

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 20 2009

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FELIX HERNANDEZ CASTILLO, a.k.a.  
Felix Castillo, Felix Nicolas Castillo,  
Frank Felix, Felix Hernandez-Castill Felix  
Hernandez-Castillo,

Defendant - Appellant.

No. 07-10482

D.C. No. CR-05-00985-FJM

MEMORANDUM\*

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

Appeal from the United States District Court  
for the District of Arizona  
Frederick J. Martone, District Judge, Presiding

Submitted February 12, 2009\*\*  
San Francisco, California

Before: D.W. NELSON, W. FLETCHER and TALLMAN, Circuit Judges.

Felix Hernandez-Castillo appeals from the district court's denial of two motions to suppress statements allegedly made in violation of his rights under

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Miranda v. Arizona*, 384 U.S. 436 (1966). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Castillo first contends he was in custody when he admitted to police that he owned everything in the car he was driving. He made the admission shortly before police conducted a consensual search of the vehicle and discovered 15 kilos of cocaine in the trunk. Because he did not raise this *Miranda* claim before the district court, we review for plain error. *See* FED. R. CRIM. P. 52(b); *United States v. Whitehead*, 200 F.3d 634, 638 (9th Cir. 2000).

The district court did not plainly err in determining that, under the totality of the circumstances, Castillo was not in custody during the initial portion of the encounter. *See Berkemer v. McCarty*, 468 U.S. 420, 436–42 (1984); *United States v. Galindo-Gallegos*, 244 F.3d 728, 729–32 (9th Cir. 2001). The detective did not use threatening language; the stop occurred in a truck stop parking lot; Castillo was not handcuffed, placed in the police car, or otherwise physically detained; the detention was brief; and the detective did not confront Castillo with evidence of guilt of a drug charge until a search of the car revealed the drugs. *See United States v. Hayden*, 260 F.3d 1062, 1066 (9th Cir. 1991) (discussing factors relevant to determining whether defendant is in custody for purposes of *Miranda*). At the time he admitted to ownership of everything in the car, a reasonable person in

Castillo's position would not have felt his "freedom of action [was] curtailed to a 'degree associated with formal arrest.'" See *Berkemer*, 468 U.S. at 442 (citing *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)).

Moreover, any error in admitting the statement was harmless. See *United States v. Gonzalez-Sandoval*, 894 F.2d 1043, 1047 (9th Cir. 1990). Even if Castillo's statement had been suppressed, the prosecution presented sufficient additional evidence for a reasonable factfinder to conclude Castillo knowingly possessed the cocaine.

Second, Castillo challenges admission of statements he made to detectives at the police station. He properly raised this claim before the district court. Therefore, we review *de novo* whether the district court erred in admitting the statements, and review the underlying factual findings for clear error. *United States v. Nevarez-Gomez*, 489 F.3d 970, 973 (9th Cir. 2007).

Though Castillo initially invoked his right to counsel, his statements were not elicited in violation of *Miranda* because he initiated further conversations with the police. See *Smith v. Illinois*, 469 U.S. 91, 95 (1984); *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981). Castillo's questions to the transport officer constituted initiation of an exchange. See *Oregon v. Bradshaw*, 462 U.S. 1039, 1042, 1044 (1983). The officer gave a curt response, which did not amount to interrogation.

Then, upon arriving at the station, Castillo explicitly said he wished to talk to the detectives. Before eliciting any incriminating statements, the detectives twice read Castillo his *Miranda* rights. The facts and circumstances in this case indicate Castillo understood his rights and knowingly and intelligently waived them. *See Edwards*, 451 U.S. at 484.

Finally, Castillo's purported psychological susceptibility to influence and suggestion did not affect the voluntariness of his waiver, and is irrelevant to whether his waiver was knowing and intelligent. *Colorado v. Connelly*, 479 U.S. 157, 170 (1986). The district court properly denied Castillo's motions to suppress his statements.

AFFIRMED.