

IN THE SUPERIOR COURT OF RICHMOND COUNTY

STATE OF GEORGIA

STATE OF GEORGIA]	CASE NO. 2018-RCCR-340
]	
VS]	
]	
LEON LAMAR TRIPP]	

**ORDER ON DEFENDANT’S
MOTION TO DISMISS THE INDICTMENT**

The defendant herein has filed a *Motion to Dismiss the Indictment and (for) Other Remedies* (designated as Defense Motion No. 88), wherein he contends that the State of Georgia, through the Richmond County Sheriff’s Office and the Office of the District Attorney, has violated his State and Federal Constitutional Rights and that those entities, separately or in concert with each other, committed at least one felony criminal offense. The Court has considered the motion, together with the evidence presented at the hearing on November 21, 2022 and the briefs of counsel, and now enters the following Order denying the motion in part and granting the motion in part.

The defendant resided with the victim and her mother in Richmond County, Georgia for a period exceeding two years. The defendant has consistently referred to the victim’s mother as his wife (and this Court will do so, likewise). Several weeks prior to the defendant’s arrest, the victim’s mother reported to the Richmond County Sheriff’s Office that the victim had disappeared. She further reported that the victim was last seen leaving her residence in the company of the defendant. Because the victim had reportedly been in the immediate presence of her mother and the defendant before her disappearance, the investigation focused on both the defendant and his wife. Although the defendant’s wife was in Richmond County, Georgia when she reported the disappearance of the victim, the defendant could not be found for several weeks. His wife advised investigators that she did not know the defendant’s whereabouts and had not been in communication with him. However, on May 23, 2017, both the defendant and his wife were located together at a U-Haul store in DeKalb County, Georgia and both were arrested.

After his arrest, the defendant submitted to a recorded interview by DeKalb County law enforcement officers, and then he was transferred from DeKalb County, Georgia to Richmond County, Georgia. After the transfer, the defendant was detained in the Richmond County Detention Center and he was subsequently interrogated on several occasions by investigators of the Richmond County Sheriff's Office. Specifically, the defendant was interrogated by Investigators of the Richmond County Sheriff's Office on June 2, 2017, June 9, 2017, and on March 14, 2018. Audio/Video recordings of each of the interviews have been admitted into evidence by stipulation, and have been reviewed by the Court. The Court notes that, in the audio/video recording admitted into evidence from the June 9, 2017 interview(s), there is no recording – audio or video – for the period of time extending from 3:39 P.M. until 3:35 P.M. Because of the discussion that preceded that 6-minute period, the Court has concluded that defense counsel was alone in the interview room with his client and, if there was a recording of their conversation, it has been redacted before being introduced into evidence at the hearing on this motion.

The interview of the defendant on June 9, 2017 began at approximately 1:39 P.M. and the investigator read and completed a printed form that included the defendant's *Miranda* rights and a waiver thereof. After the defendant was read his rights, he advised the investigator (at approximately 1:48 P.M.) that his attorney advised him not to speak with anybody without the lawyer being present. The defendant was then left in the interview room alone until approximately 3:17 P.M. when investigators re-entered the interview room and advised the defendant that his attorney had been called to come to the Sheriff's office. At approximately 3:20 P.M., the Richmond County Sheriff and the defendant's attorney joined the defendant in the interview room. In the conversation that ensued, the Sheriff advised the defendant that he wanted to locate the victim and, if the victim was deceased, he wanted to recover her body. In response, the defendant advised the Sheriff, in the presence of his attorney, that if he would be allowed to see his mother and his children (by a prior relationship), he would "resolve everything today and close the case." He reiterated (more than once) to the Sheriff and his attorney: "I have information. That's why I want to see my family." The defendant's attorney then spoke to the defendant, saying "What your

lawyer needs to know is if you have information, how bad will it hurt you.” At that time defense counsel excused the Sheriff from the interview room in order to facilitate a confidential communication with the defendant.

The State contends that it does not have a recording of the six-minute conversation that followed the dismissal of the Sheriff. The defendant is now represented by new counsel who are employed by the Office of the Capital Defender of Georgia. Defense counsel contends that the confidential interview between the defendant and his prior counsel, between 3:39 P.M. and 3:35 P.M on June 9, 2017, was recorded by a data collection system that recorded all activities in the interview room. Counsel further contends that the interview could have been simultaneously viewed by anyone with access to a monitor connected to the recording apparatus in the interview room - to include the Sheriff, investigators, or any other person with access to such monitors. In addition, defense counsel contend that the former district attorney for the Augusta Judicial Circuit was provided a recording of the confidential conversation between the defendant and his counsel.

There is no evidence that the former District Attorney, her staff, or any successors in the District Attorney’s Office have viewed or listened to the confidential communications between the defendant and counsel. The gravity of the potential for invasion of the confidential communications between former counsel and the defendant has caused defense counsel to expand this motion, by requesting dismissal of the indictment against the defendant.

Conclusions of Law

After a person is in custody of law enforcement, he is entitled to be advised of his constitutional right against self-incrimination and his right to the advice of counsel before custodial interrogation may be conducted. When a statement is obtained from a person who has been deprived of his liberty but has not been advised of those constitutional rights, any statement obtained through police interrogation is not admissible in evidence. When a person invokes his right to counsel, all interrogation must cease until an attorney is present. Miranda v. Arizona, 384 U.S. 436, 474, 86 S.Ct. 1602 (1966). A detained person can waive his right to counsel whether or not he is already represented, and that decision need not, itself, be counseled. Michigan v. Harvey, 494 S.Ct. 344, 352-353, 110 S.Ct. 1176, 108 L.E.2d 293 (1990). However, when a detained person

has invoked his right to counsel, there can be no valid waiver of that right upon further interrogation, even when he has been advised again of his *Miranda* rights. Edwards v. Arizona, 451 U.S.477, 484-485, 101 S.Ct 1880, 68 L.Ed.2d 378 (1981). The foregoing rules apply even where the subsequent interrogation concerns an unrelated criminal transaction. Arizona v. Roberson, 486 U.S. 675, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988).

On June 9, 2017, at 1:48 P.M., the defendant was advised of his Miranda rights by investigators of the Richmond County Sheriff's Office. When asked to acknowledge his rights and to waive them for purposes of an interview, the defendant advised that his lawyer had said, "Don't talk to anybody without me present." Acting upon his assertion, investigators summoned his attorney, who entered the interview room with the Sheriff of Richmond County at 3:20 P.M. After the Sheriff left the interview room, the defendant and his attorney conferred and the Sheriff was brought back to the interview room at 3:37 P.M. Defense counsel stated to the Sheriff, in the presence of the defendant, that "on the advice of counsel, you have nothing else to say." Even if the defendant's first statement, relaying the advice of his lawyer, could be considered a limited assertion of the right to counsel (under the most strained interpretation), the unequivocal statement of counsel to the Sheriff, in the presence of the defendant, served to invoke the right to counsel and the consequences set forth in Edwards v. Arizona, *supra*. Thus, any statement made by the defendant after defense counsel informed the Sheriff of the defendant's assertion of his right to counsel, was taken in violation of the ruling in *Edwards*, and is inadmissible in evidence.

The defendant asserts that suppression of the statements made after assertion of the right to counsel is an insufficient remedy, and he seeks dismissal of the indictment as a further remedy. Viewed through the lens of the evidence introduced at the hearing in this matter, and without resort to speculation, there is no authority for this Court to nullify the indictment of a grand jury.

Based upon the foregoing findings of fact and conclusions of law it is now ORDERED that any statements made by the defendant, after his counsel advised the Sheriff of Richmond County that the defendant would not make any additional statements, are not admissible in evidence in the State's case in chief and, to that extent, the defendant's motion is GRANTED.

It is further ORDERED that the defendant's Motion to Dismiss the Indictment herein is DENIED.

It is so ORDERED this 14th day of March, 2023.

Daniel J. Craig
Superior Court Judge
Augusta Judicial Circuit

CERTIFICATE OF SERVICE

Prior to filing, a copy of the foregoing Order on Defendant's Motion to Dismiss was delivered to counsel of record as follows:

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This 14th day of March, 2023.

Daniel J. Craig
Superior Court Judge
Augusta Judicial Circuit