

IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FL

CASE NO.: 2022 CF 000616
DIVISION: 50

STATE OF FLORIDA

vs.

TYRESE TYSHJUAN PATTERSON
Defendant

**ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS
ILLEGALLY OBTAINED STATEMENTS OF DEFENDANT**

THIS CAUSE was heard by the Court on the Defendant's Motion to Suppress Illegally Obtained Statements of Defendant made by the defendant at a recorded jail interview on June 14, 2022, and after having reviewed the Motion, a video of the jail interview, transcripts of the interview, and having heard the argument of counsel, the Court finds the following:

FACTS:

Defendant is charged with First Degree Murder with a Firearm for the shooting death of Noah Smith on January 12, 2022. During the murder investigation, several witnesses and suspects were interviewed by law enforcement. A few days after the shooting, on January 14, 2022, the defendant's mother arranged with detectives with the Flagler County Sheriff's Office for the defendant to give an interview regarding the incident. Later that same day, the defendant was initially interviewed by the detectives. The defendant was accompanied to the interview by Attorney S. Robinson. After the interview, Mr. Robinson and the detective exchanged business cards and, according to the detective, agreed that the attorney or his client would reach back out

to detectives for another interview. The attorney never contacted the detectives again regarding this matter.

Months after the first interview, detectives received another call from the defendant's mother, again setting up an interview with detectives. On May 10, 2022, detectives traveled to the defendant's home and interviewed him. The detectives described the defendant as eager and willing to talk to them and he was questioned about where he was and who he was with at the time of the shooting. Although the detective testified that they talked about the shooting, the defendant was not specifically questioned about his involvement. However, the entire interview was conducted without Mr. Robinson or any other attorney being present. In fact, the defendant never invoked his right to counsel or asked to have an attorney present during questioning, even after receiving proper Miranda warnings. The defendant freely and voluntarily spoke to detectives and answered their questions.

On June 14, 2022, a third interview was conducted by the same detectives. At the time of the interview, the defendant was in custody on a separate charge. As the defendant entered the office in the jail where this interview took place, a detective told the defendant that the reason the defendant was brought to the office was because the detective had something he wanted to show the defendant "real quick" and the detective was "confident that [the defendant] would want to see them [videos]." Immediately thereafter, the detective gave the defendant proper Miranda warnings. The detective asked the defendant if he understood those rights and in response the defendant answered "yes" but then asked "where's my lawyer at," not once but twice. The detective immediately responded "I have no idea about anything about a lawyer". The detective then stated "that's for you to decide" and advised the defendant that he wanted to

show the defendant "a couple of videos on this laptop just to make sure you understand what you're up against." The detective then specifically cautioned the defendant that "if you don't want to talk with us, you don't have to talk to us, if you don't want to watch this, you don't have to watch this, and you do have the right to have an attorney and have him with you before we ask you. . ." The defendant responded: "I want to watch it" and the video containing a statement from his co-defendant implicating the defendant in the shooting was shown to him.

Before a second video containing the statement of another co-defendant implicating the defendant can be shown, the defendant asked the detective specific questions about the co-defendant's admissions and makes comments regarding the veracity of those admissions. That conversation ends with the defendant telling the detective "I'm going to watch this video some more" and another video was shown to the defendant. Immediately thereafter, the defendant asks more questions, makes more comments and, eventually, makes incriminating admission about his involvement in the shooting. The defendant seeks to suppress his statements to the detectives in the jail interview,¹ contending that such statements were made after he invoked his right to counsel and in violation of his fifth amendment rights.

APPLICABLE LAW:

The law has long required that custodial interrogation of a criminal suspect stop when the suspect clearly and unequivocally requests counsel at any stage of the interview. *Davis v. U.S.*, 512 U.S. 452 (1994). Failure to stop the interview requires suppression of any statements made

¹ At the time of this interview, the defendant was in custody on other charges. Although this interview was conducted at the jail, the defendant was properly advised of his Miranda rights and, further, that he did not have to participate in the interview, speak with detectives or watch the videos the detectives brought to the conference room. Accordingly, there is some question whether the interview was custodial in nature. For purposes of the Court's analysis, however, the interview is treated as custodial.

after the suspect has invoked the right to counsel. *Edwards v. Arizona*, 451 U.S. 477 (1981). However, when officers are faced with equivocal direction from the defendant, “if the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning.” *Davis*, supra.

In *State v. Owen*, 696 So.2d 715 (Fla. 1997) the Florida Supreme Court approved denial of a Motion to Suppress incriminating statements made during a police interview. After Miranda, Owen was asked about specifically targeting the victim's house and the location of a bicycle. Owen replied “I'd rather not talk about it.” The officers did not seek clarification regarding whether Owen was generally invoking his right to counsel or simply avoiding questions regarding those limited subjects. The defendant moved to suppress his statements on that basis. The Court found that the defendant made equivocal utterances about his right to have counsel present in the interview. However, the equivocal statements following Miranda were insufficient to invoke the right to counsel or suppress any incriminating statements. The Court held:

“Thus, we hold that police in Florida need not ask clarifying questions if a defendant who has received proper Miranda warnings makes only an equivocal or ambiguous request to terminate an interrogation after having validly waived his or her Miranda rights.” *Owen* at 719.

But following a proper waiver, where a defendant *unequivocally* attempts to re-invoke the right to counsel during the custodial interview by asking a clear question, “the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer.” *Almeida v. State*, 737 So.2d 520 (Fla. 1999). The officer may not ignore the question or steamroll past a clear question involving the defendant's constitutional rights. If the officer is uncertain how to respond, they may- where appropriate- “advise the suspect of his or her rights”. Once

the officer properly answers the question, the officer may then resume the interview (provided of course that the defendant in the meantime has not invoked his or her rights).

The case of *Mathews v. Maryland*, 666 A.2d 912 (Md. Ct. Spec. App. 1995) is helpful in its analysis of 2 similar issues. There, Mathews was accused of raping and abusing his 4-year-old daughter. In a custodial interview after proper Miranda warnings, the defendant admitted that he had sex with the child.

The defendant moved to suppress his incriminating statements on 2 grounds. First, he argued that he was already represented by counsel in another matter and invoked his right to counsel, thus barring the police from initiating another custodial interview in this case. The Court held that the fact that defendant “was represented in an unrelated matter does not preserve his rights in this matter, and that fact that he invoked his rights to counsel in that case is not tantamount to an invocation of his right to counsel during custodial interrogation on the charges stemming from his daughter’s allegations.” The defendant was required to unequivocally request an attorney to invoke the protections of the Fifth Amendment. See, *Edwards*, *supra* and *Michigan v. Mosley*, 423 U.S. 96 (1975).

In his second argument, defendant complained that he invoked his right to counsel by asking for a lawyer 2 or 3 times. Like here, the defendant contended that his statement amounted to an unequivocal request to invoke his right to counsel. The record reflected that the defendant stated during his interview “Where’s my lawyer?” In rejecting this argument, the Court held that if a suspect makes an equivocal reference to an attorney that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to

counsel, the law does **not** require cessation of questioning. *Id.* at 918 and *Davis*, *supra*. The Court reasoned:

“Even if we were to concede that Mathews’s question, “Where’s my lawyer?”, might have indicated that he wanted the assistance of counsel . . . that is not enough to require the immediate cessation of interrogations. While we can speculate that it *might* have been such a request *in appellant’s mind*, the statement *to the officers* was not unambiguous and unequivocal. As the *Davis* Court held, ‘might,’ in terms of *Miranda*, is not enough.” *Mathews* at 918.

LEGAL ANALYSIS:

Here, the defendant was brought to a booking room at the jail containing 3 detectives who wished to show the defendant 2 videos. The defendant was provided full Miranda warnings, including the right to counsel and the right to stop all questioning at the defendant's request until an attorney was obtained. As clearly shown on the video of the interview, the defendant waived his rights. Only after waiving his rights, did the defendant ask "where's my attorney at."

This Court finds that if this statement (“where’s my attorney at”) was the defendant's attempt to invoke his right to counsel, the statement was equivocal, at best. He did not tell detectives that he did not wish to speak with them or that he was invoking his right to counsel. Moreover, at the time of the interview, the detectives did not know if the defendant was represented by counsel regarding the murder. The defendant was represented by counsel at an interview 5 months earlier, but 3 months later and just a month before the jail interview, he agreed to talk with detectives without counsel. In addition, at the time of this interview, the defendant had not even been charged in the case. The defendant was represented by the Office of the Public Defender on another matter unrelated to the interview but, again, no specific

request was made to speak with that attorney or invoke the right to have that counsel present during the interview. It is also relevant to note that the attorney who appeared at the previous interview 5 months earlier (i.e. Mr. Robinson), **never** contacted the detectives again on behalf of the defendant and **never** formally appeared in the matter. Accordingly, the detective was legally entitled to continue to question the defendant.²

² The Court has carefully reviewed the alleged statements made by defendants in numerous cases to determine how statements regarding the right to counsel during custodial interrogation are treated. In making the finding that the defendant's statement in this case after proper Miranda warnings and waiver was an equivocal attempt to invoke the right to counsel, this Court considered the following cases and holdings: *State v. Glatzmayer*, 789 So.2d 297 (Fla. 2001) ("should I get a lawyer" was not an unequivocal request for counsel); *Diaz v. Senkowski*, 76 F.3d 61, 63 (2d Cir.1996) (admitting the defendant's confession where he asked during interrogation, "Do you think I need a lawyer?" and the officer responded, "You have been advised of your rights."); *United States v. Ogbuehi*, 18 F.3d 807, 813 (9th Cir.1994) (admitting the defendant's confession where he asked during interrogation, "Do I need a lawyer?" and the officer responded, "that was a question that only he could answer"); *People v. Oaks*, 169 Ill.2d 409, 215 Ill.Dec. 188, 662 N.E.2d 1328, 1347 (1996) (admitting the confession where the defendant asked, "Should I see a lawyer?" and the officer responded, "That's up to you."); *State v. Bailey*, 256 Kan. 872, 889 P.2d 738, 743 (1995) (admitting the confession where the defendant asked "if he needed a lawyer" and the officers responded, "that was not a decision for us to make, that was his decision"); *State v. Thomas*, 711 So.2d 808, 813 (La.Ct.App.1998) (admitting the confession where the defendant asked, "But do I-do I need a lawyer?" and the officers responded, "That's up to you."); *State v. Jones*, 914 S.W.2d 852, 860 (Mo.Ct.App.1996) (admitting the confession where the defendant asked, "Do I need an attorney?" and the officer responded, "I'm not an attorney. I'm an investigator."); *State v. Davis*, 124 N.C.App. 93, 476 S.E.2d 453, 457 (1996) (admitting the confession where "the defendant asked if he needed a lawyer and was told that it was his decision to make"); *State v. Greybull*, 579 N.W.2d 161, 162 (N.D.1998) (admitting the confession where the defendant asked, "Do I need a lawyer?" and the officer replied, "that's up to you"); *Washington v. State*, 253 So.3d 64 (Fla 1st DCA 2018) ("Do I need that/Do I need him?, Do I need to call my lawyer? and Can I call my lawyer?" did **not** unequivocally invoke the right to counsel); *Mathews v. Maryland*, 666 A.2d 912 (MD Ct. App. 1995)(defendant's question "Where's my lawyer?" was not an unequivocal attempt to invoke the right to counsel); *North Carolina v. Lee*, 611 S.E.2d 855 (N.C. Ct. App. 2005) ("where's my lawyer at?" did not constitute an unequivocal attempt to invoke the right to counsel); and *Brooks v. State*, 363 So.3d 181 (Fla. 5th DCA 2023)(suppression of incriminating statements was not required because a defendant's question "can I have a lawyer present" was not an unequivocal attempt to invoke the right to counsel but was a question that detectives stopped to answer truthfully by reminded defendant that the right counsel was covered in the *Miranda* warnings previously given).

However, even if the defendant's statement was construed as an "unequivocal and clear question regarding his constitutional rights", the detective's only obligation was to stop the interview and make a good-faith effort to answer the question truthfully." *State v. Glatzmayer*, 789 So.2d 297 (Fla. 2001) (the defendant's questions "should I have an attorney" was an equivocal request for counsel and officers only needed provide a simple and straightforward answer.") And that's exactly what happened. The detective made a good faith attempt to answer that question with a truthful and straightforward response: "I have no idea about anything about a lawyer" and "that's for you to decide." Placing context to the response, the detective further advised the defendant that he wanted to show the defendant "a couple of videos on this laptop just to make sure you understand what you're up against." But, most important of all, the detective then specifically advised the defendant before showing any video "if you don't want to talk with us, you don't have to talk to us, if you don't want to watch this, you don't have to watch this, and ***you do have the right to have an attorney and have him with you before we ask you.*** . ." The detective's admonition was interrupted by the defendant saying unequivocally "I want to watch the video." Thereafter, no further request was made by the defendant regarding an attorney or to stop the questioning. The video clearly shows the defendant himself initiating further discussions with the detectives, resulting in the defendant incriminating himself in the shooting.

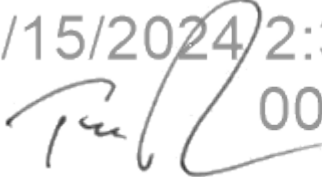

The detectives did not ignore the defendant's question, they did not engage in gamesmanship or try to steamroll the defendant. They responded directly and immediately. They responded with honesty and common sense. More importantly, their simple response was reasonable and *true*. Moreover, no evidence was presented which showed any ruse or trick by

the detectives to get the defendant to talk with them. The video showed that the defendant, not the detectives, initiated conversation regarding the videos and the statements of the co-defendants implicating the defendant in the shooting. Finally, it was the defendant, interrupting the detective when he was answering the defendant's question, that demanded to see the video after again being advised that he was not required to talk with the detective, watch the videos and that he did "have the right to have an attorney and have him with you before we ask you. .". The defendant did exactly as the detectives hoped, he incriminated himself by spontaneously and verbally responding to the videos.

Based on the above findings, it is hereby

ORDERED AND ADJUDGED that the Defendant's Motion to Suppress Illegally Obtained Statements of Defendant is hereby **denied**.

DONE AND ORDERED in Flagler County, FL, on {

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TERENCE PERKINS
CIRCUIT JUDGE

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