



A District Court denies the Defendant's motion to suppress statements that he made during and after a polygraph examination after finding that law enforcement officers did not violate his Miranda rights

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In *United States v. Farnsworth*, 2017 WL 3224966 (E.D. Mich. Mar. 15, 2017), Defendant Mark Farnsworth made certain statements to law enforcement officers during and after a polygraph examination. Farnsworth moved the District Court to suppress those statements and to prevent the Government from using those statements at trial because, according to Farnsworth, the statements were obtained in violation of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). The District Court held a two-day evidentiary hearing on Farnsworth's motion to suppress, and that hearing revealed the following facts.

In January 2015, FBI Special Agent Raymond Nichols, a member of the Southeast Michigan Trafficking and Exploitation Crimes Task Force ("SEMTEC"), began an undercover investigation into individuals trafficking in child pornography. Using a law enforcement database, Nichols identified an individual located in Michigan suspected of possessing child pornography. Nichols determined that the individual was using Gigatribe, a type of peer-to-peer software, to possess and to share the pornography.

To use Gigatribe, users must create both a username and password. Each account includes a folder into which users can download files. Users are then able to send friend requests to others on the software. However, a friend request alone is not sufficient to access the files contained within another's personal folder. To access the contents, the other user must provide his password. Oftentimes, users will exchange passwords so that each one is able to view the contents of the other's folder.

Nichols began the operation by sending a friend request to an individual who went by the username "NancyDell." After the friend request was accepted, Nichols asked for the password to NancyDell's private folder. Once Nichols received the password, he opened the folder to find files containing child pornography.

Nichols determined that the NancyDell account was being used from a home located on Oxford Street in Woodhaven, Michigan, and subsequently obtained a search warrant for the home. Nichols and several other members of the SEMTEC arrived at the home at approximately 6:00 a.m. on February 11, 2015. After the agents failed to receive an answer at the door, Nichols ordered that the door be broken down. The agents then entered the home and encountered Farnsworth to the right of the front door. Farnsworth was then put in handcuffs while the agents conducted a protective sweep of the home.

After the sweep was conducted, Nichols approached Farnsworth and informed him that the agents had a search warrant and asked if he would agree to be interviewed. After Farnsworth agreed, Nichols asked him if he was going to run. Farnsworth responded that he would not, and so, Nichols took off the handcuffs and walked with Farnsworth and Special Agent Adam Christensen to the laundry room of the home so that they could speak in private.

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Nichols testified that Farnsworth was not under arrest at this point. Nevertheless, he handed Farnsworth a form entitled "advice of rights" which set forth Farnsworth's Miranda rights. Nichols testified that, despite his belief that Farnsworth was not under arrest, he felt it was appropriate to inform Farnsworth of his Miranda rights because Farnsworth was "temporarily detained." Nichols then had Farnsworth read the advice of rights form. After Farnsworth finished, Nichols asked him if he understood his rights, to which, Farnsworth responded that he did. Nichols then had Farnsworth sign the portion of the form entitled "consent."

Nichols began a thirty-to-forty-minute interview with Farnsworth during which time Farnsworth admitted that he was NancyDell and that he used the account to download child pornography. Farnsworth also admitted using other peer-to-peer software to download child pornography. Although Farnsworth told the agents that there were 100 pictures of child pornography on his computer, agents later discovered over 8,000 such pictures.

When asked if children ever visited the home, Farnsworth stated that his daughter and his brother's four children would often stay over. Farnsworth denied ever engaging in sexual activity with them or other minors. Nichols testified that Farnsworth never asked to stop the interview or to speak to an attorney, nor did he indicate a lack of understanding of his rights. Farnsworth did inform Nichols that he had taken Percocet the night before to manage back pain.

To ensure that Farnsworth was being truthful regarding sexual contact with minors, Nichols asked him if he would be willing to take a polygraph examination, and Farnsworth responded that he would. Prior to heading to the Federal Building in Detroit to undergo the examination, Farnsworth ate and used the bathroom. While they were on their way to the polygraph, Farnsworth asked Nichols if he was going to be placed under arrest. Nichols replied that he was unsure, but that Farnsworth was not under arrest at that time. Farnsworth testified at one point that he was informed by Christensen that he would be free to go home if he passed. However, Farnsworth subsequently testified that there were no promises made about what would happen to him if he took the polygraph. Nichols also testified that no such promises were made.

Upon arriving at the Federal Building, Farnsworth met Special Agent Michael Fitzgerald who was the individual responsible for conducting the polygraph examination. Fitzgerald and Nichols then placed Farnsworth in the examination room and stepped outside to discuss the scope of the examination. Nichols informed Fitzgerald of Farnsworth's admissions at the home and requested that the polygraph focus on whether Farnsworth had engaged in sexual contact with minors. Fitzgerald testified that the room Farnsworth was left in did not lock.

Nichols and Fitzgerald then reentered the examination room. Fitzgerald informed Farnsworth of his Miranda rights and provided him with another advice of rights form and a polygraph consent form. Farnsworth read his rights and was asked by Fitzgerald if he understood his rights. After Farnsworth responded that he did, he signed both forms. Nichols then left the room and obtained an arrest warrant and criminal complaint based on Farnsworth's statements at the home.

After Nichols left the room, Fitzgerald began his questioning of Farnsworth. Fitzgerald's questioning consisted of three stages: (i) the pre-test interview; (ii) the polygraph examination; and (iii) the post-test interview. Fitzgerald's pre-test interview with Farnsworth lasted an hour and forty-five minutes during which time Fitzgerald received Farnsworth's biographical information, including his criminal record, employment history, level of education, and his health. Farnsworth stated that he dropped out of high school in the twelfth grade and received his GED online in 2012. Farnsworth did not indicate during the pre-test that he had a diminished capacity to understand the matters before him.

After the pre-test concluded, Fitzgerald placed the polygraph components on Farnsworth and began the examination. After questioning Farnsworth regarding whether he ever had sexual contact with a minor,

Fitzgerald observed that the results were inconclusive. Fitzgerald then began a second round of questioning, again asking Farnsworth whether he had ever engaged in sexual contact with a minor. The results of this second examination indicated that Farnsworth was being deceptive.

Fitzgerald then removed the polygraph components and began the post-test interview. After being informed that he had failed the polygraph examination, Farnsworth admitted that, when he was approximately twenty-two years old, he had a sexual relationship with a fifteen-year-old. Farnsworth denied that he ever engaged in sexual contact with any other minors, including those who resided at his home in Woodhaven. Fitzgerald then offered Farnsworth the opportunity to make a written statement which Farnsworth accepted. After Farnsworth finished his statement, Fitzgerald brought Nichols back into the room and read him the contents of the statement. Upon Nichols's request, Farnsworth agreed to allow Nichols to assume the identity of NancyDell to identify others trafficking in child pornography. Nichols then placed Farnsworth under arrest.

At the suppression hearing, Farnsworth testified regarding his education level and stated that he received special education from kindergarten until the ninth grade and that he struggled after he was placed in regular classes, ultimately dropping out in the twelfth grade. He stated that he did not understand the advice of rights form he signed prior to his interview with Nichols. He also testified that he was "scared at the moment" he signed the advice of rights and polygraph consent forms when he was with Fitzgerald and Nichols and that he did not grasp what he had signed until after he had signed the documents. He also testified that he often had difficulty comprehending what he reads, an issue that dates to his childhood. Despite this, Farnsworth did not voice any concerns to any of the agents.

Regarding his written statement, Farnsworth testified that Fitzgerald suggested that writing a statement would result in a lenient sentence if he were convicted. He also testified that Fitzgerald told him what he should write, including about his relationship with the fifteen-year-old and the possession of child pornography. Fitzgerald denied telling Farnsworth what to write and informed him that he did not have to make a written statement.

In his motion to suppress, Farnsworth argued that the District Court should suppress the oral and written statements that he made during and following his polygraph examination at the FBI office. Farnsworth argued that he did not voluntarily, knowingly, and intelligently waive his Miranda rights by signing the advice of rights form and the polygraph consent form. Farnsworth also argued that his confession following the polygraph (i.e., that he had sex with a minor) was the product of coercion and deception.

As for Farnsworth's first argument, the District Court explained that, under the Fifth Amendment, a defendant cannot be compelled in any criminal case to be a witness against himself, and in *Miranda*, the Supreme Court determined that a suspect under a custodial interrogation must be given notice of his Fifth Amendment right against self-incrimination. To ensure compliance with this rule, incriminating statements elicited during custodial interrogation prior to *Miranda* warnings cannot be admitted at trial.

Whether an individual is in custody and, thus, is entitled to *Miranda* rights prior to interrogation, depends on "how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U.S. 420, 422 (1984). The first factor considered is whether a reasonable person in the defendant's situation would have believed that he was free to terminate the interrogation and leave. Courts also consider the location of the interview, the length and manner of the interview, whether there was restraint on the individual's freedom to move, and whether the individual was informed that he did not need to answer the questions.

In this case, the District Court determined that a reasonable person in Farnsworth's position would have understood himself to be in continuous custody from the time the search warrant was executed through the

end of the questioning at the FBI office because a reasonable person would not believe that he was free to leave. Therefore, the District Court concluded that Farnsworth was entitled to receive his Miranda warnings. Next, the District Court considered whether Farnsworth properly waived his Miranda rights. The District Court held that Farnsworth did waive his Miranda rights. Notably, the District Court relied on the fact that the FBI Agents gave Farnsworth his Miranda warnings on two separate occasions, and Farnsworth signed both the Miranda waiver form and polygraph examination form after acknowledging that he understood his rights as contained on the forms.

The District Court further explained that, to be valid, waivers of Fifth Amendment rights must be voluntarily, knowingly and intelligently made. The inquiry as to whether there was a valid waiver has two components. First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. The ultimate question is whether, under the totality of the circumstances, the challenged confession was obtained in a manner compatible with the requirements of the Constitution. Here, the District Court concluded that Farnsworth voluntarily waived his Miranda rights. The District Court made this decision primarily for two reasons. First, the District Court found that Farnsworth was never promised anything in exchange for agreeing to take the polygraph examination. Second, the District Court held that there was no evidence of any coercive police activities towards Farnsworth. Accordingly, the District Court found that Farnsworth voluntarily waived his Miranda rights before making the statements that were the subject of his motion to suppress.

In addition, the District Court found that Farnsworth's waivers of his Miranda rights were knowingly and intelligently made. To determine whether a confession was knowingly and intelligently made, courts apply a totality of the circumstances test to ascertain whether the defendant understood his right to remain silent and to await counsel. These circumstances include the defendant's age, experience, education, background, and intelligence. The Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege. Rather, he need only understand that he can choose not to talk to the police, to talk only with counsel present, or to stop talking at any time.

In this case, Farnsworth relied heavily upon his lack of formal education and his need for special education classes in support of his argument that his waivers were neither knowingly nor intelligently made. But, the District Court explained that mental capacity is one of many factors to be considered in the totality of the circumstances analysis regarding whether a Miranda waiver was knowingly and intelligently made. Farnsworth gave no indicia to the FBI Agents that he did not understand his Miranda rights. Moreover, Farnsworth's conduct prior to the polygraph examination demonstrated that he understood the severity of the situation. Accordingly, the District Court held that Farnsworth voluntarily, knowingly, and intelligently waived his Miranda rights, and therefore, the District Court denied Farnsworth's motion to suppress the oral and written statements that he made to law enforcement officers.