

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

CR No. 2017-001237

STATE OF NEW MEXICO

Plaintiff,

vs.

AMEER MUHAMMAD,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO
SUPPRESS STATEMENTS AND FINDING MOOT DEFENDANT'S MOTION TO
EXCLUDE WITNESSES**

This matter came before this Court on May 7, 2018. Defendant filed its *Motion to Suppress Statements and Motion to Exclude Witnesses* on April 2, 2018. The State filed its responses to those motions on April 12 and April 13, 2018 respectively. The State was represented by Assistant Attorneys General Mark Probasco and Collin Brennan. Defendant was present and represented by Assistant Public Defenders Robert Charles Martin and Matthias Swonger. The Court, having reviewed the pleadings, testimony, exhibits, and arguments of counsel hereby **FINDS** and **ORDERS** as follows:

**DEFENDANTS INITIATED HIS STATEMENT AND WAIVED HIS PREVIOUS
ASSERTION OF COUNSEL**

The law allows the admission of statements after Defendant's invocation of the right to counsel where Defendant: (1) initiates the subsequent statement and (2) waives his rights before taking the subsequent statement. *Oregon v. Bradshaw*, 462 U.S. 1039, 1045–46, 103 S. Ct. 2830, 2835 (1983).

Waiver, after invoking the right to counsel, "depends upon the totality of the circumstances and the particular facts, including consideration of the mental and physical condition, background, experience, and conduct of the accused." *State v. Boeglin*, 100 N.M. at 132, 666 P.2d at 1279. The State has the burden of establishing that a defendant waived his constitutional rights and every reasonable presumption against waiver is indulged. *State v. Young*, 117 N.M. 688, 694, 875 P.2d 1119, 1125 (Ct.App.1994). However, after a suspect invokes his right to counsel, he may be interrogated if he himself "initiates further communication, exchanges, or conversations with the police." *Id.* (quoting *Edwards v. Arizona*, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884 (1981)). This is what happened in this case.

Defendant asserted a right to counsel after having been arrested and read his *Miranda* rights on March 20, 2017. The invocation of Defendant's right to counsel at this time shows that Defendant possesses the wherewithal and character to invoke his rights if he so desired.

During a subsequent contact with Defendant on March 27, 2017 to execute a lawful warrant for body standard, Defendant initiated a statement to law enforcement. Without any question being posed, he volunteered "Like, uh, never mind. I was going to say, like, I know I did it but that- is that what y'all want to know? Like I did it but I feel like I wasn't in my right mind at the time though. Like, I feel like everybody in Albuquerque, New Mexico was trying to kill me and shit."

Law enforcement at this point interrupts and stops Defendant from speaking further on the issue of his guilt and state of mind by reiterating that he needs to be read his rights again before they discuss what Defendant wants to discuss; Det. Hsu states:

"Well, Ameer, let- let's do this because I-I- it sounds like you want to talk a little bit. I want to go over your rights again before we get into that."

Defendant temporarily abides the Officer's admonition to wait until speaking further. Other than direction for the execution of the warrant, Defendant discusses: his desire for granola bars (Ameer Muhammad: "Y'all ain't got no more of those- uh granola bars?"); Defendant discussed setting up his jail phone account and described his life inside the jail. Defendant then affirmatively asks why the standards are being taken by stating: "What's the point if you guys already know I did it and shit?" and "Like, you already saw me. I had a bloody knife on me the day." It is explained to Defendant the purpose of police collecting this evidence for scientific analysis and that it is a standard process for a fair investigation to rely on something other than statements.

At the conclusion of the taking of standards, Detective Hsu again read to Defendant his *Miranda* rights. Detective Hsu methodically read each right individually. After each individual right was read, Detective Hsu asked whether Defendant understood that right. After affirming that he understood that right, Defendant was asked to explain what that right meant in his own words. Defendant was able to explain what each right meant in his own words. Only after Detective Hsu heard this explanation, the taking of the statement continued.

When a suspect initiates a conversation with police knowingly and intelligently, his statement may be admitted. *Oregon v. Bradshaw*, 462 U.S. 1039, 1046, 103 S.Ct. 2830, 2835, 77 L.Ed.2d 405 (1983). See accord *State v. Salazar*, 1997-NMSC-044, ¶ 62, 123 N.M. 778, 793.

Waivers do not even need be express. They may be implied. See e.g. *Berghuis*

v. Thompson, 560 U.S. 370, 371, 130 S. Ct. 2250, 2254, 176 L. Ed. 2d 1098 (2010) citing *North Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct. 1755, 60 L.Ed.2d 286. The waiver in this case comports with the requirements of the Constitution because Defendant initiated his interrogation: he was given repeated and individualized advice of rights, he repeatedly attempted to discuss his criminal conduct, his demeanor showed relief when he initiated his statement, and his affirmative waiver of rights indicated that he still wanted to provide a statement to the police in this case despite having on previous occasion asserted his right to counsel.

DEFENDANT'S STATEMENTS TO POLICE WERE VOLUNTARY

In New Mexico, coercive police conduct is a necessary predicate to a finding that a confession is not voluntary under the totality of the circumstances approach. *State v. Fekete*, 1995NMSC049, quoting *Colorado v. Connelly*, 479 U.S. 157 (1986). See also *State v. Galindo*, 2018-NMSC-021, ¶ 35, 415 P.3d 494, 504. The Court determines whether the Defendant's will has been overborne and his capacity for selfdetermination critically impaired in such a way as to render his confession the product of official coercion. *State v. Munoz*, 1998 NMSC 048, ¶ 20, 126 N.M. 535, 972 P.2d 847. The prosecution has the burden of proving the voluntariness of a defendant's statement by a preponderance of the evidence. *Aguilar v. State*, 106 N.M. 798, 800 (1988).

There is no evidence of impermissible coercive police tactics or particularized threats or even any assertion of force during the questioning of Defendant that would have overborne his will after the Miranda warnings were read to him. Based on the totality of the circumstances, Defendant's statement was voluntary. The Court finds this despite having heard some statements by the Defendant which were concerning and

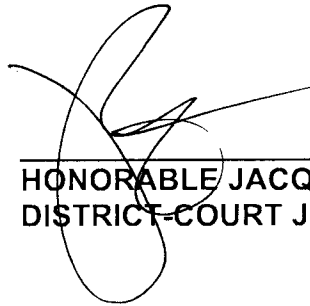
distracting. Specifically, Defendant makes some statements regarding the Matrix, his perception of two realities, the "Illuminati", abuse towards his own body, and his troubling relationship with his father. In context with the entirety of his statement, however, the Court cannot conclude and will not assume that these disparate and concerning statements rendered his statement involuntary. This is because of the evidence presented of the cogency of Defendant's demeanor during his interview; the corroboration of Defendant's narrative of events with witness observation from the scene of the murder and physical evidence which would later be tested in this case; Defendant's ability to relay time, sequence of events, and the moral magnitude of his criminal activity, and his ability to relay his present condition in the Metropolitan Detention Center.

In *Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986), the United States Supreme Court held that coercive police conduct is a necessary predicate to a finding that a confession is not "voluntary" within the meaning of the Due Process Clause of the Fourteenth Amendment. *Id.*, 479 U.S. at 164, 107 S.Ct. at 520. The Court stated that without police misconduct, there is "no basis for concluding that any state actor has deprived a criminal defendant of due process of law." *Id.* "We recognize that under the totality of circumstances test, a confession is not involuntary solely because of a defendant's mental state. Instead, the totality of circumstances test includes an element of police overreaching." *Id.* The evidence does not show any misconduct, and therefore, the statement should not be excluded.

CONCLUSION

For the foregoing reasons, Defendant's *Motion to Suppress Statements* is

DENIED. Defendant's *Motion to Exclude* was rendered moot at the hearing as the State has amended its witness list to no longer include Alejandro Cruces-Carbal, Patrick Layton, Rebecca Delmedico, nor Lenora Bird as witnesses in this matter for the trial set on June 11, 2018.

A handwritten signature in black ink, appearing to be 'J. Flores', is written over a horizontal line.

HONORABLE JACQUELINE FLORES
DISTRICT-COURT JUDGE

Respectfully submitted:

By email 5/23/2018
MARK PROBASCO
Assistant Attorney General

Not Opposed as to form by email 5/23/2018
Robert Charles Martin
Counsel for Defendant