

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

PEOPLE OF THE VIRGIN ISLANDS,	)	CASE NO. ST-2016-CR-0000111
	)	
Plaintiff,	)	V.I. Code Ann. tit. 14, § 1700(a)(1), tit.16,
vs.		) § 91(b)(6); tit. 14, § 1700(a)(2), tit. 16,
		) § 91(b)(6) (2 Counts); tit. 14, § 1700a(a), tit. 16,
ROY M. ROGERS,		) § 91(b)(6) (2 Counts); tit. 14, § 1701(a)(5), tit. 16,
(D.O.B.: 02-11-64)		) § 91(b)(6) (2 Counts); tit. 14, § 1702(a), tit. 16,
		) § 91(b)(6); tit. 14, § 1708(a)(2), tit. 16, § 91(b)(5);
Defendant.	)	tit. 14, § 1709(a), tit. 16, § 91(b)(5) (2 Counts)
	)	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Roy Rogers's Motion in Limine, which was filed on August 18, 2017. The People filed a Response on February 6, 2018. Rogers moves the Court to suppress evidence related to the circumstances surrounding his arrest. Specifically, Rogers seeks to prevent testimony and evidence purporting that he held he pointed a gun at himself and police officers shortly after being suspended from his job as a customs and immigration officer. Finding that such events are irrelevant to the charges in this matter, the Court will grant the Motion.

BACKGROUND

Roy Rogers is charged with multiple counts of sexual assault of four minors. During the pertinent period, Rogers was the Chief Immigration and Customer Officer for the U.S. Department of Homeland Security on St. Thomas. On May 10, 2016, the Court held a hearing on Rogers's Motion for Reduction of Bail, during which the People's witnesses revealed that, on March 7, 2016, at the Crown Mountain Immigration and Customs Enforcement Facility, Rogers was arrested following a ten-hour standoff between himself and several police officers (herein referred to as the "March 7, 2016 Standoff"). The witnesses testified that Rogers intermittently held a gun to his own head and pointed his firearm at Sergeant David Cannonier of the Virgin Islands Police Department.¹ The standoff was triggered when Rogers was ordered by his supervisor to surrender his government-issued firearm, credentials, cell phone, and identification because he was being placed on involuntary administrative leave due to an investigation regarding his alleged unlawful behavior with the four minors.

Arguing that the March 7, 2016 Standoff is irrelevant to this matter, Rogers moves the Court to bar testimony and evidence about this incident at his trial. The People counter that Rogers's threat of suicide is evidence of consciousness of guilt of committing the alleged sexual assault.

¹ Rogers was charged with using a dangerous weapon to forcibly resist and interfere with a peace officer engaged in the performance of his duties. On April 11, 2016, the U.S. Attorney's Office filed a Motion to Dismiss the Complaint filed against Rogers in the District Court for the Virgin Islands. *United States v. Rogers*, Case No. 3:16-mj-00022-CVR-RM, Criminal Comp.

STANDARD

A. Relevance

Pursuant to Virgin Islands Rule of Evidence 402,² only relevant evidence is admissible at trial. Rule 401 provides that evidence is relevant if it tends to make a fact more or less probable than it would be without the evidence. However, pursuant to Rule 403, even if relevant, a court still may exclude evidence if the Court finds its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

B. Consciousness of Guilt

Consciousness of guilt refers to an inference drawn from a defendant's statements or actions after a crime has been committed suggesting that the defendant knows he is guilty of the crime. For example, a defendant's flight from the law may signify consciousness of guilt. Some courts have determined that suicide or an attempt of suicide can be a form of flight, i.e., a person may commit suicide to avoid going to prison.³ The probative value of evidence of flight to show consciousness of guilt depends on the degree with which four inferences can be drawn: (1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.⁴

ANALYSIS

A. The Court Does Not Draw a Strong Inference of Consciousness of Guilt from Rogers's Suicide Threat.

The sequence of events and temporal difference between the alleged unlawful acts and the March 7, 2016 Standoff undermines the inference that Rogers's threatened suicide signifies evasion of law enforcement or prosecution. Courts have found that a defendant's flight immediately after being confronted by law enforcement or after one's criminal active has been discovered can signify consciousness of guilt.⁵ A criminal flees to avoid arrest and punishment for a crime. However, Rogers was not being detained or arrested when his supervisor told him that he

² Rogers erroneously cites to the Federal Rules of Evidence. The Court reminds counsel that the Supreme Court of the Virgin Islands adopted the Virgin Islands Rules of Evidence on January 18, 2017, effective March 31, 2017.

³ See, e.g., *United States v. Cody*, 498 F.3d 582, 591-92 (6th Cir. 2007); *State v. Mann*, 625 A.2d 1102, 1107 (N.J. 1993) ("courts often have relied on the traditional view that a defendant may attempt suicide because of an inability to endure the prospect of prosecution and punishment"); see also Response to Mot. in Limine 6, 7 (citing *United States v. Cody* and *State v. Mann*).

⁴ *United States v. Myers*, 550 F.2d 1036 (5th Cir. 1977); *Cody*, 498 F.3d at 591; *United States v. Jackson*, 572 F.2d 636, 639 (7th Cir. 1978); *United States v. Silverman*, 861 F.2d 571, 581 (9th Cir. 1988); *United States v. Simmerer*, 156 F. App'x 124, 126 (11th Cir. 2005).

⁵ See, e.g., *United States v. Wrensford*, No. 2013-0003, 2015 U.S. Dist. LEXIS 160045, at *13 (D.V.I. Nov. 30, 2015) (citing *Maynard v. Gov't of V.I.*, 392 Fed. App'x 105, 120 (3d Cir. 2010)).

would be placed on involuntary administrative leave.⁶ In addition, Rogers knew the minors had been taken into foster care by the Department of Human Services and the police were conducting an investigation before meeting with his supervisor.⁷ Considering the temporal difference between when Roger knew an investigation against him had commenced and the March 7, 2016 Standoff, the Court cannot draw a strong inference that Rogers's suicide threat indicates flight from arrest or prosecution.

Considering the argument that suicide is a form of flight, the Court also does not draw a strong inference from the March 7, 2016 Standoff to Rogers's consciousness of guilt. There are other reasonable explanations why he threatened suicide. The People assert Rogers only would have threatened suicide because he felt guilty for committing the subject charges. The People's proffer does not hold up to scrutiny. The People cursorily discount other reasons Rogers could have threatened suicide immediately after being told he would be placed on administrative leave.⁸ However, the Court does not disregard the likelihood that Rogers's suicide threat was triggered by the prospect of losing his job. The mere possibility of the People's explanation being the correct one does not create a strong inference of consciousness of guilt.

The People note that Rogers had to turnover his cell phone, which he allegedly used to communicate with the minors. However, the People do not claim that the cell phone had incriminating evidence stored in it.

B. Introduction of Evidence Discussing the March 7, 2016 Would Unfairly Prejudice Rogers and Confuse the Jury.

The Court finds the probative value of Rogers's suicide threat is outweighed by danger of unfair prejudice and confusing the jury. The People implore the Court to allow the jury, as the factfinder, to determine if Rogers's actions during the March 7, 2016 Standoff reveal consciousness of guilt. Citing U.S. Supreme Court precedence, the People point out that relevance has a low threshold of having *any* tendency to make a fact more or less probable⁹ and it is the function of the jury to make credibility determinations.¹⁰ However, Rule 403 allows the Court to exclude evidence if it might cause a jury to base a verdict on some basis unrelated to the elements of a charged crime.

Discussion of the March 7, 2016 Standoff would risk the jury judging Rogers for attempted or threatened suicide, instead of the subject charges. The People downplay this risk and assert "[t]he act of wanting to kill oneself does not independently suggest that someone is a bad person."¹¹ While this may be the prosecutor's opinion, the Court recognizes that many people consider

⁶ Response to Mot. in Limine 4 ("The Defendant was not fired or arrested at that time the supervisor merely told the Defendant he would be placed on administrative leave").

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 1.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 6.

suicide to be a grave sin.¹² It finds there is a substantial likelihood the jury could draw negative conclusions about Rogers's character from the March 7, 2016 Standoff and use such a negative character judgment to conclude impermissibly that he likely committed the subject crimes. The People assert indeterminately that, instead of concluding that Rogers is a bad person, his attempted or threatened "can suggest that this person wants to escape this world for some reason which may include the commission of a bad act."¹³ The Court recognizes it is possible a reasonable jury could make such a conclusion. It is also significantly likely that a jury could make impermissible character assumptions; namely, that Rogers likely committed the alleged sexual assault because he does not value life or he is mentally unstable. Consequently, the Court determines presentation of evidence discussing the March 7, 2016 Standoff would unfairly prejudice Rogers.

In addition, discussion of the March 7, 2016 Standoff would likely confuse the jury. During the May 10, 2016 hearing on Rogers's Motion for Reduction of Bail, the Court heard testimony regarding his actions on March 7, 2016. The People called multiple witnesses who provided extensive testimony. The Court determines there is a significant risk that presentation of such testimony at trial would risk creating a case-within-a-case, requiring the jury to determine whether Rogers in fact committed the alleged acts of March 7, 2016 in order to determine if Rogers is guilty of the charges in this matter. As a result, the jury's attention might be turned away from determining if Rogers committed sexual assault to determining if Rogers committed unlawful acts during the March 7, 2016 Standoff.

C. The Case Law Cited in the Response Does Not Support the People's Argument.

The People reference several non-binding court opinions from other jurisdictions to support their argument. *Tug Raven v. Trexler*¹⁴ and *United States v. Jackson*¹⁵ concern literal flight and concealment of evidence and, therefore, are not germane to the March 7, 2016 Standoff. In *United States v. Friedman*, the U.S. Court of Appeals for the Second Circuit upheld a district court's decision to bar evidence revealing a witness's suicide attempt, agreeing it had no probative value and might confuse the jury.¹⁶ In *United States v. Cody*, the U.S. Court of Appeals for the Sixth Circuit found the defendant's suicide attempt probative of consciousness of guilt because he stated, during an interview with police officers, that he "considered suicide as an alternative to going to prison for what he has done."¹⁷ In this matter, the People present no similar evidence revealing the reason behind Rogers's threat of suicide. Finally, in *State v. Mann*, the New Jersey Supreme Court

¹² See, e.g., Catechism of the Catholic Church Part 3, Section 2, Chapter 2, Paragraph 2281 ("Suicide contradicts the natural inclination of the human being to preserve and perpetuate his life. It is gravely contrary to the just love of self. It likewise offends love of neighbor because it unjustly breaks the ties of solidarity with family, nation, and other human societies to which we continue to have obligations. Suicide is contrary to love for the living God"); *Judaism and Suicide*, My Jewish Learning, <https://www.myjewishlearning.com/article/suicide-in-jewish-tradition-and-literature> (last visited Mar. 9, 2018) ("Suicide is sometimes regarded as stealing from God and a rejection of God's sovereignty").

¹³ Response to Mot. in Limine 6.

¹⁴ 419 F.2d 536 (4th Cir. 1969).

¹⁵ 886 F.2d 838 (7th Cir. 1989).

¹⁶ *United States v. Friedman*, 854 F.2d 535, 570 (2nd Cir. 1988) ("Admission of the testimony and videotape, moreover, would necessarily have injected Manes's subsequent suicide into the heart of the case as evidence of the guilty state of mind that caused him to lie on the earlier occasion. There was thus no error in its exclusion").

¹⁷ 498 F.3d 582, 592 (6th Cir. 2007).

recognized that suicide can be a method to avoid arrest and prosecution.¹⁸ However, the People admit Rogers was not being arrested when he was told that he was being placed on involuntary administrative leave.¹⁹ Therefore, the Court finds the case law cited by the People unpersuasive.

CONCLUSION

The Court concludes that Rogers's standoff with police officers on March 7, 2016 is irrelevant to this matter. Furthermore, discussion of the March 7, 2016 Standoff would unfairly prejudice Rogers and confuse the jury. Therefore, the Court will grant the Motion in Limine. Accordingly, it is hereby

ORDERED that Roy Rogers's Motion in Limine, filed on August 18, 2017, is **GRANTED**; and it is further

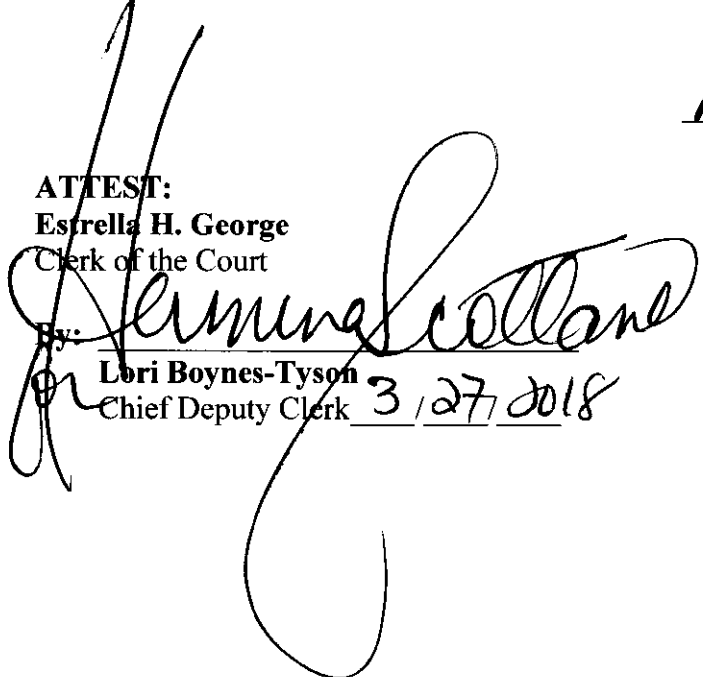
ORDERED that during the jury selection and trial, including opening statements and closing arguments, the parties are **PROHIBITED** from referencing the allegation that Roy Rogers engaged in a standoff with police officers at the Crown Mountain Immigration and Customs Enforcement Facility on March 7, 2016, including, but not limited to, the assertion that he threatened to commit suicide with a firearm; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Attorney Clive Rivers, Assistant Attorney General Quincy McRae, Chief of the Criminal Division and Assistant Attorney General Natasha L. Baker.

Dated: March 27, 2018

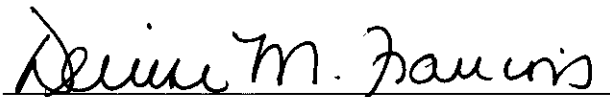
ATTEST:

Estrella H. George
Clerk of the Court

By: 

Lori Boynes-Tyson
Chief Deputy Clerk

3/27/2018



DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

¹⁸ *Mann*, 625 A.2d at 1107.

¹⁹ Response to Mot. in Limine 4.