

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NOS.:
	)	
Plaintiff,	)	
vs.	)	
	)	
DEVON JOHNMARIE and	)	ST-15-CR-383
JUANCITO GIRON,	)	ST-15-CR-384
Defendants,	)	
_____	)	

MEMORANDUM OPINION

Before this Court is Defendants' motion for the release of the juvenile records of a minor who allegedly participated in the underlying crimes with Defendants Devon JohnMarie and Juancito Giron, and who was charged in Family Court as a juvenile. For the reasons set forth herein, the motion will be granted in part and the People will be required to produce to Defendants copies of all statement(s) that the minor gave to law enforcement regarding the underlying crimes.

BACKGROUND

Defendants Devon JohnMarie and Juancito Giron are charged with Third Degree Burglary and related crimes, all related to a burglary that allegedly occurred on or about October 20, 2015, in St. Thomas, Virgin Islands. A juvenile, J.B., allegedly participated in the burglary with Defendants JohnMarie and Giron, and J.B. was charged in Family Court as a juvenile.

The Defendants have repeatedly sought the release of the minor's statements and records, and on March 4, 2016, Defendant Giron filed a motion for the release of Family Division records pertaining to J.B. in that Family Court matter. That motion

was joined by Defendant JohnMarie, and briefed on August 1, 2016. By Order dated May 21, 2016, Honorable Debra S. Watlington denied the Defendants' motion, but noted that the Family Court was not required to dispose of the motion and the judge to whom the Defendants' case is assigned had authority to dispose of the motion.

Defendants re-asserted their earlier motion to this Court.

DISCUSSION

Defendants argue they are “constitutionally entitled to see and utilize any and all J.B. court records in defending the criminal case against [them]”, and ask this Court—pursuant to 5 V.I.C. 2529—to disclose such records.¹ Defendants specifically argue J.B.'s court records should be disclosed to [Defendants] because they are material to [their] guilt and/or punishment, and thus “favorable to the accused” in the criminal case. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

Section 2529 states that juvenile records shall not be disclosed to anyone unauthorized, “unless and until otherwise ordered by the judge.” The Court finds that Defendants are entitled to copies of all *Brady* material. Therefore, the Court finds that Defendants are entitled to copies of all statement(s) that J.B. gave to law enforcement relative to his arrest in the companion case. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Therefore, the Court will direct the People to immediately provide copies of J.B.'s statement(s) to the Defendants. However, Defendants shall safeguard

¹ Defendants acknowledge that appropriate restrictions should be placed upon the use of Minor J.B.'s record to prevent further dissemination to persons not associated with the defense, or for any other purpose.

the statement(s) provided by the People and may only share the statement(s) with person(s) who need to assist Defendants in the defense of the matter. Defendants shall not share the statement(s) with any person not affiliated with the defense of this matter.

However, a separate issue may arise if the People call J.B. as a witness at trial. In making the proper determination as to whether additional records should be disclosed to the Defendants, this Court must balance the minor's privacy rights against the Co-defendant's 6th Amendment right to confront an adverse witness. The plain text of the Sixth Amendment's Confrontation Clause provides that, in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." *Blyden v. People*, 53 V.I. 637, 652-653 (V.I. 2010). To establish that his rights under the Confrontation Clause were violated, the movant must "show[] that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors ... could appropriately draw inferences relating to the reliability of the witness.'" *Davis v. Alaska*, 415 U.S. 308 (1974). *Davis* establishes the principle that a criminal defendant's 6th Amendment Constitutional right to confront a witness may be violated by a trial judge's refusal to allow impeachment of a key prosecution witness by use of his juvenile record. In *Davis* the facts showed that the government witness was on probation for the same type of crime (burglary) with which the defendant was

charged, and a safe stolen during the crime was abandoned near the witness's home. Therefore, the witness may have had a motivation to falsely testify against the Defendant in order to prevent himself from becoming a suspect. With these circumstances, the court found that Davis's right to "probe into the influence of possible bias in the testimony of a crucial identification witness," outweighed the State's policy of the confidentiality of juvenile records. *See Contra, Commonwealth v. Santos*, 376 Mass. 920 (refusing to allow the use of a juvenile record because movant did not satisfy the factors of *Davis* because movant did not prove the witness had any motive or reason to cooperate with the prosecution, and the record was devoid of any basis for finding a prosecutorial threat to the witness's freedom.)

This Court finds that Defendants' right to probe into the influence of possible bias in the testimony of Minor J.B. is higher than the standard set forth in *Davis* because J.B. and the Defendants were all arrested for the same crime. This presents a higher motive to cooperate with the prosecution to the detriment of the co-defendants. Although juvenile records are not always admissible to impeach a witness's credibility, in this circumstance it is likely unconstitutional to prevent the admission. The Court, therefore, finds that should the People call J.B. as a witness at trial, they will be required to provide Defendants with copies of J.B.'s arrest record, including disposition of all cases. However, the duty to provide copies of J.B.'s records to defendants has not yet been established. Upon proper motion, after the People name J.B. as a witness for trial, the Court will order the People to provide copies of

the J.B.'s arrest record and disposition of cases, no later than one week before trial. However, Defendants will be required to safeguard the record(s) and may only share the record(s) with person(s) who are assisting in the defense of the matter. Defendants shall not share the record(s) with any person not affiliated with the defense of this matter.

CONCLUSION

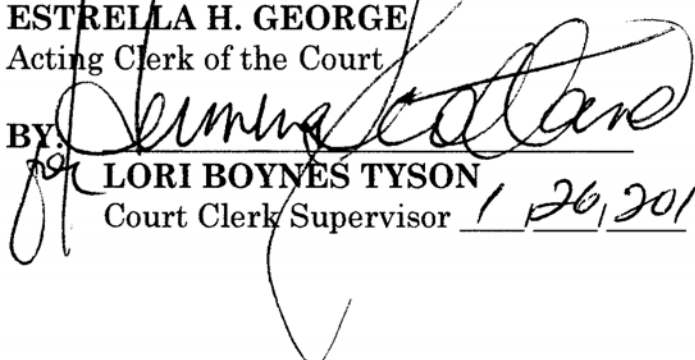
Defendants have a right to all *Brady* materials. The Court finds that any statement that the minor gave to law enforcement constitutes Brady materials for purposes of the Defendants defense. Therefore, the People will be ordered to produce copies of all statement(s) that J.B. gave to law enforcement relative to his arrest in his companion case.

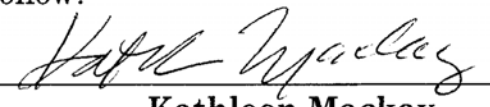
If the People intend to call J.B. as a witness in this matter, the Defendants' 6th Amendment right to confront an adverse witness outweighs the minor's privacy right. Therefore, Defendants will have a right to J.B.'s arrest record(s) and the disposition thereof, prior to trial, upon proper motion of the Defendants.

An Order consistent herewith will follow.

DATED: January 26, 2017

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 
LORI BOYNES TYSON
Court Clerk Supervisor 1/26/2017


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands