No. 04-5461

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

TRACEY JONES,

Defendant - Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

PROOF BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States agrees with the defendant that oral argument is not necessary.

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PROOF BRIEF FOR THE UNITED STATES AS APPELLEE

JURISDICTIONAL STATEMENT

A federal grand jury charged the defendant in a two-count indictment with violating 18 U.S.C. 241 and 242. The district court had jurisdiction pursuant to 18 U.S.C. 3231. Final judgment was entered on April 9, 2004, and, pursuant to Federal Rule of Appellate Procedure 4(b), the defendant filed a timely notice of appeal on April 14, 2004. This Court has jurisdiction to review the district court's judgment pursuant to 28 U.S.C. 1291.

STATEMENT OF THE ISSUE

Whether the district court erred in denying the defendant's motion to suppress the confession.

STATEMENT OF THE CASE

On June 16, 2003, a federal grand jury charged the defendant, Tracey Jones, and his co-conspirator, Robert Crisp, Jr., with conspiracy against rights and deprivation of rights under color of law. Count One of the indictment alleged that the defendant and Crisp, "while acting under color of law, did willfully conspire and agree with each other * * * to injure, oppress, threaten and intimidate Adrian Kirtz in the free exercise and enjoyment of rights secured to him by the Constitution and laws of the United States, that is, the right to be free from unreasonable searches and seizures by one acting under color of law," in violation of 18 U.S.C. 241. (R. 1 Indictment, pp. 1-2, Apx. pp. __). The indictment further alleged that the object of the conspiracy was to "stop, seize, steal, and extort a large sum of cash from Adrian Kirtz as he traveled through Hardeman County, Tennessee." (R. 1 Indictment, p. 2, Apx. p. __). Count Two of the indictment alleged that "[o]n or about January 5, 2003," the defendant and Crisp "stole a large sum of cash from Adrian Kirtz during a staged traffic stop, thereby depriving him of the right to be secure against unreasonable searches and seizures of property by

one acting under color of law," in violation of 18 U.S.C. 242 and 2.[1] (R. 1 Indictment, pp. 4-5, Apx. pp. __).

On January 11, 2003, the defendant provided to Special Agent Donna Turner of the Tennessee Bureau of Investigation a sworn, written statement in which he admitted all of the acts alleged in the indictment. (R. 40 Response, Exh. A, Apx. p. __). The defendant also provided an unsworn, oral statement to Sheriff Delphus Hicks of the Hardeman County Sheriff's Department. (Delphus Hicks at 10/21/03 TR, pp. 1-14, Apx. pp. __).

On October 30, 2003, Crisp plead guilty to the conspiracy charge alleged in Count One of the indictment. In return, the government dismissed Count Two against him. The defendant plead not guilty and proceeded to trial. (R. 58 Plea, p. 2, Apx. p. __).

Prior to trial, the government gave notice, pursuant to Federal Rule of Criminal Procedure 16, of its intention to introduce into evidence the defendant's written and oral statements. The defendant moved to suppress the sworn statement provided to Turner on the ground that it was obtained in violation of the Fifth Amendment because the defendant was not given *Miranda* warnings and because the statement was not voluntary. (R. 39 Motion, pp. 1-5, Apx. pp. __). A hearing

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[1] Section 2 is the federal aiding and abetting statute. See 18 U.S.C. 2.

was held before the district court. Both Turner and Hicks testified. The defendant did not testify or present any evidence. The district court denied the motion to suppress. The court explained:

> Based upon all the evidence presented, particularly that of Ms. Turner, it seems clear to me that Mr. Jones was not in custody, that he was free to leave. He did leave, in fact. He got up and walked down the hall, apparently to go to the restroom. He had his weapon with him. He was in familiar surroundings, a police station where he obviously had been before. He was familiar with the building.
>
> This is not the type of coercive environment that *Miranda* applies to since the officer was armed and free to leave at any time. In fact, he was not even arrested. At the conclusion of the interview, he requested an opportunity to speak to the supervisor, Sheriff Hicks. He did that. He stayed until the sheriff got there. It's clear that Mr. Jones was not under arrest or in custody at the time of this statement. Therefore, no *Miranda* warnings were required; and therefore, the statement is admissible. The motion to suppress is denied.

(Arguments & Ruling at 10/30/03 TR, pp. 5-6, Apx. pp. __).

Following a two-day trial, a jury found the defendant guilty on both counts. The defendant filed a motion for a new trial, arguing that the evidence was insufficient to support the verdict and that the district court erred in refusing to suppress the defendant's statements. (R. 78 Motion, p. 1, Apx. p. __). The court denied the motion. As to the suppression issue, the court explained that the defendant failed to offer any new evidence since the pre-trial hearing that would cause the court to alter or consider its previous ruling. (R. 82 Order, pp. 3-4, Apx.

pp. __).

The court entered final judgment on April 9, 2004, and sentenced the defendant to concurrent terms of imprisonment of 54 months for Count One, and 12 months for Count Two. (R. 86 Judgment, pp. 1, 3, Apx. pp. __). The defendant filed a timely notice of appeal on April 14, 2004. (R. 87 Appeal, p. 1, Apx. p. __).

STATEMENT OF FACTS

1. The Offense

At the time of the offense, the defendant, Tracey Jones, was employed as a Deputy Sheriff with the Hardeman County Sheriff's Department in Hardeman County, Tennessee. Robert Crisp, Jr. (a.k.a. "Roughhouse") is an acquaintance of the defendant and a resident of Hardeman County. (R. 40 Response, Exh. A, p. 1, Apx. p. __). Adrian Kirtz is Crisp's nephew. (Donna Turner at 10/30/03 TR, p. 10, Apx. p. __).

According to the defendant's own account, Crisp contacted him on January 4, 2003, and said he needed to speak with him about something "very important." (R. 40 Response, Exh. A, p. 4, Apx. p. __). The two met the following morning. Crisp told the defendant that he and his "cousin" (later identified as Crisp's nephew, Adrian Kirtz) would be driving from Indiana to Tennessee later that

afternoon with a large sum of money, and that he wanted the defendant to stage a traffic stop, pretend to arrest Crisp, and then remove the money from the car. In return, Crisp promised to pay the defendant. The defendant agreed to do it so long as it could be done before he was scheduled to begin his work shift at 4 p.m. (R. 40 Response, Exh. A, pp. 4-6, Apx. pp. __).

Crisp called the defendant that afternoon between 2:55 p.m. and 3:15 p.m. and advised him that he and Kirtz were going to head down Sain Road in a couple of minutes. Crisp also explained to the defendant where in the vehicle the money was hidden. According to plan, therefore, the defendant dressed in his uniform, drove his patrol car to Sain Road, and found the vehicle that Crisp was driving. The defendant followed the car for about four or five miles and then turned on his police lights. Crisp pulled over immediately. The defendant exited his patrol car, approached the vehicle, and purported to arrest Crisp on the ground that there was an outstanding warrant for his arrest for unpaid child support and that he was driving with a suspended license. The defendant placed handcuffs on Crisp and sat him in the back of his patrol car. The defendant returned to the other vehicle and conducted a search. When he found a bag containing the money, he asked Kirtz if it belonged to him or Crisp. He told Kirtz that if it belonged to him, he would have to take him to the jail to speak with an investigator. Kirtz told the

defendant that the money belonged to Crisp. The defendant told Kirtz that he was free to go. (R. 40 Response, Exh. A, pp. 6-11, Apx. pp. __).

The defendant drove Crisp to Crisp's mother's house. On the way, the defendant stopped on the side of the road, removed the handcuffs from Crisp, and handed Crisp the bag of a money. Crisp removed some $5,000 from the bag (which contained $35,000) and gave it to the defendant. The defendant accepted the money and proceeded to work to begin his 4:00 shift. (R. 40 Response, Exh. A, pp. 11-12, Apx. pp. __; Delphus Hicks at 10/21/03 TR, pp. 5, 9, Apx. pp. __).

2. The Confession

In the late evening hours of January 10, 2003, at the end of the defendant's work shift, a dispatcher, at the request of Special Agent Donna Turner of the Tennessee Bureau of Investigation (TBI), contacted the defendant and asked him to report to the Bolivar Police Department. The defendant drove to the station in his patrol car while he was still on duty. The defendant met with Turner and Special Agent Scott Lott, also from the TBI, in an unlocked interview room. Turner told the defendant that he was not under arrest, but that his name came up during the investigation of the theft of money from Adrian Kirtz. Turner asked the defendant if he would be willing to talk to them about it, and the defendant agreed. (Donna Turner at 10/30/03 TR, pp 1-9, Apx. pp. __).

Before beginning the interview, Turner asked the defendant if he needed to let his dispatcher know where he was and what he was doing. The defendant said no, because it was at the end of his shift. He said that everything was fine, and that he was able to talk. (Donna Turner at 10/30/03 TR, p. 9, Apx. p. __). Turner collected some personal information from the defendant and then asked him if he was involved in the theft. The defendant denied his involvement. Turner told him that he needed to be truthful. In response, the defendant became emotional, and said that he made a mistake and wanted to "get it straight." (Donna Turner at 10/30/03 TR, p. 8, Apx. p. __).

The defendant then proceeded to recount all of the facts regarding his agreement with Crisp, the staged traffic stop of Crisp and Kirtz, the theft of the money, and Crisp's payment to him of $5,000. (Donna Turner at 10/30/03 TR, pp. 9-11, Apx. pp. __). Turner recorded the facts in a 14-page written statement. (Donna Turner at 10/30/03 TR, pp. 11-12, Apx. pp. __). Before beginning the statement, at 1:23 a.m. on January 11, 2003, the defendant signed a sworn statement indicating that the statement he was about to give "is the truth, the whole truth, and nothing but the truth." (R. 40 Response, Exh. A, p. 1, Apx. p. __). While the defendant provided the statement to Turner, Lott came in and out of the room. The door remained unlocked, and all three of them took breaks to use

the restroom, make coffee, or fetch something to eat. Although the defendant was offered food and drink, he declined. The defendant left the room at least once to use the men's room, which was located near one of the station's exits. He did so unescorted. His demeanor while giving the statement was calm. At all times, the defendant remained armed, dressed in his uniform, and in possession of his car keys. He was also left alone in the unlocked room on at least one occasion. (Donna Turner at 10/30/03 TR, pp. 15-16, 18-20, Apx. pp. __). He was never told by Turner, Lott, or any of his superiors that he was required to stay in the room and be interviewed. (Donna Turner at 10/30/03 TR, p. 21, Apx. p. __). Although Turner and Lott were both armed, they never displayed their weapon to the defendant. (Donna Turner at 10/30/03 TR, p. 8, Apx. p. __).

After Turner finished recording the statement, the defendant carefully reviewed it, made all necessary corrections, and then initialed each correction as well as each paragraph. (Donna Turner at 10/30/03 TR, pp. 12-13, Apx. pp. __). At 4:45 a.m., the defendant signed an affidavit that provides:

> I, Tracy [sic] Jones, have read, or have had read to me, this sworn statement which begins on Page one (1) and ends on Page 14. I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement.
>
> I have made this statement freely without hope of benefit or reward,

> without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.
>
> At the time of the making of this statement, I am not under the influence of alcohol, drugs, or any other type of intoxicant which would render me incapable of understanding the statement made by me.

(R. 40 Response, Exh. A, p. 14, Apx. p. __).

Turner did not arrest the defendant at the conclusion of the interview. Although the defendant was free to leave, he requested to speak with his supervisor, Sheriff Delphus Hicks, to explain what he had done. He said he thought the sheriff would be disappointed in him, that he was concerned for his job, and that he wanted to be the first to tell Hicks what happened. Turner asked an investigator to call Hicks to tell him that the defendant wished to speak with him. The defendant remained at the station voluntarily until Hicks arrived. (Donna Turner at 10/30/03 TR, pp. 21-22, Apx. pp. __).

Shortly thereafter, in the early morning hours of January 11, 2003, Hicks arrived at the station. He found the defendant sitting inside an unlocked office. He was not handcuffed. (Delphus Hicks at 10/21/03 TR, pp. 5-7, Apx. pp. __). The defendant recounted to Hicks the facts of the staged traffic stop and the theft of the money. Hicks responded by telling the defendant that he would have to suspend him without pay until the investigation was finished. The conversation

lasted approximately five to ten minutes. When it was over, Hicks gave the defendant a ride to his house so that he could change clothes and handover the uniform and badge that he was wearing, as well some more uniforms he had at home. Hicks did not arrest the defendant. (Delphus Hicks at 10/21/03 TR, pp. 9-11, Apx. pp. __).

SUMMARY OF ARGUMENT

The district court did not err in refusing to suppress the defendant's confession. The defendant's position that the confession should have been suppressed because he was not advised of his *Miranda* rights is without merit because the defendant was never in custody. The defendant was never placed under arrest. In fact, he voluntarily drove himself to the police station in his police cruiser and agreed to be interviewed. He was never threatened with arrest or force. He was questioned in an unlocked interview room and had complete freedom of movement. While being interviewed, the defendant wore his police uniform and badge and maintained possession of his weapon and car keys. He was permitted to take breaks and use the restroom unescorted. He was offered food and drink. At the end of the interview, he went home. Under these circumstances, a reasonable person would not have believed that he or she was not free to leave.

For these same reasons, the defendant's confession was voluntary. The circumstances of the interview contradict the defendant's position that his confession was the product of police coercion. As already discussed, no force or threat of force was ever used against him. Moreover, the defendant is a police officer who was familiar with his surroundings and the use of police interrogation tactics. The totality of the circumstances simply do not indicate that the defendant's will was overborne in this case. The defendant cites no evidence or authority to the contrary. Accordingly, his confession was admissible, and the judgment of the district court should be affirmed.

ARGUMENT

THE DISTRICT COURT DID NOT ERR IN REFUSING TO SUPPRESS THE DEFENDANT'S CONFESSION BECAUSE THE DEFENDANT WAS NOT IN CUSTODY FOR *MIRANDA* PURPOSES AND BECAUSE HIS STATEMENTS WERE VOLUNTARY

A. Standard Of Review

"Whether a defendant was 'in custody' is a mixed question of law and fact subject to *de novo* review." *United States* v. *Crossley*, 224 F.3d 847, 860 (6th Cir. 2000) (italicization provided). "The district court's conclusions concerning the voluntary nature of an inculpatory statement are [also] reviewed *de novo*." *United States* v. *Mahan*, 190 F.3d 416, 422 (6th Cir. 1999).

B. Miranda Warnings Were Not Required Because The Defendant Was Not In Custody

The defendant argues (Def. Br. 9) that his confession should have been suppressed because he was not advised of his constitutional rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The defendant offers no argument in support of his position. Nonetheless, we briefly address why his position lacks merit.

In *Miranda*, the Supreme Court held that preinterrogation warnings are required in the context of custodial interrogations given "the compulsion inherent in custodial surroundings." 384 U.S. at 458. The Court explained that "custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444. "[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury* v. *California*, 511 U.S. 318, 323 (1994). Courts must examine "all of the circumstances surrounding the interrogation," *id.* at 322, and determine "how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her 'freedom of action,'" *id.* at 325. Relevant circumstances include whether the suspect voluntarily comes to the

police station and agrees to be interviewed, whether the suspect is informed that he is not under arrest, and whether the suspect is allowed to leave at the end of the interview. *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977) (per curiam).

To determine whether a suspect is "in custody" for *Miranda* purposes, therefore, two discrete inquiries must be made: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995). Once these questions are answered, "the court must apply an objective test to resolve the 'ultimate inquiry': [was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Ibid.* (quoting *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)).

Applying this test to the instant case, it is clear that the defendant was not "in custody" for *Miranda* purposes. The defendant voluntarily drove himself to the police station. When he arrived, Turner told the defendant that he was not under arrest. He agreed to be interviewed. Instead of pressuring the defendant with the threat of arrest and prosecution, Turner appealed to the defendant's interest in telling the truth. (Donna Turner at 10/30/03 TR, pp. 4-9, Apx. pp. __). The interview room was unlocked at all times and the door was opened and closed

throughout the night. The defendant was offered food and drink and was allowed to take breaks. He left the room unescorted to use the restroom, which was located near a station exit. The defendant, however, voluntarily returned to the room to continue his interview. The defendant remained armed and in possession of his car keys. Although Turner was armed, she never brandished her weapon. (Donna Turner at 10/30/03 TR, pp. 8, 15-22, Apx. pp. __). At the end of the interview, the defendant reviewed and corrected his statement and swore, in writing, that the written statement was made "freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement." (R. 40 Response, Exh. A, p. 14, Apx. p. __; Donna Turner at 10/30/03 TR, pp. 12-13, Apx. pp. __). Finally, and most importantly, the defendant was not arrested at the end of the interview. Although the defendant was free to leave, he requested to speak to Sheriff Hicks, and voluntarily remained at the station until Hicks arrived. (Donna Turner at 10/30/03 TR, pp. 21-22, Apx. pp. __). After a brief, informal conversation, Hicks drove the defendant to his home. (Delphus Hicks at 10/21/03 TR, pp. 10-11, Apx. pp. __).[2]

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[2] The argument portion of the defendant's brief (Def. Br. 9-10), like the defendant's pretrial motion to suppress the confession (R. 39 Motion, pp. 1-5, Apx. pp. __), addresses only the admissibility of the written statement the defendant provided to Turner, not the oral statement he provided to Hicks. Nonetheless, the defendant challenged the admissibility of that statement in his

Under these circumstances, a reasonable person clearly would have felt that he or she was at liberty to terminate the interrogation and leave. Indeed, both the Supreme Court and this Court have recently concluded in similar cases that such circumstances, when examined objectively, do not amount to "custody" under *Miranda*. See, *e.g.*, *Yarborough* v. *Alvarado*, 124 S. Ct. 2140, 2149-2150 (2004) (concluding that a seventeen-year old suspect was not in custody where his parents, rather than the police, transported him to the station; he was told he was not under arrest; the investigator focused on the importance of telling the truth rather than the suspect's involvement; the suspect was asked twice if he needed a break; and he was allowed to go home after the interview); *Mason* v. *Mitchell*, 320 F.3d 604, 632 (6th Cir. 2003) (concluding that a suspect interrogated for four

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motion for a new trial (R. 78 Motion, p. 1, Apx. p. __), and he discusses Hicks' suppression hearing testimony in the statement-of-facts section of his appellate brief (Def. Br. 4-5). However, Hicks' testimony at the suppression hearing was offered by the government only out of an abundance of caution, and the district court agreed with the government's argument that the defendant's oral statement to him was admissible on both *Miranda* and voluntariness grounds (Arguments & Ruling at 10/30/03 TR, pp. 5-6, Apx. pp. __; R. 82 Order, pp. 3-4, Apx. pp. __). Although the defendant does not appear to renew the argument here, the government maintains that, because the defendant requested to speak to Hicks and did so out of self-interest, the district court's ruling was correct. See, *e.g.*, *United States* v. *Sivils*, 960 F.2d 587, 598 (6th Cir.) (concluding that a defendant police officer's statements were voluntary and that he was not in custody where he "initiated the * * * interview by calling one of the investigating agents and asking for a second meeting"), cert. denied, 506 U.S. 843 (1992).

hours in a basement interview room was not in custody, even though he asked to leave and was arrested at the conclusion of the interview, because "at the time of questioning he was not under arrest and he voluntarily agreed to answer the police's questions"); *Crossley*, 224 F.3d at 862 (concluding that a suspect interviewed at the workplace by the FBI was not in custody where the suspect "had complete freedom of movement because she was not physically restrained in anyway and was sitting close to the door in an unlocked room"; the suspect "was not arrested at its conclusion"; and "agents never made any showing of force, such as brandishing a firearm").

The defendant cites no authority in support of his position that his confession was taken in violation of *Miranda*. Accordingly, his argument that the district court erred in refusing to suppress his confession on *Miranda* grounds is without merit.

C. The Defendant's Statements Were Voluntary

The defendant also argues (Def. Br. 9-10) that his confession should have been suppressed because it was not made voluntarily. This position also lacks merit.

"This Court has established three requirements for a finding that a confession was involuntary due to police coercion: (i) the police activity was

objectively coercive; (ii) the coercion in question was sufficient to overbear the defendant's will; and (iii) the alleged police misconduct was the crucial motivating factor in the defendant's decision to offer the statement." *Mahan*, 190 F.3d at 422. "In determining whether a confession has been elicited by means that are unconstitutional, this [C]ourt looks to the totality of the circumstances concerning 'whether a defendant's will was overborne in a particular case.'" *Ibid.* (quoting *Ledbetter* v. *Edwards*, 35 F.3d 1062, 1067 (6th Cir. 1994), cert. denied, 515 U.S. 1145 (1995)). Unlike the objective *Miranda* custody test, therefore, this inquiry permits consideration of the characteristics of the accused, including "the suspect's age, education, and intelligence, as well as a suspect's prior experience with law enforcement." *Yarborough*, 124 S. Ct. at 2151 (citation omitted). Other relevant factors include "whether the defendant has been informed of his constitutional rights; the length and extent of the questioning; and the use of physical punishment, such as the deprivation of food or sleep." *Mahan*, 190 F.3d at 423.

The totality of the circumstances here indicates that the defendant's confession was the product of a free and rational choice rather than any police coercion. As set forth in the *Miranda* custody discussion above, the defendant was never placed under arrest or threatened with arrest. Turner never brandished

her weapon, nor took any other action associated with force or coercion, and the interview took place in an unlocked room. The defendant was never told that he could not leave. To the contrary, the defendant had complete freedom of movement, as he was permitted to take breaks and leave the room unescorted, with his weapon and car keys. See Part A, *supra*. In *Mahan*, this Court held that such circumstances contradict a finding of coercion. *Ibid.*

Moreover, the defendant in this case is a seasoned police officer, who was familiar with his surroundings and well aware of his rights and the use of police interrogation tactics. Given such experience and knowledge, the defendant's assertion that he felt "pressured" (Def. Br. 10) into signing a written confession is inconceivable. Indeed, this Court has noted that a suspect's experience as a police officer is relevant to a finding of voluntariness. *Sivils*, 960 F.2d at 598.

The defendant's position (Def. Br. 10) that the "totality of the circumstances dictates unfairness and overreaching" because he "was questioned between 1:00 and 4:00 AM at the Bolivar Police Station with many officers either participating in the questioning or otherwise in the near vicinity" (Def. Br. 10) similarly lacks merit. Indeed, this Court has already approved interrogations lasting as long as 18 hours (beginning at 11:30 a.m. and ending at 6:00 a.m. the next morning) and by as many as eleven different police officers, even under threat of the death penalty.

See *McCall* v. *Dutton*, 863 F.2d 454, 459-460 (6th Cir. 1988), cert. denied, 490 U.S. 1020 (1989) (citing *Hawkins* v. *Lynaugh*, 844 F.2d 1132, 1140 (5th Cir.), cert. denied, 488 U.S. 900 (1988)); see also *Ledbetter*, 35 F.3d at 1069 (relying on *McCall*'s approval of *Hawkins* to reverse the district court's suppression of a statement taken from an interview that lasted from midnight to 3:00 a.m.); accord *Mahan*, 190 F.3d at 423. Moreover, as already discussed, the defendant, as a police officer, was in a familiar environment and therefore less likely to feel intimidated or coerced. Cf. *Mahan*, 190 F.3d at 423 (concluding that an interview conducted at the defendant's workplace was not coercive).

In sum, the district court did not err in refusing to suppress the defendant's confession because it was wholly voluntary, and not the product of police coercion.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the district court.

Respectfully submitted,

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____

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CERTIFICATE OF SERVICE

I certify that on September 13, 2004, one copy of the foregoing PROOF BRIEF FOR THE UNITED STATES AS APPELLEE was sent by first-class mail to the following counsel of record:

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TOVAH R. CALDERON
Attorney

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Fed. R. App. P. 32(a)(7)(C), that the attached PROOF BRIEF FOR THE UNITED STATES AS APPELLEE is proportionally spaced, has a typeface of 14 points, and contains 4,591 words.

____

TOVAH R. CALDERON
Attorney

Date: September 13, 2004

APPELLEE'S DESIGNATION OF APPENDIX CONTENTS

APPELLEE’S DESIGNATION OF APPENDIX CONTENTS

Appellant, pursuant to Sixth Circuit Rule 28(d), hereby designates the following filings in the district court’s record as items to be included in the joint appendix.

Description of Entry	**Date filed in District Court**	**Record Entry Number**
District Court Docket Sheet		
Response to Motion to Suppress	08/28/03	40
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