United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-3093 **September Term, 2018**

FILED ON: DECEMBER 14, 2018

UNITED STATES OF AMERICA,
APPELLANT

v.

JOSEPH DANIEL HALLFORD,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-cr-00335)

Before: GARLAND, *Chief Judge*, MILLETT, *Circuit Judge*, and EDWARDS, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and the briefs and the oral arguments of the parties. The Court has accorded the issues full consideration and determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and **ADJUDGED** that the judgment of the District Court be affirmed.

On November 5, 2013, Appellee, Joseph Hallford, checked himself into the George Washington University Hospital ("GW Hospital") after participating in a protest near the White House. While at GW Hospital, Appellee made aggressive and threatening statements, including about the U.S. Secret Service. GW Hospital staff then acted to have Appellee transferred to the District of Columbia's United Medical Center ("UMC") for an involuntary psychiatric evaluation under a civil commitment order. On November 6, 2013, during an interview with Secret Service agents at UMC, Appellee admitted that he had several firearms and a Molotov cocktail in his vehicle, which police confirmed when they later located and searched the vehicle. Appellee was subsequently charged with weapons offenses under District of Columbia and federal law. In a hearing before the District Court, Appellee moved to suppress physical evidence and the statements that he had made to the Secret Service agents on the grounds that the statements were involuntary and obtained in violation of his *Miranda* rights. The District Court agreed and

suppressed the statements and evidence. *United States v. Hallford*, 103 F. Supp. 3d 1, 2, 4–5 (D.D.C. 2015). This court held that Appellee's statements were voluntary and reversed the District Court's ruling suppressing the physical evidence, but remanded the *Miranda* custody question for further proceedings. *United States v. Hallford* (*Hallford I*), 816 F.3d 850, 860 (D.C. Cir. 2016). On remand, the District Court again suppressed Appellee's statements. *United States v. Hallford* (*Hallford II*), 280 F. Supp. 3d 170, 187 (D.D.C. 2017). The Government now appeals again, arguing that the District Court erred in determining that Appellee's statements were obtained in violation of his *Miranda* rights.

Background

Appellee left his home in Alabama in his father's car and arrived in Washington, D.C. on November 5, 2013, where he attended a protest near the White House. *Hallford I*, 816 F.3d at 852. Unable to find his car after the event and having missed his medication for hemophilia, he hailed a taxi to GW Hospital. *Id.* At the hospital, Appellee explained to staff why he came to Washington and complained of physical pain and bleeding. *Id.* at 853. He also made a number of threatening and belligerent statements, including that he wanted to be "shot by the Secret Service" and to "hurt the government," and said that he would "bash the doctor's head in" if he did not receive pain medication. *Id.* at 853. Alarmed by his comments, hospital staff moved to have Appellee transferred to UMC for an involuntary psychiatric evaluation under a D.C. civil commitment order. *Id.* A nurse explained to Appellee that he was being committed because of comments he had made. Tr. of Evidentiary Hearing (May 22, 2017) at 16, *reprinted in* Appendix for Appellant ("App.") 372. Meanwhile, hospital security staff called the Secret Service to report the statements. *Hallford I*, 816 F.3d at 853.

Appellee was transported to UMC the following afternoon. *Id.* According to Appellee, shortly after he arrived at UMC, three hospital employees came to his room and told him that "the Secret Service and the FBI were there" and that he "had to go talk to them." Tr. of Evidentiary Hearing (May 22, 2017) at 8, App. 364. When Appellee asked if he needed to speak with them now, one of the employees "said 'yes.'" *Id.* The law enforcement personnel who were present at UMC were Secret Service agents Brian Fox and John Maher. *Hallford I*, 816 F.3d at 853. The agents had first gathered information from staff at GW Hospital about Appellee's behavior, statements, and condition, including that he experienced paranoid delusions about the government and had taken antidepressant medication. *Id.*; Tr. of Suppression Hearing (June 5, 2014) at 39, *reprinted in* App. 111. The agents also had been advised in an email assigning the case to them that Appellee might have symptoms of a mental health disorder. Tr. of Suppression Hearing (June 5, 2014) at 31, App. 103.

When the agents arrived at UMC, security officers escorted them to the facility's fourth floor and used a keycard to open a locked door leading into a corridor. Appellee was at the other end of the corridor, walking unrestrained with two or three hospital staff. The two groups converged and entered the open door of a doctor's lounge. Appellee sat down at a table and the agents approached him and identified themselves. *Id.* at 51–52, App. 123–24. While the parties presented differing accounts of the statements that followed, the District Court credited Appellee's testimony,

Hallford II, 280 F. Supp. 3d at 176 n.3, and the Government does not dispute the finding on appeal, Appellant's Br. at 43 n.3. According to Appellee, after the agents introduced themselves, Appellee asked them whether he was "in trouble," to which Agent Fox either replied, "Well, not if you didn't do anything wrong," or asked, "Did you do something wrong?" Tr. of Evidentiary Hearing (May 22, 2017) at 10, App. 366. When Appellee responded "no," Agent Fox "shrugged his shoulder." *Id.* at 35, App. 391. The Government maintains that the agents then asked Appellee if they could speak to him, while Appellee contends that they simply told him that they had questions to ask him. *See* Appellant's Br. at 25; Appellee's Br. at 26–28. The District Court in the decision on appeal accepted "for the sake of argument," without making a contrary factual finding, that the agents asked Appellee if they could question him. *Hallford II*, 280 F. Supp. 3d at 181.

The agents then asked Appellee biographical questions, leading him to explain that in the past he had been arrested, abused prescription drugs, and had been involuntarily committed due to mental health issues. The discussion then turned to Appellee's statements about the Secret Service, and the agents determined that Appellee did not pose a threat. During this period, UMC staff members and a doctor came in and out of the lounge. When Appellee at one point said that he had not eaten for some time, the doctor offered him chocolate, which he declined. When the door to the hallway closed, Agent Fox reopened it. Agent Fox also took Appellee's photograph after saying that he would do so, without asking Appellee's permission.

The agents prepared to conclude the interview by asking Appellee questions from an agency checklist, including whether he owned any weapons. Appellee replied that he owned a handgun and three long guns. When asked where they were located, Appellee initially said they were in his home in Alabama. When asked for more detail, he replied that they were in fact in the car that he had driven to Washington. At that point, Agent Fox walked into the hallway to call his supervisor. When Agent Fox stood up, Appellee noticed that he was armed. As Agent Fox walked away, Appellee stated to Agent Maher, without prompting, that "there was other stuff in the vehicle that would look bad," including a tank of gasoline, two propane tanks, and a Molotov cocktail. Tr. of Suppression Hearing (June 5, 2014) at 71–72, App. 143–44. When Agent Fox returned, the agents asked Appellee to consent to searches of his vehicle and his medical records, both of which he declined. The agents thanked Appellee and left. *Id.* at 82–83, App. 154–55.

Appellee's interaction with Agents Fox and Maher lasted approximately one hour. At no point did the agents read Appellee his *Miranda* rights, nor inform him that he was free to end the interview at any time. Their interview report also noted that Appellee was "shivering and appeared extremely tired." *Id.* at 146–47, App. 218–19. Agent Fox testified that Appellee was generally "calm" and "controlled" in his demeanor and tone, although he did "get emotional at times" when talking about his family and his physical illness. *Id.* at 78–79, App. 150–51. At no point in the interaction was Appellee restrained or handcuffed, nor did the agents make physical contact with him until he shook Agent Fox's hand at the end of the interview. After the interview, police located and searched Appellee's vehicle. Inside were the firearms Appellee had described, a large amount of ammunition, a bottle with suspected Molotov cocktail ingredients, and a body armor vest. The next day, November 7, 2013, a UMC psychiatrist diagnosed Appellee with schizoaffective

disorder, a mood instability disorder involving psychosis, paranoid delusions, and self-destructive behavior. Appellee was arrested at UMC the following day.

A grand jury indicted Appellee for ten violations of D.C. weapons law and two violations of federal statutes barring possession and interstate transport of the Molotov cocktail. Indictment, *United States v. Hallford*, No. 13-cr-00335 (D.D.C. Dec. 19, 2013), *reprinted in* App. 13–17. Appellee then moved to suppress physical evidence from his vehicle and the statements that he had made to Agents Fox and Maher on the grounds that the statements were involuntary and obtained in violation of his *Miranda* rights. The District Court granted the motions. *Hallford*, 103 F. Supp. 3d at 2. On review, this court found several of the District Court's findings clearly erroneous. *Hallford I*, 816 F.3d at 857–59. We held that Appellee's statements were voluntary and therefore reversed the ruling suppressing the physical evidence, but remanded for additional record development on whether Appellee was in *Miranda* custody. *Id.* at 859–60. We directed the District Court to apply both steps of the *Miranda* custody inquiry established by the Supreme Court in *Howes v. Fields*, 565 U.S. 499 (2012). *Id.* at 860. Under *Fields*, restriction of the interviewee's movement is "simply the first step in the analysis, not the last." *Id.* (quoting *Fields*, 565 U.S. at 509). We instructed the District Court to "take care to answer 'the additional question whether the relevant environment present[ed] the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.'" *Id*. (quoting *Fields*, 565 U.S. at 509) (alteration in original).

Following remand, the Government dismissed the D.C. weapons charges. United States' Unopposed Motion for Leave of Court to Dismiss D.C. Code Offenses, *United States v. Hallford*, No. 13-cr-00335 (D.D.C. May 15, 2017), *reprinted in* App. 18–19. After the District Court heard testimony from Appellee, which it credited over Agent Fox's testimony, the court again held that Appellee was in custody during the interview and granted his motion to suppress his statements to the agents. *Hallford II*, 280 F. Supp. 3d at 176 n.3, 185. Several findings were critical to the trial court's decision. Most prominent was the District Court's conclusion that when UMC staff told Hallford that the interview was mandatory, the staff members were "acting pursuant to the direction of the Secret Service." *Id.* at 181, 184. Also crucial was that the agents never told Appellee that he was free to end the questioning and "equivocated" when he asked whether he was "in trouble." *Id.* at 176 n.3, 182. Other factors included that the agents photographed Hallford without his permission and were armed. *Id.* Finally, the District Court concluded that Hallford had suffered the shock associated with arrest as a result of his involuntary commitment and that a reasonable person in Hallford's situation would have felt pressed to speak because he reasonably believed that the Secret Service had control over his commitment. *Id.* at 183–85. The Government now appeals.

Standard of Review

When reviewing a District Court's *Miranda* custody determination, we examine the court's legal conclusions *de novo* and review its underlying findings of fact for clear error. *United States v. Brinson-Scott*, 714 F.3d 616, 620–21 (D.C. Cir. 2013). The clear error standard is "deferential" and "does not entitle us to overturn a finding 'simply because [we are] convinced that [we] would

have decided the case differently.'" *Glossip v. Gross*, 135 S. Ct. 2726, 2739 (2015) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)) (alterations in original). The District Court's factual findings are presumed correct, particularly when based on oral testimony, *Bose Corp. v. Consumers Union of U.S.*, 466 U.S. 485, 500 (1984), and "must govern" as long as they are "'plausible' . . . even if another [finding] is equally or more [plausible]." *Cooper v. Harris*, 137 S. Ct. 1455, 1465 (2017) (quoting *Bessemer City*, 470 U.S. at 574).

Analysis

Before we turn to the merits, we must first address a procedural issue with the Government's case. When appealing a District Court's pretrial ruling suppressing or excluding evidence in a criminal case, the United States Attorney must certify "that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding." 18 U.S.C. § 3731. In a prior case before this court, the office of the U.S. Attorney for the District of Columbia pledged that "from [that] point forward its policy [would] be to file the § 3731 certification on or before the date it files the notice of appeal." *United States v. Bookhardt*, 277 F.3d 558, 562 (D.C. Cir. 2002). We accepted that assurance and decided not to dismiss the case, holding that the requirement to file a certification is not jurisdictional but that Federal Rule of Appellate Procedure 3(a)(2) gives the court discretion to dismiss an appeal submitted without one. *Id.* at 562–64. In the present appeal, however, the Government failed to follow its policy, submitting a certification more than three months after its notice of appeal. We will not dismiss this appeal because Appellee's counsel did not raise this issue. Nevertheless, we fully expect the Government to honor the commitment it has now made to the court by letter that it will follow the agreed certification procedure. Letter, *United States v. Hallford*, No. 17-3093 (D.C. Cir. Oct. 16, 2018).

Turning to the substance of this case, we start by reiterating that the Supreme Court in *Howes v. Fields* explained that there are two components to the *Miranda* custody analysis. 565 U.S. at 508–09; *see also Hallford I*, 816 F.3d at 860. "[T]he initial step is to ascertain whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Fields*, 565 U.S. at 509 (internal quotation marks and citations omitted). "[C]ourts must examine 'all of the circumstances surrounding the interrogation'" to determine if the subject's "freedom of movement was curtailed." *Id.* (quoting *Stansbury v. California*, 511 U.S. 318, 322 (1994) (*per curiam*)). However, the test is "an objective inquiry," and thus "'subjective views harbored by either the interrogating officers or the person being questioned' are irrelevant." *J.D.B. v. North Carolina*, 564 U.S. 261, 270–71 (2011) (quoting *Stansbury*, 511 U.S. at 323). Further, interrogating officers are "not required to 'make guesses' as to circumstances 'unknowable' to them at the time" of the interview. *Id.* at 271 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 430–31 (1984)).

Even if an interviewee's freedom of movement has been restrained, courts must additionally ask "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Fields*, 565 U.S. at 509; *see also Maryland v. Shatzer*, 559 U.S. 98, 112 (2010) (explaining that "the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody"). Coercive pressures include "the

shock" of being arrested and questioned after being "yanked from familiar surroundings in the outside world" and "'cut off from his normal life and companions'"; "the hope" that speaking will allow the interviewee "to leave and go home"; and a reason to think that the interrogating officers have "authority to affect the duration" of the interviewee's confinement. *Fields*, 565 U.S. at 511–12 (quoting *Shatzer*, 559 U.S. at 106).

Applying clearly erroneous review, we have no basis upon which to overturn the District Court's findings of fact underlying the conclusion that Appellee was in custody. First, we have little doubt that Appellee's freedom of movement was curtailed such that a reasonable person in his situation would not have felt free to terminate the interrogation. *See Fields*, 565 U.S. at 509. Most importantly, Appellee was told that he was required to speak with law enforcement. The District Court found that the UMC staff who made this statement to Appellee were acting at the direction of the Secret Service, and we see insufficient grounds to treat that finding as clearly erroneous. The court's account of the evidence is sufficiently "plausible in light of the record viewed in its entirety" and thus we "may not reverse it," *Bessemer City*, 470 U.S. at 573–74, "even if another [finding] is equally or more [plausible]," *Harris*, 137 S. Ct. at 1465.

Accepting that the Secret Service effectively ordered Appellee to speak with them, we have little trouble in concluding that a reasonable person would not have felt free to refuse their questioning. Other factors bolster this conclusion. Perhaps the most important is that the agents never informed Appellee that he was free to stop the interview and return to his room. In holding that the incarcerated interviewee in *Fields* was not in custody, the Supreme Court found "especially" important that the questioners told the subject that he could return to his cell at any time. *Fields*, 565 U.S. at 516–17. The Secret Service's failure to give Appellee that reassurance here substantially distinguishes the present case. Other key undisputed facts include that the agents equivocated when Appellee asked whether he was "in trouble," that they photographed him without permission, and that Appellee noticed during the interview that Agent Fox was armed. Despite the presence of some countervailing facts, including that the interview lasted only one hour, that the agents spoke calmly, and that Appellee was not physically restrained, we agree with the District Court that a reasonable person would not have felt free to leave.

We also agree with the District Court that the questioning environment was sufficiently coercive to satisfy the second element of the *Fields* inquiry. Appellee had just been involuntarily committed in an unfamiliar city, was suffering from mental illness, and had been required to submit to an interview with the agents, all of which was known to the Secret Service. The presence of the pressures that the Supreme Court listed in *Fields* as typical of a coercive environment is evident. Most compellingly, there is a clear resemblance between Appellee's experience and the scenario of a person being "yanked from familiar surroundings in the outside world" and "'cut off from his normal life and companions'" that the Court in *Fields* detailed as prominent features of custodial station house questioning. *Fields*, 565 U.S. at 511 (quoting *Shatzer*, 559 U.S. at 106). A person in Appellee's position would reasonably feel a "shock" from such a "sharp and ominous change" in his or her environment and a resulting coercive, pressuring effect. *Id.* In other words, the circumstances of Appellee's commitment – of which the agents were aware – are properly part of the coerciveness determination described by the Court in *Fields*.

We see significant evidence of the two other types of coercive pressures that *Fields* identified as well. It was objectively apparent that Appellee was being committed, at least in part, because of comments he had made regarding the Secret Service. *See* Tr. of Suppression Hearing (June 5, 2014) at 30–31, 37, App. 102–03, 109. When Secret Service agents then arrive for an interview, and Appellee both is told he is required to attend and is objectively aware that the circumstances of his commitment included comments about the Secret Service, a person in that situation could reasonably experience "hope" that explaining the comments will allow him or her "to leave and go home," and thus may feel pressure to speak. *Fields*, 565 U.S. at 511. The person could also reach the reasonable conclusion that the agents have some "authority to affect the duration" of his or her commitment and thus "'will feel compelled to speak by the fear of reprisal for remaining silent.'" *Id.* at 512 (quoting *Illinois v. Perkins*, 496 U.S. 292, 296–97 (1990)). Overall, we see sufficient signs of the "inherently coercive pressures" present in "the type of station house questioning at issue in *Miranda*" to conclude that the *Fields* inquiry is satisfied. *Id.* at 509.

Pursuant to Rule 36 of this Court, this disposition will not be published. The clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk