

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire

v.

Michael Addison

Docket No.: 07-S-0254

ORDER ON DEFENDANT'S MOTIONS TO SUPPRESS

The defendant has filed three motions to suppress various statements he made to Boston and Manchester police officers. The State objects to all three motions. The Court held a hearing on the motions on June 30 and July 1, 2008, and heard the testimony of eight Boston police officers and two Manchester police officers. After considering the evidence, the parties' arguments and relevant legal precedent, the defendant's Motion to Suppress #1 is DENIED as to the background questions and GRANTED as to the defendant's confession to the Manchester police detectives; Motion to Suppress #2 is DENIED; and Motion to Suppress #3 is MOOT in light of the defendant's confession being suppressed.

Background

The defendant is accused of shooting to death Manchester Police officer Michael Briggs on October 16, 2006. Later that day, the Manchester police became aware that the defendant had fled from Manchester to Boston, Massachusetts and notified Boston police, who immediately began investigating the defendant's whereabouts. Boston law enforcement learned that the

defendant was in his grandmother's sixth floor apartment at 22 Beechwood Street in Dorchester. 22 Beechwood Street is an elderly housing complex, approximately six stories high, with ten to twelve units per floor. There are two stairwells, one on either side of the building.

The Boston police secured the area surrounding 22 Beechwood Street, and the Tactical Team Unit and a hostage negotiator, Boston Police Deputy Superintendent Colm Lydon, arrived and entered the complex. Lydon's duties included attempting to safely apprehend fugitives and de-escalate hostage situations, not to get information. Lydon called the landline in the defendant's grandmother's apartment. Meanwhile, the officers of the Tactical Unit were trained on the door to the apartment.

Deputy Superintendent Lydon testified that no one answered the phone. Using a bullhorn, he asked the defendant to pick up the phone to talk to him. There was no response. Lydon then asked Mrs. Eloise Wilson, the defendant's grandmother, if she was in the apartment and if she could hear him. Mrs. Wilson responded that she was there and could hear him.

Lydon called the apartment's landline again and spoke with Mrs. Wilson and asked her whether the defendant was in the apartment. She said he was. Deputy Superintendent Lydon identified himself and asked Mrs. Wilson to tell her grandson who he was and that he wanted to speak to him. Shortly thereafter, the defendant got on the line and told Lydon that he had been sleeping. After confirming the defendant's identity, Lydon told the defendant he wanted to help him leave the apartment. The defendant told Lydon that he had wanted to turn

himself in as soon as he heard he was wanted, and that he didn't do anything and didn't want to die. The defendant asked Lydon to come to the front of the apartment door so that the defendant could see him. Lydon declined, and told the defendant that there were other Boston police officers outside the apartment. The defendant repeated that he didn't want to die and said that he wanted a cigarette.

Deputy Superintendent Lydon told the defendant to tuck the phone beneath his chin, empty his hands, and knock on the door. Lydon reiterated that when he left the apartment, the defendant would see police officers. The defendant stated that he was going to smoke a cigarette and repeated that he didn't want to die. At some point during the exchange, the defendant asked Lydon whether he had spoken to his uncle Darryl, and stated that he didn't want anyone to shoot him, and Lydon told the defendant to come out of the apartment with his hands visible. The defendant came out of the apartment and Boston police took him into custody. Boston Police Sergeant Eblan, who was present in the hallway, testified that the defendant was sobbing and repeatedly stated, "I didn't kill him" and that he saw it on the news.

Boston Police Detective James Miller, along with several other police officers, escorted the defendant down the rear stairwell and arranged for his transport to Boston Police Headquarters. Detective Miller testified that the defendant made several statements as they proceeded down the stairwell, namely, "I didn't do it, I was in the house," "I was going to turn myself in", "I saw myself on television, I was going to turn myself in" and to go ask his uncle.

Detective Miller also testified that the defendant also said, "fuck them, they're not going to set me up, I'll tell on everybody," and repeated continuously that he didn't do it. Detective Miller testified that no one said anything to the defendant to prompt these statements.

Detective Miller walked the defendant outside, and Boston Police Officer Emmanuel Canuto placed him in a marked cruiser for transport to headquarters. Detective Miller followed the cruiser in an unmarked vehicle. Detective Jeffrey Cecil rode in the back of the cruiser with the defendant, and Officer Canuto sat in the front. Detectives Martin O'Malley and Sean Joyce, and Sergeant Marc Sullivan also followed the cruiser to headquarters.

As the cruiser drove away from 22 Beechwood Street, it passed representatives from the media. Detective Cecil testified that when the defendant saw the media he directed his body towards the window and shouted to them. Detective Miller testified that as the cruiser passed the media, he heard the defendant yell,¹ "look at my face, this is what I look like, they will beat me up." Detective Cecil and Officer Canuto testified that although none of the officers in the cruiser spoke to the defendant, he made other unsolicited statements during the drive to headquarters. Detective Cecil testified that the defendant asked "did he die," "stated that "Antoine Twizz did it, I was home sleeping" to "check out the residue DNA," "I saw it on TV," and "please don't fuck me up, you guys are going to fuck me up." Officer Canuto testified that the defendant said "damn, my boy

¹ Detective Cecil testified that the cruiser's window was up. However, Detective Miller testified that he could hear the defendant yelling through an open window.

died" and "I hope he's not dead," and made other statements that he could not hear.

The cruiser arrived at headquarters and parked near the sally port at the rear of the building. Detective O'Malley helped remove the defendant from the cruiser. Detectives Joyce, O'Malley and Cecil, Sergeant Marc Sullivan, and Officer Canuto waited nearby. Detective Cecil testified that someone may have told him to take the defendant to the Homicide Unit. Detective O'Malley testified that the defendant asked where they were taking him, and Detective O'Malley told him that he was going to the Homicide Unit. Several officers testified that the defendant said something to the effect of "Homicide? What? He died?" although some were uncertain what prompted this statement.

Sergeant Sullivan, Officer Canuto, Detectives Joyce, Cecil, O'Malley, and Miller, and other Boston police officers escorted the defendant into the elevator where they rode to the second floor of headquarters, where the Homicide Unit is located. Sergeant Sullivan and Officer Canuto testified that the defendant made comments indicating that he was concerned about his safety.² Both testified that no one said anything to prompt this comment. Officer Canuto also testified that the defendant said at some point, "damn, my boy died," "all I care about is he's not dead," and "damn, I'm going to Homicide he died."

Once the defendant and the officers arrived at the Homicide Unit, Detectives Cecil and Joyce sat in silence with the defendant in an interview

² Detectives O'Malley and Joyce testified that they could not recall any statements during the elevator ride. Detective Joyce also testified that he could not recall anyone talking to the defendant or intimidating the defendant. Detective Joyce also testified that he might have heard the defendant say in the elevator, "is this where I take a beating?"

room, waiting for Manchester detectives to arrive. The detectives both testified that the defendant made a comment to the effect that Detective Joyce was angry or would harm him. Detective Cecil testified that Detective Joyce did not do anything to provoke this comment and neither detective questioned the defendant. Every Boston police officer called at the hearing testified that during their contact with the defendant they did not question him, and that it was the policy of the Boston Police Department not to question suspects wanted in other jurisdictions, but to leave that to the police from that jurisdiction.

Shortly afterwards, Manchester Police Detectives Ryan Grant and Sean Leighton arrived at Boston Police Headquarters. Detective Leighton testified that earlier in the day he had researched the defendant's background and reviewed police reports generated by prior police contacts with the defendant. He learned the defendant's parents' names and residences, the names and ages of his siblings, his prior addresses at Maple Street and Pearl Street, his date of birth, nicknames, and prior arrests. Detective Leighton testified that he knew the defendant's height and weight, build, social security and driver's license numbers, employment, and prior addresses. Detective Leighton also learned from the defendant's girlfriend that he had not been living with her at the Maple Street address for some time.

Boston Police Detective Juan Torres and other Boston police officers briefed the Manchester detectives. Both Manchester detectives testified that some Boston police officers told them that the defendant was eager to speak to them. Shortly thereafter, the detectives entered the interview room, and

Detectives Cecil and Joyce left. Both Manchester detectives testified that the defendant appeared to be pleased or relieved to see them, as he sighed and leaned forward when they entered the room. The defendant recognized Detective Grant from a prior incident during which the defendant had been stabbed. Both detectives testified that the defendant told them that he wanted to talk to them to clear his name. He also stated that he had seen himself on the news and didn't know how he was involved. After a brief exchange, the detectives asked the defendant if they could record their interview with him and the defendant agreed.

After confirming that the defendant understood that they would record the interview, Detective Grant stated that "[w]hat ... what we're gonna do, Mike, is just get a little bit of history from you first." Appendix to the State's Objection to the Defendant's Motion to Suppress #1 at 2 (Transcript of the defendant's October 16, 2006 police interview). Detective Leighton took notes during this portion of the interview. Detective Leighton asked the defendant for his address. The defendant told the detectives that he was living with his "baby's mom" but that he had not lived there for some time. The defendant also stated that he had been living with some friends and that he did not receive mail.

Detective Leighton asked the defendant for his phone number, and the defendant responded that he did not have a phone number at his current address. The detective next asked whether he had a cell phone. The defendant responded that he did not. Detective Leighton did not inquire any further about the cell phone, but asked the defendant his date of birth, where he was born,

what hospital he was born in, what schools he attended, his level of schooling, his employment, marital, and military histories, and his social security number. The defendant answered each question.

Detective Leighton then asked the defendant the names of his father and mother, where they lived, about his contact with his mother, and his siblings' names, ages, and residences. The defendant answered these questions as well. Detective Leighton then asked about his grandmother, Rosetta Addison, and her address, and the names and ages of the defendant's children. The defendant again responded.

After getting this background information, Detective Grant advised the defendant that they had to review his Miranda rights with him. The detectives had a copy of the standard Manchester Police Department Miranda waiver form with them, which detailed the Miranda warnings in five separate sentences, with a space next to each for the defendant to initial. Detective Grant wrote on the form the date, time and location, the defendant's name, and his and Detective Leighton's names, and then passed the form to the defendant. Detective Grant explained to the defendant, "I'm gonna have you read these out loud. If you understand each one, just place your initials." App. at 12. The following exchange then occurred:

Michael Addison: All right. "I have the right to remain silent." I wasn't really explained that. Know mean?

Ryan Grant: All right.

MA: I don't have to answer nothing I don't want to. Does that mean that?

RG: That's exactly what that means.

MA: Okay. "Anything I say can be used against me in a court of law." Yeah, I know that.

RG: Do you understand that?

MA: I . . . if I say anything now, it can be used against me.

RG: Right.

MA: Yeah, I seen that before. People told me. "I have a right to talk to a lawyer for advice . . ."

RG: You got to speak out loud though ok?

MA: "I have a right to talk to a lawyer for advice before questioning and to have on with me during questioning." I would like that though.

RG: You would like what?

MA: A lawyer. That just what I was told.

RG: Okay.

MA: I mean, to always have a lawyer.

RG: Okay. Place your initials there, if you understand what that says.

App. at 12-13.

Detective Grant testified that as he made the last comment, he leaned over the table to point to the space next to the third sentence on the waiver form.

After the defendant initialed the form next to the third sentence, he read the remaining two Miranda rights out loud and initialed each on the form.

Detective Grant asked the defendant if he understood all the rights described on the form, and the defendant said he did. Detective Grant then asked the defendant to waive his rights:

RG: This is where you need to make your decision. "Are you willing to waive each of those rights and answer questions?"

MA: (Pause). Yeah, I guess so.

RG: Now do you know . . . do you know what that means?

MA: No. Can you explain that to me, please?

RG: Sure. Are you willing . . . the . . . these five rights that you read right here, are you willing to give up those rights and speak with us, or would you rather remain silent or . . . and . . . and not talk to us?

MA: Okay.

RG: . . . until you have a lawyer present?

MA: But, I can stop at any time, right?

Sean Leighton: Yeah.

RG: You . . . you . . . at any time, you can stop though.

MA: Well, I'll say yes, if I can stop any time.

RG: Exactly.

MA: You need my signature?

RG: Yup. Now, Michael, I just want to confirm with you, because it . . . we . . . we have to do this. E . . . earlier, when you read Number Three, ah . . . you said you . . . when you read the one that says, "You have the right to talk to a lawyer for advice before questioning and have one during questioning," you said that . . .

MA: Is there a lawyer here?

RG: You said that you wanted one.

MA: Yes, . . .

RG: But . . . but, . . .

MA . . . I would like to have a lawyer, yeah.

RG: You would like to have a lawyer . . . lawyer, now, before you speak with us?

MA: No, cuz I can stop at any time. If I . . .if I don't understand something, I can just stop.

SL: So . . . so we're all clear. You're . . . you're willing to speak with us now, . . .?

MA: Yeah, I am . . .

SL: . . . without a lawyer here?

MA: Yeah, I'm . . . I'm willing to speak.

SL: Okay. Cuz, that's . . . that's important. We want to make sure we're . . .

MA: Yeah, I'm willing to speak . . .

SL: . . . Perfectly clear.

MA: . . . because you all was fair last time we met. So, you know what I mean?

SL: Okay.

RG: We treated you right. But, we just have to make sure that you understand these . . .

MA: Yeah.

RG: . . . and you want to give these rights up and talk to us about what . . .

MA: Yes, I wanna talk.

MA: Yes, I'm willing.

App. at 13-15.

The interview then turned to the shooting of Officer Briggs.

Analysis

The defendant moves to suppress his statements to the Boston and Manchester police on October 16, 2006 based on violations of both Part I, Article 15 of the State Constitution and the Fifth and Fourteenth Amendments to the Federal Constitution. Part I, Article 15 states, “[n]o subject shall . . . be compelled to accuse or furnish evidence against himself.” N.H. Const. Pt. I, Art. 15. The Fifth Amendment states “No person shall . . . be compelled in any criminal case to be a witness against himself.” U.S. Const. Amend. V. As the defendant raises both state and federal violations, the Court will first look to the State Constitution, citing federal decisions for guidance only. State v. Plch, 149 N.H. 608, 613 (2003) (finding right to counsel under the 5th Amendment is not more protective than Part I, Article 15); State v. Chrisicos, 148 N.H. 546, 548 (2002) (finding right against self incrimination under the 5th Amendment is not more protective than Part I, Article 15).

I. **Statements to Boston Police Officers (Defendant’s Motion to Suppress # 2)**

The defendant asks the Court to suppress statements that he made to members of the Boston Police prior to his interview with Detectives Grant and Leighton because he was subject to custodial interrogation without Miranda warnings. Specifically, the defendant asserts that he was subject to custodial interrogation 1) while in the apartment; 2) on the way from the apartment to Boston Police headquarters; and 3) at headquarters. The defendant contends that there are “significant doubts as to whether [his] statements were spontaneous” because Boston Police officers testified to different statements from the defendant and because there are no reports of “instructions and/or

statements to [him] during the handcuffing, the escort to the police cruiser, and within the cruiser.” Def.’s Mot. to Suppress No. 2 at ¶ 20. The State counters that the defendant was not in custody when in the apartment, and, although in custody after he left the apartment, was never subject to interrogation prior to his interview with Detectives Grant and Leighton. The State argues that all of the defendant’s statements to Boston Police officers were spontaneous.

“Miranda warnings are required when a defendant is subject[] to custodial interrogation.” State v. Locke, 149 N.H. 1, 6 (2002). “A person is in custody, and therefore entitled to Miranda protections during interrogation, where there is a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.” State v. Dedrick, 132 N.H. 218, 224 (1989) (quotations omitted) (abrogated on other grounds in State v. Spencer, 149 N.H. 622, 624-25 (2003)). However, to trigger the requirements of Miranda, the defendant must be both in custody and subject to interrogation. State v. Graca, 142 N.H. 670, 674 (1998).

“Interrogation for Miranda purposes occurs where ‘a person in custody is subjected to either express questioning or its functional equivalent.’” Spencer, 149 N.H. at 625 (quoting Rhode Island v. Innis, 466 U.S. 291, 300-01 (1980)). The functional equivalent of interrogation encompasses “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” State v. Dellorfano, 128 N.H. 628, 633-34 (1986). The “functional equivalent” aspect of the term ‘focuses primarily upon the perceptions of the suspect, rather than the intent of the police,’” State v. Plich,

149 N.H. 608, 614 (2003), although the intent of the questioning police officer is "relevant to determining whether the [question] was the functional equivalent of interrogation." Spencer, 149 N.H. at 626. The State has the burden to prove by a preponderance of the evidence that the defendant's statements were spontaneous and thus not the product of interrogation for the purposes of Miranda. State v. Rathbun, 132 N.H. 28, 30 (1989).

a. Statements made in the apartment

The Court will assume without deciding that the defendant was in custody for the purposes of Miranda when he was in the apartment and determine whether Deputy Superintendent Lydon subjected him to unlawful interrogation. The Court finds that none of the defendant's statements in the apartment were the product of interrogation. Lydon's questions and statements to the defendant constituted neither express questioning nor the functional equivalent of questioning within the meaning of Miranda. Lydon's questions and statements focused solely on determining whether the defendant was inside the apartment and instructing him how to leave it safely. They did not concern the shooting of Officer Briggs or any underlying events and were not "reasonably likely to elicit an incriminating response" from the defendant. Spencer, 149 N.H. at 625 (quoting Innis, 466 U.S. at 300-01). Deputy Superintendent Lydon's purpose as a hostage negotiator was not to get information about the crime for which the defendant was being apprehended but only to get him into police custody without anyone getting hurt. Id. at 626 (noting that intent of police officer is relevant to interrogation determination). Other courts have found that questions asked by

hostage negotiators do not constitute interrogation for the purposes of Miranda. See People v. Scott, 710 N.Y.S.2d 228, 230 (N.Y. App. Div. 2000) (noting that the intent of the investigator was to persuade defendant to release hostages and to surrender peacefully as opposed to eliciting incriminating statement from defendant); Commonwealth v. Stallworth, 781 A.2d 110, 115-16 (Pa. 2001) (finding that negotiators conversed with defendant "to discover what [his] plans were given the situation, gain [his] trust, and peacefully end the standoff."); State v. Cooper, 949 P.2d 660, 667 (N.M. 1997) ("Verbal efforts to obtain an accused's surrender or to prevent him from committing suicide or injury to others is not interrogation.").

b. Statements made during transport to and at headquarters

Clearly, the defendant was in custody after he came out of the apartment and was handcuffed by the police. However, the defendant was still not entitled to Miranda warnings because the Boston police never interrogated him. Rather, all of the defendant's statements were spontaneous.

Each Boston Police officer testified that he did not ask the defendant any questions or otherwise prompt statements from the defendant and that he heard no other officer do so. That the Boston police officers would not question the defendant is consistent with department policy when apprehending a suspect wanted for a crime in another jurisdiction, and with common sense. This was Manchester's case. Boston Police knew little about it and certainly would not want to do anything that would jeopardize the prosecution of this high profile case.

The defendant takes particular issue with three encounters with the Boston Police. The defendant first contends that the statement by the Boston Police that he was being taken to the Homicide Unit was the functional equivalent of interrogation. Although the testimony from Boston police officers varies somewhat on this point,³ the statement that the defendant was going to the Homicide Unit does not constitute interrogation for Miranda purposes. See id. Rather, it was a statement “attendant to arrest and custody,” either in response to the defendant’s query or simply overheard by the defendant. The defendant’s response to the news that he was going to the Homicide Unit was unsolicited and voluntary. See Spencer, 149 N.H. at 625 (setting out standard). Moreover, no Boston Police officer followed up on the defendant’s statement in any way.

The defendant cites two cases from other jurisdictions, Hill v. United States, 858 A.2d 435 (D.C. 2004), and Drury v. State, 793 A.2d 567 (Md. 2002), in support of his contention that the statement that the defendant would go to Homicide was the functional equivalent of interrogation. However, these cases involve significantly different factual scenarios and do not support his contention. See Hill, 858 A.2d at 443 (finding that police telling the suspect that he was charged with murder and that his friend had told them everything was interrogation”); Drury, 793 A.2d at 571 (finding that police confronting the suspect with evidence of crime and telling him they were going to test it for fingerprints was interrogation).

³ Detective Cecil testified that someone may have told him to take the defendant to the Homicide Unit. Detective O’Malley testified that he told the defendant he was going to the Homicide Unit in response to the defendant’s question. Officer Canuto testified that he was not sure what prompted the defendant’s statement.

The second contact with which the defendant takes issue occurred while traveling up the elevator to the Homicide Unit. Officer Canuto testified that the defendant asked whether Boston Police officers would harm him. Another officer asked, "what?," in response, and the defendant repeated his question.⁴ Officer Canuto, Detective O'Malley and Sergeant Sullivan all testified that no officer made statements or took action to prompt the defendant's question. The testimony of the officers in the elevator was consistent and credible.

The same is true for the third encounter noted by the defendant, that, while waiting for the Manchester detectives to arrive, he commented about Detective Joyce being mad at him. Every Boston Police officer present testified that no one did anything to prompt this statement from the defendant, and the Court credits this testimony.

Additionally, the defendant argues that variances in the Boston Police reports about the defendant's statements and their lack of "instructions and/or statements to [the defendant] during the handcuffing, the escort to the police cruiser, and within the cruiser [create] at least significant doubts as to whether the statements were spontaneous." Def.'s Mot. to Suppress No. 2 at ¶ 20. The Court finds the testimony of the Boston Police officers largely consistent and credible. In any event, the defendant's argument goes to the weight, not the admissibility of evidence of the defendant's statements.

⁴ Detective O'Malley and Sergeant Sullivan both testified that the defendant made a statement to the effect that he was concerned for his safety in the elevator.

For the above reasons, the Court concludes that none of the statements the defendant made to the Boston Police were the product of unlawful custodial interrogation. Accordingly, the defendant's Motion to Suppress No. 2 is DENIED.

II. Background Questions (Defendant's Motion to Suppress #1)

The defendant argues that Manchester Detectives Grant and Leighton violated his Miranda rights when they asked for background information that went beyond normal booking questioning. The defendant argues that the detectives "were not questioning [him] to obtain biographical data necessary to complete booking or pretrial services," but were attempting to elicit incriminating responses and/or information that would lead to evidence that could be used against him in his capital trial, both in the guilt/innocence and sentencing phases. Mot. to Suppress No. 1 at ¶ 12. Accordingly, the defendant argues that these statements must be suppressed as well as the testimony of various grand jury witnesses and the resulting indictments, as fruits of the poisonous tree.

The State objects, countering that the detectives were not required to inform the defendant of his Miranda rights prior to asking him background questions under the booking exception to Miranda. The State asserts that the questions were not designed to elicit incriminating responses from the defendant, and were unrelated to the shooting. Rather, contact information for the defendant and his family, his ties to the community, verification of his identity, and other answers were "relevant to future administrative concerns" and pretrial services, such as bail determination and extradition to New Hampshire. State's Obj. to the Def.'s Mot. to Suppress No. 1 at ¶ 21. Also, biographical questions

were necessary to ascertain the defendant's comprehension, coherency, and level of impairment prior to Miranda warnings. Further, the State submits that the defendant did not make incriminating statements in response to the detectives' questions. The State also rejects the defendant's argument that the questions went beyond the scope of the booking exception, and, even if the booking exception does not apply, the questions did not constitute interrogation for the purposes of Miranda.

Both the United States Supreme Court and the New Hampshire Supreme Court recognize a booking exception to the Miranda requirements. See Pennsylvania v. Muniz, 496 U.S. 582, 601-02 (1990); Chrisicos, 148 N.H. at 548-49 ("Statements made in response to routine booking questions need not be suppressed even if the defendant did not first waive his or her Miranda rights."). This "exception applies to 'questions to secure the biographical data necessary to complete booking or pretrial services,' and includes the defendant's name, address, height, weight, eye color, date of birth, and current age." Chrisicos, 148 N.H. at 548-59 (quoting Muniz, 496 U.S. at 601). However, "in the absence of waiver, 'police may not ask questions, even during booking, that are designed to elicit incriminatory admissions.'" Id. at 549 (quoting Muniz, 496 U.S. at 602 n.14). In Muniz, the Supreme Court reasoned that questions asked for "record-keeping purposes only" that are "reasonably related to the police's administrative concerns" are constitutionally acceptable. Id. at 601-02 (quotations omitted); see United States v. Simmons, 526 F.Supp.2d. 557, 571 (2007) (stating that biographical questions "squarely within the booking exception).

As the defendant acknowledges, questions regarding the defendant's name, address, date of birth and age fall within the booking exception to Miranda. See Chriscos, 148 N.H. at 548-49; Muniz, 496 U.S. at 601. The Court concludes, however, that the booking exception is not limited to these narrow areas but also includes all information normally attendant to the booking process. See Chriscos, 148 N.H. at 548-49. Both the Boston and Manchester booking forms contain sections for information regarding an arrestee's phone number, address, place of birth, social security number, occupation and employer, marital status/spouse's name, and nickname/alias. Accordingly, the detectives' questions about the defendant's place of birth and the hospital where he was born, phone number, employment and military information, marital status, and social security number fall within the booking exception to Miranda. See id. As to asking the defendant whether he had a cell phone, Detective Leighton only asked him this question after the defendant said that he had neither a permanent address nor a land line. This was a natural follow up question and, given the ubiquity of cell phones, probably one that the detectives were entitled to ask even if the defendant had given them a home phone number. They did not inquire further when the defendant denied owning a cell phone.

The remaining questions about the defendant's family, their names and addresses, and the defendant's educational background appear not to fall under the booking exception of Miranda. See Hibbert v. State, 393 S.E.2d 96, 98 (Ga. App. 1990) (during completion of arrest record finding questions about names and addresses of family members "inquiry normally attendant to arrest and

custody” and not related to “interrogation regarding the criminal offense under investigation.”). As it is undisputed that the defendant was in custody for the purposes of Miranda at Boston Police headquarters, the Court will consider whether these questions constitute interrogation. See Graca, 142 N.H. at 674 (defendant must be both in custody and subject to interrogation to trigger Miranda protections). After consideration of the evidence presented, the Court finds that they do not.

The questions at issue were not “designed to lead to an incriminating response,” see Chrisicos, 148 N.H. at 549, nor were they reasonably likely to do so, see Spencer, 149 N.H. at 625 (setting out standard). See Innis, 446 U.S. at 301 n.5 (defining “incriminating response” as “any response ... that the prosecution may seek to introduce at trial.”) (emphasis removed). Both detectives testified that they were unaware of the special sentencing procedures in a capital case and were not seeking information for that purpose. See id. at 626 (noting that intent of officers is relevant to determination whether questioning was functional equivalent of interrogation). Both detectives testified that they ask these types of questions for administrative purposes,⁵ to assess a suspect’s coherency, communication skills, ability to comprehend and level of impairment. Both detectives testified that they were not instructed to follow any different procedure in interviewing the defendant as in other cases. Moreover, the officers justifiably sought additional background information in this case because of the defendant’s criminal record and because he had given a false name to the

⁵ Detective Leighton conceded under cross-examination that some of the defendant’s answers could be useful for leverage later in the interrogation, although the purpose behind obtaining this information was administrative.

Manchester police on a prior occasion and fled to Boston following Officer Briggs' shooting. Finally, it is not clear to the Court what information the defendant gave that the Manchester and/or Boston Police did not already have given his numerous prior police involvements.

Accordingly, the defendant's motion to suppress his statements made before Miranda warnings and accordingly the testimony of grand jury witnesses as fruits of the poisonous tree is DENIED.

III. Assertion of the Right to Counsel (Motion to Suppress #1)

The defendant also argues that his statements to Detectives Leighton and Grant after they began giving him his Miranda rights should be suppressed because the detectives failed to stop questioning him after he asserted his right to counsel in violation of Part I, Article 15 of the New Hampshire Constitution, and the 5th and 14th Amendments to the Federal Constitution. He claims that his statement "I would like that though," immediately after he read aloud his right to counsel from the waiver form, and his subsequent clarifying statement "a lawyer," constitute an unambiguous request for a lawyer which the police were required to honor by immediately discontinuing their questioning.

The State objects, arguing that the defendant's statements were ambiguous, and therefore the detectives did not have to immediately cease questioning. Detectives Grant and Leighton both testified that they believed that the defendant's statements after reading the third sentence of the waiver form were, at best, an ambiguous assertion of the right to counsel because: (1) Boston police officers told the detectives that the defendant was eager to speak with

them; (2) the defendant appeared to be happy to see the detectives and immediately made statements about the crime; and (3) the defendant's statements indicate that other people told him to get a lawyer, not that he himself wanted counsel. The State argues that the context of the statements renders the defendant's assertion of counsel ambiguous and the detectives properly clarified the defendant's ambiguous request and determined that he waived his right to counsel.

The Court agrees with the defendant, finding that: (1) the defendant unambiguously asserted his right to counsel, and the detectives failed to scrupulously honor this assertion when they ignored it and continued to cover the Miranda form; and (2) even if the detectives were confused by the defendant's assertion, they had an obligation to immediately clarify, which they failed to do.

When a person is subject to custodial interrogation, the police must administer Miranda warnings, "that he has a right to remain silent, that anything he says can and will be used against him, and that he has a right to counsel." State v. Roach, 148 N.H. 45, 48 (2002); see Miranda v. Arizona, 384 U.S. 436, 444 (1966). "If the individual states that he wants an attorney, the interrogation must cease until an attorney is present." Pich, 149 N.H. at 613 (citing Miranda, 384 U.S. at 474).; Edwards v. Arizona, 451 U.S. 477, 484-85 (1981) ("an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him."). "If an accused invoked his right to counsel, courts may admit his responses to further questioning only on finding

that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked." Plch, 149 N.H. at 616 (citing Smith v. Illinois, 469 U.S. 91, 95 (1984)).

The rule that questioning must cease after a suspect invokes his right to counsel is "rigid." State v. Tappley, 124 N.H. 318, 323 (1983). "Once an accused indicates 'by any means or in any manner' that he seeks counsel, *all* interrogation must cease until the accused has had the opportunity to confer with counsel." State v. Sunstrom, 131 N.H. 203, 206 (1988) (citations omitted) (emphasis added).

Edwards set forth a 'bright-line rule' that *all* questioning must cease after an accused requests counsel. . . . In the absence of such a bright-line prohibition, the authorities through 'badgering' or 'overreaching' – explicit or subtle, deliberate or unintentional – might wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance.

Smith, 469 U.S. at 98 (emphasis in original). "The right to counsel is a fundamental one which transcends the enforcement of the criminal law and should be liberally observed by those who have sworn to uphold the constitution, and no effect should be made to discourage the exercise of the right by our citizens." Tappley, 124 N.H. at 325.

The "preliminary question in this analysis is whether the defendant adequately indicated to the officers that [he or] she sought the assistance of counsel." State v. Grant-Chase, 140 N.H. 264, 267 (1995). Only when "nothing about the request for counsel or the circumstances leading up to the request would render it ambiguous, [must] all questioning [] cease." Smith, 469 U.S. at 98. This is an "objective inquiry," requiring the Court to consider whether the

defendant “articulate[d] his desire to have counsel sufficiently clearly so that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” United States v. Davis, 512 U.S. at 459 (1994); see also McNeil v. Wisconsin, 501 U.S. 172, 178 (1991) (“requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.”); Sundstrom, 131 N.H. at 207 (considering factual background and content of defendant’s statements to determine if it was assertion of right to counsel).

“A request for counsel may be characterized as ambiguous or equivocal as a result of events preceding the request or the nuances inherent in the request itself.” Smith, 469 U.S. at 98. A request is equivocal if it “evince[s] indecision or uncertainty,” and ambiguous if “admits different interpretations.” United States v. Rodriguez, 518 F.3d 1072, 1076-77 (9th Cir. 2008). In Davis, for example, the United States Supreme Court found that the defendant’s statement that “Maybe I should talk to a lawyer” was equivocal. 512 U.S. at 455, 462. Similarly, in Sundstrom, the New Hampshire Supreme Court found that a defendant’s statements “I don’t know” in response to the police question whether he wanted a lawyer, and “Later There is no hurry” in response to a police question whether he wanted to call his lawyer during booking were either not assertions of the right to counsel or were ambiguous. 131 N.H. at 207. However, “an accused’s *postrequest* responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself.” Smith, 469 U.S. at 100 (emphasis in original).

Neither the New Hampshire nor the United States Supreme Courts has ever required defendants to use specific words or phrases to invoke the right to counsel. Sunstrom, 131 N.H. at 206 (An accused can invoke the right to counsel “by any means or in any manner”). It is sufficient if the “ordinary meaning of the respondent’s statement” is an assertion of the right to counsel. Connecticut v. Barrett, 479 U.S. 523, 529-30 (1987). “[A] suspect need not speak with the discrimination of an Oxford don.” Davis, 512 U.S. at 459 (internal quotations omitted). Following this reasoning, the New Hampshire Supreme Court has found that the statements “Should I have my lawyer . . .” (interrupted by the police) and “Do I need a lawyer for this before I . . .” (interrupted by the police) to be unambiguous assertions of the right to counsel. Tappley, 124 N.H. at 322-25. Similarly, in Smith, the United States Supreme Court found that the defendant’s statement “Uh, yeah. I’d like to do that” in response to the police asking if he understood that he had a right to an attorney was an unambiguous assertion of counsel. 469 U.S. at 97-98.

Considering this case law, the timing of the defendant’s assertions, and their plain meaning, it is clear that “a reasonable police officer in the circumstances would understand [the defendant’s statements] to be a request for an attorney.” See Davis, 512 U.S. at 459. The defendant made two statements in short succession that are both unambiguous assertions of the right to counsel. First, after reading aloud the third sentence of the Miranda waiver form informing him of his right to consult with and have an attorney present during interrogation, the defendant stated, “I would like that though.” Detective Grant had the

defendant clarify his statement by asking, "You would like what?" The defendant responded, "A lawyer. That's just what I was told I mean, to always have a lawyer." Tr. at 12. The plain meaning of the defendant's first statement is that he "would like" the right that he had just read, namely, a lawyer. The defendant's second statement made the meaning of the first unmistakable, as he clarified that what he "would like" was a lawyer, "to always have a lawyer."

The ordinary meaning of these statements is an unambiguous expression of a present desire for the assistance of counsel. See McNeil, 501 U.S. at 278. Unlike in Sunstrom and Davis, the defendant did not use any equivocal words like "maybe" or "I don't know" that would demonstrate any uncertainty about whether to have a lawyer. See Sunstrom, 131 N.H. at 207 (defendant's statement "I don't know" not unequivocal assertion of right to counsel); Davis, 512 U.S. at 455 (defendant's statement "maybe I should talk to a lawyer" not unequivocal assertion). Nor is there anything ambiguous about *when* the defendant wanted a lawyer, as he stated he would like to "*always* have a lawyer," which in its plain meaning would include having a lawyer at the time of the request. See Sunstrom, 131 N.H. at 207 (defendant's statement that he would talk to his lawyer "later There's no hurry" not an invocation of the right to counsel at that time).

In terms of the timing of the request and its wording, the defendant's assertion is remarkably similar to that in Smith, which the Supreme Court found to be "neither indecisive or ambiguous." Compare App. at 12 ("I would like that though A lawyer. That's just what I was told. I mean, to always have a

lawyer" following Miranda warning about the right to counsel) with Smith, 469 U.S. at 97-98 ("Um, yeah. I'd like to do that" in response to Miranda warning about counsel). Further, the defendant's statements are far more decisive and clear than "Should I have my lawyer . . ." (interrupted by the police) and "Do I need a lawyer for this before I . . ." (interrupted by the police), which the New Hampshire Supreme Court has previously found to be unambiguous assertions of counsel. See Tappley, 124 N.H. at 322-25.

Both Detectives Leighton and Grant testified that they thought that the defendant's statement "That's just what I was told" meant that other people had told him to get a lawyer, not that he necessarily wanted one. However, the defendant's statement about the advice of others is simply an explanation of why he wanted a lawyer. "[S]o long as the suspect's apparent motives do not cast genuine doubt on his desire to [assert his rights], then the issue of why he wants to do so is constitutionally irrelevant." Munson v. State, 123 P.3d 1042, 1049 (Alaska 2005) (finding defendant's motive for asserting his right to remain silent was irrelevant when "the request itself was entirely unambiguous."); cf. Anderson v. Smith, 751 F.2d 96 (2nd Cir. 2006) ("The interrogator never needs to know why a suspect wants to remain silent."). Here, the defendant's motive does not cast doubt on his assertion because the defendant made clear his desire for a lawyer: "I would like that though . . . A lawyer." Tr. at 12 (emphasis added).

Moreover, the detectives' testimony at the suppression hearing and actions during the defendant's interview after he stated he wanted a lawyer demonstrate that they understood that the defendant invoked his right to counsel.

Detective Leighton candidly testified at the suppression hearing that he was confused by the defendant's statement "I would like that though" because the third sentence on the waiver form described two variations of the right to counsel: to have a lawyer for advice before questioning and to have one with him during questioning, and it wasn't clear to him which of the variations the defendant wanted to invoke. Either way, of course, the defendant was requesting the assistance of counsel.

Similarly, the transcript of the defendant's interview reveals that Detective Grant also understood that the defendant had requested the services of counsel. After pointing to the spot where the defendant had to initial to demonstrate that he understood his right to counsel, and after having the defendant continue reading his rights and waiving them, Detective Grant went back to the defendant's assertion of counsel. He said to the defendant, "Earlier, when you read Number Three . . . when you read the one that says, 'You have the right to talk to a lawyer for advice before questioning and have one during questioning,' you said that *You said that you wanted one.*" App. at 15 (emphasis added).

Despite these admissions by the detectives, the case law and the transcript of the defendant's interview, the State claims that the context of the defendant's assertion renders it ambiguous. The State argues that certain circumstances, namely, statements by Boston police officers that the defendant wanted to speak to the Manchester detectives, and spontaneous statements by the defendant about the crime and his eagerness to see Detectives Leighton and Grant when they arrived, made the detectives believe that the defendant was

willing to talk to them. However, the Court need not examine these circumstances when the defendant's assertion of counsel is clear.⁶

Based on the ordinary meaning of the defendant's statements and their lack of ambiguity, the Court finds that a reasonable police officer in the circumstances would understand the defendant's statement to be an invocation of the right to counsel. See Davis, 512 U.S. at 459. As the defendant clearly asserted his rights to counsel, the detectives had an obligation to cease questioning unless and until the defendant himself reinitiated the dialog. See Plch, 149 N.H. at 616. The detectives here did not do so, but instead turned the defendant's attention back to the Miranda form and continued reviewing it with him until he waived his rights.

Even if the detectives were confused about the defendant's assertion, they could not simply ignore his statement. Rather, they should have immediately clarified the defendant's intent. The State relies on United States v. Davis to argue that the detectives were not required to immediately clarify the defendant's ambiguous assertion, but were on constitutionally secure grounds to wait to do so after the defendant waived his rights. The Court disagrees. The rule announced in Davis, that the police need not clarify an ambiguous assertion, applies only when the assertion occurs *after* the defendant has waived his Miranda rights. See 512 U.S. at 461. Davis narrowly held that "*after a knowing*

⁶ The State submits several cases to support the proposition that a suspect's previous willingness to talk to the police may make a later assertion of counsel ambiguous. See Medina v. Singletary, 59 F.3d 1095, 1104-05 (11th Cir. 1995); State v. Pitts, 936 So.2d 111, 1130-31 (Fla 2006); Edmonds v. State, 840 N.E.2d 456, 460-61 (Ind. Ct. App. 2006). However, these cases are all factually distinguishable from this case, as they concerned one-word answer "yes" or "no" assertions of counsel, not a clear statement that a defendant "would like . . . a lawyer." See id. The Court can find no case where a defendant's prior willingness to speak mitigates a *clear* assertion of the right to counsel.

and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney." 512 U.S. at 461 (emphasis added); see LaFave et. al. Criminal Procedure, § 6.9 (g), at 866 n. 185 (3rd ed. 2007) ("Although the point is sometimes missed . . . Davis is so limited" because it applies only to post-waiver invocation of rights).⁷ Moreover, although the New Hampshire Supreme Court has never specifically addressed this issue, case law indicates that if a suspect makes an ambiguous assertion of counsel, the police must clarify his or her intent regardless of the stage of questioning at which it occurs. See Sundstrom, 131 N.H. at 207. In Sundstrom, the Supreme Court held under the State Constitution that the police "responded properly" by "clarif[ying] the defendant's indecision," in contrast to the police in Tappley who "rather than eliminating any ambiguity or doubt that existed as to whether the defendant wished to assert or waive his right to have counsel present during questioning, diverted his attention to other matters." Id. at 106-07; see also Grant-Chase, 140 N.H. at 268 ("the police have a right to clarify the ambiguity by asking the defendant if he or she wishes to go forward with interrogation.").

[T]wo precepts have commanded broad assent [in previous caselaw]: that the Miranda safeguards exist to assure that *the individual's right to choose* between speech and silence remains unfettered throughout the interrogation process, and that the justification for the Miranda rules, intended to operate in the real world, must be consistent with practical realities. A rule barring government agents from further interrogation until they determine

⁷This view has been adopted by the 9th Circuit and a number of state courts. See United States v. Rodriguez, 518 F.3d 1072, 1077-80 (9th Cir. 2008); State v. Collins, 937 So.2d 86, 92-93 (Ala. 2005); Noyakuk v. State, 127 P.3d 856, 868-69 (Alaska Ct. App. 2006); Jackson v. State, 476 S.E.2d 615, 618-19 (Ga. Ct. App. 1996); Freeman v. State, 857 A.2d 557, 572-73 (Md. 2004); State v. Tuttle, 650 N.W.2d 20, 28 (S.D. 2002) State v. Leyva, 951 P.2d 738, 741-43 (Utah 1997).

whether a suspect's ambiguous statement was meant as a request for counsel fulfills both ambitions.

Davis, 512 U.S. at 468-69 (Souter, J., concurring) (emphasis in original).

In sum, the defendant's Motion to Suppress #1 is GRANTED as to the defendant's confession to Manchester police detectives because he invoked his right to counsel and his request for counsel was not scrupulously honored.

The defendant's Motion to Suppress #1 is DENIED as to the background information elicited by the detectives because it either comes within the booking exception to Miranda requirements or it was not the product of custodial interrogation.

The defendant's Motion to Suppress #2 is DENIED because the Boston police officers did not in any way question the defendant for Miranda purposes.

The defendant's Motion to Suppress #3, challenging the knowing, intelligent and voluntary nature of the defendant's confession is MOOT because his confession has been suppressed.

SO ORDERED.

7/22/08

Date



Kathleen A. McGuire
Presiding Justice