UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. Case No: 8:19-cr-605-WFJ-CPT

MICHAEL J. DACORTA
_____/

ORDER

This matter comes before the Court on Defendant's motion to suppress statements made to law enforcement during the execution of a search warrant at his home on April 18, 2019. Dkt. 43. The motion was referred to the magistrate judge, who recommended the motion be denied. Dkt. 84. Defendant filed an objection to the Report and Recommendation, Dkt. 88, and the Government filed a response to that objection, Dkt. 94.

The district court may accept, reject, or modify "in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). If objections are filed, as here, a *de novo* determination is required "of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Legal conclusions are reviewed *de novo*, even in the absence of an objection. *LeCroy v. McNeil*, 397 F. App'x 554,

556 (11th Cir. 2010); *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

The magistrate judge found that Defendant was not in *Miranda* custody at the time he made the statements he seeks to suppress. Defendant does not object to the facts surrounding his questioning as set forth in the Report and Recommendation. Rather, Defendant only objects to the magistrate judge's credibility determinations made at the evidentiary hearing on this matter and requests this Court to conduct its own evidentiary hearing. Dkt. 88 at 2. As the Eleventh Circuit has established, where there is conflicting witness testimony, deference is to be given to the magistrate judge's credibility determinations "unless his understanding of the facts appears to be unbelievable." *United States v. Rash*, 787 F. App'x 648, 650 (11th Cir. 2019) (quoting *United States v. Ramirez-Chilel*, 289 F.3d 744, 749 (11th Cir. 2002)). The magistrate judge's understanding of the facts in this case does not appear to be unbelievable. The Report and Recommendation recounts the facts as they appear in the record. The magistrate judge's credibility determinations should receive deference—a repeated evidentiary hearing on this matter is unnecessary.

For the reasons explained in the Report and Recommendation, and in conjunction with an independent examination of the file, the Court concludes that the Report and Recommendation, Dkt. 84, should be adopted as part of this Order,

confirmed, and approved in all respects. Defendant was not in *Miranda* custody at the time he made his statements. Accordingly, Defendant's objection, Dkt. 88, is overruled, and Defendant's motion to suppress, Dkt. 43, is denied.

DONE AND ORDERED at Tampa, Florida, on November 1, 2021.

/s/ William F. Jung
WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record