COUNTY COURT: SUFFOLK COUNTY
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

-vs-

CHAD JOHNSON,

Defendant.

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DECISION AND ORDER

BY: GARY J. WEBER, J.C.C.

DATED: March 23, 2011

CASE NO. 01455-2010

HON. THOMAS J. SPOTA, ESQ.
DISTRICT ATTORNEY
BY: TODD A. PETTIGREW, ESQ.
Criminal Court Building
Center Drive
Riverhead, New York 11901

WILLIAM T. FERRIS, III, ESQ.
Attorney For the Defendant
BRACKEN, MARGOLIN, BESUNDER, LLP
1050 Old Nichols Road, Suite 200
Islandia, NY 11749

In accordance with the Order of this Court dated January 6, 2011, a combined *Mapp/Dunaway* and *Huntley* hearing was commenced on February 16, 2011 and continued on February 17, 2011; February 23, 2011; March 21, 2011; March 22, 2011 and concluded on March 23, 2011.

The People called Suffolk County Detective-Sergeant Mark Pulaski, Detective Sean McQuaid and Detective Michael Soto to testify. The Court finds their testimony to have been credible in all material respects. The Defendant called no witnesses.

FINDINGS OF FACT

On April 4, 2010, at about 10:30 p.m., Suffolk County Detective-Sergeant Mark Pulaski together with Detective Thomas McDougal went to a residence located at 773 Expressway Drive North in Medford for the purposes of speaking to the Defendant, Chad Johnson. Pulaski and McDougal were investigating a missing person's report concerning Jennifer Papain. One of the last calls to Ms. Papain's cellular telephone had been made from a cellular telephone that had been used by Chad Johnson when he had, at an earlier time, made a report to Suffolk County police which was referenced in police records. Detectives Pulaski and McDougal went to the residence and asked to speak to Chad Johnson. Mr. Johnson came to the door and the detectives showed him a photograph of the missing person and asked if he knew her. Mr. Johnson requested that they speak privately outside the residence, and then agreed speak with detectives inside their unmarked police car. Once in the car, the Defendant acknowledged that he had called Jennifer Papain after getting her number from a Craig's list personal advertisement.

Johnson said he had arranged to meet Ms. Papain at the Bay Shore Inn where she had agreed to perform a sexual act for money. The Defendant explained that he did meet Papain, he paid her, and she gave him a "blow job."

On April 9, 2010 at about 11:40 a.m. Detective Soto and Detective Comiskey went to the defendant's residence at 773 Expressway Drive North and the Defendant agreed to speak with the detectives in their car, for a short period of time, but said he would speak with them more later. The Defendant left the detectives so he could attend to personal business. Later that day the Defendant called Detective Comiskey at 1:30 p.m. and agreed to meet at a deli located on Horseblock Road. Detectives Soto and Comiskey met Johnson. He agreed to speak with them in their car and, again, the Defendant acknowledged that he knew Jennifer Papain, and that she had agreed to fellate him for money. Defendant said he met Papain outside the Bay Shore Inn, she got in the car he was driving, they parked, and she performed oral sodomy after having been paid. The Defendant accompanied the Detectives to the Bay Shore Inn. The Defendant directed the detectives along the way telling them the roads he drove with Papain. He identified where they parked and had sexual relations, and the Defendant told the detectives where he had let Ms. Papain out of his car. The Detectives did not arrest the Defendant at this time.

On May 24, 2010 detectives Sean McQuaid, Michael Soto and Comiskey conferred about the case and agreed to arrest the Defendant on the charge of patronizing a prostitute and, after a records check with the Department of Motor Vehicles showed that the Defendant's driving privileges in the State of New York were suspended, driving with a suspended license if they were to find him driving. At about 2:00 p.m. the Detective's located the defendant, observed him driving, and Detective McQuaid effected a traffic stop. Detective McQuaid asked the defendant for his license and registration and the Defendant stated he knew his license was suspended. Detective McQuaid asked the Defendant to step out of the vehicle and Det. McQuaid observed glassine envelopes that appeared to contain marijuana. Det. McQuaid arrested the Defendant for the crime of patronizing a prostitute, operating a motor vehicle with a suspended license and unlawful possession of marijuana. The Defendant was then transported to police headquarters in Yaphank. No conversation between the Defendant and Detective McQuaid occurred during the ride to headquarters.

Once in the interrogation room at headquarters the Defendant met detectives Comiskey and Soto. The Defendant was read his *Miranda* rights from a preprinted card. *People's Hearing Exhibit 4.* The Defendant said he understood his rights and agreed to speak to the Detectives without a lawyer. It was after Detectives told the defendant that the police had been speaking with his brother and that his brother had told detectives about the killing of an "MD nigger" that the Defendant agreed to give the police the complete story of what had happened with the prostitute. According to the Defendant's later confession on the date he killed Jennifer Papain he had told his brother he had killed "an MD nigger." The Detectives had been speaking with the Defendant's brother at

headquarters, and the Defendant asked to see him. After seeing that his brother was in custody, the Defendant, Chad Johnson, told the detectives that his brother had nothing to do with Jennifer Papain. The Defendant and Detective Soto went outside together to smoke a cigarette. The Defendant assumed the detectives knew the prostitute, Jennifer Papain, was dead, and the Defendant told Detective Soto he would show him where he had buried Ms. Papain's body.

Detective Soto and the Defendant, following the Defendant's directions, drove to the location where the Defendant had buried the body of Jennifer Papain. Upon returning to police headquarters the Defendant was permitted to use the bathroom, given water, and continued speaking to the police and gave them his username and internet password that he had used to find the prostitute on Craig's list. The Defendant then told detectives how he had choked Jennifer Papain to death after she refused to return his money or provide a discount when he did not ejaculate during the oral sodomy. The Defendant agreed to give a written statement and was once again read his *Miranda* rights and warnings from the statement form, *People's Hearing Exhibit 9,* and upon completion of the preparation of the written statement reviewed the statement and made corrections. The questioning included a review of a diagram, *People's Hearing Exhibit 10,* and an identification by the Defendant of Jennifer Papain from a missing person's poster, *People's Hearing Exhibit 11.* The Defendant also agreed to give a buccal swab to provide a DNA sample for comparison purposes and signed a consent form. *People's Hearing Exhibit 12.* After all of the foregoing, the Detectives requested the Defendant to give his statement on videotape, but the Defendant declined and signed a video refusal form. *People's Hearing Exhibit 13.*

CONCLUSIONS OF LAW

The People have sustained their burden to produce evidence that the police encounters with the Defendant were permitted by law and that his arrest on May 24, 2010 was authorized. *People v. Berrios, 28 N.Y.2d 361* The Defendant has failed to sustain his burden of proof by a preponderance of the evidence that the police encounters with the Defendant and, ultimately his arrest, transgressed upon either the Defendant's state or federal constitutional rights in any manner. Accordingly the Defendant's motion to suppress evidence as the product of an unconstitutional police encounter, search or seizure, is in all respects denied.

The Fourteenth Amendment's Due Process Clause, both independently and as it incorporates the Fifth Amendment's Self-Incrimination Clause, prohibits admitting involuntary statements into evidence. *Dickerson v. United States, 530 U.S. 428, 433 (2000).* Voluntariness is determined after an evaluation of "whether the behavior of the State's law enforcement officials was such as to overbear petitioner's will to resist and bring about confessions not freely self-determined." *Rogers v. Richmond, 365 U.S. 534, 544 (1961).* If, in the totality of the circumstances, a defendant's will was overborne by state-created circumstances, his statements are involuntary and inadmissible. *Dickerson,*

*530 U.S. at 434 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973); Withrow v. Williams, 507 U.S. 680, 689 (1993);* and *Colorado v. Connelly, 479 U.S. 157, 165 (1986).*

Here, the People have sustained their burden of proof beyond a reasonable doubt that the statements made by the defendant to the police in each instance were both voluntary and truthful. *People v. Renis, 94 A.D.2d 728.* The People have also satisfied their burden of producing evidence that all the statements made by the Defendant prior to his May 24, 2010 arrest were non-custodial, and that the Defendant was only in custody on May 24, 2011 after he had gotten out of the car he was driving. The People have also adduced evidence that the Defendant was read his *Miranda* rights and warnings, and that he knowingly, intelligently and voluntarily waived his right to counsel and right to remain silent before any custodial statements were made by the Defendant.

In the case before this Court, the Defendant was a college student and throughout the police investigation, both when he was in custody and earlier when he was out of custody, the Defendant engaged in a deliberative calculus to voluntarily admit that he had solicited sexual acts from Ms. Papain in return for money, admit that he had met with her, admit he had paid her, and admit that she had orally sodomized him. The Defendant had been in custody only five hours when he learned that his brother, Dartanion Johnson, was in police custody.[1]

Once the Defendant learned that Dartanion was in custody and had disclosed to the police that in March he, the Defendant, had told Dartanion that he had killed an "MD Nigger" the Defendant's calculus of limited disclosure changed. Whether the Defendant was concerned that Dartanion may have, unknown to him, made more significant incriminating disclosures to the police; or whether he was concerned that his brother might be held criminally liable for helping to bury the body; or whether he had a concern that the police might misinterpret the evidence and hold Dartanion accountable for the murder of Jennifer Papain; the Defendant was free to address these concerns by telling the police what had actually happened, and he did. *Reay v. Henry, 2009 U.S. Dist. LEXIS 43736 (Magistrates recommendation, adopted by the district, affirmed by the 9th Cir. Ct of Appeals at Reay v. Scribner, 369 Fed. Appx. 847); United States v. Dillard, 1992 U.S. App Lexis 32863; United States v. McShane, 462 F.2d 5, 6 (9th Cir. 1972); and Vogt v. United States, 156 F.2d 308, 312 (5th Cir. 1946).* The Defendant's decision to complete the narrative that had begun with accepting criminal responsibility for patronizing a prostitute was freely made when he confessed to the murder of Jennifer Papain. This was

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[1]Dartanion was arrested on a warrant and the police were not exploiting an illegal detention of the defendant's brother, but instead, were utilizing every investigative avenue available to them to secure the Defendant's decision to speak more completely about the events that led to Jennifer Papain's death at his hands.

the product of his free will, voluntarily and rationally exercised. Accordingly, all statements made by the Defendant will be admissible on the People's direct case.

ORDER

*ORDERED* that the People will be permitted to adduce on their direct case all statements made by the Defendant that were the subject of this hearing, and all other tangible and intangible evidence recovered as a result of the Defendant's arrest; and it is further

*ORDERED* that the case is scheduled for a *Sandoval* hearing and conference to be held at 11:00 a.m. on April 26, 2011; and it is further

*ORDERED* that in accordance with this Court's Order dated January 6, 2011, the prosecutor shall notify the defendant of all specific instances of a defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for purposes of impeaching the credibility of the defendant; and it is further

*ORDERED* that in the event a plea agreement is reached between the prosecution and the defense the court will advance the case to a mutually agreed upon date for that purpose.

The foregoing shall constitute the decision and order of the Court.

GARY J. WEBER, J.C.C.