

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.**

**SUPERIOR COURT**

**[Filed: November 12, 2015]**

**STATE OF RHODE ISLAND**

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**VS.**

**P1/2015-0848AG**

**SENDRA BEAUREGARD**

**DECISION**

**MCGUIRL, J.** This matter is before the Court on Defendant Sendra Beauregard’s (Defendant) motion to suppress physical evidence, which she alleges the Providence Police Department obtained in violation of her privilege against self-incrimination under the Fifth Amendment of the United States Constitution as well as Art. I, Section 13 of the Rhode Island Constitution. The State objects to Defendant’s motion on the basis that 1) violations of Miranda do not require suppression of physical fruits of a suspect’s otherwise voluntary statement; and, 2) voluntary unwarned statements made after a Miranda violation can be used for impeachment purposes. The Defendant’s motion to suppress statements taken in violation of Miranda is granted without objection from the State.

**I**

**Facts and Travel**

The relevant facts underlying the instant motion to suppress are as follows. On December 1, 2014, the Defendant visited the Providence Police Station and expressed concern over her girlfriend’s drug use and abusive boyfriend. After thirty minutes, the Defendant left the station without identifying her girlfriend. On December 2, 2014, the Providence Police were

called to the apartment of Pamela Donahue (Ms. Donahue). The police found Ms. Donahue lying unconscious on her parlor floor with a bullet wound in her chest. The police proceeded to interview Ms. Donahue's roommate, Walter Woodyatt (Mr. Woodyatt). Mr. Woodyatt told police that Ms. Donahue's girlfriend, Sendra Beauregard, had been with Ms. Donahue at the apartment earlier that evening when he walked to the corner store to buy cigarettes at her request. On his way back from the store, he saw the Defendant driving away in her car. When he re-entered the apartment, he found Ms. Donahue lying unconscious in the parlor. Ms. Donahue succumbed to her injuries later that evening at Rhode Island Hospital. The hospital determined that the gunshot wound was the cause of death.

### **Interview 1**

On December 3, 2014, Providence Police Detective William Corrigan (Detective Corrigan) located the Defendant at her home in Johnston, Rhode Island. The Defendant went willingly to the Providence Police Station (the police station) and agreed to an interview with Detectives Corrigan and Frank Vilella (Interview 1). Interview 1 is approximately twenty-two minutes long. This Court viewed a video recording of Interview 1; however, due to a mechanical error, the audio did not record. Detective Corrigan testified that on the ride over to the police station, the Defendant rambled somewhat incoherently and seemed confused. After arriving at the police station, Detectives Corrigan and Vilella brought the Defendant to an interview room.

The detectives read the Defendant her Miranda rights, and she signed a waiver form. Detective Corrigan testified that the Defendant appeared to understand her rights. She told him that she and Ms. Donahue had been in a relationship for several years and had intended to get married. He testified that the Defendant told him that she had recently been in the hospital for a physical ailment and that during her stay someone had taken money from her bank account. He

further testified that the Defendant admitted that she had an argument with Ms. Donahue on the night of December 2, 2014. The Defendant told Detective Corrigan that she left the apartment shortly after Mr. Woodyatt went to get cigarettes at Ms. Donahue's request. The Defendant denied killing Ms. Donahue and eventually requested a lawyer, at which point the detectives ended the interview and released the Defendant.

### **Interview 2**

The Providence Police continued their investigation, took formal statements from witnesses and conducted a forensic analysis of the evidence, including casings that they found on the passenger seat of the Defendant's car. On December 22, 2014, the Providence Police arrested the Defendant and transported her to the police station. Detention Officer Kathleen Chamberlain (Detention Officer Chamberlain) testified that she processed the Defendant at 2:30 p.m., put her in a cell and gave the Defendant two cereal bars. Detention Officer Chamberlain further testified that she makes rounds every fifteen minutes and that inmates are given two cereal bars twice nightly. She stated that she believed the Defendant requested additional cereal bars, which she gave her. She also testified that arrestees have access to water as well as a toilet in their cells. At approximately 4:50 p.m., Detective Corrigan and Detective Carlos Sical came down to the cellblock and escorted the Defendant upstairs for an interview (Interview 2). Interview 2 lasted for approximately one hour and thirty minutes, from 4:50 p.m. until 6:15 p.m. This Court viewed a video recording as well as a transcript of Interview 2.

The video recording shows that during Interview 2, the Defendant was not in handcuffs and that the police gave her water during the interview. Further, the video recording shows that the police were not crowding the Defendant at the interviewing table and that she appeared conversational and calm. Before the detectives could read the Defendant her Miranda rights, she

asked whether her attorney had contacted the police. The pertinent portion of the Interview 2 transcript reads:

“The Defendant: Um, didn’t my attorney call you again?”

“Detective Corrigan: I haven’t spoken to him. Did you, did you make a phone call downstairs?”

“The Defendant: Oh, well I called Judy.

....

“The Defendant: And I had her call him.”  
Interview 2 Tr. 3:7-16, Dec. 22, 2014.

Detective Corrigan then read the Defendant her Miranda rights. Id. at 3:18-22. The Defendant told the detectives that she understood her rights, and then asked after her attorney again. Id. at 4:21. She went on to say that she was a “psych patient” and that she had been hospitalized for her mental illness in the past. Id. at 5:2-7. Throughout Interview 2, The Defendant references being a “psych patient” and feeling depressed four times. Id. at 5:2; 16:20; 39:8; 52:1. After telling the detectives that she did not have anything to say, the Defendant once again asked Detective Corrigan whether he could call her lawyer. Id. at 6:11-14. Detective Corrigan then asked the Defendant whether she wanted her lawyer present, to which she replied “yeah.” Id. at 6:15-17.

Rather than stop the interview, the detectives continued to question the Defendant. Detective Corrigan testified that he knew that he was supposed to stop questioning the Defendant when she asked for her attorney; however, he wanted to elicit information from her. Further on in Interview 2, the police truthfully told the Defendant that they had found shell casings on the passenger seat of her car. Id. at 57:10-19. In response, the Defendant adamantly contended that she did not know how the casings got into her car. Id. at 57:20. She went on to insinuate that

someone, perhaps the police, planted the casings in her car. Id. at 63:17. Up until this point, the video recording of Interview 2 shows that the exchanges between the Defendant and the detectives were quiet and calm. However, after the police informed the Defendant about the casings, she became agitated and spoke in a raised voice for a few minutes. At this point, the detectives also become slightly argumentative—for the first time in Interview 2—for a short period of time.

The Defendant continued to deny that she had anything to do with the casings the police found in her car, or Ms. Donahue’s death. Eventually, the Defendant stated, “And I’m . . . I thought I was supposed to have a lawyer here for questioning.” Id. at 69:11-12. Once again, the detectives continued to talk to the Defendant. Towards the end of Interview 2, the Defendant asked the detectives whether they had anything else they wanted to tell her. Id. at 77:10-11. Detective Corrigan responded, “[y]eah, the bullet . . . the shell casing we found in your car, the . . . it matches the bullet we found in her body.” Id. at 77:12-13. After a bit more back and forth with the detectives, where they encouraged the Defendant to tell the truth, she once again adamantly invoked her right to counsel. The pertinent portion of the Interview 2 transcript reads:

“The Defendant:        You’re supposed . . .

“Detective Sical:        Sendra . . .

“The Defendant:        To have a lawyer here. You’re not even supposed to continue to talk to me. Why can’t . . .

“Detective Sical:        Do you want your lawyer?

. . . .

“Detective Sical:        We’ve asked you several times.

. . . .

“The Defendant: I know . . . I said, ‘yes, I do want him here.’”  
Id. at 81:24-25; 82:1-17.

At this point, the detectives ended Interview 2 and escorted the Defendant back down to the cellblock.

### **Interview 3**

At 6:14 p.m., immediately upon taking the Defendant back to the cellblock, the detectives allowed the Defendant to call her lawyer and leave a message on his answering service. Before leaving the cellblock, the detectives told the Defendant that if she wanted to speak to them again, she could tell Detention Officer Chamberlain. After leaving a message on her lawyer’s answering service, Detention Officer Chamberlain escorted the Defendant back to her cell.

Detention Officer Chamberlain testified—and the video recording taken from surveillance cameras in the cellblock corroborates her testimony—that no police officers came down to speak to the Defendant between 6:15 and 9:00 p.m. At 8:27 p.m.—approximately two hours after Interview 2 ended—Detention Officer Chamberlain heard the Defendant call out and tell her that she wanted to talk to the police. Officer Chamberlain testified that at the time she asked to speak to the police, the Defendant seemed tired and nervous. However, she also testified that the Defendant did not appear to be frantic; rather, she appeared calm and subdued. At 9:09 p.m.—approximately three hours after Interview 2 ended—Detectives Sical and Fabio Zuena brought the Defendant back to the interview room (Interview 3). Detectives Sical and Fabio Zuena conducted Interview 3, which lasted from 9:11 p.m. until 10:16 p.m. The Court reviewed a video recording and transcript of Interview 3.

Similar to Interview 2, the video recording of Interview 3 shows the Defendant sitting without handcuffs at the interview table with two detectives. During Interview 2, the police also brought the Defendant water, as well as a coat. Further, unlike Interview 2, neither the police

nor the Defendant use raised voices. Rather, the Defendant is conversational and calm. Moreover, both the police and the Defendant speak so quietly during segments of Interview 3 that their words are indecipherable on the video recording.

Unlike Interview 2, Detectives Sical and Zuena did not fully Mirandize the Defendant before they started questioning her. The pertinent portion of the Interview 3 transcript reads:

“Detective Zuena: All right. Before we get started here, you approached them downstairs. You wanted to speak to us again?”

“The Defendant: That’s right.

. . . .

“Detective Zuena: Okay. You understand you had your rights before? And in the middle you want the, the attorney?”

“The Defendant: Yeah. He was never called.

. . . .

“Detective Zuena: Then you expressed to them that you wanted to speak to us again?”

“The Defendant: That’s right.

“Detective Zuena: Okay. All right. We just want to make sure.

“Detective Sical: So . . . just so you know, the same rules apply. Okay?”

“The Defendant: What . . . yeah. The same rules apply.”  
Interview 3 Tr. 2:4-25, Dec. 22, 2014.

The Defendant never asked for any attorney during the course of Interview 3. The detectives began the interview by urging the Defendant to tell them the truth. *Id.* at 5:15. They told her, “It’s actually hurting you by lying. So we’ll be more than happy to hear what you have

to say. But we're asking you, please, be honest." Id. at 4:7-9. The Defendant then asked the police whether someone had implicated her in Ms. Donahue's death. Id. at 5:6. Detective Sical told her that, "we have the side of [the] story of Woody, from Woody when, when he was there. Okay? And that's it." Id. at 5:9-11. The Defendant proceeded to tell the police that Ms. Donahue had cost her seventy thousand dollars, had cheated on her and had stolen money from her when she was in the hospital. Id. at 6:10, 9:4. Similar to Interview 2, she referenced her mental health issues and drug addiction to the detectives. She also revealed that she had gone off her medication. The pertinent portion of the Interview 3 transcript reads:

"The Defendant: I'm going to be honest with you. I'm an, I'm an addict. I'm a flake.

"Detective Zuena: All right.

"The Defendant: You know, I'm tired of getting sick. And I have emotional problems. I have problems.

"Detective Zuena: All right. So you're saying that . . .

"The Defendant: I, I have a drug problem.

. . . .

"The Defendant: I have a mood disorder.

. . . .

"The Defendant: It's called schizo . . . it's, it's not schizophrenic. My grandfather was a schizophrenic. My mom is.

"Detective Sical: Okay. So let's . . .

"Ms. Beauregard: I'm on meds.

"Detective Sical: So what, what happened that night?

"The Defendant: I went off my meds. I'm still trying to get my meds." Id. at 6:16-25; 7:1-9.

The Defendant alleged that Ms. Donahue kept a gun at the apartment and that she feared that Ms. Donahue intended to kill her and steal her money. Id. at 23:1-11. Eventually, the Defendant told the police that she had bought a two-shot pistol for protection. Id. at 9:10-23. She told the police that she had the gun with her on December 2, 2014 and eventually confessed, “I’m very ashamed to tell you I killed her.” Id. at 26:10-21. Detective Zuena testified that the Defendant seemed remorseful and subdued when she confessed to the murder. After confessing, the Defendant then revealed that she had left the gun she had shot Ms. Donahue with at a park in Scituate, Rhode Island. Id. at 36:1. She also told the detectives that she had buried bullets near the gun. Id. at 52:1-4. Although the police questioned the Defendant as to how she had acquired the gun and bullets, she adamantly refused to tell them who had sold her the gun.

The detectives expressed concern that a child could find her abandoned gun and pressed the Defendant to lead them to the gun that evening. Id. at 39:11-18. She said “no,” because it was too dark, but she told the detectives that she would lead them to the gun in the morning. Id. at 39:19-22. The Interview 3 transcript reveals that the Defendant expressed concern about the consequences of her actions, as well as remorse and guilt. At 10:16 p.m., the detectives returned the Defendant to the cellblock.

#### **Interview 4**

At approximately 8:30 a.m., on the morning of December 23, 2014, Detectives Corrigan, Sical and Jason Simonoe brought the Defendant to Scituate to find the discarded gun. The detectives did not re-Mirandize the Defendant on the morning of the 23rd. Detective Corrigan testified that he did not read the Defendant her rights again because he thought that the police had Mirandized her twice the day before and that she understood her rights. He also testified that

she appeared to be calm and coherent during the ride to Scituate. Detective Simonoe testified that the Defendant did not speak to the detectives except to give directional instructions. He testified that she never asked for an attorney. On the way to Scituate, the detectives stopped at a Dunkin Donuts to purchase coffee and a donut for the Defendant.

Detective Corrigan testified that the Defendant directed them to a public park in Scituate. He stated that although a locked gate blocked the parking lot, it would be possible for pedestrians to enter the park on foot. He also testified that although the park is located in a rural area, he saw several houses located near the entranceway of the park. The detectives asked the Defendant to point out the general location of the gun and then had her wait in the police car while they searched for the gun so that she would not get cold and wet from the rain. Detective Simonoe testified that he noticed something metallic glimmering under a tree while he was walking down one of the marked paths in the park. When he brushed away the leaves partially obscuring the glimmering object, he found bullets. He eventually located the gun, which was located under a tree nearby under a thin cover of leaves.

### **Procedural History**

This matter originally came before the Court on the Defendant's motion to suppress certain statements as well as physical evidence, which she claims the Providence Police obtained in violation of her right against self-incrimination under the Fifth Amendment of the United States Constitution. In support of her motion, the Defendant argued that the Providence Police violated her Miranda rights during Interviews 2, 3 and 4. She alleged that during Interview 2, the Providence Police Mirandized her and then repeatedly ignored her requests for an attorney. She alleged that during Interview 3, the police never Mirandized her. Thus, the Defendant argued that her subsequent confession to police and the physical evidence that the police obtained as a

result of her confession must be suppressed. In response, the State admitted that the Providence Police violated the Defendant's Miranda rights during Interview 2 when they continued to interrogate her after she had requested an attorney. However, the State initially argued that the Court should admit the Defendant's statements during Interview 3 in addition to the physical evidence derived from that confession.

This Court held a hearing on the Defendant's motion on October 16, 2015 and October 20, 2015. During the hearing, this Court heard testimony from Detective William Corrigan, Detective Fabio Zuena, and Detention Officer Chamberlain. At the close of the hearing on October 20, 2015, the State conceded that the Providence Police had failed to properly Mirandize the Defendant before the second interview on December 22, 2014. The State admitted—and this Court agreed—that it would be improper to introduce the Defendant's unwarned statements for Interviews 1, 2, 3 and 4 during the State's case-in-chief, and that the motion to suppress the Defendant's statements should be granted. See Miranda v. Arizona, 384 U.S. 436, 444-45 (1966) (holding that prosecutors cannot use statements made by an accused during a custodial interrogation in the state's case-in-chief unless the state can demonstrate that certain procedural safeguards have been met. Specifically, before interrogation commences, police must inform a suspect that she has the right to remain silent, any statement she makes may be used as evidence against her, and, she has the right to the presence of an attorney, either retained or appointed).

However, the State now argues that the confession may still come in as impeachment evidence if the Defendant decides to testify. Further, the State argues that regardless of a Miranda violation, the physical evidence the police obtained as a result of the Defendant's statements should not be suppressed. Thus, the issues before this Court are whether 1) the

physical evidence must be excluded as fruit of the poisonous tree; and, 2) Defendant's unwarned statements may come in as impeachment evidence.

The Defendant essentially makes three major arguments to support her position that this Court should exclude the gun that the Providence Police found on December 23, 2014 as fruit of the poisonous tree. First, the Defendant urges this Court to reject the Supreme Court's holding in U.S. v. Patane, 542 U.S. 630 (2004)—where a plurality of the Court declined to extend the fruit of the poisonous tree doctrine to un compelled physical evidence obtained in violation of Miranda—on state constitution grounds, as several other jurisdictions have done. In support of this argument, the Defendant suggests that this Court find that the Rhode Island Constitution's self-incrimination clause offers broader protections than the Fifth Amendment of the United States Constitution. Second, the Defendant argues that this Court should follow the lead of the United States District Court of New York in U.S. v. Gilkeson, 431 F. Supp. 2d 270 (N.D.N.Y. 2006) and hold that Patane is inapposite to the facts in this case. The Defendant argues that because the Providence Police ignored the Defendant's request for counsel, the holding in Patane—which related to unwarned statements—does not apply to this set of facts. Third, the Defendant argues that even if this Court does apply Patane to this set of facts, her confession was involuntary due to her mental illness and coercive interrogation techniques that the Providence Police employed. Therefore, the Defendant argues, the gun and shell casings are inadmissible in the State's case-in-chief.

In response, the State argues that under United States Supreme Court precedent, physical evidence obtained through voluntary statements made in violation of Miranda may be used in the prosecution's case-in-chief. Further, the State argues that under both Rhode Island law as well as Supreme Court precedent, a suspect's mental illness is not dispositive in determining whether

her confession was coerced. Rather, the analysis turns on the nature of police conduct. Additionally, the State argues that the Defendant's otherwise inadmissible statements may come in as impeachment evidence.

## II

### Analysis

#### **Exclusion of Physical Evidence Obtained in Violation of Miranda Under the Fruit of the Poisonous Tree Doctrine**

First, the Defendant argues that this Court should exclude the physical evidence police obtained after violating her Miranda rights as fruit of the poisonous tree. In response, the State argues that this Court is bound by the United States Supreme Court's holding in Patane and should not extend the fruit of the poisonous tree doctrine to exclude physical evidence obtained in violation of a suspect's Miranda rights. As the Supreme Court of the United States has held, when courts determine that a confession is involuntary, the court must suppress the tainted physical fruits and confessions of the involuntary confessions. Wong Sun v. U.S., 371 U.S. 471, 484-85 (1963). However, the question as to whether physical fruits obtained as the result of a Miranda violation should be excluded under a "fruit of the poisonous tree" analysis has endured a long and confusing history. Much of the confusion has stemmed from whether the Supreme Court's decision in Wong Sun, 371 U.S. 471, 484-85 (1963) applies in the context of violations of the Fifth Amendment.

In 1963, the United States Supreme Court decided Wong Sun, and held that verbal evidence derived from illegal searches and seizures under the Fourth Amendment must be suppressed as "fruit of the poisonous tree." Wong Sun, 371 U.S. at 484-85. In Wong Sun, the Court noted that historically, the Fourth Amendment exclusionary rule barred physical, tangible materials obtained after an illegal search and seizure. Id. at 486. However, the Court determined

that in the context of the Fourth Amendment exclusionary rule, verbal statements derived from an unlawful seizure were “no less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion.” Id. at 487. Thus, the Court ultimately determined that in applying the Fourth Amendment exclusionary rule, it would not differentiate between physical and testimonial evidence. Id.

In the aftermath of Wong Sun, the circuit courts were divided as to whether the fruit of the poisonous tree doctrine applied to physical evidence as well as statements that police obtained in violation of the prophylactic protections of Miranda. See U.S. v. Sterling, 283 F.3d 216, 218-19 (4th Cir. 2002), cert. denied, 536 U.S. 931 (2002) (holding that the physical fruits of a Miranda violation are never subject to Wong Sun suppression); U.S. v. DeSumma, 272 F.3d 176, 180-81 (3d Cir. 2001), cert. denied 535 U.S. 1028 (2002) (holding that the physical fruits of a Miranda violation are not subject to a Wong Sun analysis). But see U.S. v. Faulkingham, 295 F.3d 85, 93 (1st Cir. 2002) (holding that “[u]nlike some other circuits, we are unwilling, at least until the Supreme Court addresses the issue, to say that the interest of deterrence may never lead to the suppression of derivative evidence from a Miranda violation”); see also State v. Innis, 120 R.I. 641, 645, 391 A.2d 1158 (1978), cert. granted, 440 U.S. 934 (1979), and vacated by 446 U.S. 291 (1980) (citing Wong Sun as the only basis to exclude physical evidence obtained in violation of Miranda under a fruit of the poisonous tree analysis).

In 2004, the United States Supreme Court decided Patane, which directly addressed for the first time whether the fruit of the poisonous tree doctrine should be utilized to suppress physical evidence discovered as a consequence of a Miranda violation. Patane, 542 U.S. at 643. In Patane, police arrested the defendant at his residence on suspicion of illegal possession of a firearm and violation of a restraining order. Id. at 635. The police started to advise the

defendant of his Miranda rights but did not complete them. Id. Rather, the defendant interrupted the police before they could finish Mirandizing him and asserted that he knew his rights. Id. The police launched into questioning and never completely Mirandized the defendant. Id. Almost immediately, the defendant disclosed the location of the firearm. Id. Citing Wong Sun, the Circuit Court of Appeals for the Tenth Circuit excluded the evidence obtained in violation of the defendant's Miranda rights as fruit of the poisonous tree. Id.

On appeal, a plurality of the Supreme Court reversed the tenth circuit and held that the exclusionary rule articulated in Wong Sun did not apply to violations of the prophylactic requirements of Miranda. Id. at 363-37.<sup>1</sup> The Court found that “police do not violate a suspect’s constitutional rights (or the Miranda rule) by negligent or even deliberate failures to provide the suspect with the full panoply of warnings prescribed by Miranda.” Id. at 641. Further, the Court announced that potential constitutional violations only occur upon the admission of unwarned statements at trial. Id. at 642. The plurality reasoned the core protection afforded by the Self-Incrimination Clause applied to a suspect’s testimonial statements. Id. at 637. Thus, the “[i]ntroduction of the nontestimonial fruit of a voluntary statement” obtained in violation of Miranda did not implicate the protections of the Self-Incrimination Clause. Id. at 643. As such, the Court ultimately concluded that unless the statements that led to the evidence were coerced, the Court would not suppress physical evidence obtained through an unwarned confession. Id. at 643-44.

In the aftermath of Patane, state courts have been divided as to whether the Supreme Court’s holding applies in the context of their state constitutions. Several courts have elected to

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<sup>1</sup> Thomas, J. announced the judgment of the Court and delivered an opinion, in which Rehnquist, C.J. and Scalia, J. joined. Kennedy, J. filed an opinion concurring in the judgment, in which O’Connor, J. joined. Souter, J. filed a dissenting opinion, in which Stevens, J. and Ginsberg, J. joined. Breyer, J. filed a dissenting opinion.

follow the Supreme Court's ruling in Patane. These courts have held that due to the Supreme Court's rejection of the fruit of the poisonous tree analysis in the context of Miranda violations, physical evidence obtained in violation of Miranda need not be suppressed. See In re H.V., 252 S.W.3d 319 (Tex. 2008); State v. John, 123 So. 3d 196, 203 (La. Ct. App. 2013).<sup>2</sup> However, several states have rejected Patane on state constitution grounds. See Commonwealth v. Martin, 444 Mass. 213, 827 N.E.2d 198 (2005). These courts have held that their state constitutions self-incrimination clauses offer broader protections than the Fifth Amendment.

Here, the Defendant argues that this Court should hold, as Massachusetts has, that Patane does not apply on state constitution grounds and therefore, that the gun and bullet casings should be excluded as fruit of the poisonous tree. This Court looks at case law from the states that have applied Patane as well as the states that have declined to apply Patane.

#### **Jurisdictions That Follow Patane**

In 2008, the Texas Supreme Court elected to follow the Supreme Court's holding in Patane on a set of facts similar to the facts herein. In re H.V., 252 S.W.3d at 319. In In re H.V., police arrested the defendant on suspicion of murder and advised the defendant of his Miranda

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<sup>2</sup> The first, sixth, tenth and eleventh circuits have also followed the Supreme Court's ruling in Patane. See U.S. v. Jackson, 544 F.3d 351, 361 (1st Cir. 2008) (“[Defendant] also argued below that the two guns should be suppressed because they were tainted by the constitutional violation. We disagree. The Supreme Court has held that physical evidence need not be excluded simply because it is discovered as a result of unwarned questioning in violation of Miranda”); U.S. v. Ross, No. 02-1539, 2004 WL 2476456, at \*3 (10th Cir. Nov. 4, 2004) (“The fact that this non-testimonial evidence was examined only after the officers were prompted to do so by Defendant's statements does not, under Patane, make the criminal history information the poisoned fruit of those un-Mirandized statements”); U.S. v. Jackson, 506 F.3d 1358, 1361 (11th Cir. 2007) (“Because Jackson's firearm is physical evidence and he concedes that his unwarned statement was voluntary, Patane allows the admission of Jackson's firearm”); U.S. v. Reese, No. 11-3297, 2012 WL 6734674, at \*7 (6th Cir. Dec. 28, 2012) (“The Fifth Amendment's protection against compelled self-incrimination, from which Miranda's warning requirement is derived, prevents the government from introducing unwarned statements against a criminal defendant at trial, but it does not apply to physical evidence”).

rights. Id. at 322. In response, the defendant requested an attorney. Id. However, despite his ignored request for counsel, the defendant eventually divulged the location of the murder weapon to the police during an interrogation. Id. The Texas Supreme Court upheld the lower court's ruling suppressing the defendant's statements as a violation of his right against self-incrimination but overturned the lower court's ruling which required that the gun also be suppressed as fruit of the poisonous tree. Id. at 327, 329.

In its decision, the court noted that the United States Supreme Court had rejected the fruit of the poisonous tree doctrine in the Fifth Amendment context where the police obtain physical evidence after failing to give Miranda warnings. Id. at 327. The court stated that under the Supreme Court's ruling in Patane, the protections of the Fifth Amendment do not extend to uncompelled non-testimonial evidence and thus, the physical evidence could come in at trial. Id. at 329. In so ruling, the court noted that under a Patane analysis, situations where the police ignore a defendant's request for counsel and situations where the police fail to properly Mirandize a defendant are indistinguishable. Id. at 328. The court found that the defendant had not argued that his disclosure of the gun's location was involuntary for any reason other than the violation of his right to counsel. Id. Thus, the court held that the evidence must come in under a Patane analysis, "[b]ecause violations of Miranda do not justify exclusion of physical evidence resulting therefrom."<sup>3</sup> Id.

Similar to In re H.V., the Louisiana Court of Appeals applied the Court's holding in Patane and declined to suppress physical evidence police obtained through unwarned statements.

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<sup>3</sup> The court noted the lower court's concerns that failure to suppress physical evidence after a suspect invokes his right to counsel might encourage bad police conduct during investigations. In re H.V., 252 S.W.3d at 328. However, the court ultimately concluded that despite the importance of deterrence policies, the court could not exclude the evidence under a Patane analysis. Id.

State v. John, 123 So. 3d at 203. In John, police arrested the defendant for a DWI and failed to advise him of his Miranda rights. Id. at 199. At the scene of the arrest, the defendant admitted that he had a sawed-off shotgun in the backseat of his car. Id. At trial, the court suppressed the shotgun as the physical fruit of an unwarned search. Id. at 201. On appeal, the court reversed, holding that “in contrast to exclusion of fruits of an involuntary confession, the United States Supreme Court has taken the position that exclusion of the fruits of an unwarned, Miranda-tainted statement is not necessary, nor required, in all circumstances.” Id. The court noted that under Supreme Court precedent, “a procedural Miranda violation differs from a Fourth Amendment seizure violation, and therefore, the “fruit of the poisonous tree” doctrine is not applicable to Miranda warning violations. Id. at 202. Although it suppressed the defendant’s statements, the court allowed the evidence to come in at trial on the basis that the statement which led to the evidence was voluntary. Id.

### **Courts That Have Rejected Patane on State Constitution Grounds**

In contrast, the Massachusetts Supreme Judicial Court declined to follow Patane on the basis that traditionally, Massachusetts interpreted its self-incrimination clause as providing greater protection than the Fifth Amendment. Martin, 444 Mass. at 213. In Martin, police arrested the defendant outside his apartment and began questioning him on the location of a gun but neglected to Mirandize him. Id. at 215. The court ruled that the gun had to be excluded under Massachusetts’ self-incrimination clause.<sup>4</sup> Id. at 218. The court reasoned that in a number of past cases, it had interpreted Massachusetts’ self-incrimination clause as providing “protections that go beyond what the Supreme Court would require in similar circumstances.” Id. at 221. The court noted that unlike the Supreme Court’s interpretation of the Fifth

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<sup>4</sup> Massachusetts’ self-incrimination clause provides that, “No subject shall be . . . compelled to accuse, or furnish evidence against himself.” Id. at 218; M.G.L.A. Const. Pt. 1, Art. 12.

Amendment, it had interpreted Article 12's protections as extending to physical evidence as well as testimonial evidence. Id.<sup>5</sup>

### **The Law in Rhode Island**

Since Patane was decided, the Rhode Island Supreme Court has not specifically ruled on whether physical evidence obtained in violation of Miranda should be suppressed under Rhode Island's constitution. However, in 1978, before the United States Supreme Court decided Patane, the Rhode Island Supreme Court addressed whether physical evidence obtained in violation of Miranda should come in during a trial. Innis, 120 R.I. at 641, 391 A.2d at 1158, cert. granted, 440 U.S. 934 (1979), and vacated by 446 U.S. 291 (1980). In Innis, a defendant invoked his right to counsel under Miranda, but after overhearing police officers discussing the safety of children in the area, divulged the whereabouts of his discarded gun. Id. at 645. Citing Wong Sun, the Court found that the conversation between the police officers constituted an illegal interrogation in violation of Miranda and excluded the gun as "fruit of the poisonous

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<sup>5</sup> Other courts have declined to follow Patane on state constitutional grounds. The courts in these cases have historically declined to apply Supreme Court precedent narrowing the Federal right against self-incrimination in the context of their own state constitutions. Further, the courts in these cases have—in a number of past cases—construed their self-incrimination clause protections to extend to non-testimonial evidence. See State v. Peterson, 2007 VT 24, ¶ 28, 181 Vt. 436, 923 A.2d 585 (suppressing evidence obtained in violation of Miranda on the basis that in past cases, Vermont applied a broader exclusionary rule under the self-incrimination clause of the state constitution than the Supreme Court has under the Fifth Amendment); State v. Knapp, 2005 WI App 127, ¶ 64-65, 285 Wis. 2d 86, 700 N.W.2d 899 (rejecting Patane on the basis that in past cases it interpreted Wisconsin's self-incrimination clause to extend to testimonial as well as non-testimonial evidence); State v. Farris, 109 Ohio St. 3d 519, 2006-Ohio-3255, 849 N.E.2d 985 (holding that the physical evidence police obtained in violation of the Defendant's Miranda rights were inadmissible under the Ohio Constitution's self-incrimination clause); State v. Vondehn, 348 Or. 462, 236 P.3d 691 (2010) (holding that "when the police violate Article 1, section 12, by failing to give required Miranda warnings, the state is precluded from using physical evidence that is derived from that constitutional violation to prosecute a defendant").

tree.” Id. at 652. The Court never directly addressed whether the evidence could come in under Rhode Island’s Self-Incrimination Clause. See id.

On certiorari, the United States Supreme Court vacated the judgment of the Rhode Island Supreme Court, holding that no violation of Miranda occurred because the conversation between the two police officers did not constitute an interrogation. Rhode Island v. Innis, 446 U.S. 291, 302 (1980). Thus, in Innis, the Court never reached the issue as to whether the physical evidence should be excluded under Wong Sun. See id. However, in Patane, the Supreme Court specifically found that the exclusionary rule articulated in Wong Sun does not apply to violations of the Fifth Amendment. Patane, 542 U.S. at 637. Because the Supreme Court specifically disavowed analyzing violations of the Fifth Amendment under the Wong Sun exclusionary rule—and it appears that the Rhode Island Supreme Court decided State v. Innis relying solely on Wong Sun—it does not appear to this Court that State v. Innis provides guidance as to whether physical evidence obtained in violation of a suspect’s Miranda rights should be excluded in Rhode Island.

Following our sister states’ reasoning, in order to uphold the Defendant’s argument, this Court would have to find that the Rhode Island Constitution’s Self-Incrimination Clause affords broader protections than the Self-Incrimination Clause of the Fifth Amendment. Article I, section 13, of the Rhode Island Constitution states that, “[n]o person in a court of common law shall be compelled to give self-criminating evidence.” RI Const. art. I, § 13. While no Rhode Island Supreme Court decision has specifically examined the difference of the wording of the Fifth Amendment as it compares to article I, section 13 of the Rhode Island Constitution<sup>6</sup>, the

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<sup>6</sup> See State v. Distefano, 764 A.2d 1156, 1173 (R.I. 2000) (Flanders, J., concurring in part and dissenting in part) (“Although previous Rhode Island judicial decisions have refused to differentiate between the standard to be applied under article I, section 13, and the one that

Rhode Island Supreme Court in several cases have analyzed the protections of article I, section 13 as it relates to its Federal counterpart. See State v. Bertram, 591 A.2d 14 (R.I. 1991).

In Bertram, the police arrested the defendant in connection with a sixteen-year-old murder victim who had been found strangled to death at a hotel. Id. at 16. At trial, a major factual issue involved the authorship of hand-printed entries on the hotel's registration book. Id. at 21. The trial court ordered the defendant to provide samples of his handwriting, which an expert determined matched the handwriting on the registration card. Id. On appeal, the defendant claimed that the trial court had violated his self-incrimination rights under article I, section 13 after the court allowed the prosecution to obtain a physical sample of defendant's handwriting. Id.

The Court disagreed, stating that "this court has seldom, if ever, afforded criminal or civil defendants greater protection under article I, section 13, of our State Constitution than has been afforded to criminal or civil defendants under the Fifth Amendment to the United States Constitution." Id. The Court went on to say that the protections of article I, section 13 "have uniformly been interpreted as tantamount to those available under the Federal Constitution in matters relating to . . . Miranda rights and waiver of those rights, [and] the right against self-incrimination." Id. Thus, unlike the courts that have declined to follow Patane, the Rhode Island Supreme Court has interpreted the state constitution's self-incrimination clause as offering no greater protections than the self-incrimination clause of the Fifth Amendment. See also State v.

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applies under the Fifth Amendment to the Federal Constitution, no Rhode Island Supreme Court decision yet has examined the potentially critical difference in the wording of these two constitutional provisions and its arguable significance in cases in which the government requires a suspect 'to give self-criminating evidence' that is not in itself of a communicative or a testimonial nature") (internal citations omitted). See also State v. Dumas, 750 A.2d 420, 424 n.4 (R.I. 2000) (holding open, but declining to address the "exact bounds" of article I, section 13 in a footnote).

Pona, 926 A.2d 592, 611 (R.I. 2007) (holding that Rhode Island—unlike Vermont—allows statements obtained in violation of Miranda to be used for impeachment purposes in line with the Supreme Court’s ruling in Harris v. New York, 401 U.S. 222 (1971); Dumas, 750 A.2d at 424 (declining to hold that article 1, section 13 confers broader protection than the Fifth Amendment); State v. Burbine, 451 A.2d 22, 29 (R.I. 1982) (declining to extend the protections of Rhode Island self-incrimination clause beyond those afforded by the Federal Constitution).

This Court notes, however, that the Rhode Island Supreme Court has departed from federal standards and held that certain provisions of the Rhode Island Constitution offer broader protections than their federal counterparts. The Court has held that article I, section 6<sup>7</sup> of the Rhode Island Constitution offers broader protections than the Fourth Amendment<sup>8</sup> to the United States Constitution. See Pimental v. Dep’t of Transp., 561 A.2d 1348, 1350 (R.I. 1989) (holding that nondiscretionary automobile roadblocks violate the Rhode Island Constitution); State v. Maloof, 114 R.I. 380, 333 A.2d 676 (1975) (requiring stricter compliance with the provisions of the Rhode Island electronic-eavesdropping statute than the Fourth Amendment); State v. von Bulow, 475 A.2d 995, 1019 (R.I. 1984) (holding that the Rhode Island Constitution’s prohibition against unreasonable searches and seizures offered broader protections than the Fourth

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<sup>7</sup> Article I, section 6 of the Rhode Island Constitution entitled “Search and Seizure” states that, “[t]he right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on complaint in writing, upon probable cause, supported by oath or affirmation, and describing as nearly as may be, the place to be searched and the persons or things to be seized.” RI Const. art. I, § 6.

<sup>8</sup> The Fourth Amendment to the United States Constitution provides that, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

Amendment). The Rhode Island Supreme Court has also held that article I, section 15<sup>9</sup> of the Rhode Island Constitution offers broader protections than the Sixth Amendment<sup>10</sup> to the United States Constitution. See In re Advisory Opinion to the Senate, 108 R.I. 628, 278 A.2d 852 (1971) (holding that sections 10 and 15 of article I require a twelve-person jury in a criminal prosecution as opposed to the Supreme Court’s ruling that the Sixth Amendment only requires a six-person jury).

In addition, the Rhode Island Supreme Court has applied a higher standard than the United States Supreme Court in determining whether a defendant has voluntarily waived his or her Miranda rights. In Rhode Island, in order to prove that a defendant’s confession is voluntary, the State must prove by clear and convincing evidence that a defendant knowingly and intelligently waived his or her rights against self-incrimination. State v. Jimenez, 33 A.3d 724, 733-34 (R.I. 2011). However, under federal law, the prosecution need only prove by a preponderance of the evidence that a defendant’s statement was voluntary. See State v. Amado, 424 A.2d 1057, 1061 (R.I. 1981) (noting that the United States Supreme Court has determined that the prosecution must prove the voluntariness of a defendant’s confession by at least a preponderance of the evidence, while in Rhode Island, the prosecution must prove voluntariness by clear and convincing evidence); see also Colorado v. Connelly, 479 U.S. 157, 168-69 (1986) (“If, as we held in Lego v. Twomey . . . the voluntariness of a confession need be established

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<sup>9</sup> Article I, section 15 of the Rhode Island Constitution entitled “Trial by jury” states that, “[t]he right of trial by jury shall remain inviolate. In civil cases the general assembly may fix the size of the petit jury at less than twelve but not less than six.” RI Const. art. I, § 15.

<sup>10</sup> The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI.

only by a preponderance of the evidence, then a waiver of the auxiliary protections established in MIRANDA should require no higher burden of proof”) (internal citations omitted).

Despite the differences that the Rhode Island Supreme Court has delineated between certain provisions in the Rhode Island Constitution and its federal counterpart, the Court has not afforded criminal defendants any greater protections under Rhode Island’s self-incrimination clause than the United States Supreme Court has under the Federal Constitution. As the Rhode Island Supreme Court noted in Rhode Island Grand Jury v. Doe, while the Court has granted additional protections in “certain areas,” it has continually interpreted “article I, section 13 . . . as coextensive with the protections guaranteed by the Fifth Amendment.” 641 A.2d 1295, 1296-97 (R.I. 1994). In addition, unlike the courts that have declined to follow Patane, the Rhode Island Supreme Court has determined that the protections of the state’s self-incrimination clause do not extend to physical evidence. In Bertram, the Court held that “[t]his court, like the United States Supreme Court, has traditionally distinguished between physical evidence and testimonial evidence when undertaking a self-incrimination analysis under article I, section 13.” Bertram, 591 A.2d at 22. Ultimately, the Court concluded that “Rhode Island’s self-incrimination prohibition [is] directed more toward preventing the use of compelled testimonial, rather than physical, evidence against the accused.” Id.

Thus, Rhode Island, unlike the states that have not followed Patane, has interpreted its self-incrimination clause narrowly and extended its protections to testimonial evidence, not physical evidence. Because this Court cannot find support in Rhode Island case law extending the protections of our state’s self-incrimination clause beyond those guaranteed under the Fifth Amendment, this Court is constrained to follow the Supreme Court’s holding in Patane and will not suppress the guns and casings as fruit of the poisonous tree.

## **The Application of Patane in Context of Violations of the Fifth Amendment Right to Counsel**

Citing Gilkeson, 431 F. Supp. 2d at 270, the Defendant argues that the holding of Patane does not apply in the context of violations of the right to counsel.<sup>11</sup> In response, the State argues that the facts in Gilkeson can be differentiated from the facts herein. In Gilkeson, police handcuffed the defendant to a floor rail for several hours and ignored his requests to call his lawyer. Id. at 275. Police then questioned the defendant for over seventeen hours during which time the defendant repeatedly asked to call his lawyer. Id. Eventually, the defendant made a confession and gave the police permission to search his house for evidence. Id. at 276. Ultimately, the court excluded the physical evidence due to the fact that the police engaged the defendant in a prolonged interrogation after he had invoked his Fifth Amendment right to counsel. Id. at 294. In making its decision, the court differentiated between the circumstances in

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<sup>11</sup> The Defendant also cites to a First Circuit Court of Appeals case from 1981 as support for her proposition that violations of the right to counsel should be subjected to a higher scrutiny than unwarned confessions. U.S. v. Downing, 665 F.2d 404 (1st Cir. 1981). In Downing, the court ultimately suppressed physical evidence that the police obtained after ignoring the defendant’s request for an attorney. Citing Wong Sun, the court concluded that the evidence must be suppressed as fruit of the poisonous tree. Id. at 408. In its rationale, the court also noted that “[t]he resumption of questioning in the absence of an attorney after an accused has invoked his right to have counsel present during police interrogation strongly suggests to an accused that he has no choice but to answer.” Id. at 406. However, the court never suggested that it would treat a violation of the right to remain silent differently than a violation of the right to counsel. See id. (“Once an accused indicates that he wishes to remain silent *or* desires the presence of an attorney, any statement taken by police officials cannot be other than the product of compulsion”) (emphasis added) (internal citations omitted). Because this case cites Wong Sun for the basis of suppressing physical evidence obtained after a Miranda violation—an approach the Supreme Court specifically disavowed in Patane—this Court does not find it persuasive in determining whether physical evidence obtained after a suspect’s invocation of the right to counsel has been ignored must be suppressed. Moreover, the first circuit did not state that an invocation of the right to counsel should be treated any differently than an invocation of the right to silence. Thus, this case is not persuasive authority for the proposition that violations of a right to counsel should be held to a higher standard than unwarned confessions. This Court also notes that there is no Rhode Island case law suggesting that violations of a right to counsel should be held to a higher standard than unwarned confessions.

Gilkeson and the circumstances in Patane. The court reasoned that Patane only addressed the introduction of physical evidence obtained through unwarned statements, rather than statements made after an accused invokes his or her right to counsel. Id. at 292. However, the court did acknowledge that a suspect may be subject to further police questioning after he invokes his right to counsel if he reinitiates contact. Id. at 290.

This Court agrees with the State and finds that the facts in Gilkeson are clearly distinguishable from the facts here. In Gilkeson, police chained the defendant to the floor for several hours, interrogated him for seventeen straight hours, and completely ignored his request for an attorney. Here, the Providence Police did continue to interrogate the Defendant after she invoked her right to counsel in the second interview on December 22, 2014. However, in contrast to the facts of Gilkeson, the Providence Police's first interview with the Defendant lasted less than two hours. Also, unlike Gilkeson, the Providence Police ended the first interview, brought the Defendant back to the cellblock, and gave her an opportunity to call her lawyer. Further, in Gilkeson, the defendant never had the opportunity to reinitiate contact because the police never released him from the interrogation room. By contrast, here, the Defendant reinitiated contact with the police. As the Rhode Island Supreme Court has noted, police may requestion a suspect after she has invoked her right to counsel if she voluntarily reinitiates contact with the police. See State v. Brouillard, 745 A.2d 759, 762 (R.I. 2000) (citing Oregon v. Bradshaw, 462 U.S. 1039, 1045-46 (1983)).

Here, because the police did not subject the Defendant to prolonged interrogation, released the Defendant, and allowed her to call a lawyer in between interrogations, the facts

presented in this case are strikingly different from the facts in Gilkeson. Therefore, this Court declines to apply the holding in Gilkeson in the instant case.<sup>12</sup>

### **Voluntariness of the Statements That Led to the Evidence**

The Defendant additionally argues that even under a Patane analysis, the gun must be excluded as the result of coercion due to the conduct of the Providence Police as well as her mental illness. In Patane, the Court held that physical evidence must be excluded if police obtain it through coercion. Patane, 542 U.S. at 643-44. Therefore, in order for the gun and bullet casings to come in under a Patane analysis, this Court must determine whether the Defendant's statements, which led the Police to the evidence, were involuntary.

In Rhode Island, "a defendant's statement is voluntary if it was the product of his free and rational choice rather than the result of coercion that had overcome the defendant's will at the time he confessed."<sup>13</sup> State v. Carter, 744 A.2d 839, 845 (R.I. 2000). In deciding whether a statement is the product of coercion, the court will consider the totality of the circumstances. Id.

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<sup>12</sup> Moreover, it merits mention that other courts have determined that under Patane, violations of the Fifth Amendment right to counsel should not be treated differently from violations which are the result of unwarned statements. In Coleman-Fuller v. State, 995 A.2d 985 (Md. Ct. Spec. App. 2010), the Court of Special Appeals in Maryland found Gilkeson's analysis of Patane unpersuasive. In that case, the police subjected defendant to two interrogations. Id. at 996. During the first interrogation, the police ignored his request to have counsel present and continued to question him. Id. at 997. Eventually, the police released the Defendant from custody. Id. After seven days, the police brought defendant back in for questioning when he waived his Miranda rights and made statements which led the police to relevant evidence. Id. at 1000. The Court found that defendant's right to have counsel present extended to the second interview. Id. However, the court declined to follow the holding of Gilkeson and held that the evidence should come in under the Supreme Court's ruling in Patane. Id. The court held that in Patane, "only evidence derived from compelled statements is inadmissible, but the fruits of statements that are voluntary, but otherwise violate Miranda, are admissible." Id.

<sup>13</sup> This Court notes that the Rhode Island Supreme Court has not addressed whether the clear and convincing standard applies in a case where the police obtain physical evidence through a voluntary unwarned statement. However, given that the Rhode Island Supreme Court has held that the clear and convincing standard applies in determining whether a suspect has voluntarily waived his or her Miranda rights, this Court will apply the same standard in this matter.

The totality of the circumstances is derived from the circumstances surrounding the confession, police conduct, as well as the “background, experience, and conduct of the accused.” Id. (internal quotation marks omitted).

In this case, the Defendant argues that her statements were involuntary considering the totality of the circumstances. In support, she specifically argues that the Providence Police took advantage of her obvious mental illness and engaged in a pattern of conduct that amounted to coercion. Regarding her pattern argument, the Defendant alleges that the Providence Police 1) deliberately allowed nineteen days to lapse between Interview 1 and Interview 2 arrests so that they could speak to her without an attorney present; 2) lied about the strength of the case against her by telling her that the bullet casings found in her car matched the bullets found in Ms. Donahue’s body and that they had additional statements from Mr. Woodyatt regarding her involvement in the death of Ms. Donahue; 3) ignored her requests for an attorney in Interview 2, and never re-Mirandized her before Interviews 3, or 4; and, 4) urged her to tell the truth in both interviews. In addition, the Defendant alleges that after the police revealed that they had found casings in Interview 2, the tenor of the interview became combative and the Defendant became distraught. Thus, the Defendant argues that essentially, her reinitiation of contact with the Police was due to her mental upset after Interview 2.

In response, the State argues that under Rhode Island and federal law, the mental state of a suspect is not dispositive in a coercion analysis. Further, the State argues that the evidence shows that the Providence Police treated the Defendant well and did not subject her to coercive interrogation techniques. Specifically, the State alleges that the fourteen-day lapse between Interview 1 and Interview 2 was legally required and that the officers’ statements regarding the origin of the casings and witness testimony in Interviews 2 and 3 did not amount to lies. Further,

the State argues that the officer's failure to re-Mirandize the Defendant did not amount to bad faith, but rather, was the result of a mistake. Lastly, the State argues that the evidence shows that the Defendant's will was not overborne during Interview 2 as evidenced by her frequent denials and insistence on calling her lawyer. Thus, the State argues her reinitiation was voluntary.

### **Mental Illness and Voluntariness**

This Court first examines the Defendant's argument that her mental illness affected the voluntariness of her confession. As the State argues, the United States Supreme Court has held that a defendant's mental illness does not enter into a coercion analysis in the context of alleged Miranda violations. Connelly, 479 U.S. at 170. In Connelly, the defendant approached a police officer on the street and told him that he wanted to confess to a murder. Id. at 160. After being Mirandized, the defendant admitted that although he was not under the influence of drugs or alcohol, he had been a patient in several mental hospitals. Id. The officer testified that during his initial interview with the defendant, he appeared coherent and calm. Id. at 161. The next morning, however, the defendant appeared disoriented and confused and told police that "voices had told him to come to Denver." Id. The Court found that the defendant's mental impairment had no effect on the voluntariness of his confession. Id. at 170. The court stated that "the sole concern of the Fifth Amendment, on which Miranda was based, is governmental coercion." Id. The Court went on to find that "the Fifth Amendment privilege is not concerned with moral and psychological pressures to confess emanating from sources other than official coercion." Id. Ultimately, the Court concluded that since the defendant had not been subject to lengthy interviews, trickery, deceit, or physical or psychological pressure, his confession was voluntary. Id.

Likewise, the Rhode Island Supreme Court has found that a defendant suffering from “delusions of satanic possession” when he waived his Miranda rights had made a voluntary statement free from coercion. State v. Arpin, 122 R.I. 643, 650 n.4, 410 A.2d 1340 (1980). In Arpin, at the time of his arrest, the defendant was visibly agitated, muttering to himself and confessed to using drugs. Id. at 647. However, at trial, the police testified that during the interrogation, the defendant was calm, coherent, and rational. Id. at 648-49. Further, the police described the defendant as quiet and passive when he confessed to the murder. Id. A psychiatrist later testified that the defendant had been suffering from a severe mental illness when he signed a rights waiver. Id. at 650. The Court determined that in spite of his earlier agitation and mental illness, the defendant’s statements were voluntary due to his calm and rational demeanor during the questioning, as well as his clear affirmative waiver of rights. Id.

In a more recent case, the Rhode Island Supreme Court also found that a defendant’s mental impairment is irrelevant in determining the voluntariness of a defendant’s waiver of rights. Brouillard, 745 A.2d at 764. In Brouillard, the defendant claimed to be in the grips of alcohol withdrawal symptoms when he waived his Miranda rights. Id. at 761. Citing Connelly, the court stated that, “defendant’s impaired mental state . . . was irrelevant to the question of the voluntariness of his confession because it was not induced by the police or by any other state actor.” Id. at 764. The court relied on testimony from the questioning officers who described the defendant’s behavior as normal and coherent during the interrogation. Id. Because the court did not find any coercive police action, the defendant’s waiver of rights was voluntary in spite of his mental impairment. Id. Thus, in Rhode Island, a defendant’s mental illness alone will not affect a finding of voluntariness in the absence of police coercion. To determine whether the Defendant’s mental illness rendered her confession involuntary, first, this Court will analyze the

evidence it has on the record regarding the Defendant's mental state. On April 1, 2015, the Eleanor Slater Hospital (the IMH) conducted a competency evaluation to determine the Defendant's competency to stand trial. Def.'s Competency Evaluation 9. The IMH diagnosed the Defendant and determined that she suffers from schizoaffective disorder (bipolar type), post-traumatic stress disorder, opioid use disorder, stimulant use disorder, and alcohol use disorder. Id. at 9. The IMH's report also notes that the Defendant had been treated by the Providence Center intermittently since 1996 and had been prescribed several medications including Ambien, Cogentin, Perphenazine and Cymbalta. Id. at 10. Other than the Defendant's statement to police that she was not on her medication in Interview 3, the Court has no evidence as to whether she was on medication when the Providence Police interviewed her. While not observably psychotic, the IMH noted that the Defendant experiences mild auditory hallucinations, and "reports impairment in memory, attention, and concentration." Id. at 20. When the IMH reviewed the Defendant's medical records they also determined that, "she may have been experiencing manic and psychotic symptoms earlier in her incarceration, which is consistent with her longstanding diagnosis of Schizoaffective Disorder. However, these symptoms appeared to resolve when she was started on her outpatient medication." Id. Further, the IMH found that during their interviews with the Defendant, she "display[ed] a bizarre affect odd mannerisms" and "a pattern of mood instability." Id.

Ultimately, however, the IMH found that the Defendant "is mentally competent to stand trial despite the active symptoms of mental illness." Id. at 21. The IMH reported that the Defendant recalled her lawyer's information and advice, understood the charges against her and appeared motivated to participate in her own defense. Id. Further, the IMH found that the Defendant could control her behavior to participate properly in appearing before the Court. Id.

The report also stated that despite her mental illness, the Defendant had graduated from Classical High School, taken classes at the Community College of Rhode Island, worked as a CNA for a number of years, taken care of her mother and kept up household expenses. Id. at 6, 8.

Thus, in light of the evidence, although the Defendant suffers from mental illness, this Court does not find that the Defendant's condition rendered her confession to the Providence Police involuntary. In making this determination the Court notes that despite her mental illnesses, the Defendant is a graduate from Classical High School, took classes at CCRI, worked as a CNA, took care of herself and others and paid household expenses. This Court also notes that the video recordings of Interviews 1, 2 and 3 show that the Defendant appeared calm and alert, as well as definitive and deliberative in her responses to the police regarding the information she was willing to tell them and the information she was not willing to divulge. The Defendant is intelligent and appeared to understand the questions that the detectives asked her. Further, the video recordings and transcripts of Interviews 1, 2 and 3 illustrate that the Defendant responded rationally and coherently to police questioning. After examining these relevant facts in light of the Rhode Island Supreme Court's decisions in Brouillard and Arpin, this Court is constrained to holding that in the absence of police coercion the Defendant's mental illness did not affect the voluntariness of her confession. See Arpin, 122 R.I. at 650.

#### **Voluntariness of the Defendant's Statements**

Next, the Defendant points to the Providence Police's nineteen-day lapse between Interview 1 and Interview 2, as well as Officer Corrigan's misstatements regarding the strength of the case against the Defendant during Interviews 2 and 3, as evidence of a pattern of police coercion. At the outset, this Court notes that the United States Supreme Court has determined that after a suspect invokes his or her right to counsel, police must wait for fourteen days before

they may reinitiate contact with the suspect. Maryland v. Shatzer, 599 U.S. 98, 110 (2010). Therefore, Officer Corrigan’s decision to wait nineteen days before reinitiating contact with the Defendant was legally proper and not indicative of coercion. Further, this Court also notes that mere misrepresentations regarding the strength of the case against the Defendant will not affect a finding of voluntariness. See Frazier v. Cupp, 394 U.S. 731 (1969) (holding that the “fact that the police misrepresented the statements that [the witness] made is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible”). Here, the State alleges that at the time of Interview 2, the police believed that the casings found in the Defendant’s car matched the casings found in Ms. Donahue’s body. This Court does not find that the police’s misstatements regarding Mr. Woodyatt’s statements or the bullet casings sufficient to affect a voluntariness finding. This Court also does not find, as the Defendant argues, that the Providence Police’s failure to re-Mirandize her before Interviews 3 and 4 constitute a pattern of police misconduct. The police did not properly advise the Defendant of her Miranda rights, and the prosecution is paying a high price and will not be able to admit the Defendant’s statements into evidence as a result of the officer’s failure to re-Mirandize the Defendant.

Considering the evidence before it, this Court also does not find that the Providence Police’s interviewing techniques amounted to coercion. The evidence shows that the police did not subject the Defendant to unreasonably long interrogations. Rather, all together, Interviews 2 and 3 were under three hours long. Interview 2 lasted approximately one hour and thirty minutes and Interview 3 lasted approximately one hour. Further, the police did not threaten the Defendant, yell at the Defendant, make her false promises, use force on the Defendant or subject her to physical abuse or psychological duress. Rather, the police were calm, conversational and responsive to the Defendant’s needs during the interviews. For example, the police provided the

Defendant with a jacket during Interview 3 and interrupted Interviews 2 and 3 to provide the Defendant with water. The video recording also shows that the police did not crowd or invade the Defendant's personal space at the interview table. Moreover, the Defendant was offered food on multiple occasions between December 22nd and 23rd. Detention Officer Chamberlain provided the Defendant with cereal bars when she processed the Defendant and testified that she believed that she provided the Defendant with additional cereal bars when she requested them. Further, Detective Zuena testified that the police provided the Defendant with Burger King on the evening of December 22nd and brought the Defendant to Dunkin Donuts the next morning for coffee and a donut. The Defendant also had an opportunity to rest overnight between Interviews 3 and 4 in a quiet cell monitored by Detention Officer Chamberlain. When in Scituate looking for the gun, the police put the Defendant in a police car so she would not be out in the cold rain.

Further, after examining all of the evidence, including the video recordings of Interviews 1, 2, and 3, this Court does not find that the Defendant's conduct during the interviews indicates that the Providence Police overcame her will to an extent that renders her statements involuntary. See Carter, 744 A.2d at 845. Here, the evidence indicates that the Defendant appeared intelligent, polite, alert, calm, rational and responsive during all three interviews. Her responses to police questions were clear, thoughtful and reflective. The Defendant never cried or got upset. Although she was subdued and soft spoken during the interviews, the evidence also indicates that the Defendant understood her conduct and expressed remorse and concern for the consequences of her actions. During Interview 2, the Defendant adamantly insisted on multiple occasions that the police should not be speaking to her in her lawyer's absence. She also repetitively insisted that she did not know how the casings police found on the passenger seat of her car had arrived

there, going so far as to suggest that the police had planted the casings themselves. Further, during Interview 3, the Defendant refused to answer questions regarding where she had purchased the gun and bullets. This testimony, which reveals that the Defendant asserted her will at various points during the interviews in the face of police questioning, is affirmative evidence in the eyes of the Court that the Defendant's will was not overborne by the detective's interrogation techniques. Thus, after analyzing the Defendant's conduct during the interviews, it does not appear to this Court that Defendant's will was overborne during the interviews in a way that would evidence police coercion.

Considering the totality of the circumstances, this Court finds that the Defendant's statements to police were voluntary and that the detectives' conduct during Interviews 1, 2 and 3 was not coercive. Thus, under a Patane analysis, the gun and casings should not be excluded in the State's case-in-chief.

### **Statements as Impeachment Evidence**

The State contends that while they cannot introduce the Defendant's confession in its case-in-chief, it may introduce the statements as impeachment evidence should the Defendant decide to testify. The Defendant does not contest this issue at this time.

This Court notes that “[i]t is well settled in this jurisdiction that . . . statements, inadmissible against a defendant in the prosecution's case in chief because of a lack of the procedural safeguards required by Miranda, may, if their trustworthiness satisfies legal standards, be used for impeachment purposes to attack the credibility of a defendant's direct testimony at trial.” Pona, 926 A.2d at 611 (quoting State v. Mattatall, 603 A.2d 1098, 1111 (R.I. 1992)) (internal citations omitted). The Rhode Island Supreme Court has stated that “[t]he exclusion of reliable and probative evidence for *all* purposes is not mandated unless it is derived from coerced

and involuntary statements.” Mattatall, 603 A.2d at 1114. Here, the Court has already determined that the Defendant’s statements were not the product of police coercion. Thus, in this case, should the Defendant decide to testify, her statements may be admissible as impeachment evidence even though the statements are inadmissible in the State’s case-in-chief. See Pona, 926 A.2d at 611.

At this point, the Court holds that the Defendant’s statements may be introduced subject to hearing testimony. This decision is without prejudice to the Defendant’s ability to raise the issue at the time of trial.

### **III**

#### **Conclusion**

For the reasons stated above, this Court holds that certain of Defendant’s statements to the police must be suppressed as a violation of the Defendant’s Miranda rights. The Court holds that the State may introduce the gun and bullets they obtained as a result of the Defendant’s voluntary unwarned statement at trial. Lastly, the Court holds without prejudice that the State may use the Defendant’s statements which the police obtained in violation of Miranda as impeachment evidence, should the Defendant decide to testify. Accordingly, Defendant’s Motions are granted in part and denied in part.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** State of Rhode Island v. Sendra Beauregard

**CASE NO:** P1/2015-0848AG

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** November 12, 2015

**JUSTICE/MAGISTRATE:** McGuirl, J.

**ATTORNEYS:**

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For Defendant: Ronald L. Bonin, Esq.