

United States District Court.
D. Arizona.
UNITED STATES of America, Plaintiff,
.v.
Shawnell Shya KASEY; Antonio Roy James, Defendants.
No. CR. 06-775-PHX-MHM.
Feb. 14, 2007.

[Vincent Quill Kirby](#), U.S Attorney's Office, Phoenix, AZ, for Plaintiff.

ORDER

[MARY H. MURGUIA](#), District Judge.

*1 Presently pending before the Court is Defendant Shawnell Shya Kasey's Motion to Suppress her statements taken on June 8, 2006 (Doc. 52). The government has filed a Response (Doc. 54). The Court held a Voluntariness Hearing on December 12, 2006. After considering the papers, the oral argument, and the evidence presented, the Court hereby issues the following Order.

BACKGROUND

Defendant was arrested on tribal charges in connection with the stabbing death of Santana Paxson that allegedly took place on or about June 7, 2006 on the White Mountain Apache Reservation in Arizona. On June 8, 2006, Defendant was interviewed by Special Agents James H. Rominger, Raymond Duncan Jr., and White Mountain Apache Detective Perphilia Massey. Most of the interview was tape recorded. However, there is approximately twenty minutes of the interview that was not tape recorded and is "off the record" at the Defendant's request. During the interview, Defendant confessed to the murder of Santana Paxson. Defendant Kasey and Co-Defendant Antonio Roy James were subsequently charged with murder. Defendant now moves this Court to suppress the statements she made during that interview.

The June 8, 2006 interrogation began at approximately 1:09 p.m. Initially, Defendant was advised of her *Miranda* rights. She responded affirmatively when asked if she understood her rights. When the agents asked Defendant if she was willing to waive her rights to talk with the agents, Defendant replied, "Is that a good thing or a bad thing?" Agent Rominger advised Defendant that "It's completely up to you." Agent Rominger advised Defendant that if she talked with the agents it would allow her side of the story to "come out." Agent Rominger then asked Defendant again if she wished to waive her rights. Defendant stated that she did wish to waive her rights. Agent Rominger told Defendant that if, at any time during the interview, she became uncomfortable, she could stop the interview. Defendant then signed the waiver of rights form (*See* Exh. 1).

During the interview, Defendant asserted that she was not with the other suspects but instead had babysat for a cousin. The agents told Defendant that her story did not comport with the other suspects' stories. The agents told Defendant that this was a serious matter; that she would face greater consequences if she lied as opposed to simply not answering the question; and that there was a huge amount of evidence against her. The agents also asked Defendant to consent to providing a DNA sample using a buccal swab. Defendant agreed.

Defendant asserts that she attempted to invoke her right to remain silent at least six times. The testimony that Defendant asserts were attempts to invoke her right to remain silent are as follows. First, when SA Rominger offered Defendant an "opportunity to tell [her] side of the story" and offering the Defendant the opportunity to tell why she had acted the way she had, Defendant responded by saying "I just can't say." June 6, 2006 Interview Transcript ("IT") at 8-9. Next, when SA Duncan asked the Defendant if she wanted to tell her side of the story because it may differ from the story the others had told, Defendant responded by saying, "[s]o they already told you, huh? Well, then you can get it from them." IT at 11. Third, when SA Rominger asked the Defendant if she wanted people to hear what happened, Defendant responded by saying "[n]o." IT at 12. Fourth, when SA Rominger asked the Defendant about Santana and what had happened to her, Defendant responded by stating, "I don't know about her." IT at 13-14. Fifth, when both SA Rominger and SA Duncan asked the Defendant if the others who were interviewed were more "stand up" than the Defendant, Defendant responded by stating, "I guess so." IT at 14-15. Finally, when SA Rominger asked the Defendant if she wanted her side of the story to come out, Defendant responded by stating, "[o]bviously, you got enough there." IT at 15.

LEGAL STANDARD

*2 The burden is on the government to show that a defendant was aware of her rights and that she waived them. [*United States v. Cazares*, 121 F.3d 1241, 1244 \(9th Cir.1997\)](#). In order for a confession obtained during a custodial interrogation to be admissible, any waiver of a defendant's Miranda rights must be voluntary, knowing, and intelligent. [*United States v. Vallejo*, 237 F.3d 1008, 1014 \(9th Cir.2001\)](#)(*citing* [*Miranda v. Arizona*, 384 U.S. 436, 479 \(1966\)](#)).

The government has the burden to prove that a statement was voluntary by a preponderance of the evidence. [*United States v. Bautista*, 362 F.3d 584, 589 \(9th Cir.2004\)](#). "In evaluating voluntariness, the test is whether, considering the totality of the circumstances, the government obtained the statement by physical or psychological coercion or by improper inducement so that the suspect's will was overborne." [*Bautista*, 362 F.3d at 589](#) (internal citation omitted). In considering the totality of the circumstances, factors to consider include the presence of any police coercion, the length of the interrogation, its location and its continuity, whether the police advised the suspect of her rights, and whether there were any direct or implied promises of a benefit. [*Clark v. Murphy*, 331 F.3d 1062, 1072 \(9th Cir.2003\)](#). To be knowing and intelligent, "the waiver must have been made with a full awareness of both the nature of the right being

abandoned and the consequences of the decision to abandon it.” [*Moran v. Burbine*, 475 U.S. 412, 421 \(1986\)](#). “In short the true test of admissibility is that the confession is made freely, voluntarily, and without compulsion or inducement of any sort.” [*Haynes v. State of Washington*, 373 U.S. 503, 513-14 \(1963\)](#).

“Coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process clause of the Fourteenth Amendment ...” [*Colorado v. Connelly*, 479 U.S. 157, 167 \(1986\)](#). “Where the record lacks evidence of either physical or psychological coercion by law enforcement officials, the defendant's mental capacity is irrelevant to the due process inquiry into the voluntariness of the confession.” [*United States v. Chischilly*, 30 F.3d 1144, 1151 \(9th Cir.1994\)](#).

DISCUSSION

I. INVOCATION OF RIGHTS

The words used to invoke one's *Miranda* rights are to be “understood as ordinary people would understand them. [*Connecticut v. Barrett*, 479 U.S. 523, 529 \(1987\)](#). Defendant was advised of her rights and she agreed to waive them by signing a written waiver. (*See* Exh. 1.) As stated above, during the June 8, 2006 interview, Defendant made remarks such as “I just can't say”; “Well you can get it from them”; “No” (in response to a question whether she wanted her side of the story to be heard by everybody); “I don't know about her”; “I guess so”; and “Obviously you got enough there.” Defendant's statements that she now claims were an attempt to invoke her right to remain silent are ambiguous at best. At no point during the interview did Defendant state that she wished to remain silent or that she no longer wanted to speak with the agents. Even when the agents told Defendant that it was better to state that she was not going to answer the question than it was to lie, Defendant did not indicate that she wanted the interview terminated. Nor did Defendant indicate that she was done talking and wished to remain silent, even when she requested that the agents turn off the tape recorder. Moreover, a number of times during the interview, the agents reminded Defendant that she could terminate the interview if that was her wish. Thus, the Court finds that no ordinary person would have understood Defendant's statements to indicate that her comments were made in an effort to invoke her right to remain silent.

II. PROMISES OF LENIENCY

*3 Defendant asserts that the agents made promises of benefits or leniency if Defendant talked with them. During the interview the agents made the following statements that Defendant alleges were promises of leniency:

(1) SA Rominger: ... You can help yourself out by telling the truth. By standing up and telling the truth and accepting what you did. Acceptance of responsibility and cooperation with the Government, so that they can see that and they can help make their

decision on how to handle this case.

IT at 8.

(2) SA Rominger: ... [T]his is probably going to be a 50-year-to-life-type count.

You know you need to mitigate, try to help yourself out....

IT at 12.

(3) SA Duncan: We're giving everybody the same opportunity.

SA Rominger: And they'll give the benefit for standing up. Because that's the way the Federal system works for cooperation with the Government. That's the way it works. You get the benefits for doing that. It shows a truthfulness. Whether the truth hurts, you get a benefit for the truth, and the truth can hurt. It's not fun talking about this kind of stuff.

IT at 15.

(1) SA Rominger: ... You just need to make a decision if you want to do something like that to explain to the world why this went down. But it's up to you. I mean, this is to help you. It's not going to help me, I don't need the help.

... They're young like you are. They are trying to do whatever they can to rectify a bad situation and make it in their best interest, and I would do the same thing.

And these aren't all the people that are there either. I mean, there's other people. We got the blue truck, and that's all being processed. We got this-There's just a huge amount of evidence and when we work with the Apache Detectives and us, that's the kind of cases we put together. And they're very thorough, very solid. So you're young, you need to do something that's going to help you out.

IT 19-20.

(5) SA Rominger: The time is 1:53, and it was asked to turn off because Shya needed time to think, and she was concerned about the others that are involved in this and she wants to see what she can do to assist them, so that they don't face as harsh a time. She is now willing to talk to help those other people out....

IT at 21.

A promise to recommend leniency is insufficient to establish the involuntariness of a statement. [*United States v. Leon Guerrero*, 847 F.2d 1363, 1366 \(9th Cir.1988\)](#). A promise only vitiates consent if it is “sufficiently compelling to overbear the suspect's will in light of all attendant circumstances.” [*Id.* at 1366](#). Reciting possible penalties or sentences does not render a statement involuntary. [*United States v. Haswood*, 350 F.3d](#)

[1024, 1029 \(9th Cir.2003\).](#)

Here, the agents told Defendant that she could help herself by telling her version of the events. There is nothing in the interview transcript to indicate that the agents said or did anything to overbear Defendant's will. Merely stating that Defendant should "help herself by telling her story" is not sufficiently compelling to overbearing her will by offers of leniency. Furthermore, Defendant states that she confessed to prevent others, who had nothing to do with the murders, from being charged. At no point in the interview did Defendant indicate that she confessed because the agents promised leniency or that her confession was in exchange for a lighter sentence. Nor do the agents state that they are offering Defendant a lesser sentence in exchange for her confession. Finally, the agents' recital of possible prison sentences does not render Defendant's statement involuntary.

III. THREATS

*4 Defendant contends that her statement is involuntary because the agents threatened to arrest her family; specifically, Defendant's grandmother who raised her. There was a period of time in which the tape recorder was turned off and the discussion was "off the record ." When the tape recorder was turned on again, Defendant stated was as follows:

Defendant: ... You guys wanted a confession you got one. You got one now. Leave everybody alone. Don't ever mention my grandma's name again to me too. Don't ever mention her name. She's the only reason why I'm doing this. You mention her name to me. I love her so much.

We've been through so much together. Just leave my grandma. Nobody was never there, nobody. Just me and my grandma. I never had a father, and I never had a mother ... Now it's just me and my grandma. Nobody-the only reason why I'm telling you this is because you mentioned my grandma' name. Don't ever mention my grandma's name against.

You want a confession, you got it. You got. You leave those people alone.

SA Rominger: Okay.

Defendant: Leave them alone.

SA Rominger: So none of them-none of the other ones had anything to do with it?

IT at 21-24.

Threats to arrest a suspect's family may constitute impermissible coercion that may render a resulting confession involuntary. [United States v. Moreno, 891 F.2d 247 \(9th Cir.1989\)](#). As stated above, a confession violates due process if an agent's threats overbear a defendant's will at the time of the confession. [Haynes, 373 U.S. at 513-14](#).

In this case, the Defendant requested that the agent turn off the tape recorder. When the

recorder was turned back on, Defendant talked about the need to leave her family members alone. However, it is unclear why, at that point, Defendant talks about the need for the agents to leave her grandmother alone. There is no indication in the transcript that the agents threatened Defendant's family members. Nor does the Defendant state that she is confessing because the agents threatened her family while the tape was off. In fact, the transcript indicates that the agents told Defendant that they did not believe her family members were involved. (*See* IT 17-18, 55, 56.) Furthermore, Agent Rominger testified at the December 12, 2006 Voluntariness Hearing that no one threatened the Defendant or her family during the time the tape recorder was turned off. (*See* Suppression Hearing Transcript 17:25-18:3.) Therefore, the Court does not find that the Defendant's will was overborne by threats at the time she confessed.

IV. MISREPRESENTATION OF STRENGTH OF EVIDENCE

The Defendant asserts that the agents misrepresented the strength of their case in an effort to coerce a confession from her. As evidence, Defendant submits the following transcript excerpts:

(1) SA Rominger: Plus, it allows you to make sure your story is recorded in case these are different than what your story is. Now, these people have all said the exact same thing, so it's all the same story. So I assume that yours will match theirs, but that's what this is up to. So it's up to you.

*5 IT at 4.

(2) SA Rominger: Because I can tell you every detail of that night. Times, everything, and you need to decide whether you want to tell the truth or whether you don't. And honestly, it doesn't make any difference because the DNA, the testimony, all this stuff is all going to play out. Every crime scene, everything that we went through, pulling out your clothes out of the fire pit, everything is there.

IT at 7.

(3) SA Rominger: But obviously, you know what I'm talking about, and you know that I know everything. I mean, I can go into every detail and every facet of this case.

SA Duncan: These are all witness statements of everybody that was there with you that night. Any they're all telling us yeah, Jazzy left, saying that you were there and what you did. And like Jay said, this is your chance to tell your side of the story. You did it for a reason.

IT at 10.

(4) SA Duncan: Down the road, there's going to be a day when you go to court on this, if you decide to take it that far. There's going to be seven people that are going to testify and tell the truth and you're going to be hanging out there all by yourself with this lie that

you just told us.

SA Rominger: That you weren't anywhere there.

SA Duncan: And there is a jury and they take a look at everybody and they decide who's telling the truth. I don't know about you, but seven people that tell the exact same story is more believable than one person that they all say is there, but just refusing to admit what they did.

IT at 15-16.

(5) SA Rominger: And these aren't all the people that are there either. I mean, there's other people. We got the blue truck, and that's all being processed. We got this-There's just a huge amount of evidence.

IT at 20.

Trickery, or deceit does not render a statement involuntary unless the agents make threats or promises. [United States v. Crawford, 372 F.3d 1048, 1060 \(9th Cir.2004\)](#).

As the First Circuit has noted, 'trickery is not automatically coercion. Indeed, the police commonly engage in such ruses as suggesting to a suspect that a confederate has just confessed or that police have or will secure physical evidence against the suspect. While the line between ruse and coercion is sometimes blurred, confessions procured by deceptions have been held voluntary in a number of situations.'

[United States v. Byram, 145 F.3d 405, 408 \(1st Cir.1998\)](#); *see also* [United States v. Orso, 266 F.3d 1030, 1039 \(9th Cir.2001\)](#) (*en banc*) (holding that an inspector's misrepresentation that a piece of evidence existed, while reprehensible, does not constitute coercive conduct); [Clanton v. Cooper, 129 F.3d 1147, 1158 \(10th Cir.1997\)](#) (holding that a confession was voluntary despite the fact that an officer falsely told the defendant that physical evidence connected him to the crime).

Id.

In the instant case, the agents had other participants' statements about what happened the night of the alleged crime. It seems that all evidence that the agents alleged to have gathered, they, in fact, had gathered. From the evidence presented, it appears that the agents made no misrepresentations to the Defendant about the strength of their case against her.

CONCLUSION

*6 The Court finds that the Defendant knowingly, intelligently, and voluntarily confessed to the alleged murder. There is insufficient evidence to show that Defendant was overcome by promises of leniency. There is insufficient evidence to show that the agents

threatened to arrest Defendant's family if she did not confess. Considering the totality of the circumstances, it appears by a preponderance of the evidence that the government did not overbear Defendant's will but, instead, Defendant confessed voluntarily.

Accordingly,

IT IS ORDERED that Defendant's Motion to Suppress (Doc. 52) is denied.

D.Ariz.,2007.

U.S. v. Kasey

Slip Copy, 2007 WL 505291 (D.Ariz.)