[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-14800

D.C. Docket No. 3:13-cr-00177-LSC-JEG-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

AARON M. RICHARDSON,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(May 1, 2018)

Before MARTIN and ANDERSON, Circuit Judges, and MURPHY[*], District Judge.

[*] Honorable Stephen J. Murphy, United States District Court for the Eastern District of Michigan, sitting by designation.

PER CURIAM:

In March 2016, a Florida jury convicted Appellant Aaron M. Richardson of twenty-four charges related to the attempted murder of District Judge Timothy J. Corrigan. Appellant now appeals his conviction and sentence. The pertinent issues are whether the district court erred by: (1) denying a motion to suppress statements allegedly compelled in violation of the Fifth Amendment; (2) denying a motion to suppress cell-tower data allegedly obtained in violation of the Fourth Amendment; (3) denying a motion for judgment of acquittal on two false-statement charges; and (4) applying a sentencing enhancement for obstruction of justice. For the reasons set forth below, we affirm.

BACKGROUND

I. Factual Background

A. The Shooting

In 2011, Judge Corrigan sentenced Appellant to time served and three years of supervised release for an unrelated offense. The sentence affected Appellant's enrollment at a university, so he sought to end the supervised release. But Judge Corrigan denied the request.

Appellant's troubles then began to compound. He was arrested in October, November, and December 2012 for various burglaries and thefts. Under his

supervised release terms, Appellant was required to submit a monthly report regarding contact with law enforcement. Despite his arrests, Appellant reported each month that he had not been arrested or questioned by law enforcement. A petition for revocation of supervised release was ultimately filed, and Appellant was ordered to appear in court.

Instead of addressing his legal troubles in court, the evidence at trial revealed that Appellant began working on his "Mission Freedom."[1] Appellant found Judge Corrigan's home address and telephone number on the Internet and researched rifles and ammunition. Appellant then visited a sporting goods store and examined a hunting rifle. Several days later, he reentered the same sporting goods store and hid until closing. Once the store emptied, Appellant went to the gun department, cut the plastic trigger guard on the rifle to free it from a security cable, and grabbed some ammunition.

Two days later, Appellant bought a movie ticket from a theater near Judge Corrigan's home. Several hours later, Judge Corrigan sat watching television with his wife in their home. Then suddenly there was a loud bang; Judge Corrigan was struck by shards of metal from the window frame near where he was sitting, and a bullet lodged itself in the family-room closet. Less than two hours later, Appellant

[1] In his cellphone contact list, Appellant stored Judge Corrigan's phone number as "Mission Freedom." And then on the date of his revocation hearing, Appellant texted his mother from near Judge Corrigan's home that he needed to complete his mission so he could come home free.

entered a bar near Judge Corrigan's home. An employee stated that Appellant looked like he had just walked out of the woods; Appellant also had a fresh injury on his eye that looked like a "scope bite": an injury that occurs when a rifle's recoil causes the scope to strike the shooter.

B. Arrest and Interrogation

Two days after the shooting, the police went to arrest Appellant at his apartment for failing to appear at his revocation hearings.[2] The police also searched the apartment and found evidence linking Appellant to Judge Corrigan's shooting. First, the police found a rifle in Appellant's bedroom closet. Like the rifle stolen from the sporting goods store, the rifle's trigger guard had been cut and covered with electrical tape; the tape on the rifle matched tape that was found in the bushes outside Judge Corrigan's home. Moreover, the gun's size and rifling were consistent with the bullet recovered from Judge Corrigan's home. And it appeared Appellant had used the rifle as his DNA was found on its scope. In addition to the rifle, the police recovered ammunition, Appellant's cellphone, and bolt cutters. Finally, the police found a sham order with Judge Corrigan's forged signature that ostensibly pardoned Appellant's entire criminal history.

Appellant was ultimately taken to a local sheriff's office so the FBI could question him. After expressing a desire to go home, an agent advised Appellant

[2] Appellant's hearing was rescheduled after he missed the first date, but Appellant also did not appear at the rescheduled hearing.

that he had to stay. An agent then presented Appellant with an advice of rights card, and the agents read the card aloud to Appellant. After each line, an agent asked Appellant if he understood and Appellant either nodded or said yes. Appellant then refused to sign a waiver, but said he would answer the questions.

During the questioning, Appellant stated that he had been at home on the night of the shooting and claimed to have no knowledge of the rifle. Appellant also stated that if his fingerprints were on the rifle, it was because he had touched the rifle while getting his shoes out of a pile of clothes after his arrest. Towards the end, Appellant acknowledged that the video recording of the questioning was admissible in court and that he could request an attorney. Appellant believed, however, that he had not said anything incriminating.

II. Procedural History

In September 2013, a grand jury issued a twenty-five-count indictment against Appellant. In addition to charges directly related to Judge Corrigan's shooting, Appellant was also charged with making a false statement during his FBI questioning and for falsely representing on his supervised release report that he had not been arrested in December 2012.

Appellant's competency was then questioned. In October 2013, the magistrate judge ordered a psychiatric evaluation.[3] The magistrate judge later held a competency hearing, and on the next day held a suppression hearing regarding Appellant's statements to the FBI. The district judge ultimately found that Appellant was competent, and the magistrate judge recommended not suppressing the statements at issue here. The district judge adopted the recommendation over objection and without making any additional findings.

Appellant then proceeded to trial. After the Government presented its case, Appellant made an oral motion for judgment of acquittal on, inter alia, two counts of making a false statement. The district court denied the motion and submitted the case to the jury.[4] The jury then convicted Appellant of twenty-four of the twenty-five counts in the indictment. The Court sentenced Appellant to 4,116 months' imprisonment, which included a two-level enhancement for obstruction of justice. This appeal followed.

LEGAL STANDARD

When considering a motion to suppress or application of the sentencing guidelines, the Court reviews conclusions of law de novo and findings of fact for clear error. *United States v. Doe*, 661 F.3d 550, 565 (11th Cir. 2011); *United States*

[3] Appellant's competency was also a primary issue in a separate criminal matter that was simultaneously pending.

[4] Appellant did not present a case in chief, and the district judge advised that his motion for judgment of acquittal was preserved.

v. Farias-Gonzalez, 556 F.3d 1181, 1185 (11th Cir. 2009). Motions for a judgment of acquittal are reviewed de novo. *United States v. Gonzalez*, 834 F.3d 1206, 1214 (11th Cir. 2016).

DISCUSSION

I. Suppression of Statements

Appellant contends that the district court erred by not suppressing certain statements he made to the FBI. The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." Absent certain procedural safeguards, a statement given during custodial interrogation is presumed to be compelled in violation of the Constitution. *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966). To dispel that presumption of compulsion, the person in custody must be advised of certain rights. *Id.* The person in custody may then waive his rights, but to be operative the waiver must be made voluntarily, knowingly, and intelligently. *Id.* If the Government violates a person's right against compelled self-incrimination, then generally the compelled statements must be suppressed. *Missouri v. Seibert*, 542 U.S. 600, 608 (2004).

Appellant's constitutional right against compelled self-incrimination was not violated, so his statements need not be suppressed. Once the *Miranda* protections attach and the *Miranda* warnings have been given, the police are not obligated to

stop asking questions. *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). Rather, the suspect must either invoke or waive his rights. *Id.* A waiver can be implied when, as here, the suspect is advised of his rights and acts in a manner inconsistent with the exercising of those rights. *Id.* at 385. Because Appellant answered the FBI's questions, there was at least an implied waiver of his Fifth Amendment rights.

The issue is whether the waiver was effective in light of Appellant's mental health history. Although a waiver must be made voluntarily, knowingly, and intelligently, the Supreme Court has essentially bifurcated the analysis into whether the waiver was: (1) uncoerced (i.e. voluntary), and (2) made with the requisite level of comprehension (i.e. knowingly and intelligently). *See Moran v. Burbine*, 475 U.S. 412, 421 (1986). When performing the analysis, courts evaluate the totality of the circumstances. *Id.*

Appellant's waiver was voluntary. This Court has previously recognized that "a mental disability does not, by itself, render a waiver involuntary[.]" *United States v. Barbour*, 70 F.3d 580, 585 (11th Cir. 1995) (citations omitted). Instead, courts look to see whether there was coercion by an official actor; for example, if police take advantage of a suspect's mental disability. *Id.* The only mention of Appellant's mental health at the suppression hearing came when Appellant's attorney asked an FBI agent if he knew that part of Appellant's prior supervised

release "had involved mental health treatment." The agent responded that at the time of the interrogation, "I don't believe I knew that." The agent then explained that he learned of Appellant's mental health problems while preparing for trial. Based on the record before us, the district court did not err by concluding that Appellant's waiver was voluntary.

Nor did the district court err by concluding that Appellant's waiver was made knowingly and intelligently. When determining whether a waiver was competently made, courts consider mental health as part of the totality of the circumstances. *Miller v. Dugger*, 838 F.2d 1530, 1539 (11th Cir. 1988). To do so, we "rely on the objective indicia of a defendant's mental state[.]" *United States v. Sonderup*, 639 F.2d 294, 297–98 (5th Cir. Unit A March 31, 1981).[5] The objective indicia here support the district court's conclusion that Appellant was sufficiently competent to waive his rights. The record shows that an FBI agent read all the *Miranda* rights to Appellant, and after each line Appellant acknowledged his understanding. Appellant even asked clarifying questions (which the agents answered) and carried on a conversation with his interrogators. Near the end, Appellant observed that he knew the video recording of his answers could be used in court and that "I can ask for an attorney but I haven't said anything

[5] Fifth Circuit decisions issued before October 1, 1981 are binding on this Court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

incriminating." Based on this record, the district court did not clearly err by finding that Richardson had the capacity to waive his *Miranda* rights.[6]

For these reasons, we affirm the district court's conclusion that Appellant's constitutional rights were not violated and therefore his statements need not be suppressed.

II. Cell-Tower Data

Appellant contends that the district court erred by not suppressing cell-tower data that was obtained without a warrant and that placed

[6] As our colleague, Judge Martin, notes, all the parties at the suppression hearing, including the magistrate judge, were well aware of Richardson's mental health history. The law is well established that mental health can bear upon whether a defendant has knowingly and intelligently waived his *Miranda* rights. *United States v. Barbour*, 70 F.3d 580, 585 (11th Cir. 1995); *Coleman v. Singletary*, 30 F.3d 1420, 1426 (11th Cir. 1994). The law is also well established that we will assume that the trial judge knows the law and applies it in making his decisions. *Burrell v. Bd. of Trs. of Ga. Military Coll.*, 125 F.3d 1390, 1395 (11th Cir. 1997). Here, we assume that the magistrate judge who found that Richardson knowingly and intelligently understood and waived his *Miranda* rights knew that Richardson's mental health history was relevant to that determination. Thus, the magistrate judge made an implicit finding of fact that Richardson's mental health history did not render him unable to knowingly and intelligently waive his *Miranda* rights. In light of the evidence before the court at the suppression hearing, Richardson falls far short of demonstrating that this finding of the magistrate judge is clearly erroneous. That evidence included, *inter alia*, the lack of evidence that, at or around the time of the June 25, 2013 interrogation, Richardson was mentally unable to understand and waive his *Miranda* rights; the video indicating that he did in fact knowingly and intelligently waive his rights; and the fact that exceedingly competent counsel (also well aware of his mental health history) were representing Richardson at the suppression hearing but did not suggest that mental illness prevented him from waiving his *Miranda* rights. *See United States v. Rodriguez*, 799 F.2d 649, 655 (11th Cir. 1986) (per curiam) (holding in the analogous context of competence to stand trial that "[the defendant's] counsel's failure to raise the competency issue is also persuasive evidence that [the defendant's] mental competence was not in doubt.").

While it would have been better practice for the magistrate judge to have made the relevant findings of fact expressly instead of implicitly, we cannot conclude that there has been error.

Appellant near the scene of the crime. Appellant acknowledges that his argument is foreclosed by *United States v. Davis*, which held that obtaining cell-tower data without a warrant did not violate the Fourth Amendment. 785 F.3d 498, 513, 518 (11th Cir. 2015) (en banc). Because we are bound by *Davis*, Appellant's argument fails.

III. Convictions for False Statements

Appellant challenges the district court's denial of his motion for judgment of acquittal on two counts of making false statements in violation of 18 U.S.C. §§ 1001, 2147(1). A motion for judgment of acquittal should be denied if "the relevant evidence, viewed in a light most favorable to the Government, could be accepted by a jury as adequate and sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt." *United States v. Taylor*, 972 F.2d 1247, 1250 (11th Cir. 1992) (quoting *United States v. Varkonyi*, 611 F.2d 84, 85 (5th Cir. 1980)). The Government was required to prove "(1) that [Appellant] made a false statement; (2) that the statement was material; (3) that [Appellant] acted with specific intent to mislead; and (4) that the matter was within the purview of a federal government agency." *United States v. McCarrick*, 294 F.3d 1286, 1290 (11th Cir. 2002). Falsity "can be established by a false representation or by the concealment of a material fact." *United States v. Calhoon*, 97 F.3d 518, 524 (11th Cir. 1996). We will address each count in turn, and affirm.

A. Statements about Interactions with the Rifle

Count Ten charged Appellant with making false statements in response to a series of questions about whether his fingerprints or DNA would be found on the rifle recovered from his home.[7] Appellant argues that the answer was hypothetical and was not material to the government's investigation. This Court has previously rejected arguments that a defendant "was only speculating out loud" in response to questions, and therefore his statement could not be false because it was "ambiguous and uncorroborated, and . . . susceptible to an interpretation that was literally true." *United States v. Fern*, 696 F.2d 1269, 1275 (11th Cir. 1983).

Here, a jury could find that Appellant's statement was false on its face. Appellant did not accidently touch the gun after his arrest because no officer let him into the room where the gun was found. And Appellant was untruthful when he claimed not to know that there was a gun: his DNA on the rifle scope shows that he had contact with the gun. Viewing the evidence in the light most favorable to the Government, there was sufficient evidence to support the jury's conclusion that Appellant made a false statement.

Next, a jury could find that Appellant's false statement was material. To be material, "[t]he statement must have a natural tendency to influence, or be capable

[7] Specifically, Appellant's statement was that if his fingerprints or DNA were on the Savage Arms .30-06 caliber rifle, serial number H783115, it was because he touched the rifle in an attempt to get his shoes out of a pile of belongings that law enforcement officers had assembled and placed in a pile during his arrest on June 25, 2013.

of influencing, the decision of the decisionmaking body to which it was addressed." *United States v. Boffil-Rivera*, 607 F.3d 736, 741 (11th Cir. 2010) (quotation omitted and alteration adopted). The Government need not rely on the statement, rather the statement "must simply have the capacity to impair or pervert the functioning of a government agency." *Id.* (quotation omitted); *see also United States v. Baker*, 626 F.2d 512, 514 (5th Cir. 1980). Consequently, Appellant's argument that the Government never actually believed his story is irrelevant. Rather, the statement was relevant and material to the investigation because the statement bore on whether Appellant knew of or had used the rifle. Viewing this evidence in the light most favorable to the government, the district court correctly denied the motion for acquittal.

B. False Monthly Supervision Report

Count Twenty-One charged Appellant with submitting a false monthly supervision report to the U.S. Probation Office. Specifically, Appellant checked a box on his monthly supervision report indicating that he had not interacted with law enforcement during December 2012. Appellant argues that the statement was true when it was made because the report is dated "12/30/12" and he was not arrested until December 31, 2012. *Cf. United States v. Lange*, 528 F.2d 1280, 1288 (5th Cir. 1976) (requiring evidence that defendant knew statement was false at the time it was made). The Government, however, presented evidence that Appellant

may have back-dated a previous supervision report.[8] Viewed in the light most favorable to the Government, a jury could infer that Appellant also altered his December 2012 supervision report. And misleading denials can support a conviction. *See Boffil-Rivera*, 607 F.3d at 741; *United States v. Swindall*, 971 F.2d 1531, 1553 (11th Cir. 1992). Consequently, the evidence was sufficient to support a guilty verdict. The district court therefore did not err.

IV. Sentencing Enhancement

Finally, Appellant challenges the district court's application of Sentencing Guideline § 3C1.1. That section provides for a two-level enhancement if "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction." USSG § 3C1.1. The district court applied the enhancement because of Appellant's false statements to the FBI. Because we affirmed that conviction, *supra* Section III.A, the enhancement under § 3C1.1 must also stand. *See* USSG § 3C1.1, cmt. n.4 ("This adjustment [] applies to any other obstructive conduct in respect to the official investigation, prosecution, or sentencing of the instant offense where there is a separate count of

[8] Specifically, the Government presented evidence that Defendant changed the date on his November 2012 supervision report from November 30th to November 29th so that he could avoid reporting an arrest made on November 30th.

conviction for such conduct."); *United States v. Ucsinski*, 369 F.3d 1243, 1246–47 (11th Cir. 2004) (per curiam).

CONCLUSION

In sum, we reject all of Appellant's arguments and find that the district court did not err.

AFFIRMED.

MARTIN, Circuit Judge, concurring in part and dissenting in part:

Within six months of Aaron Richardson's June 25, 2013 interrogation by Jacksonville Deputy Sheriffs, in their office, the District Court ordered that he receive a psychiatric evaluation. That evaluation found him to be "suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." As a result of this finding, Mr. Richardson's trial for the very serious and frightening charge of discharging a firearm into the home of Judge Corrigan and his wife was delayed two years. Mr. Richardson was ultimately rehabilitated to the point that he was found competent to stand trial. Then on the day after the Magistrate Judge conducted the final competency hearing, which resulted in Mr. Richardson being found competent to stand trial, the same Magistrate Judge held a hearing on Mr. Richardson's claim that his June 25, 2013 statements should be suppressed. All parties involved—the government, the defense, the Court—knew of Mr. Richardson's struggle with schizophrenia. After all, they had all been in the same courtroom, just the day before, discussing this exact topic. Even so, no one raised Mr. Richardson's competence as an issue at the suppression hearing. Because this record demonstrates that the government failed to carry its burden to show Mr.

Richardson's Miranda[1] waiver was knowing and intelligent, I would suppress the statements he made at the Jacksonville Sheriff's Office on June 25, 2013.

This Court's precedent tells us that mental health can bear on whether Mr. Richardson knowingly and intelligently waived his Miranda rights. See Coleman v. Singletary, 30 F.3d 1420, 1426–27 (11th Cir. 1994). We also know that the burden is on the government to demonstrate that one's waiver of Miranda rights is done voluntarily, knowingly, and intelligently. J.B.D. v. North Carolina, 564 U.S. 261, 269–70, 131 S. Ct. 2394, 2401 (2011). At the suppression hearing neither party raised the issue of whether Mr. Richardson's waiver of his Miranda rights was knowing and voluntary.

It is true, of course, that in the ordinary case addressing whether there has been a knowing and intelligent waiver of Miranda rights, it is the defendant who raises the issue. In this process, courts routinely consider expert testimony as well as recordings of the interrogation, for example. See, e.g., Coleman, 30 F.3d at 1426–27. I recognize as well that the government is generally not required to prove a negative in addressing a Miranda waiver, by, for example, producing a clean alcohol or drug test for every defendant. See Grayson v. Thompson 257 F.3d 1194, 1200, 1230 (11th Cir. 2001) (holding that state court did not err in failing to

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966)

suppress statements when defendant did not appear to be intoxicated, despite absence of alcohol or drug tests).

This case strikes me as different, however. Everyone participating in this suppression hearing was well aware of Mr. Richardson's mental health problems. Just the day before, the Magistrate Judge conducted a competency hearing during which the parties discussed Mr. Richardson's diagnosis of schizophrenia and his ongoing treatment. This included testimony from expert witnesses that Mr. Richardson "needs to be on antipsychotic medication" to maintain his legal competency. The government's counsel at the suppression hearing on Friday, was the same counsel who had litigated Mr. Richardson's competency on Thursday. Thus, there is no question that the government was well aware of mental health problems that may have prevented Mr. Richardson from knowingly and intelligently waiving his Miranda rights back in June of 2013.[2] In this circumstance, it seems to me that the government's burden to establish Mr. Richardson's waiver as knowing and intelligent requires them to make some showing. See J.B.D., 564 U.S. at 269–70, 131 S. Ct. at 2401; North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 1757 (1979) (in case of possibly illiterate defendant, it remained the "prosecution's burden" to show the defendant "in fact knowingly and voluntarily waived the rights delineated in

[2] Mr. Richardson was first diagnosed in connection with his federal arson case, meaning the government likely had custody of Mr. Richardson's relevant medical records.

the Miranda case"); Hall v. Thomas, 611 F.3d 1259, 1285 (11th Cir. 2010) (burden remains on the government to show juvenile defendant had the capacity to waive Miranda rights).

I interpret the absence of any evidence or argument at the suppression hearing to mean that the government failed to carry its burden of demonstrating a valid waiver. For this reason, I would suppress any statements Mr. Richardson made during his interrogation. See Jones v. Cannon, 174 F.3d 1271, 1291 (11th Cir. 1999) (explaining that the remedy for a Miranda violation is the suppression of evidence).

Counts Five through Ten charged Mr. Richardson with making a false statement during his June 25, 2013, interrogation, so suppressing his statements would result in vacating those convictions. At the same time, I believe the error in admitting Mr. Richardson's statements of that date was harmless as to his remaining convictions. See Hart v. Att'y Gen., 323 F.3d 884, 895 (11th Cir. 2003) ("The admission of statements obtained in violation of Miranda is subject to harmless error scrutiny."). The evidence supporting those convictions was simply overwhelming.

On the other hand, suppression of Mr. Richardson's statement in the Jacksonville Sheriff's office on June 25, 2013 would impact the District Court's application of Sentencing Guidelines § 3C1.1. This is the guideline that provides

for a two-level increase in the guideline calculation if "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction." USSG § 3C1.1. The District Court indicated that the enhancement applied because of the false statements Mr. Richardson made during his interrogation in the Sheriff's Office. Indeed the District Court was right that the convictions under § 1001 for those false statements supported an application of the enhancement. See USSG § 3C1.1, cmt. n.4 ("This adjustment [] applies to any other obstructive conduct in respect to the official investigation, prosecution, or sentencing of the instant offense where there is a separate count of conviction for such conduct." (emphasis added)). Because I would vacate Mr. Richardson's false-statement convictions, I would also set aside the application of this enhancement, and remand this case to the District Court for resentencing.

Finally, while the panel opinion correctly sets out the state of the law in Part II, above, I write separately to address United States v. Davis, 785 F.3d 498 (11th Cir. 2015). Our panel is indeed bound by this court's ruling in Davis, however I have set out my reasons for believing it was wrongly decided. The parties to this proceeding are aware, of course, that the Supreme Court has recently heard arguments on a similar Fourth Amendment challenge, see United States v. Carpenter, 819 F.3d 880 (6th Cir. 2016), cert. granted, 137 S. Ct. 2211 (2017),

which may mean that this issue will need to be revisited.