

prompting by McNeil, that he wished to speak with McNeil and ATF SA Timothy Kenty. Shortly thereafter, Kenty read a second *Miranda* warning to Jacques, who waived his right to counsel and agreed to answer Kenty's and McNeil's questions. Jacques was questioned in the rear passenger seat of McNeil's car for approximately two hours and 45 minutes. He wore handcuffs for the duration of the interrogation, although Kenty loosened the handcuffs at Jacques' request.

II. MOTION TO SUPPRESS

Jacques presents two arguments. First, he claims that he did not freely waive his *Miranda* rights to remain silent and to speak with counsel. ECF No. 27 at 2. Second, he claims that his statements were not voluntary because, in the course of arresting and interrogating him, Kenty and McNeil "broke or overbore his will." *Id.* (citing *Chambers v. Florida*, 309 U.S. 227, 240 (1940)). Jacques notes that it is the Government's burden to establish by a preponderance of the evidence that his waiver of rights and his statements were voluntary. *Id.* (citing *Lego v. Twomey*, 404 U.S. 477, 484, 489 (1972)).

The Government cites audio recordings of the two *Miranda* warnings given to Jacques and of his subsequent interrogation. ECF No. 31 at 7 (citing Gov't Exh. 1, 2). It claims that the recordings establish that "the interrogation was completely devoid of coercion and that the defendant's statements were made voluntarily." *Id.*

III. LEGAL ANALYSIS

A. *Miranda* Waiver

In *Edwards v. Arizona*, 451 U.S. 477 (1981), the Supreme Court held that when an accused has invoked his *Miranda* rights, a valid waiver of those rights cannot be

established by showing only that the accused “responded to further police-initiated custodial interrogation even if he [was] advised of his rights.” 451 U.S. at 484. The accused may not be subjected to further interrogation until either counsel has been made available to him or “the accused himself initiates further communication, exchanges, or conversations with the police.” *Id.* at 484-85. The rationale of *Edwards* is that once a suspect indicates that he does not wish to undergo custodial questioning without having counsel present, “any subsequent waiver that has come at the authorities’ behest, and not at the suspect’s own instigation, is itself the product of the inherently compelling pressures and not the purely voluntary choice of the suspect.” *Maryland v. Shatzer*, 559 U.S. 98, 104-05 (2010) (quotation omitted).

The *Edwards* rule is satisfied here. At the suppression hearing, SA Kenty testified that he read the first *Miranda* warning to Jacques, and that Jacques chose not to speak with investigators. There is no evidence nor any allegation that Kenty or McNeil attempted to question Jacques after he invoked his *Miranda* rights. Both Kenty and McNeil testified that Jacques remained in the rear passenger seat of McNeil’s car for approximately 15 to 20 minutes as the agents continued their investigation at Weaponcraft. McNeil testified that he went to place his jacket in the rear cargo area of his car, whereupon Jacques told McNeil that he wished to speak with the agents. Kenty and McNeil both testified that Jacques was subsequently read the *Miranda* warning a second time, and that after this second *Miranda* warning, Jacques waived his right to have counsel present during questioning. Kenty’s and McNeil’s testimony is entirely consistent with the audio recordings of the agents’ interactions with Jacques. Gov’t Exh. 1, 2.

Based upon these facts, and under the totality of the circumstances that they establish, the Government has met its burden of establishing by a preponderance of the evidence that Jacques' waiver of his *Miranda* rights was knowing and voluntary and undertaken upon his own initiative, thus satisfying the *Edwards* rule. *See* 451 U.S. at 484-85, 486 n.9.

At the suppression hearing, Jacques argued that the 15 to 20 minutes between the two *Miranda* warnings fell far short of the 14 days required by the Supreme Court's opinion in *Shatzer*, 559 U.S. at 110 (holding that the *Edwards* presumption continues for 14 days after a suspect invokes his right to counsel). However, *Shatzer* does not come into play under the facts presented here because the undisputed evidence is that Jacques himself re-initiated communication with McNeil, telling McNeil that he wished to speak. *See id.* at 104-05. Therefore, I conclude that the Government has met its burden of proving by a preponderance of the evidence that Jacques voluntarily waived his *Miranda* rights.

B. Voluntariness of Statements

The burden is also on the Government to prove by a preponderance of the evidence that the defendant's statements were voluntary. *Lego*, 404 U.S. at 489. Where a defendant claims that his confession was extracted involuntarily, the Government's burden is to show that, based on the totality of the circumstances, the investigating agents neither "broke" nor overbore his will. *Chambers*, 309 U.S. at 239-40. *Cf. Colorado v. Connelly*, 479 U.S. 157, 167 (1986) ("[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment.").

Jacques argues that his statements to Kenty and McNeil were the product of coercion because their questioning lasted for approximately two hours and 45 minutes, and because he was required to sit in the rear seat of McNeil's car for the duration, causing him discomfort.

I conclude that the Government has satisfied its burden of proving by a preponderance of the evidence that Jacques' statements were voluntary, and that the ATF agents did not break or overbear his will. With regard to the length of time that Jacques spent handcuffed in the rear seat of McNeil's car, SA McNeil testified and I find that Jacques would have been taken from the scene of his arrest sooner had he not expressed his desire to speak to the agents. But once Jacques expressed an interest in talking, McNeil determined that it was important to conduct and complete the interview at the scene, allowing the agents to determine in real time whether the statements by Jacques and the other two suspects who remained at the scene confirmed or contradicted each other. Furthermore, the audio recording of Jacques' interrogation reveals no indication of coercion—to the contrary, Kenty and McNeil remained calm and polite throughout the interrogation. When Jacques told SA Kenty that the handcuffs on his wrists were hurting him, Kenty loosened them. When Jacques told McNeil that he needed to use the restroom, McNeil agreed to take him. Jacques did not express to the agents that sitting in the rear seat of McNeil's car was causing him serious discomfort. Based on this evidentiary record, I am satisfied that Jacques' statements and his decision to speak with SAs Kenty and McNeil were voluntary under the standards set forth in *Lego*, 404 U.S. 477, and *Chambers*, 309 U.S. 227.

IV. CONCLUSION

For the foregoing reasons, Jacques' Motion to Suppress (ECF No. 27) is **DENIED.**

SO ORDERED.

Dated this 16th day of December, 2015.

 /s/ Jon D. Levy
U.S. DISTRICT JUDGE