

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff** )  
 )  
 Vs. )  
 )  
RAJESH T MAHARAJ, JR **Defendant** )

CASE NO. ST-14-CR-0000002

ACTION FOR: 14 V.I.C. 2253(A)

**NOTICE OF ENTRY OF  
MEMORANDUM  
OPINION & ORDER**

TO: QUINCY MCRAE, ESQ., AAG.  
MARIA HODGE, ESQ.  
JUDGES, MAGISTRATES, LAW CLERKS, IT  
ESTRELLA H. GEORGE, ACTING CLERK OF THE COURT  
EDNIN MARTINEZ, ESQ., AAG.

Please take notice that on December 23, 2016 a(n) MEMORANDUM  
OPINION & ORDER dated December 16, 2016 was entered by the Clerk in the  
above-entitled matter.

Dated: December 23, 2016

Estrella H. George  
ACTING CLERK OF THE SUPERIOR  
COURT



CAMEIL A. CLARKE  
COURT CLERK II

## IN THE SUPERIOR COURT THE VIRGIN ISLANDS

## DIVISION OF ST. THOMAS AND ST. JOHN

**PEOPLE OF THE VIRGIN ISLANDS,**

**Plaintiff,**

**CASE NO. ST-14-CR-2**

**V.**

**RAJESH T. MAHARAJ, JR.**

**Defendant.**

# MEMORANDUM OPINION

Pending before the Court is Defendant Rajesh T. Maharaj, Jr.'s February 19, 2016, Motion *in Limine* to Absolutely Exclude any Reference to Defendant's Statements on Day One of his Interrogation.<sup>1</sup> Defendant's Motion will be granted to the extent it seeks to prohibit testimony concerning January 11, 2013, and denied to the extent it seeks to permit Dr. Ramona Moss to testify about the events of January 11, 2013.

## FACTUAL AND PROCEDURAL HISTORY

On January 14, 2014, the People of the Virgin Islands charged Defendant Maharaj in a 14 count Information. The charges arose after Defendant was subjected to questioning by the Virgin Islands Police Department on January 11, 2013, and January 12, 2013, regarding the September 7, 2012, shooting death of David Payne, Jr. After waiving his rights on both occasions, Defendant gave statements to the officers that were recorded by audio and video at the Intelligence Unit located in Barbel Plaza, St. Thomas. Defendant was arrested as a juvenile on October 11, 2013,

<sup>1</sup> The People failed to respond by the Court ordered deadline of March 2, 2016, and without a response from the People, Defendant filed a final memorandum in support of his Motion on March 11, 2016. Without leave of Court, the People filed an opposition on May 9, 2016.

and the case was transferred from the Family Division to the Criminal Division of the Superior Court on December 30, 2013. On January 2, 2014, Defendant moved to suppress the January 11, 2013, and January 12, 2013, statements claiming that, although he waived his *Miranda* rights, the statements were obtained in violation of Defendant's Constitutional rights.

On September 11, 2014, the Court conducted a hearing and heard the testimony of Detective Dwight Griffith, Wanda Sanes, Dr. Ramona Moss, Margarita Falero, Armando Sanes, Rajesh Maharaj, Sr., and Detective Jose Allen, considered the arguments of counsel, and took the matter under advisement. On December 9, 2015, the Court suppressed Defendant's statements from January 11, 2013, after finding the questioning constituted a custodial interrogation and violated 5 V.I.C. § 2512. However, the Court did not suppress the statements from January 12, 2013, finding Defendant's statements to be voluntary because the questioning did not constitute a custodial interrogation and there was a sufficient break in the stream of events to remove the "taint" from the questioning on January 11 to allow Defendant's January 12 statements to be voluntary.

### STANDARD

A motion *in limine* is "[a] pretrial request that certain inadmissible evidence not be referred to or offered at trial."<sup>2</sup> Under Fed. R. Evid. 403, "[t]he [C]ourt may exclude relevant evidence if 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."<sup>3</sup> However,

because all evidence is inherently prejudicial to the party against whom it is offered, Rule 403 does not bar all prejudicial evidence. Rule 403 only serves to bar

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<sup>2</sup> Black's Law Dictionary 1109 (9th ed. 2009).

<sup>3</sup> FED. R. EVID. 403 (In the absence of a local statute, case law, or Superior Court of the Virgin Islands rule addressing the issue adequately, the Federal Rules of Evidence are applicable to the Superior Court by V.I. Super. Ct. R. 7); *Monelle v. People of the Virgin Islands*, 63 V.I. 757, 766-768 (V.I. 2015) and *Alexander v. People of the Virgin Islands*, 60 V.I. 486, 496 (V.I. 2014) (both applying FED. R. EVID. 403).

the evidence that is so unfairly prejudicial as to outweigh its probative value. In weighing the evidence and evaluating the incremental probative value of the evidence, the trial court must assume that the evidence will be believed by the trier of fact.<sup>4</sup>

“A trial court has wide discretion in determining whether to exclude otherwise admissible evidence under Rule 403 of the Federal Rules of Evidence.” “[A] trial court’s Rule 403 ruling is afforded great deference.”<sup>5</sup> The Supreme Court of the Virgin Islands “may not disturb the [Superior C]ourt’s determination unless . . . [it] find[s] that the court acted arbitrarily or irrationally.”<sup>6</sup> “Similarly, the admission of expert testimony lies within the discretion of the trial court, and its judgment must not be reversed absent an abuse of discretion.”<sup>7</sup>

### ANALYSIS

Defendant asks the Court to prohibit the introduction of evidence and testimony relating to any statements made or allegedly made by Defendant on January 11, 2013, notwithstanding any evidence adduced by Defendant relating to the impact on the questioning on January 12, 2013, of the coercive practices employed and other misconduct during the January 11, 2013, custodial interrogation, as found in the Court’s December 9, 2015, Opinion. Specifically, Defendant relies on the Court’s conclusion that the interrogation on January 12, 2013, differed substantially from that on January 11, 2013.<sup>8</sup> Nevertheless, Defendant highlights the fact that interwoven with the

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<sup>4</sup> *Alexander*, 60 V.I. at 496 (citing *Ballou v. Henri Studios, Inc.*, 656 F.2d 1147, 1154-1155 (5th Cir. 1981)) (other internal citation omitted).

<sup>5</sup> *Tyson v. People of the Virgin Islands*, 59 V.I. 391, 423-424 (V.I. 2013).

<sup>6</sup> *Alexander*, 60 V.I. at 494 (citing *Francis v. People*, 56 V.I. 370, 386 (V.I. 2012)).

<sup>7</sup> *Id.* (citing *Westcott v. Crinklaw*, 68 F.3d 1073, 1075 (8th Cir. 1995)).

<sup>8</sup> “The key circumstances indicating that Defendant was in custody during the January 11 interrogation, that Defendant was at the police station for at least eight (8) hours, that all of Defendant’s family members left him alone for a period of time at the police station, that Defendant was threatened with violence and imprisonment by the police and his mother during the questioning, and that Defendant was told he was allowed to leave only after completing his interview, inter alia, were not present during the interrogation on January 12. Rather, on January 12, the interrogation lasted for only (1) hour, during which Defendant was not threatened by his mother or the police, and, most significantly, Defendant returned for questioning despite having the benefit of hindsight from his experience the day before. Considering the totality of circumstances and applying the foregoing five (5) factors, the Court finds that

custody analysis was the consideration of whether the custodial interrogation and subsequent involuntary admission from the first day tainted Defendant's statements on the second day so as to make them involuntary.

Here, Defendant seeks to call Dr. Ramona Moss, the psychiatrist who examined Defendant regarding his limited cognitive capacity and emotional susceptibility, to testify about the impact of the January 11 interrogation on Defendant. Defendant maintains the testimony from Dr. Moss must be permitted in order to explain the effect of the January 11 interrogation on Defendant's ability to provide a voluntary statement on January 12. However, Defendant seeks to introduce evidence from January 11 without being exposed to the risk of the Government arguing that this would "open the door" to the introduction of any statements made by Defendant on January 11, notwithstanding the Court's suppression Order finding the statements to be inadmissible, involuntary, and illegally obtained. Defendant argues that, without this opportunity, Defendant will be denied the chance to demonstrate to the jury the devastating impact that the cumulative effect of two days of questioning had on his ability to offer a voluntary statement. Although Defendant recognizes the Court's determination was a legal analysis, Defendant believes the jury, as the finder of fact, is entitled to hear evidence on the coercive conduct and impact of the two days of questioning in order to understand the substance of Defendant's argument that any statement made at the end of the questioning on January 12 should not be accepted by the jury as credible in their evaluation of the evidence as a whole.

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Defendant was not in custody on January 12, 2013. Because Miranda warnings and the provisions of 5 V.I.C. § 2512 apply only to custodial interrogations, Defendant's statements must be considered voluntary." December 9, 2015, Memorandum Opinion, at 32-33 (footnotes omitted).

The People respond that, although the Defendant titled his motion as a motion *in limine*, based on the contents of the motion it is more appropriately categorized as a motion for reconsideration of the Court's December 9, 2015, Memorandum Opinion regarding the motion to suppress.<sup>9</sup> In its Opinion, the Court found that Defendant's statements from January 12 "were voluntary and 'derived by means sufficiently distinguishable' from the custodial interrogation on January 11, 2013," thereby denying the motion to suppress the statements from January 12 but granting the motion to suppress the statements from January 11. The People argue that Defendant fails to offer any legal analysis in his Motion to refute the Court's finding that the statements made on January 12, 2013, were voluntary and distinguishable from the custodial interrogation on January 11, 2013, instead choosing to focus on statements and events from January 11. Further, the People maintain that Defendant has failed to allege any facts to demonstrate manifest injustice if Defendant voluntarily chooses to open the door to statements from January 11, which would allow the People to use portions of those statements on cross examination during Defendant's case in chief or on rebuttal.

As the Court has previously articulated in this case, a motion for reconsideration is an extraordinary remedy, not to be used as a substitute for appeal or merely because the attorney disagrees with a decision of the Court.<sup>10</sup> The only time a motion for reconsideration is appropriate is when there is an intervening change in controlling law, availability of new evidence, or, the need to correct clear error or prevent manifest injustice.<sup>11</sup> Assuming *arguendo* that Defendant's motion

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<sup>9</sup> The Court notes that the People's response was untimely and without leave of Court, however since Defendant has not objected to the response or requested leave to file a reply, the Court will consider the People's response.

<sup>10</sup> See December 9, 2016, Order.

<sup>11</sup> LRCi 7.3 (Since no provision of the Virgin Islands Code or rule of this Court authorizes the filing of a motion for reconsideration, a motion for reconsideration of an interlocutory order is properly filed under LRCi 7.3, made applicable to the Superior Court of the Virgin Islands under Super. Ct. R. 7.)

was a motion for reconsideration of the Court's decision not to suppress the statements from January 12, 2013, the Court is unable to identify any intervening change in controlling law or availability of new evidence. If Defendant wanted to argue the need to correct clear error or prevent manifest injustice based on the Court's legal conclusion that Defendant's statements were voluntary on January 12, 2013, Defendant should have filed the appropriate motion with the requisite analysis. The Court conducted a thorough analysis and carefully weighed numerous factors in its December 9, 2015, Opinion before reaching its conclusion and is unable to find clear error or manifest injustice to Defendant based on its decision.<sup>12</sup>

The purpose of a motion to suppress is to "prohibit the introduction of illegally obtained evidence at a criminal trial,"<sup>13</sup> whereas, a motion *in limine* is a "pretrial request that certain inadmissible evidence not be referred to or offered at trial."<sup>14</sup> These motions are critical because "[t]he introduction of any evidence in violation of the Rules of Evidence reduces the fairness of the trial and this is particularly so where...the evidence is initially excluded because it was procured in violation of a defendant's constitutional rights."<sup>15</sup> Here, the Court has determined that any evidence procured on January 11 was in violation of Defendant's constitutional rights. Nevertheless, it is Defendant who now seeks to offer evidence from January 11.

However, even with a pretrial ruling by the Court regarding the introduction or reference to certain evidence at trial, the rules of evidence govern during trial. Under Fed. R. Evid. 106, "[i]f a party introduces all or part of a ...recorded statement, an adverse party may require the introduction, at that time, of any other part...that in fairness ought to be considered at the same

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<sup>12</sup> See December 9, 2015, Memorandum Opinion.

<sup>13</sup> Black's Law Dictionary 1110 (9th ed. 2009).

<sup>14</sup> Black's Law Dictionary 1109 (9th ed. 2009).

<sup>15</sup> *Frett v. People of the V.I.*, 58 V.I. 492, 508 (V.I. 2013) (internal citations and citations omitted).

time.”<sup>16</sup> Traditionally, this is also known as the “open door” doctrine. “When a party opens the door to evidence that would be otherwise inadmissible, that party cannot complain on appeal about the admission of that evidence.”<sup>17</sup> However, “the ‘open door’ doctrine’s soundness depends on the specific situation in which it is used and thus calls for an exercise of judicial discretion.”<sup>18</sup> The Court may limit any rebuttal evidence if it “does not directly contradict the evidence previously received, or goes beyond the necessity of removing prejudice in the interest of fairness.”<sup>19</sup> As a result, even were the Court to permit use of the suppressed evidence, counsel for Defendant would take a calculated risk when inquiring into that evidence.<sup>20</sup>

The People maintain that Defendant has failed to provide any justification why Defendant’s statements from January 11 would be admissible at trial, “since it is not a statement by a party opponent nor do they appear to be admissible under any of the Federal Rules of Evidence.” Specifically, the People question the capability of the expert to testify regarding the events of January 11. Under Fed. R. Evid. 703,

[a]n expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed...[b]ut if the facts...would be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs the prejudicial effect.<sup>21</sup>

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<sup>16</sup> FED. R. EVID. 106. While not binding, this Court considers doctrines developed under the federal rules by federal courts in addition to the precedent delineated in this jurisdiction.

<sup>17</sup> *United States v. Villegas*, 655 F.3d 662, 672 (7th Cir. 2011) (citations omitted).

<sup>18</sup> 21 C. Wright & K. Graham, *Federal Practice and Procedure* § 5039, p. 199 (1977); *see also Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 177, 109 S. Ct. 439, 102 L. Ed. 2d 445 (1988) (Rehnquist, J., dissenting).

<sup>19</sup> *Villegas*, 655 F.3d at 664.

<sup>20</sup> *See People of the V.I. v. Ward*, 52 V.I. 71, 88 (Super. Ct. 2009), *appealed and remanded on other grounds*, 55 V.I. 829, 833 (V.I. 2011) (“Although counsel for Defendant Ward strenuously objected to any attempt of using 404(b) testimony against his client...defense counsel took a calculated risk once he made inquiry concerning his client being shot. At that juncture, defense counsel ‘opened the door’ for the prosecution to put in evidence of Defendant Ward’s bad character.”).

<sup>21</sup> FED. R. EVID. 703.

Regardless of the Court's prior decision to suppress the statements from January 11, under Fed. R. Evid. 403 the Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of confusing the issues or misleading the jury. "Evidence considered to be of the type that confuses or misleads the jury is evidence that may lure the jury to consider matters other than those in dispute at trial or factors that should not be considered."<sup>22</sup> Here, if Defendant attempts to introduce portions of the suppressed statements through Dr. Moss as predicate evidence for the impact on the voluntariness of Defendant's statements on January 12, this would likely confuse or mislead the jury, since the issue of the voluntariness of the statements requires a question of law which the Court decided in its December 9, 2015, Opinion.

Here, the Court agrees with the People. Defendant has failed to provide any justification for permitting Dr. Moss to testify regarding the impact of the January 11 interrogation on the January 12 questioning and the voluntariness of Defendant's statements, without being at risk of "opening the door" for the People. Defendant is attempting to undercut the Court's legal conclusion and, if permitted to do so, would confuse the issues for the jury. The Court previously found "by a preponderance of the evidence that there was a sufficient break in the stream of events to remove the 'taint' from the questioning on January 12, 2013, and that Defendant's statements were voluntary and 'derived by means sufficiently distinguishable' from the custodial interrogation on January 11, 2013." The mere fact that the Court indicated in reaching its legal conclusion that the balance was close is not an invitation for Defendant to frame the issue as a factual question for the jury. The Court reminds the parties that "the proper time to object [is] at

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<sup>22</sup> *Alexander*, 60 V.I. at 496-97 (citations omitted).

the time of the testimony in order to provide the court with an opportunity to take corrective action".<sup>23</sup> Upon proper objections by the parties, the Court will exclude evidence previously suppressed, but if Defendant's counsel attempts to introduce evidence from the January 11 interrogation, counsel does so at the risk of opening the door. Simply put, the Court having suppressed the statements obtained on January 11, 2013, there should be no testimony concerning the questioning on that day.

### CONCLUSION

For the foregoing reasons, Defendant Maharaj's February 19, 2016, Motion *in Limine* to Absolutely Exclude any Reference to Defendant's Statements on Day one of his Interrogation will be granted in part and denied in part in accordance with the Court's December 9, 2015, Memorandum Opinion. An Order consistent with this Opinion shall follow.

Dated: December 16, 2016.

ATTEST: Estrella H. George  
Acting Clerk of the Court \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

by:

*For* Lori Boynes-Tyson  
Court Clerk Supervisor 12 / 22 / 2016

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

CERTIFIED A TRUE COPY  
DATE: Dec. 22, 2016  
ESTRELLA H. GEORGE  
Acting Clerk of the Court  
By:   
Camell A. Clarke  
Court Clerk II

<sup>23</sup> *Lembach v. Antilles Sch., Inc.*, 2015 V.I. LEXIS 35, \*46-47 (V.I. Super. Ct., Apr. 7, 2015) (citations omitted), *aff'd*, 64 V.I. 400 (V.I. 2016).

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

RAJESH T. MAHARAJ, JR.

Defendant.

CASE NO. ST-14-CR-2

ORDER

The Court having issued a Memorandum Opinion on this date, it is

**ORDERED** that Defendant's February 19, 2016, Motion *in Limine* to Absolutely Exclude any Reference to Defendant's Statements on Day One of his Interrogation is **GRANTED IN PART** to the extent it seeks to prohibit testimony concerning January 11, 2013, and **DENIED IN PART** to the extent it seeks to permit Dr. Ramona Moss to testify about the events of January 11, 2013; and it is

**ORDERED** that copies of this Order and accompanying Memorandum Opinion shall be directed to counsel of record and to the IT Division of the Virgin Islands Superior Court.

Dated: December 16, 2016

ATTEST: Estrella H. George  
Acting Clerk of the Court

by: [Signature]  
Lori Boynes-Tyson  
Court Clerk Supervisor

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

CERTIFIED A TRUE COPY  
DATE: Dec. 21, 2016  
ESTRELLA H. GEORGE  
Acting Clerk of the Court

By: [Signature]  
Cameil A. Clarke  
Court Clerk II