

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**UNITED STATES OF AMERICA,** §  
§  
**VS.** § **CAUSE NO. A-10-CR-136 (SS)**  
§  
**PAUL EDWARD COPELAND** §

**GOVERNMENT’S RESPONSE TO Defendant’S  
MOTION TO SUPPRESS STATEMENTS**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, the United States of America by and through her undersigned Special Assistant United States Attorney and files this Government’s Response to Defendant’s Motion to Suppress Statements and would respectfully show the Court as follows:

**I. FACTS**

On or about January 16, 2010, law enforcement personnel with the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), Austin Police Department (APD) and Immigration and Customs Enforcement (ICE) conducted an undercover operation at the Texas Gun Show located at 10601 N. Lamar Blvd, Austin, Texas (Western District of Texas). The purpose of the operation was to look for firearms violations.

During the operation, ATF agents’ attention was drawn to the Defendant, who was talking to a group of customers in a loud and boisterous manner. He stated that he had served his country, been shot and stabbed and that he could sell firearms to whoever he wanted. When asked if he was afraid that there were undercover officers at the show, the Defendant looked around and stated, “I don’t see any police officers.” An ATF agent was standing directly in front of him when he made

this statement.

Later that day, ATF agents witnessed the Defendant conduct a transaction with a group of spanish speaking hispanic males. Agents witnessed the Defendant negotiate a price for a handgun with Hipolito Aviles, who then handed cash to a second hispanic male, who then handed Aviles' cash and his own identification to the Defendant. The Defendant in turn sold the firearm and handed it to the "straw" purchaser, who then handed the firearm to Hipolito Aviles. The Defendant then instructed Mr. Aviles to hand the firearm back to the straw purchaser because he had "bought" the firearm. Agents witnessed the straw purchaser hand the firearm back to Hipolito Aviles a short time later. Hipolito Aviles was an illegal alien and therefore is prohibited from possessing a firearm.

Agents with ATF and APD made contact with the Defendant and asked him to step outside to talk to the agents. He was told he was not under arrest and he was not placed in restraints. He refused to say anything other than he sold the firearm to the "guy with the ID." The agents did not arrest the Defendant but allowed him to leave and go back into the gun show. He was allowed to surrender himself to the U.S. Marshal's Service after his indictment by the Grand Jury on March 2, 2010.

## II. DISCUSSION

It is well settled that statements made by a Defendant in the course of a "custodial interrogation" are not admissible unless certain procedural safeguards are respected. *Miranda v. Arizona*, 384 U.S. 436 (1966). What constitutes "custodial interrogation" such that the procedural safeguards of *Miranda* attach is a common question. The test for custodial interrogation adopted by the 5<sup>th</sup> Circuit is articulated in *United States v. Bengivenga*, 845 F.2d 593 (5<sup>th</sup> Cir.) (en banc), *cert denied*, 488 U.S. 924 (1988). The U.S. Supreme Court stated:

"the meaning of custody has been refined so the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated

with formal arrest. The only relevant inquiry is how a reasonable man in the suspect's position would have understood the situation." A suspect is therefore 'in custody' for *Miranda* purposes when placed under formal arrest or when a reasonable person in the suspect's position would have understood the situation to constitute a restraint on freedom of movement of the degree which the law associates with formal arrest."

*See United States v. Harrell*, 894 F.2d 120 (5<sup>th</sup> Cir. 1990).

If it is demonstrated that safeguards afforded by *Miranda* have not been respected and statements admitted at trial have been elicited from the Defendant without adequate precautions, reversal is not automatic, as such unforwarned statements may have been harmless. *Id. at 123*.

In the case before the Court, ATF was investigating the possession of a firearm by an illegal alien. That possession was facilitated by the Defendant's actions of selling the firearm to the alien through the "straw purchaser," who provided his identification for the sale. The Defendant was asked to step outside, he was told he was not under arrest and he was asked several questions about the sale of the firearm. The Defendant refused to say anything except that he "sold the gun to the one with the ID." Once officers were finished questioning him, he was allowed to leave and go back into the gun show.

Nothing in this encounter with the ATF gives any suggestion that the Defendant was "in custody" for purposes of *Miranda*. He was told he was not under arrest, he was not taken to an interrogation room or to ATF or APD headquarters for interview. He was never handcuffed or otherwise restrained. He was questioned in the parking lot at the gun show and ultimately was allowed to leave. No reasonable person in the Defendant's position would have understood the situation to constitute a restraint on freedom of movement of the degree which the law associates with formal arrest.

Should the Court conclude the encounter did rise to the level of a custodial interrogation the admission of the Defendant's statement that "he sold the gun to the guy with the ID" would be



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**ORDER**

Came on to be considered the Defendant's Motion to SUPPRESS STATEMENTS in the above styled and numbered cause. Having considered the pleadings, the United States Response to Defendant's Motion, after hearing testimony and the argument of counsel the court, hereby:

**ORDERS** that the Defendant's motion be DENIED.

**ENTERED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE