Motion to Suppress Statements
Salt Lake City, Utah Third District Court
Judge Elizabeth Hruby-Mills
Case: 235900706

INTRODUCTION

Pursuant to Rules 7 and 12 of the Utah Rules of Civil Procedure, and in accordance with both the Fourth and Fifth Amendments to the United States Constitution as incorporated through the Fourteenth Amendment, the Defendant, Peter Golub, hereby moves this Honorable Court to suppress all statements obtained during his custodial interrogation, September 6, 2023.

This *Motion to Suppress* presents two distinct constitutional grounds for relief. First, under the framework established by *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny in Utah jurisprudence, including *State v. Larocco*, 794 P.2d 460 (Utah 1990), the State obtained statements in violation of Mr. Golub's Fifth Amendment privilege against self-incrimination. Specifically, law enforcement conducted custodial interrogation for approximately 70 minutes before administering *Miranda* warnings, failed to obtain a knowing and intelligent waiver of those rights, and employed tactics designed to circumvent constitutional protections.

Second, pursuant to Article I, Section 14 of the Utah Constitution and the Fourth Amendment to the United States Constitution, as interpreted by the Utah Supreme Court in *State v. Hansen*, 63 P.3d 650 (Utah 2002), all statements obtained during Mr. Golub's detention must be suppressed as fruits of an illegal seizure conducted without probable cause or reasonable suspicion. The Utah Supreme Court has consistently held that evidence obtained through constitutional violations must be excluded. See *State v. Worwood*, 164 P.3d 397 (Utah 2007).

This motion proceeds in two parts. Part I addresses the Fifth Amendment violations, analyzing: (A) the legal framework governing custodial interrogation and its application to the 70-minute period before warnings were administered; (B) the absence of a knowing, intelligent, and

voluntary waiver of *Miranda* rights; and (C) the pattern of coercive tactics employed to obviate Mr. Golub's constitutional protections. Part II examines Fourth Amendment violations, specifically addressing: (A) the illegal arrest and search of Mr. Golub's person; and (B) the absence of probable cause for both the DUI investigation and the subsequent vehicle search conducted by Cpl. Ernstsen and supporting officers.

PART I. ALL STATEMENTS ALLEGEDLY MADE BY MR. GOLUB WHILE IN THE CUSTODY OF HIGHWAY PATROL TROOPER CPL. ERNSTSEN WERE OBTAINED IN VIOLATION OF MR. GOLUB'S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION AND MUST BE SUPPRESSED PURSUANT TO *MIRANDA v. ARIZONA*

Video IV (Cpl. Ernstsen's Bodycam) shows that the corporal does not read *Miranda* warnings until minute 01:09:11—i.e., after nearly 65 minutes of questioning.

Custodial interrogation was defined by the Supreme Court as "…questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444. However, interrogation not only applies to police practices that involve direct questioning of a defendant while in custody. *Rhode Island v. Innis*, 446 U.S. 291 (1980). Interrogation under *Miranda* also refers to "words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* 301. This behavior is the functional equivalent of police interrogation within the meaning of *Miranda*. *Id.* 302.

Moreover, statements made to police that are not the "product of free will and rational choice" must be suppressed. *Mincey v. Arizona*, 437 U.S. 385, 398 (1978). Mr. Golub has a constitutional right to a fair hearing on this matter, at which the State bears the burden of proving the voluntariness of the statements by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *Jackson v. Denno*, 378 U.S. 368, 377 (1964). The test used by courts to determine voluntariness is whether the defendant's free will has been overborne, given the totality of the

circumstances (*Arizona v. Fulminante*, 499 U.S. 279, 288 (1991); *Beasley v. United States*, 512 A.2d 1007, 1016 (D.C. 1986). Coercive interrogation techniques as applied to the unique characteristics of the suspect must also be taken into consideration. *Colorado v. Connelly*, 479 U.S. 157, 163 (1985) (citing *Moran v. Burbine*, 475 U.S. 412, 432–434 (1986)).

A. Mr. Golub was in custody for over 65 minutes before being read *Miranda* warnings by Cpl. Ernstsen

The State may not use statements "stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). In order to use a statement that is the product of custodial interrogation, the State must satisfy the burden of proving not only that *Miranda* warnings were given, but also that "the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Id.* at 475. Video evidence shows that Cpl. Ernstsen read *Miranda* warnings at the very end of the arrest, shortly before walking Mr. Golub to jail (*Video IV*, [1:09:11]). Thus, all statements allegedly made by Mr. Golub while in the custody of Cpl. Ernstsen (and a second unnamed officer) were obtained in violation of *Miranda*.

Mr. Golub was in custody when a uniformed Utah High Patrol Trooper, Cpl. Ernstsen: 1) stopped him at 2600 South State Street; 2) began a DUI investigation; 3) ordered Mr. Golub to exit his car; 4) ordered Mr. Golub to perform a series of Standardized Field Sobriety Tests; 5) was joined by another officer (Officer 2) on the scene; 6) placed Mr. Golub in handcuffs with the assistance of Officer 2; 7) placed Mr. Golub into Cpl. Ernstsen's squad car; 8) drove Mr. Golub to Special Operations; 9) administered a chemical breath test; and 10) attempted to enter Mr. Golub's phone and listen to a private conversation.

Video evidence shows that Mr. Golub asked to be allowed to "go home" many times. Despite his entreaties, Mr. Golub's freedom was restrained by Cpl. Ernstsen and a second officer. In

Miley v. United States, 477 A.2d 720, 722 (D.C. 1984), officers asserted their authority over the defendant, making it clear that the defendant was in custody. For purposes of *Miranda*, "[t]he [Supreme] Court agreed that 'the circumstances of each case must certainly influence' the custody determination, but reemphasized that 'the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004) (qtd. *California v. Beheler,* 463 U.S. 1121 (1983) (*per curiam*).

Custody must be determined based on how a reasonable person in the suspect's situation would perceive his circumstances. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011); *Berkemer v. McCarty,* 468 U.S. 420 (1984). As shown in *Miley v. United States*, once an officer asserts their authority over the defendant, the defendant is in custody. And once the officer executes an investigation, the defendant must be read his *Miranda* warnings if any of his statements are to be used against his in a court of law.

There is little question that Mr. Golub's freedom was restrained by Cpl. Ernstsen prior to the reading of *Miranda* warnings. Video evidence shows that Mr. Golub's *Miranda* warnings were not given until Mr. Golub was taken to jail—after Cpl. Ernstsen launched into a DUI investigation (*Video IV*, [00:07:32]); after all relevant questions were asked; after field sobriety tests were administered; after Mr. Golub was handcuffed; after Mr. Golub was places inside a squad car; after Mr. Golub was taken to Special Operation; and even after leaving Special Operations.

While the custody analysis does not account for the subjective mental state of the defendant to prevent officers from having to analyze his mental and physical idiosyncrasies, the case in point is not an idiosyncrasy but common sense. As the Supreme Court recognized in *J.D.B.*, custodial interrogation is inherently coercive and can induce false confession, especially when the subject is extremely fatigued. When Cpl. Ernstsen chooses to turn the traffic stop into a DUI investigation, he

says, "he said he just wanted to go home… Anyway. Slurred speech. Glossy bloodshot eyes…" (*Video IV*, [00:08:30]).

In this case, the circumstances of Mr. Golub's seizure by Cpl. Ernstsen clearly involved a restraint on freedom of movement associated with a formal arrest (as articulated in *Yarborough*). Cpl. Ernstsen and a second, unnamed officer (Officer 2) stood on both sides of Mr. Golub, handcuffed her, conducted a search of his person, and locked his inside Cpl. Ernstsen's vehicle while they searched his car. After he was locked inside Cpl. Ernstsen's car, Mr. Golub was indisputably in custody; however, Cpl. Ernstsen still wouldn't read *Miranda* warnings for another 51 minutes (*Video IV*, [1:09:11]).

Even before handcuffs were placed on Mr. Golub, a reasonable person in his position would not have felt free to leave, especially once he was made to stand against Cpl. Ernstsen's squad car flanked by two officers.

B. During custodial interrogation and prior to the administration of *Miranda* warnings, Mr. Golub did not knowingly, intelligently, and voluntarily waive *Miranda* rights

Mr. Golub was in custody when Cpl. Ernstsen asked him direct questions without the administration of *Miranda* warnings.

When the police interrogate a defendant as part of a criminal investigation, the individual in their custody has a constitutional right to be warned, "[p]rior to any questioning . . . that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444. "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Rhode Island v. Innis*, 446 U.S. 291 (1980) qtd. *Miranda*, 384 U.S at 444). *Miranda* warnings provide the necessary safeguards where the police must expressly announce they are conducting a criminal investigation and advise a person against self-incrimination.

Miranda, 384 U.S. at 471. It is the State's burden to prove that the client did in fact waive his rights after *Miranda* warnings were properly administered. The absence of these specific warnings, statements elicited during custodial interrogations are presumptively coerced and must be suppressed. See *United States v. Patane*, 542 U.S. 630, 639 (2004); *see also Miley*, 477 A.2d at 724.

In this case, the defendant could not have knowingly, intelligently, and voluntarily waived his *Miranda* rights, because he was never given *Miranda* warnings until he was booked (*Video IV*, [1:09:11]). The failure to show that the defendant understood the warnings and that the police obtained a valid waiver renders all statements in response to custodial interrogation inadmissible. See *Lewis v. United States*, 483 A.2d 1125, 1128 (D.C. 1984). Therefore, all statements obtained prior to *Miranda* warnings, must be suppressed as a violation of Mr. Golub's Fifth Amendment right against self-incrimination.

Mr. Golub was indisputably in custody when he was inside Cpl. Ernstsen's squad car. This is similar to when Mr. Golub was questioned by Officer 2 and Cpl. Ernstsen, when Mr. Golub reasonably felt that his freedom was restrained—equaling arrest. *Yarborough*, 541 U.S. at 662; *Berkemer v. McCarty,* 468 U.S. 420. Once Mr. Golub was inside Cpl. Ernstsen's custody, he should have been read *Miranda* warnings. As such, any and all unwarned statements given by Mr. Golub while inside Cpl. Erntsen's squad car must be suppressed as the product of a Fifth Amendment violation.

C. After reading *Miranda* warnings, Cpl. Ernstsen attempted to access Mr. Golub's phone

It was close to midnight. Mr. Golub and Cpl. Ernstsen were sitting in Cpl. Ernstsen's truck—Mr. Golub was handcuffed in the backseat, staring vacantly at the bright, flickering light above the back door of the jail, pressing his fingernails deep into his palms in an attempt to assess the progress of numb pain spidering from his wrists; Cpl. Ernstsen was methodically typing with just

his index fingers on the backlit-blue, dashboard keyboard, which had been placed too high and to the left, so that Cpl. Ernstsen had to lean way over to the passenger side and search for each letter of each word, as if after every click of the key, the letters rearranged themselves into new patterns, forcing his fingers to fumble in fits and starts for what he knew was rightfully his. Mr. Golub thought it sounded like the mice who'd been baited with scraps only to be crushed inside the rusty mechanism of the old trap whose sonorous snap he'd hear in his room by the kitchen; sometimes the mice would stumble across the kitchen linoleum in stuttering clickety-clacks for what seemed like all night, every night.

Then, having either finished or given up on typing, Cpl. Ernstsen raised his head and finally recited the *Miranda* warnings in a slow, sober tone like a piece of liturgical verse:

> You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.

With the invisible protection of the oath cast, Mr. Golub again felt the numb tightness as his wrists creaked in their warm metal embrace. *Surely*, thought Mr. Golub, *he's finished; surely, he will let me out and at least I'll have my hands back*. But Mr. Golub was wrong. The *Miranda* spell didn't preclude Cpl. Ernstsen from endowing his pitiable companion (just picked up off the street) with a little human warmth. And sure enough, the corporal turned and leaned toward the backseat and offered to "get into" Mr. Golub's phone so that Mr. Golub could call his mother. Mr. Golub had tried to contact her earlier—it was Mom's car; she made breakfast at 5:15 a.m. so that Mr. Golub could teach a class of children so special that some parents dropped them off an hour early, and others didn't drop them off at all (at which point Mr. Golub would have to stay late and fill out a form). She was doubtlessly worried, the mother, but when Mr. Golub had asked if a call could be placed, Cpl. Ernstsen shrugged in sympathy—the matter was out of his hands. "Can she come pick up her car?" "Unfortunately, it has to be towed and impounded for the night. There's a number she can

call." "What number?" "They'll tell you." "Can I at least tell her not to wait up?" "Sorry, there's nothing I can do," Cpl. Ernstsen had said placing his palm on the small of Mr. Golub's back to lead him into the truck.

And yet, there was *something*. Now, Cpl. Ernstsen was offering to call the mother himself. Mr. Golub couldn't call on account of the handcuffs, but Cpl. Ernstsen had no such impediment. All the corporal needed was for Mr. Golub to give him the phone's passcode. Indeed, the corporal was feeling so generous, he wouldn't just get into Mr. Golub's phone and place a call to his mother (who must be worried sick with Mr. Golub having disappeared into the night like that), but Cpl. Erntsen would put the call on speakerphone, seeing as how Mr. Golub couldn't hold a phone up to his ear in handcuffs. Mr. Golub could contact Mom right now and say everything he needed to say concerning the whole regrettable affair.

Cpl. Ernstsen smiled to show he really meant it; the corporal felt magnanimous; the corporal was 100% sympathetic; the call could be made right here in the privacy of the idling truck—just him, Mr. Golub, and the mom.

Surely Mr. Golub wanted to call her—the owner of the now impounded car. And yet, Mr. Golub couldn't help thinking about those mice. Mr. Golub was a vegetarian. Mr. Golub remembered the kindnesses of Eichmann as described by Arendt. Was this the clay jug of water of the Samaritan woman at the well? Or had Cpl. Ernstsen an ulterior, perhaps less benevolent, motive?

A less generous, more worldly mind might conclude that contrary to allaying the anxieties of his prisoner, Cpl. Erntsen was attempting to circumvent *Miranda* protections through what the Supreme Court has termed the "functional equivalent" of interrogation. *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). When the Supreme Court held that "*Miranda* safeguards come into play whenever a

person in custody is subjected to either express questioning or its functional equivalent" (*Innis*, 446 U.S. at 301).

Was this the kind of coercion the law was intended to prevent? What were the corporal's intentions? Does this constitute an attempt at an illegal seizure within the Fourth Amendment? So many questions, so few answers. There are, however, facts (for what they're worth).

When law enforcement deliberately fosters an expectation of goodwill via "favors," especially for the purpose of circumventing a defendant's right to counsel, the obtained statements and confessions are generally inadmissible. But perhaps Cpl. Ernstsen was genuinely conciliatory. The law states that once *Miranda* warnings have been given and the individual states that she wants an attorney, all interrogation must cease until an attorney is present. *Edwards v. Arizona*, 451 U.S 477, 482-84 (1981).

Custodial interrogation has been defined by the Supreme Court as ". . . questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. Interrogation under *Miranda* also refers to not only direct questioning by officers while the suspect is in custody, but also "words or actions on the part of the police[…] that the police know are likely to elicit an incriminating response from the suspect." *Innis*, 446 U.S. at 301. Within the framework of *Miranda*, any statements deliberately elicited by police through words or actions after a suspect has invoked her right to counsel is a violation of her Fifth Amendment right. *See Minnick v. Mississippi*, 498 U.S. 146 (1990).

It is impossible to know for certain whether Cpl. Ernstsen was 1) offering a helping hand to a person who had both her hands bound behind her back or 2) trying to expertly circumvent just those procedural safeguards designed to protect a defendant's rights, as stipulated by *Miranda*, as well as Amendments Four, Five, Six, and Fourteen of the Constitution.

Of course, even if the latter were true, Cpl. Ernstsen didn't break any laws (probably). However, as Justice Frankfurter observed, "The history of liberty has largely been the history of observance of procedural safeguards," *McNabb v. United States*, 318 U.S. 332, 347 (1943). With the upshot being that when those procedural safeguards go unobserved, history—the history of the people of the United States—runs along the well-worn tracks of something other than liberty.

II. ALL STATEMENTS MUST BE SUPPRESSED AS FRUIT OF MR GOLUB'S ILLEGAL SEIZURE PURSUANT TO THE FOURTH AMENDMENT

A. Mr. Golub was illegally arrested and searched

Warrantless seizures are considered "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz*, 389 U.S. at 357. Absent a warrant, the State bears the burden of establishing that the arrest of a US citizen falls within one of the time-honored exceptions to the warrant requirement.

In this case, the arresting officer did not have probable cause. Video evidence (*Video VII*, Cpl. Ernstsen's dashcam, [00:00:20]) shows that Cpl. Ernstsen's claimed basis for the stop—an alleged failure to signal—was observed from an impossible distance and was obstructed by multiple vehicles. But even if the failure to signal had occurred, the extended detention far exceeded any reasonable scope. As Justice Ginsburg noted, "an officer's authority to seize a driver 'ends when the tasks tied to the traffic infraction are—or reasonably should have been—completed.'" *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). What was Cpl. Ernstsen's "task" when he followed Mr. Golub for 10 blocks and proceeded to pull him over as Mr. Golub was turning onto the freeway? And when did this task end?

Under the Fourth Amendment, a person is seized when an officer's actions would lead a reasonable person to believe he is not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). "Only when the officer, by means of physical force or show of authority, has in some way

restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 20 n. 16 (1968); *see also In re D.T.B*, 726 A.2d 1233, 1235 (D.C. 1999). A seizure may escalate to an arrest where the "investigatory" detention has all the characteristics of a formal arrest, requiring that there be probable cause to justify the conduct of the officer involved.

Should the police act without probable cause, it is the State's burden to prove that police conduct was justified and that there was sufficient evidence for probable cause. *See id.*, 442 U.S. 200; *Malcolm v. United States*, 332 A.2d 917, 918 (D.C. 1975). "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160 (qtd. in *Carroll v. United States*, 267 U.S. 132, 162 (1925).

B. The stop may have been tainted by Cpl. Ernstsen's illegal conduct

Under the totality of circumstances, the arresting officers (the second omitted from all records of the arrest) lacked probable cause to search or seize Mr. Golub. More fundamentally, the entire stop was tainted by Cpl. Ernstsen's illegal conduct. Video evidence (*Video VII*, [00:00:03]) clearly shows the corporal running a red light at State Street and Kensington Avenue without emergency lights or sirens—a direct violation of Utah Code § 41-6a-212(2)(c), which permits emergency vehicles to proceed through red lights only when both emergency lights and sirens are activated. This violation was compounded by an illegal U-turn in violation of Utah Code § 41-6a-802.

The Utah Supreme Court has established that law enforcement officers must demonstrate "reasonable and articulable suspicion" for traffic stops. *State v. Lopez*, 873 P.2d 1127, 1132 (Utah 1994). However, under *State v. Bello*, 871 P.2d 584, 587 (Utah Ct. App. 1994), evidence obtained following an officer's illegal conduct should be suppressed if the illegal conduct directly led to the

discovery of the evidence. Here, Cpl. Ernstsen's illegal maneuvers placed him in a position to conduct surveillance of Mr. Golub—surveillance that would not have been possible but for the officer's traffic violations. The Utah Supreme Court in *State v. Thurman*, 846 P.2d 1256, 1263 (Utah 1993) established that when an officer's initial illegal conduct taints subsequent enforcement actions, the exclusionary rule requires suppression of all evidence obtained thereafter. This principle is particularly relevant where, as here, an officer violates the laws he purports to enforce.

The absence of any observable traffic violation by Mr. Golub, combined with Cpl. Ernstsen's own traffic violation, renders the subsequent search, seizure, and arrest constitutionally infirm under both Article I, Section 14 of the Utah Constitution and the Fourth Amendment. As such, all statements and evidence obtained following Cpl. Ernstsen's illegal conduct must be suppressed as fruit of the poisonous tree pursuant to *Wong Sun v. United States*, 371 U.S. 471, 484-86 (1963).

III. CONCLUSION

In light of the above, the defendant has argued that all statements allegedly made during his detention and interrogation were obtained in violation of his constitutional rights. The failure to provide timely *Miranda* warnings, the coercive tactics employed by law enforcement, and the unlawful seizure without probable cause collectively demonstrate a disregard for established procedural safeguards.

WHEREFORE, for the foregoing reasons, and any others that may appear to this Honorable Court at a hearing on this matter, Mr. Golub respectfully requests that this motion be granted and that the Court suppress all statements obtained in connection with this case.

Respectfully submitted this 29th day of November, 2024

Peter Golub
Pro Se Defendant