inspection. Furthermore, the Defendant was certainly not free to leave the Custom Office. However, in a customs setting, those facts are not necessarily dispositive of the issues:

In *Pratt* we made clear that even secondary inspection does not per se constitute custodial interrogation. We acknowledged that though “[a]ny person required to submit to a secondary customs search may apprehend some increased level of official suspicion[,] . . . this perception . . . is not sufficient by itself to apply coercive pressures equivalent to custodial questioning.” There, we found that the limited and routine nature of the questioning and short duration of the encounter militated against requiring *Miranda* warnings. The line between routine Customs questioning and custodial interrogation is not easily drawn

United States v. Ventura, 85 F.3d 708, 711 (1st Cir. 1996), (citing *United States v. Pratt*, 645 F.2d 89, 90-91 (1st Cir. 1981)).

Agent Scull’s first questions, occurring just after she had located the firearm in the vehicle, were clearly part of the customs inspection and had none of the indicia of a formal arrest situation. Shortly after the stop and while the Defendant and his friend were waiting in the office, she located the firearms and ammunition in the vehicle, brought them into the office, held them up and asked, “Whose are these?” When Defendant responded affirmatively, she then questioned him briefly about his criminal record. Then as she was printing his criminal history she asked some follow-up questions regarding the Defendant’s prior record. Under the *Ventura* standard, these statements are admissible as they were all part of the officer’s routine customs examination. Agent Scull’s questioning was limited in scope to information concerning identity and inquiry regarding the firearm. Those questions were reasonably related to a routine customs inquiry.

The second responses, which elicited the comment that the gun belonged to Defendant's father, were of a different nature. According to the transcript of the preliminary hearing, which was admitted into evidence during the motion hearing, that answer came in response to Agent Scull's renewed interrogation after the police search of the vehicle. (Tr. of prelim. exam. p. 32). By that point in time uniformed State Police Officers were present, as were local Town police. The atmosphere at the U.S. Customs Office was much more custodial in nature and the line between custodial interrogation and routine customs' inquiry was crossed. Those statements should be suppressed as being obtained in violation of *Miranda*.

The third set of statements obtained from the Defendant pertained to picking up the hitchhiker and finding the gun on the floor of the vehicle. As to these statements the Government contends that there was no interrogation. According to Agent Scull the Defendant made these statements spontaneously as they waited at the Customs Office for Special Agent Saylor. By this point in time the search of the vehicle had been concluded and the Defendant and his passenger were smoking cigarettes with the officers and generally in a relaxed setting. The evidence strongly supports Agent Scull's testimony that no interrogation took place. She had ceased questioning the Defendant when he volunteered this "third story" in regard to the firearm. Accordingly there was no *Miranda* violation.

Conclusion

Based upon the foregoing, I recommend that the Motion to Suppress be **Denied** as to the statement made on February 28, 2000. As to those statements made on February 27, 2000, I recommend that the motion be **Granted-in-Part** and **Denied-in-Part**. I recommend that the

Court suppress the statements made during the second interrogation by Agent Scull, following the search of the vehicle with the assistance of the canine.

Notice

A party may file objections to those specified portions of this report or proposed findings or recommended decision for which de novo review by the district court is sought, together with a supporting memorandum, within ten days after being served with a copy hereof. A responsive memorandum shall be filed within ten days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 31st day of May, 2000.

Margaret J. Kravchuk
U.S. Magistrate Judge

TRLLST

U.S. District Court
District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 00-CR-15-ALL

USA v. MACNEIL

Filed: 03/22/00

Other Dkt # 1:00-m -00010

Case Assigned to: JUDGE GENE CARTER

ALFRED H MACNEIL (1)
defendant

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Pending Counts:

Disposition

18:922G.F FELON IN POSSESSION
OF FIREARM - ARMED CAREER
CRIMINAL
(1)

Offense Level (opening): 4

Complaints

Disposition

18:922(g)(1) Felon in
Possession of Firearm
[1:00-m -10]

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