

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
 CARLOS NORMAN **Defendant**)

CASE NO. ST-10-CR-0000065

ACTION FOR: 14 V.I.C. 1083

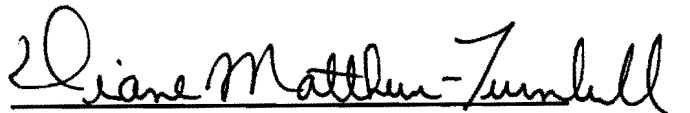
**NOTICE OF ENTRY OF
MEMORANDUM
OPINION AND ORDER**

TO: RENEE GUMBS CARTY, ESQ., ASSISTANT ATTORNEY GENERAL
ORDER BOOK
LIBRARIAN
JUDGES & MAGISTRATES, SUPERIOR COURT
✓ IT DIVISION
CLIVE RIVERS, ESQUIRE

Please take notice that on May 26, 2010 a(n) MEMORANDUM OPINION AND ORDER dated May 24, 2010 was entered by the Clerk in the above-entitled matter.

Dated: May 26, 2010

Venetia H. Velazquez, Esq.
CLERK OF THE SUPERIOR COURT



DIANE MATTHEW-TURNBULL
COURT CLERK II

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

PEOPLE OF THE VIRGIN ISLANDS,)	
)	CASE NO. ST-10-CR-65
Plaintiff,)	
)	
vs.)	
)	
CARLOS NORMAN,)	
)	
Defendant.)	
)	
)	
)	

MEMORANDUM OPINION

This matter is before the Court on Defendant Carlos Norman’s Motion to Suppress Statement (“the Motion”) filed on April 6, 2010. The People filed an Opposition to Defendant’s Motion on April 20, 2010.

FACTS AND PROCEDURAL HISTORY

On February 8, 2010, Detective Margaret Price investigated a robbery that occurred on February 7, 2010, at approximately 12:00 a.m. on Nicholas Friday Drive in Estate Nazareth, St. Thomas. On February 9, 2010, as part of the investigation, Defendant voluntarily went to the police station and Detective Price and Detective Sophia Rachid, at separate times, interviewed and took statements¹ from Defendant. Defendant was verbally advised of his rights and signed his name on a “Warning as to Rights” and

¹ The statements taken from Defendant on February 9, 2010 are “not contested” by Defendant. See Defendant’s Motion, pg. 2.

“Waiver” form acknowledging that he was advised of his constitutional rights and consented to waiving his rights.²

On February 10, 2010, Detective Price interviewed Brandon Habich, the victim, who stated that on February 7, 2010, at approximately 12:00 a.m., he was walking in the area of Nicholas Friday Drive in Estate Nazareth when a new, silver four-door Honda Civic (“the vehicle”) with three (3) occupants pulled up next to him. Habich further stated that the front passenger exited the vehicle, ran up to him, pressed the barrel of a black gun against his chest, and demanded that he give the gunman everything he had on his person. While Habich was giving the front passenger his belongings, a second suspect exited the vehicle from the back seat and began to pat him down. Thereafter, both suspects jumped back into the vehicle, which sped off, but Habich was able to see its license plate number, TDW-792.

Subsequent investigation by Detective Price revealed that the vehicle was registered to a Ms. Frederick of 9-8 Contant. However, an interview with Ms. Frederick revealed that, although the vehicle is registered in her name, she had purchased the vehicle for her godson, Craig Norman. When contacted, Craig Norman stated that on February 6, 2010, at approximately 11:00 p.m., his cousin, Carlos Norman, was driving the vehicle and that Carlos did not return the vehicle until approximately 1:25 a.m.

Consequently, on February 13, 2010, Detective Price asked Defendant to return to the police station because she wanted to follow-up on the statement he provided on

² See the People’s Opposition, Attachment A, Warning as to Rights.

February 9, 2010.³ When Defendant voluntarily arrived at the police station, Detective Price⁴ read him his rights at approximately 8:25 a.m.⁵ Defendant again signed the “Warning as to Rights” section of the form acknowledging that he was advised of his rights but refused to sign the “Waiver” portion.⁶ Defendant was handcuffed and kept in a small interrogation room. In spite of Defendant’s refusal to waive his rights, Detective Price continued to speak with Defendant, telling him that it was evident that he was involved in the robbery of Mr. Habich because the vehicle involved had been indentified as belonging to the Defendant’s cousin, Craig Norman. Detective Price further told Defendant that it was unfair for him to solely take the blame for the crime and asked him who else was involved in the robbery. Defendant began to cry and told Detective Price that he had been in jail before, did not want to go back, and would tell her what happened. Then, Detective Price stopped the Defendant and, at 9:25 a.m., Defendant signed another form acknowledging that he was advised of his constitutional rights and consented to waiving his rights.⁷

Defendant then provided Detective Price with a six (6) page written statement admitting that he was driving Craig Norman’s vehicle when Habich was robbed at gunpoint by the two (2) passengers. More specifically, Defendant’s statement revealed that he was driving the vehicle in the area of Red Hook on his way home to the Bovini area when two (2) of his friends from school flagged him down in the area by Duffy’s

³ May 11, 2010, Suppression Hearing, Testimony of Detective Margaret Price.

⁴ Detective Price testified at the May 11, 2010, Suppression Hearing that she believed Sergeant Cannonier was present when she advised Defendant of his rights on February 13, 2010, at 8:25 a.m.

⁵ May 11, 2010, Suppression Hearing, Testimony of Detective Margaret Price.

⁶ See the People’s Opposition, Attachment B.

⁷ Submitted in the People’s Opposition with no attachment identifier.

and asked him for a ride. When they arrived in the area of the food van by Eudora Ivana Kean High School, they noticed a Caucasian male walking on the right side of the road carrying a plate of food in his hand. Both of Defendant's friends told him to stop the vehicle, and when he slowed down they jumped out of the vehicle and went toward the Caucasian male. Shortly after they got back into the vehicle, Defendant asked them what they did as he drove off. However, Defendant stated that they did not answer his question and, instead, asked him to drop them off by the supermarket in Frydenhoj and Defendant agreed. After dropping his friends off, Defendant drove home.

The February 24, 2010, Information charged Defendant with second degree robbery, using a dangerous weapon during commission of a robbery, first degree assault, using a dangerous weapon during the commission of a first degree assault, grand larceny, and using a dangerous weapon during the commission of a grand larceny.

THE STANDARD OF REVIEW

In *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966), the court held:

when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has a right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.

Moreover, in *Michigan v. Mosley*, 423 U.S. 96, 104 (1975), the court held that “the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* [sic] on whether his ‘right to cut off questioning’ was ‘scrupulously honored.’” In determining whether a defendant’s “right to cut off questioning” was honored, the Supreme Court in *Mosley* considered the following: 1) the amount of time that passed before questioning resumed; 2) whether the next interrogation was conducted by the same officer Defendant had informed that he was invoking his right to remain silent; 3) whether Defendant was given a new set of *Miranda* warnings at the subsequent interrogation; 4) and whether the second interrogation addressed a crime that had not “been a subject of the earlier interrogation.” *Id.*, at 106. However, it is important to note that these factors are not “necessarily dispositive.” *United States v. Lafferty*, 503 F.3d 293, 303 (3d Cir. 2007).

Additionally, in *People of the V.I. v. Lewis*, Criminal No. 2008-45, 2008 WL 5191439, at *3 (D.V.I. Dec. 10, 2008), the court concluded that “[t]he scrupulously honored standard requires the government to abstain from questioning a suspect unless he (1) initiates further conversation; and (2) waives the previously asserted right to silence.”

DISCUSSION

Defendant asserts that his Fifth Amendment privilege against self-incrimination was violated. The Court notes that there is no dispute that Defendant was in custody⁸ on February 13, 2010, when the statement at issue was made. Courts have held that if, after

⁸ In determining whether a defendant is in custody “the ultimate inquiry is simply whether there [was] a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” *Stansbury v. California*, 511 U.S. 318, 322 (1994). In the case at bar, there is no dispute that Defendant was in custody because at 8:25 A.M., Defendant was placed under arrest and handcuffed at the police station. See May 11, 2010, Suppression Hearing, Testimony of Detective Margaret Price.

a suspect has been read his rights, he or she indicates in any manner before or during questioning that he or she would like to remain silent, the interrogation must immediately stop. *Mosley, supra*, at 103-04; *Miranda, supra*, at 474; *United States v. Tyler*, 164 F.3d 150, 156 (3d Cir. 1998); See also *Lafferty, supra*, at 300. While, a Defendant's exercise of his right to remain silent does not mean that questioning of defendant can never resume, it also cannot be interpreted "[t]o permit the continuation of a custodial interrogation after a momentary cessation." *Mosley, supra* at 102.

In this matter, the Defendant's right to remain silent was never honored. After Defendant informed Detective Price that he wished to exercise his right to remain silent, the questioning did not cease immediately. On the contrary, Detective Price continued to interrogate the Defendant in an attempt to elicit a response from Defendant.

In contrast, the *Mosley* court held that the defendant's rights were not violated when the court admitted defendant's statement into evidence because "the police immediately ceased the interrogation, resumed questioning only after the passage of a significant period of time and [provided the defendant with a] fresh set of warnings, and restricted the second interrogation to a crime that had not been a subject of the earlier interrogation." *Id.*, at 106. The Supreme Court in *Mosley* stressed that the facts did not present a case "where the police failed to honor a decision of a person in custody to cut off questioning either by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind." *Id.*, at 106-06. In this case, Detective Price's actions were the opposite of those of the officers in *Mosley*. After Defendant refused to waive his rights, Detective Price

continued to question him about the same crime in an attempt to convince him to change his mind. Defendant was not afforded the benefit of any passage of time to consider changing his mind about waiving his rights.

The police also did not “scrupulously honor” Defendant’s request that they cease questioning him. In *Nelson v. Fulcomer*, 911 F.2d 928, 937, 940 (3d Cir. 1990), after the defendant was read his rights, he refused to speak to the police, thus invoking his right to remain silent. The court held that the police failed to honor defendant’s right to remain silent and intentionally attempted to elicit a response from the defendant when they brought the other suspect into the interrogation room and left both suspects alone to speak. Once the suspects were alone, the defendant confessed to the other suspect, and the statement was later admitted into evidence in court. The court suppressed the statement, reasoning that “all the evidence suggests that the detectives used the ploy ‘for no other reason than to induce the defendant to change his mind.’” (quoting *Vujosevic v. Rafferty*, 844 F.2d 1023, 1029 (3d Cir. 1988)).

Likewise, in the case at bar, Detective Price was trying to change Defendant’s mind about remaining silent by continuing to converse with Defendant immediately after he had invoked his right to remain silent and by telling him that it was apparent that he was involved in the crime because the vehicle in the robbery had been identified and Craig Norman had placed Defendant in the vehicle at the time of the robbery. Detective Price explicitly asked for a response from the Defendant by telling him he should not have to take responsibility for the crime alone and asking him to tell her who else was involved in the robbery. Clearly, Detective Price knew that telling Defendant there was

evidence against him and that it would be unfair for him alone to be charged with the crime was likely to elicit a response from Defendant.

Moreover, in *Tyler, supra*, at 153, after invoking his right to remain silent, the defendant was placed in a small room for hours where the walls contained crime scene photographs and a timeline of the murder investigation. Later, the detectives began talking to the defendant, who became emotional and cried. The police told the defendant to “tell the truth,” after which the defendant began to make incriminating statements. The police stopped the defendant and reread him his rights, and the defendant signed a rights waiver form. The court held that the defendant’s statement was obtained illegally because the accused was instructed to “tell the truth” and was placed in a room with pictures of the crime scene strewn all over the walls. *Id.*, at 155. Similarly, Norman was instructed to speak by Detective Price when she asked him to reveal who else was involved in the robbery of Habich.

Further, in *Tyler* a great deal of time passed before the police proceeded to interrogate the defendant again. See *Mosley, supra*. In the present case, the Defendant was continuously questioned after invoking his right to remain silent. Nor is this a case like *Lewis*, where the accused reinitiated contact with the police. Norman was persuaded by Detective Price to give a statement despite his earlier invocation of his right to remain silent.

CONCLUSION


In summary, Defendant did not initiate any conversation once he had invoked his right to remain silent. Even though all questioning was required to cease once Defendant

invoked his Fifth Amendment right to remain silent, Detective Price continued to question Defendant about the same crime. Simply again informing the Defendant of his *Miranda* warnings and providing a signed waiver of his rights was insufficient to overcome Defendant's earlier invocation of his right to remain silent.


Accordingly, it is clear that police cannot, as if by alchemy, negate [the defendant's] invocation of his right to remain silent by a mantra-like recitation of *Miranda* warnings. The warnings are not intended to be a mere ritual, the exercise of which guarantees the admissibility of any statement that is obtained in a custodial interrogation regardless of circumstances. *Tyler, supra* at 155.


Therefore, Defendant's Motion to Suppress Statement will be granted because his February 13, 2010, statement was taken in violation of Defendant's Fifth Amendment right to remain silent. See *Miranda, supra* at 478-79. A separate Order shall follow.

Dated: May 24 2010


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

Attest:
Venetia H. Velasquez, Esq.
Court Clerk Supervisor / /

by: 
Rosalie Griffith
Court Clerk Supervisor 5/25/10

CERTIFIED A TRUE COPY
Date: 5/26/10
Venetia H. Velasquez, Esq.
Clerk of the Court
By: 
Court Clerk

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

PEOPLE OF THE VIRGIN ISLANDS,)
))
Plaintiff,)
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CARLOS NORMAN,)
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Defendant.)

CASE NO. ST-10-CR-65


ORDER

The Court having rendered a Memorandum Opinion this date, in accordance with that opinion it is

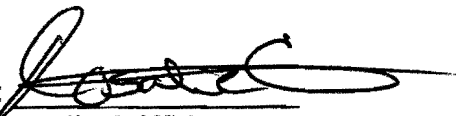
ORDERED that Defendant's Motion to Suppress is **GRANTED** and Defendant's February 13, 2010, statement is **SUPPRESSED**; and it is further

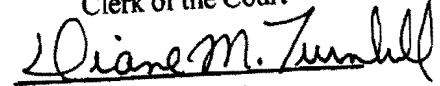
ORDERED that copies of this Order be directed to counsel of record.

Dated: May 24, 2010


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

Attest:
Venetia H. Velasquez, Esq.
Court Clerk Supervisor / /

by: 
Rosalie Griffith
Court Clerk Supervisor 5/25/10

CERTIFIED A TRUE COPY
Date: 5/26/10
Venetia H. Velasquez, Esq.
Clerk of the Court
By: 
Court Clerk