

**SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. THOMAS AND ST. JOHN**

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|--------------------------------------|---|---------------------|
| <b>PEOPLE OF THE VIRGIN ISLANDS,</b> | ) |                     |
|                                      | ) |                     |
| <b>Plaintiff,</b>                    | ) |                     |
|                                      | ) |                     |
| <b>vs.</b>                           | ) | <b>ST-13-CR-057</b> |
|                                      | ) |                     |
| <b>DYHANI HEYLIGER,</b>              | ) |                     |
|                                      | ) |                     |
| <b>Defendant.</b>                    | ) |                     |
| _____                                | ) |                     |

**MEMORANDUM OPINION**

Pending before the Court is Defendant Dyhani Heyliger's March 14, 2013, Motion to Suppress Statements Obtained in Violation of Defendant's Constitutional Rights.<sup>1</sup> Defendant's Motion will be denied.

**FACTUAL AND PROCEDURAL HISTORY**

On February 12, 2013, the People of the Virgin Islands charged Defendant Dyhani Heyliger with a fifteen (15) count Information with the following charges: murder in the first degree (Count I); unauthorized use of a firearm during the commission of murder in the first degree (Count II); murder in the second degree (Count III); unauthorized use of a firearm during the commission of murder in the second degree (Count IV); assault in the first degree (Counts V and XI); unauthorized use of a firearm during the commission of assault in the first degree (Counts VI and XII); assault in the third degree (Counts VII, IX and XIII); unauthorized use of a firearm during the commission of assault in the third degree (Counts VIII, X and XIV); and reckless

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<sup>1</sup> The People responded on March 18, 2013. After the suppression hearing, on May 15, 2013, the People filed a Supplemental Memorandum in Opposition to Defendant's Motion to Suppress.

endangerment in the first degree (Count XV). The charges arose from an incident in the early morning hours of December 8, 2012, outside Metropolis Night Club, on St. Thomas, U.S. Virgin Islands, where Defendant allegedly shot several rounds striking Keith Dawson, Jr. who later died at the hospital allegedly as a result of a gunshot wound to the neck. Defendant was arrested on January 25, 2013, as he was attempting to board a plane to Atlanta, Georgia. On the same date, Defendant gave a statement to the officers at the Intelligence Unit located in Barbel Plaza, St. Thomas, that was recorded on video. Defendant moved to suppress the January 25, 2013, statement claiming that, although he had asserted his right to counsel on multiple occasions, the officers continued to question him. A suppression hearing was held on May 13, 2013.

### STANDARDS

In order to safeguard an individual's Fifth Amendment privilege against self-incrimination, any individual who is subject to "custodial interrogation" must be given *Miranda* warnings, which includes warnings that the individual has the right to remain silent and the right to an attorney,<sup>2</sup> to abrogate the inherently coercive nature of law enforcement interrogations.<sup>3</sup> Thus, in the situation of a "custodial interrogation" that results in a defendant giving an incriminating statement, the burden is on the prosecution to show, by a preponderance of the evidence, that the defendant knowingly, intelligently, and voluntarily waived his rights after being given his *Miranda* warnings. The Courts

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<sup>2</sup> *Miranda* requires that a defendant be advised that he has the right to remain silent, anything he says or does may be used against him in a court of law, he has the right to an attorney, and if cannot afford one, an attorney will be appointed to him by the court for free. See *Miranda v. Arizona*, 384 U.S. 436, 467 (1966).

<sup>3</sup> *Miranda*, 384 U.S. at 467 ("We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely."); see *Gov't of Virgin Islands v. Christopher*, 990 F. Supp. 391, 393 (D.V.I. 1997).

evaluate whether a defendant knowingly, intelligently, and voluntarily waived his rights based on the totality of the circumstances.<sup>4</sup> Some factors may include the defendant's "intelligence and education, age, familiarity with the criminal justice system, physical and mental condition," as well as "the explicitness of the waiver, language barriers," and the timing of the *Miranda* rights in relationship to the questioning.<sup>5</sup>

Even if a defendant is properly given his *Miranda* warnings, an incriminating statement is also not admissible if it was the product of coercion. Once again, the Courts look to the totality of the circumstances to determine "whether the defendant's will was overborne at the time he confessed,"<sup>6</sup> paying particular attention to "the characteristics of the accused and details of the interrogation," such as the conduct of the law enforcement officials.<sup>7</sup>

A defendant may assert his *Miranda* rights at any time during a custodial interrogation. However, a defendant's request for counsel must be "unambiguous or unequivocal," such "that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney."<sup>8</sup> For example, in *Davis v U.S.* the United States Supreme Court held that a defendant's statement that 'maybe I should talk to a lawyer' was not an unambiguous or unequivocal request for counsel because it

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<sup>4</sup> See *Fare v. Michael C.*, 442 U.S. 707, 726-27 (1979).

<sup>5</sup> 39 Geo. L.J. Ann. Rev. Crim. Proc. (2010).

<sup>6</sup> *Haynes v. State of Wash.*, 373 U.S. 503, 513 (1963).

<sup>7</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973) ("Some of the factors taken into account have included the youth of the accused, his lack of education, or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep . . . .")(internal citations omitted).

<sup>8</sup> *Davis v. U.S.*, 512 U.S. 452, 458-59 (1994).

was is “indecisive.”<sup>9</sup> In comparison, in *Edwards v. Arizona*, the defendant stated ‘I want an attorney before making a deal,’ which the Court found to be an unequivocal request for an attorney.<sup>10</sup> If a defendant asserts any of his *Miranda* rights, all questioning must cease.<sup>11</sup>

### ANALYSIS

Defendant generally alleges that (1) the video statement was not voluntary because the officers coerced him into signing the *Miranda* waiver and into giving a statement; and (2) that he requested “a representative” or “a legal representative” several times at the airport, in the car, and at the Intelligence Unit, but the officers continued to question him. Having heard the oral testimony of all the witnesses, including Defendant, and having considered the both the oral and written arguments of the parties, as well as the DVD recording of Defendant’s January 25, 2013 statement, and having considered the factors described below, the Court is persuaded that the People have met their burden of proving, by a preponderance of the evidence, that, under the totality of the circumstances, Defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights prior to giving his video statement, was not coerced into giving an incriminating statement, and did not unambiguously or unequivocally assert his right to an attorney before or during the video statement.

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<sup>9</sup> *Id.* at 460; *See e.g. Mueller v. Angelone*, 181 F.3d 557, 573-74 (4th Cir. 1999); *U.S. v. Walker*, 272 F.3d 407, 412-13 (7th Cir. 2001); *compare Wood v. Ercole*, 644 F.3d 83, 91 (2d Cir. 2011) (holding a statement saying “I think I should get a lawyer” showed no “internal debate,” and therefore was an unambiguous request for counsel).

<sup>10</sup> 451 U.S. 477, 479 (1981).

<sup>11</sup> *See McNeil v. Wisconsin*, 501 U.S. 171, 176-77 (1991) (“Once a suspect asserts the right, not only must the current interrogation cease, but he may not be approached for further interrogation” until counsel has been made available to him . . . .”) (citing *Edwards*, 451 U.S. at 484-85).

**I. Defendant's will was not overborne at any time by the conduct of the officers.**

The Court finds no testimony or other evidence supporting Defendant's contention that his will was overborne. Specifically, the parties do not dispute that Defendant was taken into custody at the airport on January 25, 2013, at approximately 5:00 p.m., transported to the Intelligence Unit at approximately 6:00 p.m., and read his *Miranda* rights at approximately 7:40 p.m. People's Exhibit One (1), a DVD recording of Defendant's statement, and People's Exhibit Two (2), a copy of Defendant's written "Warning As to Rights," both conclusively demonstrate that Defendant was read his *Miranda* rights, which Defendant acknowledged by a signature at 7:37 p.m., and was further read the waiver, which Defendant signed at 7:40 p.m.

Defendant testified that he was "forced into" signing the waiver and giving a statement. However, none of the testimony by the officers or the DVD recording of Defendant's statement demonstrate any such coercion. Specifically, Officer Jose Allen, an officer with the Virgin Islands Police Department for 15 years, testified that five other officers were present at the airport, that Defendant was handcuffed at the airport, and that he personally orally gave Defendant his *Miranda* warnings. He further testified that Defendant was not questioned at the airport and was transported to the Intelligence Unit in Barbel Plaza where he was uncuffed and given an opportunity to use the restroom and drink some water. Officer Allen also stated the Defendant never asked for a lawyer at the airport or in the car, but did at one point ask to speak to his mother or father. It appears that Officer Allen, in response, stated that Defendant was a "Big Man," and so implying

that Defendant “didn’t need to speak to his mother or father.” Officer Allen further testified that no threats were made and no weapons were drawn at any time. The Court gives full credit to Officer Allen’s testimony because it is largely supported and reaffirmed by the testimony of Officer Mark Thomas and Officer Devina Van Holten.<sup>12</sup>

The DVD recording also demonstrates that Defendant voluntarily gave his statement. Specifically, Defendant’s demeanor was calm throughout the recording and spoke with Officer Allen in a casual, relaxed tone. It appeared from the recording that Defendant was comfortable, speaking freely and in detail concerning his activities on the night in question. Defendant was read his *Miranda* warnings and the waiver of his *Miranda* rights by Officer Jose Allen, Officer Jose Allen repeatedly asked Defendant if he had any questions regarding the “Warning As to Rights.” In response, Defendant acknowledged the *Miranda* warnings, indicating verbally that he understood them and signed them. Defendant also signed the waiver of his rights after taking a few moments to read it more closely.<sup>13</sup> Additionally, Defendant does not assert that threats induced his statement, as he himself testified that no threats were made against him and he was not mistreated in any way. Thus, the Defendant’s contention that Officer Allen’s comment, captured on the DVD recording that Defendant was an “adult,” and he can thereby “make up his own mind” in response to a comment by Defendant that “my mother always says I should have a legal representative,” in the totality of the circumstances, is not coercive.

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<sup>12</sup> Officer Devina Van Holten’s testimony is largely consistent with the other two officers, stating that no threats were made, she did not hear Defendant ask for a lawyer, and that Defendant asked for his family members. While Officer Holten did testify that she never heard anyone read Defendant his *Miranda* rights at the airport, she also testified that she went to the rest room once and that the Defendant is Officer Holten’s cousin. Therefore, the Court does not credit this portion of Officer Holten’s seemingly contradictory testimony.

<sup>13</sup> Defendant does not claim that he had any difficulty understanding the “Warning As to Rights” due to any language barrier, his level of intelligence or education, or otherwise.

Defendant is Twenty-three (23) years of age, and is, in fact, an “adult.” Overall, the Court finds no evidence that Defendant’s will was overborne either by the conduct of the officers or by any other detail of the interrogation. Instead, the Court finds Defendant voluntarily, intelligently, and knowingly waived his *Miranda* rights and subsequently gave a voluntary statement.

**II. Defendant never unambiguously or unequivocally asserted his right to an attorney.**

Defendant testified that he requested “a representative” several times at the airport and in the car prior to his video statement. He argues that proof he had requested an attorney earlier is captured at approximately one hour eleven minutes into the DVD recording when Officer Jose Allen referred to remembering that the Defendant had requested “a representative.” He further argues that his statement, captured in the first few minutes of the DVD recording when he was being read his “Warning As To Rights,” that “my mother always says I should have a legal representative” was an unambiguous and unequivocal request for an attorney. The Court finds none of these arguments persuasive.

First, as discussed above, Defendant Jose Allen testified that he never heard Defendant ask for “a representative,” but that he asked for his mother and/or father. This testimony is supported by both Officer Mark Thomas and Officer Devina Van Holten. Thus, the Court does not credit Defendant’s testimony that he requested a “representative” several times prior to giving his statement at the Intelligence Unit. Further, requesting to speak with a family member or “representative” is not the equivalent of requesting to speak with an attorney, and, under the circumstances presented here, does not constitute

an unequivocal or unambiguous request for an attorney.<sup>14</sup> Accordingly, Defendant's argument that Officer Jose Allen acknowledged that Defendant had requested a "representative" earlier had no merit.

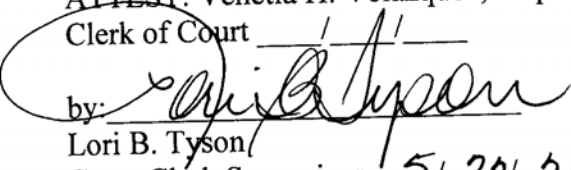
Second, Defendant's statement "my mother always says I should have a legal representative" also does not constitute an unambiguous and unequivocal request for an attorney. Instead, it is an indication that Defendant was uncertain as to whether he should request an attorney. Further, on the DVD recording, Defendant repeatedly confirmed that "he did not have a problem" talking with the officers. At no other point throughout the questioning did Defendant make any request for a lawyer. Thus, the Court finds that Defendant's Fifth Amendment right to have an attorney present was not violated at any time.

### CONCLUSION

Accordingly, Defendant's Motion to Suppress is denied. An Order consistent with this Opinion shall follow.

Dated: May 21, 2013

ATTEST: Venetia H. Velazquez, Esq.  
Clerk of Court

by:   
Lori B. Tyson  
Court Clerk Supervisor 5/22/2013

  
HON. MICHAEL C. DUNSTON  
JUDGE OF THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

<sup>14</sup> See e.g. *Fare v. Michael*, 442 U.S. 707 (2005) (juvenile defendant's request for his probation officer was not the equivalent of a request for a lawyer during an interrogation, nor was it an assertion of defendant's right to remain silent).