

April 27, 2021

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ETHAN GUILLEN,

Defendant - Appellant.

No. 20-2004

Appeal from the United States District Court
for the District of New Mexico
(D.C. No. 1:17-CR-01723-WJ-1)

Melissa Ayn Morris, Assistant Federal Public Defender, Albuquerque, New Mexico, for Defendant–Appellant.

Tiffany L. Walters, Assistant United States Attorney (John C. Anderson, United States Attorney, with her on the brief), Albuquerque, New Mexico, for Plaintiff–Appellee.

Before **TYMKOVICH**, Chief Judge, **BALDOCK**, and **CARSON**, Circuit Judges.

BALDOCK, Circuit Judge.

After a young woman found a pressure cooker bomb hidden under her bed, law enforcement agents went to the home of the only person she said might want to harm

her: Ethan Guillen.¹ The agents entered Ethan's home, questioned him, and obtained consent from his father to search the residence. During the search, the agents found evidence in Ethan's bedroom indicating his involvement with the pressure cooker bomb. When one of the agents confronted Ethan with the information and evidence they had collected, he confessed to making the bomb. The agent immediately provided the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and Ethan proceeded to make more incriminating statements.

Ethan ultimately entered a conditional plea of guilty to possession of an unregistered destructive device and an attempt to damage or destroy a building by means of fire or an explosive. His plea agreement reserved the right to appeal the district court's order denying his motion to suppress the physical evidence and incriminating statements resulting from the search of his home. Exercising that right, Ethan argues the district court should have suppressed the physical evidence found in his home because the agents' warrantless entry and search of his bedroom violated his Fourth Amendment rights. He also contends the district court should have suppressed the incriminating statements he made after receiving *Miranda* warnings because the agents elicited them through coercion and used an impermissible two-step interrogation technique to end run around *Miranda*.

We have jurisdiction under 28 U.S.C. § 1291, and we conclude that the district court correctly denied Ethan's suppression motion. No Fourth Amendment violation

¹ The parties refer to Ethan Guillen; his father, Reynaldo Guillen; and his brother, Tyler Guillen, by their first names. In the interest of clarity, we do the same.

occurred because Ethan voluntarily consented to the agents' entry into his home and because the agents reasonably relied on his father's consent to search his bedroom. Ethan's initial confession, which the district court suppressed, was inadmissible because the agents failed to provide *Miranda* warnings before they engaged in custodial interrogation. But the midstream *Miranda* warnings Ethan received were sufficient to advise him of his rights and render his voluntary postwarning statements admissible. For these reasons, we affirm the district court's judgment.

I.

On May 31, 2017, law enforcement responded to a 911 call from "MC," a young woman who had found an improvised explosive device under her bed. The device was a pressure cooker sealed with white duct tape and filled with black powder; homemade napalm; and various types of shrapnel, including nuts, bolts, and screws. A fuse ran through the pressure cooker's release valve and connected to an electric soldering iron, which was plugged into a timer that was plugged into the wall with a power strip. The device was designed so that the timer would turn on the soldering iron, which would heat up, ignite the fuse, and cause an explosion. Fortunately, the bomb never detonated.

Special Agent Zachary Rominger, an agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), interviewed MC and her mother. When asked if anyone would want to hurt or kill her, MC could think of only one person—her ex-boyfriend, Ethan. MC said she had dated Ethan for about six months. After they broke up, MC explained, Ethan continued to try and communicate with her

against her wishes. And at some point, MC's school provided her with an escort to class in an effort to stop Ethan's harassment.

After wrapping things up at MC's home, law enforcement agents went to Ethan's house. At approximately 9:43 p.m., ATF Special Agents Zachary Rominger and Derek Wright, FBI Special Agent Bomb Technicians Craig Greene and Michael Anthony, and Albuquerque Police Department Detective James Larranaga knocked on Ethan's front door. FBI Supervisor Marco Gonzalez was also present, but he stayed out by the street when the other five agents approached the house. Detective Larranaga's lapel camera captured on video, among other things, the moments leading up to the agents' entry into Ethan's home.

When the agents knocked on the door, Ethan and his brother, Tyler Guillen, answered. At the time, Ethan was eighteen years old; Tyler was twenty. The agents asked if they could come inside and talk. Tyler agreed, but Ethan asked if the agents had a warrant. After Agent Greene said they did not have a warrant, Ethan suggested they talk in the doorway instead. When the agents asked again if they could come inside, the brothers had a brief and largely inaudible discussion, during which Tyler asked Ethan, "Why do you care?" After the discussion, one of the brothers said "sure." Agents Rominger and Greene testified that Ethan said "sure," but Tyler testified he made that statement. Assessing the conflicting accounts and the lapel cam video, the district court deemed the agents' testimony credible and found that Ethan was the one who said the word "sure." At this point, Tyler put his hand on Ethan's shoulder, and both brothers moved out of the doorway. Agent Greene

confirmed: “Are you inviting us in to talk?” One of the brothers responded, “Yeah, sure.” Then they all went inside the house.

Following a protective sweep of the residence, during which no evidence was gathered, Agents Rominger and Greene interviewed Ethan at the kitchen table while other agents spoke with Tyler in the hallway. Tyler told the agents that their father, Reynaldo, is a musician and was practicing with his band in Santa Fe that night. Reynaldo returned home about 18 minutes after the agents’ entry. He informed the agents he had recently bought a pressure cooker for Ethan and, at the agents’ request, looked for it. After Reynaldo could not find the pressure cooker, he asked Ethan where it was. Ethan said he had taken it to his mother’s house. Reynaldo then called Ethan’s mother to see if she had the pressure cooker. Ethan’s mother said she did not know whether the pressure cooker was at her house and told Reynaldo she would have to look for it.

While questioning continued, Reynaldo confirmed he owned the house and verbally consented to a search. He also signed a search consent form. At that point, the agents called in the Albuquerque Bomb Squad to assist. Shortly after the search began, the agents asked Reynaldo if he owned a soldering iron. Reynaldo said he did, but he couldn’t find it. The agents’ search did not uncover the soldering iron either, but they discovered a table on the back porch with burn marks and a piece of fuse burnt onto it. The bomb squad also found white duct tape matching the tape on the pressure cooker bomb, black duct tape, latex gloves, scissors, super glue, and zip

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