

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA :
 :
 v. : C.A. No. 1:12-MJ-0317A
 :
 JORGE DANIEL ESTRADA :

MEMORANDUM AND ORDER

Defendant was arrested on October 24, 2012 and is charged by Criminal Complaint with possession with intent to distribute one kilogram or more of heroin and conspiring to do so with others in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. According to the supporting Affidavit of Task Force Officer Michael Naylor, Defendant delivered one kilogram of heroin to an informant on October 23, 2012 and another kilogram on October 24, 2012. Both of these deliveries were surveilled by law enforcement.

Defendant was arrested at some point after the second delivery. After his arrest, Defendant was interviewed, and he admitted to delivery of the drugs to the informant. He also consented to a search of his residence and directed officers to a locked box in a closet which contained over seventeen kilograms of heroin. Officer Naylor later testified that the “retail” value of such drugs is approximately \$5,000,000.00. In addition to the drugs, several identification documents containing Defendant’s photograph were seized. These documents included Guatemala driver’s licenses in the names Jose David Gutierrez Figueroa (DOB August 20, 1991), Manuel Antonio Sandoval Argueta (DOB August 20, 1988) and Jorge Daniel Estrada Marroquin (DOB August 20, 1991), and a photocopy of one in the name Henry Alexander Batz Martin (DOB September 18,

1985). Gov't Exs. 2, 3, 4 and 24). After his arrest, Defendant asserted that he was seventeen years old and born on August 20, 1995.

On November 7, 2012, Defendant's counsel filed a Motion to Determine Juvenile Status and requested an evidentiary hearing to determine Defendant's status as a juvenile. (Document No. 12). Under the federal Juvenile Delinquency Act ("JDA"), a juvenile is defined generally as a person who has not attained his eighteenth birthday. 18 U.S.C. § 5031. The JDA also establishes special procedures and protections for prosecuting an act of "juvenile delinquency" which is defined as "the violation of a law of the United States committed by a person prior to his eighteenth birthday." Id.; see also 18 U.S.C. §§ 5031, et seq.

"The initial burden of proving defendant's age falls on the government, which must offer prima facie evidence of defendant's adult status." United States v. Gomez-Gomez, No. 09-CR-209(1), 2010 WL 200278 at *1 (S.D. Ohio, Jan. 13, 2010). On November 1, 2012, I found that the Government met this initial burden based on the evidence set forth in the sworn Affidavit including, but not limited to, the seized identification documents with birth dates indicative of adult status, Defendant's representation during traffic stops on June 6, 2012 and October 23, 2012 that he was born in 1991 and his girlfriend's statement to police after Defendant's arrest that he told her that he was twenty-two years old. The burden then shifted to Defendant to "come forward with evidence of his juvenile status" to rebut the presumption of adult status created by the Government's prima facie case. Id.; see also United States v. Dire, 680 F.3d 446, 475-476 (4th Cir. 2012). On November 8, 2012, Defendant did so, albeit barely, by submitting a certified copy of a Guatemalan birth certificate in the name of Jorge Daniel Estrada Marroquin with a birth date of August 20, 1995.

Def.'s Exs. A and B.¹ Defendant did not, however, offer any other verifiable evidence at that time to establish that as his true identity other than Defendant's counsel's representation that her client would testify as to that fact. Based on Defendant's submission, I scheduled an evidentiary hearing to receive further evidence on the issue. "After receiving such evidence, the Court must determine from the preponderance of the evidence the date on which defendant was born." United States v. Salgado-Ocampo, 50 F. Supp. 2d 908, 909 (D. Minn. 1999). "Preponderance of the evidence is the greater weight of the evidence...[e]vidence that th[e] Court believes because it outweighs or overbalances the evidence opposed to it." United States v. Gomez-Gomez, 2010 WL 200278 at *7. An evidentiary hearing was held over four days on November 19, 21, 27 and 29, 2012 at which four law enforcement officers and Defendant testified.² After fully considering the competing evidence presented, I find that, on balance, the weight of the conflicting evidence leads to the conclusion that Defendant was born on August 20, 1991 and thus he may be prosecuted as an adult.

There is no doubt that Defendant has used numerous identities and birth dates since his unlawful arrival in the United States and that he has repeatedly misrepresented his name and age. Defendant testified that he is Jorge Daniel Estrada Marroquin born in Guatemala on August 20, 1995. Defendant testified that he believed his parents were dead and that he was raised in Guatemala by a woman named Orchardia Martin. Although he identified Ms. Martin as his "aunt," he did not know if or how he was actually related to Ms. Martin. Also, he testified that he only

¹ The birth certificate was apparently created on October 31, 2012 from the contents of a local birth book in Guatemala. Although it stipulated that the birth certificate was a genuine document, the Government disputes that it relates to Defendant and later argued that its veracity was under further investigation. See Gov't Ex. 34 for identification.

² Although Defendant knowingly waived his Fifth Amendment right against self-incrimination and chose to testify with the advice of defense counsel, it should be noted that the Court restricted the hearing to the narrow issue of Defendant's age/identity and somewhat limited the Government's cross-examination of Defendant in order to balance his ability to effectively pursue his claim of juvenile status with his Fifth Amendment rights.

learned his name and 1995 birth date from Ms. Martin. Defendant offered no other verifiable information to establish the veracity of his asserted name and birth date. Thus, the issue before me turns primarily on whether I find Defendant to be a credible witness.

After unlawfully entering the United States, it is clear that Defendant utilized multiple identities for various purposes. He possessed numerous documents with various names and dates of birth, and none reflect a birth date of August 20, 1995. He utilized a birth date of August 20, 1991 when accessing the health care system, twice when stopped by the police in his car and when reporting to police an attempted break-in at his rented, single-family house at 151 Salina Street in Providence. Gov't Exs. 1, 9, 17, 19 and 25. In addition, he even utilized the password "PRISCILA2081991" as a password for a printer. Gov't Ex. 32. Priscila is his girlfriend's name and "2081991" is the numeric order of the birth date August 20, 1991 as it appears on several of Defendant's various Guatemalan identification documents. Significantly, Defendant testified that he was unable to access an email account because he forgot the password and then offered no credible explanation regarding why he would then create a password with a "false" birth date and why that would be easier for him to remember.

The most significant evidence undercutting Defendant's credibility are the detail discrepancies between his testimony and the information provided by his "aunt" to law enforcement. First, Defendant testified that his "aunt" was named Orchadia Martin while she identified herself to police as Isabella Martin. Defendant indicated that he lived with and was raised by his aunt for many years but provided a different address for her house than the one the aunt provided and provided conflicting information about who owned the house. Defendant also contradicted his "aunt" regarding the identity of the residents of the house and the names of his "aunt's" children.

While Defendant testified that he left school at age nine and came to the United States in October, 2009, the “aunt” indicated to police that Defendant completed school at age fourteen and came to the United States one year and eight months ago – or, in early 2011. Defendant also testified that his “aunt” had previously worked in a clothing factory but had been ill for several years and unable to work. The “aunt,” however, indicated to police that she was currently employed folding clothes. Defendant offered no explanation for these significant discrepancies. If Defendant is being truthful about his background, these are basic and significant facts about which he and the “aunt” who raised him should have no disagreement or contradiction. Additionally, Defendant testified that his trip to the United States was financed by his “boss” in Guatemala but he told the police in his post-arrest interview that his “aunt” took a loan on her house to pay for his trip. Finally, Defendant’s story that his “boss,” a bus owner, financed the trip so that Defendant, a fourteen year old boy, would accompany his boss’ sister on this dangerous trip. Defendant also later testified that this “boss” possessed a visa which allowed him to regularly travel between the United States and Guatemala and thus he had sufficient resources for such travel as well as to finance Defendant’s trip and also to obtain several false identification documents for Defendant. It is simply not credible that a man with such resources would place his sister’s safety into a mere boy’s hands for a dangerous journey from Guatemala, through Mexico, and then illegally over the United States border.

The Government also offered evidence regarding recordings of recent calls made by Defendant from the prison and conversations he had with a visitor at the prison. For instance, when calling his girlfriend at work, Defendant referred to himself as Jose but, when another friend visited him at the prison, she called Defendant Henry. Defendant now testifies that his first name is Jorge. In addition, these conversations contained other inconsistent or cryptic statements which call

Defendant's credibility into question. For instance, in one telephone conversation, Defendant's "aunt" asked him "who do they think I am?" and Defendant responded "the aunt." Further, the "aunt" greeted Defendant as "my son," and at one point, told Defendant that "his father" was in the house but Defendant testified he had no relatives.

Finally, there is circumstantial evidence about Defendant's activities and lifestyle since arriving in this country that simply do not jibe with his story or claimed current age of seventeen years, three months. Defendant claims he came to this country, alone and penniless, at age fourteen. He asserts that he started working for \$30.00 per day in a junkyard and, within a fairly short period of time, he had changed jobs and then took over and operated an auto parts salvage business which he relocated from a location in Cranston to a location on Valley Street in Providence. Also, on December 21, 2010, Defendant purchased a computer and related items for \$895.59 which he paid for with \$900.00 cash and provided an email address of "HENRYMARTIN10@YAHOO.COM." Gov't Ex. 27. However, at the time, Defendant claims he was fifteen years old, he had been here for fourteen months, was being paid cash to dismantle cars for parts and had no other means of support. Furthermore, when he was arrested, Defendant was, at the claimed age of seventeen, renting a single-family house in Providence and living with a woman in her early 30s³ and her three year old daughter. Also, according to the Affidavit and Officer Naylor's testimony, Defendant's rented house was monitored by several surveillance cameras with a digital monitor and recording device located in the bedroom and that such bedroom contained a locked box containing a substantial amount of heroin at the time of Defendant's arrest which was allegedly entrusted to him. Overall, Defendant's past activities and his demeanor on the witness stand in the face of lengthy

³ Defendant met this woman approximately one year ago and started dating her when he was sixteen years old. She has stated that Defendant told her that he was in his early twenties.

direct and cross-examination simply are not consistent with his story that he is presently barely seventeen years old and left school at age nine.

Conclusion

After considering and weighing all of the evidence of record, and for the reasons summarized herein, I do not find Defendant to be a credible witness and, in the absence of any other definitive proof of Defendant's age, I find that the preponderance of the evidence establishes that Defendant's date of birth is August 20, 1991 and thus he was twenty-one years old at the time of his arrest and an adult when he allegedly committed the crimes charged in this case. Accordingly, Defendant's Motion to Determine Juvenile Status (Document No. 12) is DENIED.

Because Defendant has claimed to be a juvenile, he has been detained in protective custody at my Order since his initial appearance. I Order that Defendant remain in such protective custody for one week following the date of this decision to allow Defendant's counsel the opportunity to appeal and seek a stay from a District Judge of removal from protective custody pending consideration of any appeal. However, if Defendant wishes to immediately terminate protective custody, his counsel may file a motion seeking such relief.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
December 5, 2012