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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

STATE OF IDAHO, Plaintiff, V. **MAJORJON ALLEN KAYLOR,** Defendant.	**CASE NUMBER CR40-23-0970** **MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE**

COMES NOW, Majorjon Allen Kaylor, by and through his attorney, Christopher D. Schwartz of Schwartz Law, and hereby provides this *Memorandum* in support of his *Motion to Suppress Evidence* filed in the above-entitled matter. This request is made based on Mr. Kaylor's rights under the Fifth and Sixth Amendments of the U.S. Constitution, Article I, Section 13, of the Idaho State Constitution, and any other violation of the U.S. Constitution or Constitution of the State of Idaho that may arise throughout the process of discovery or through additional evidence provided at any evidentiary hearing on the matter.

FACTS

On June 18, 2023, at approximately 7:20 P.M., a 911 call came into Shoshone County dispatch alleging shots fired around 515 Brown Avenue in Kellogg. (P.C. Aff., p. 1). Shortly

thereafter, dispatch received a second call indicating that those shots may have resulted in fatalities. (*Id.*). Sergeant Jared Bilaski of the Shoshone County Sheriff's Office responded to the scene at approximately 7:24 P.M., at which point he observed Majorjon Kaylor standing in the street. (*Id.*). According to Sgt. Bilaski, Mr. Kaylor reported that he had shot his neighbors. (*Id.*). "You what?" Sgt. Bilaski asked. (NOR_PE1239_SO1206_06182023192346_CAA_N (hereinafter, "Bilaski POV 1") at :30-:34). Mr. Kaylor repeated that he had shot his neighbors. (*Id.*). At that point, Sgt. Bilaski asked if he had the firearm on him, and Mr. Kaylor advised that it was put away. (*Id.* at :34-:36).

Sgt. Bilaski then commanded Mr. Kaylor to immediately drop down on the ground. (*Id.* at :36-:38). Mr. Kaylor began to explain that his shoulder was broken, but Sgt. Bilaski again told him to drop down on the ground. (*Id.* at :38-:41). He then asked Mr. Kaylor, "you shot four people?" (*Id.* at :41-:42). Mr. Kaylor acknowledged that he had. (*Id.* at :42-:43). He made additional comments regarding the neighbor being a pedophile, having called the cops, and the police refusing to do anything about it. (*Id.* at :42-:46). Sgt. Bilaski ordered Mr. Kaylor not to move. (*Id.* at :46-:49). Sgt. Bilaski then commanded Mr. Kaylor to put his hands behind his back, and he handcuffed him. (*Id.* at :49-1:10). He then told him he was going to have him come sit in his car. (*Id.* at 1:34-1:35). During their walk to the car, Mr. Kaylor continued to make comments about calling the police on the neighbors and the neighbors telling him there was nothing he could do about it. (*Id.* at 1:46-1:53). Sgt. Bilaski advised he would need to read Mr. Kaylor his rights before they continued. (*Id.* at 1:53-1:56). However, he did not read them; instead, he told Mr. Kaylor he needed to check on everyone, instructed him to hold tight, and closed the car door. (*Id.* at 1:56-2:19). He later confirmed to another officer that he not yet read Mr. Kaylor any *Miranda* warnings.

(*Id.* at 16:19-16:21). During Mr. Kaylor's time in the back of Sgt. Bilaski's vehicle, he was nauseous, hadn't yet eaten, and was mere feet from his wife, who was screaming and huddling under a blanket with their children. *See generally,* Bilaski POV 1.

At approximately 9:56 PM, Mr. Kaylor was brought from Sgt. Bilaski's patrol car to a nearby church, where Captain Lee and Detective Klitch awaited him. (PC Aff., p. 2; Captain Lee POV NOR_PE1204_SO1203_06182023215539_CAA_N (hereinafter, "Lee POV") at :07). Mr. Kaylor remained in handcuffs. (*Id.*). While Mr. Kaylor used the restroom, Captain Lee asked Detective Klitch if he had his *Miranda* card, and Detective Klitch confirmed that he did. (Lee POV at 3:55-4:00). However, after Detective Klitch introduced himself to Mr. Kaylor, he did not read him *Miranda* – rather, he immediately began talking about a podcast he'd listened to about "sex predator bullshit", which had reduced his wife to tears:

> "So, I gotta tell you dude, I just got back from Seattle about an hour ago…have you ever heard of the Shawn Ryan show? Well, you'll have to listen to this podcast. But my wife cried the whole way to Seattle because we were listening to this sex predator bullshit…"

(*Id.* at 4:00-4:14). Mr. Kaylor responded that he had a big problem with things like that. (*Id.* at 4:10-4:11). Detective Klitch then stated that he read the message Mr. Kaylor's wife had posted, and he "couldn't fucking believe that shit." (*Id.* at 4:11-4:19). He was referring to a post made by Mrs. Kaylor a few days prior to the incident, in which she publicly revealed an incident involving one of their neighbors; specifically, she shared on Facebook that Devin Smith had exposed himself and masturbated in front of their juvenile daughters. (PC Aff., p. 1-2).

Following Detective Klitch's comment regarding the Facebook post, the following conversation transpired:

> **Kaylor:** "That's why this happened. Because no one would do anything about it and I'm not okay with that. I'm not going to let something happen to my fucking kids."
>
> **Klitch:** "I understand, man."
>
> **Kaylor:** "And his mother is telling me, 'he can do whatever he wants, there's nothing you can do about it.' So, I'm like, 'you're okay with his behavior?' He's never had any repercussions and the whole town is aware of it, but no one will do anything about it."
>
> **Klitch:** "Look dude, it's infuriating. I mean, I…"
>
> **Kaylor:** "I have three kids, I'm not going to allow it, period."
>
> **Klitch:** "No, I'm … like I said, dude, my wife literally cried for two hours. I mean, when I read that Facebook message from your wife, it just pissed me off. But before we get started, I do want to ask some questions. All I know is that Facebook post, okay? That's all I've seen. But I have to go through some procedural shit here…"

(Lee POV at 4:11-5:18). Following Detective Klitch reading Mr. Kaylor his rights, he continued the interview and elicited further incriminating statements from Mr. Kaylor. (*Id.* at 5:18-14:16). Finally, Detective Klitch asked Mr. Kaylor what he did in response to the conflict with the neighbors, and Mr. Kaylor advised that he didn't feel comfortable saying that without a lawyer. (*Id.* at 14:16-14:22). The interview was concluded. (*Id.* at 14:22-20:!3).

Following further investigation, on June 20, 2023, Mr. Kaylor was charged by Criminal Complaint with four counts of First-Degree Murder and one count of Burglary. (Cr. Compl.). On August 15, 2023, having received Mr. Kaylor's signed, written waiver, the Court waived Mr. Kaylor's preliminary hearing and bound him over to the district court. (Order Waiving Preliminary Hearing, August 15, 2023). On August 23, 2023, the State filed its Information, which charged Mr. Kaylor with four counts of First Degree Murder and one count of Burglary. (Information,

August 23, 2023). At his arraignment, Mr. Kaylor entered pleas of Not Guilty to all charges, and this matter was scheduled for trial in January 2024. (Notice of Hearing, September 13, 2023).

On October 11, 2023, the parties stipulated to enlarge the time for filing pretrial motions by one week, to Friday, October 19, 2023. (Stipulated Motion to Enlarge Time for Pre-Trial Motions, October 11, 2023). The next day, the District Court issued its order permitting the enlargement. (Order to Enlarge Time, October 12, 2023). Now, Counsel for Mr. Kaylor submits his *Motion to Suppress Evidence,* which seeks suppression of his statements to Sgt. Bilaski, who interrogated Mr. Kaylor while he was in custody and without the benefit of *Miranda,* and Detective Klitch, who also elicited incriminating statements while Mr. Kaylor was in custody and who deployed a deliberate "mid-stream" tactic to circumvent the requirement of advising Mr. Kaylor of his rights in the first place.

ISSUE PRESENTED

Whether I) Mr. Kaylor was not properly read his *Miranda* rights prior to custodial interrogation; II) Mr. Kaylor initial, unwarned statements were not voluntary; and III) Detective Klitch's midstream *Miranda* warnings were not effective.

ARGUMENT

I. The State Cannot Use Mr. Kaylor's Initial Statements Because He was Subjected to Custodial Interrogation but *Miranda* Warnings Were Not Properly Administered

The Self-Incrimination Clause of the Fifth Amendment to the United State Constitution provides that no "person ... shall be compelled in any criminal case to be a witness against himself." *Pennsylvania v. Muniz*, 496 U.S. 582, 588, 110 S. Ct. 2638, 2643, 110 L. Ed. 2d 528 (1990). This protection is applicable to the states through the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 6, 84 S. Ct. 1489, 1492, 12 L. Ed. 2d 653 (1964). Further, Article I, § 13 of the Idaho

Constitution essentially mirrors the language of the Fifth Amendment, stating that no person shall be compelled in any criminal case to be a witness against himself. Idaho Const. art. I, § 13.

In *Miranda v. Arizona*, the court responded to the inherently compelling pressure of in-custody interrogation by establishing proper safeguards to adequately and effectively apprise the accused of his constitutional rights. 384 U.S. 436, 467, 86 S. Ct. 1602, 1624, 16 L. Ed. 2d 694 (1966). Prior to interrogation, the person in custody must be advised 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 a right to the presence of an attorney, either retained or appointed. *Id.* at 444; *State v. Doe*, 130 Idaho 811, 815, 948 P.2d 166, 170 (Ct. App. 1997). Unless custodial interrogation is preceded by these warnings, the prosecution may not use statements obtained during that encounter. *Miranda* at 444. Here, Mr. Kaylor was in custody, interrogated, and not initially read *Miranda* warnings; thus, the unwarned statements obtained during that encounter cannot be used in his criminal case.

A. Mr. Kaylor was in custody for purposes of *Miranda* because he was under arrest.

Routine traffic stops and other investigative detentions do not automatically implicate *Miranda*; rather, the obligation to administer *Miranda* warnings arises when an individual is in "custody", which hinges on "whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *State v. Silver*, 155 Idaho 29, 32, 304 P.3d 304, 307 (Ct. App. 2013); *Doe*, 130 Idaho at 815 (citing *Beheler*, 463 U.S. at 1125, 103 S.Ct. at 3520, quoting *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711, 714, 50 L. Ed. 2d 714 (1977)). The test is an objective one based on the totality of the circumstances, and the proper inquiry is how a reasonable person in the suspect's position would have understood the situation. *Silver*, 155 Idaho at 32. Relevant factors include the time and location of the interrogation, the

conduct of the officers, the nature and manner of the questioning, and other persons present. *Id.*; *State v. Medrano*, 123 Idaho 114, 118, 844 P.2d 1364, 1368 (Ct. App. 1992). *See Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) (police seizure of individual without probable cause and subsequent detention at police station for questioning constituted custodial interrogation); *State v. Myers*, 118 Idaho 608, 611, 798 P.2d 453, 456 (Ct. App. 1990) (the response of four police officers to a traffic stop, unusual police effort to stop and detain the individual, and questioning not related to the purpose of the traffic stop supported conclusion that individual was in custody for purposes of *Miranda*).

Here, Mr. Kaylor was restrained to a point synonymous with arrest when Sgt. Bilaski ordered him to drop down on the ground. While Sgt. Bilaski acknowledged that he *should* read Mr. Kaylor *Miranda* warnings, he did not ever accomplish this task. He simply placed Mr. Kaylor in his vehicle, where he remained handcuffed for over two hours, during which time he was surrounded by law enforcement vehicles and police officers.

Then, Mr. Kaylor was escorted by law enforcement into a church. He remained in handcuffs, even during his visit to the urinal, which was supervised by law enforcement. Captain Lee and Detective Klitch knew Mr. Kaylor had not been Mirandized. Captain Lee even ensured that Detective Klitch had his *Miranda* card ready. However, instead of beginning the interview with those warnings, Detective Klitch initiated his conversation with Mr. Kaylor without them.

B. Mr. Kaylor was subjected to interrogation while in police custody.

In Mr. Kaylor's case, *Miranda* was triggered because he was in custody, expressly questioned by Sgt. Bilaski, and subjected to comments designed to elicit an incriminating response by Detective Klitch. *Miranda*'s safeguards are implicated when an individual in custody is

subjected to either express questioning or its functional equivalent. *Rhode Island v. Innis*, 446 U.S. 291, 300–02, 100 S.Ct. 1682, 1689–90, 64 L.Ed.2d 297, 307–09 (1980); *State v. Frank*, 133 Idaho 364, 370, 986 P.2d 1030, 1036 (Ct. App. 1999). The functional equivalent of express questioning encompasses any words or actions on the part of the police that they should know are reasonably likely to elicit an incriminating response. *State v. Harms*, 137 Idaho 891, 894, 55 P.3d 884, 887 (Ct. App. 2002). "Incriminating response" refers to any response the prosecutor may seek to introduce, whether inculpatory or exculpatory. *Id.*

See State v. Frank, 133 Idaho 364 (court found direct questioning occurred where officer asked in-custody suspect about the ownership and contents of metal cylinder that fell from suspect's pocket); *State v. Arenas*, 161 Idaho 642, 647, 389 P.3d 187, 192 (Ct. App. 2016) (where officer's comment, "I thought you said you had nothing on you, dude", was directed at the defendant and referenced an earlier conversation, the officer should have known that his statement was reasonably likely to elicit an incriminating response).

In this matter, Mr. Kaylor was expressly questioned by Sgt. Bilaski after he was already ordered to the pavement when Sgt. Bilaski asked him about the shooting, thereby referencing their earlier conversation. Later, after Mr. Kaylor was led in handcuffs into the church, Detective Klitch made impassioned comments about how a podcast about sexual predators brought his wife to tears, knowing that Mr. Kaylor had previously reported one of the alleged victims to law enforcement for masturbating while watching his young children. Sgt. Bilaski's inquiry meets the first prong of *Innis* in that he was expressly questioning Mr. Kaylor. Additionally, Detective Klitch's comments satisfy the second prong of *Innis*, as they amount to the functional equivalent of express questioning because Detective Klitch should have known his comments would elicit an

incriminating response. As Mr. Kaylor was not properly warned before said questioning and comments, his statements were obtained in violation of *Miranda*.

II. The State Cannot Use Mr. Kaylor's Later Statements Because His Initial, Unwarned Statements Were Not Voluntary.

Mr. Kaylor's initial, unwarned statements were not voluntary, so his latter statements cannot be admitted against him. Under *Miranda*, when police question a suspect in custody without administering the required warnings, the answers received are presumed compelled. *Oregon v. Elstad*, 470 U.S. 298, 317, 105 S. Ct. 1285, 1297, 84 L. Ed. 2d 222 (1985). However, a breach of *Miranda* does not necessarily mean a Fifth Amendment violation has occurred: where earlier statements are unwarned but voluntary, police subsequently administer *Miranda* warnings, and the suspect makes a knowing and voluntary waiver, the "taint" of the former statements is not imputed to the latter. *State v. Wass*, 162 Idaho 361, 396 P.3d 1243, 1246 (2017) (citing *Elstad*, 470 U.S. at 307).

In assessing whether a confession was voluntary, the court examines the "totality of the circumstances" to determine "whether the defendant's will was overborne." *State v. Doe*, 137 Idaho 519, 523, 50 P.3d 1014, 1018 (2002) (quoting *State v. Radford*, 134 Idaho 187, 191, 998 P.2d 80, 84 (2000)). The following factors must be considered:

> (1) Whether Miranda warnings were given;
> (2) The youth of the accused;
> (3) The accused's level of education or low intelligence;
> (4) The length of the detention;
> (5) The repeated and prolonged nature of the questioning; and
> (6) Deprivation of food or sleep.

State v. Person, 140 Idaho 934, 937, 104 P.3d 976, 979 (Ct. App. 2004). Whether *Miranda* warnings were given is a particularly significant factor. *State v. Andersen*, 164 Idaho 309, 314, 429 P.3d 850, 855 (2018).

See State v. Troy, 124 Idaho 211, 858 P.2d 750 (1993) (confession was given voluntarily where defendant was not in custody, he was read and waived his *Miranda* rights, he was told that he was free to leave the interview with the detective at any time, and the detective never represented that he had the authority to decide whether or not to file charges); *Person*, 140 Idaho 934 (confession was voluntary where defendant was read *Miranda* rights, signed a written waiver, and was given a soft drink and breaks during the interview).

Here, Mr. Kaylor was not warned, and he was not free to leave; rather, he was in handcuffs in a back room with two cops after having spent several hours in the back seat of a patrol car. He had a broken shoulder, he hadn't eaten since coming home from work, he reported feeling nauseous, and he had just witnessed his wife and children screaming while huddled under a blanket at a traumatic and chaotic scene. *See generally,* Bilaski POV 1. He was surrounded by religious décor in a church – a place that traditionally insists that an individual confess his sins. *Id.* Detective Klitch did not Mirandize Mr. Kaylor, Mr. Kaylor did not verbally waive *Miranda*, and Mr. Kaylor did not sign a *Miranda* waiver. Rather, Detective Klitch immediately preyed on Mr. Kaylor's emotional state and his role as a father by bringing up instances where one of the deceased neighbors had masturbated while watching Mr. Kaylor's children. In response, Mr. Kaylor's will was overborne, and he made incriminating statements. Considering these circumstances, those statements should be rendered involuntary.

III. Assuming *Arguendo* That Mr. Kaylor's Earlier Statements Were Voluntary, Detective Klitch's Midstream *Miranda* Warnings Were Deliberate and Objectively Ineffective.

Even if Mr. Kaylor's initial statements had been voluntary, the two-stage interrogation employed by Detective Klitch was intended to induce a confession, and the midstream warnings did not adequately apprise Mr. Kaylor of his rights. Where a two-step interrogation technique is designed to circumvent *Miranda*, subsequent statements will not be admitted. *Missouri v. Seibert*, 542 U.S. 600, 618, 124 S. Ct. 2601, 2614, 159 L. Ed. 2d 643 (2004) (Kennedy, J., concurring). Idaho has adopted the analysis of *Siebert* promulgated by the majority of circuit courts, finding that Justice Kennedy's concurrence, and not Justice Souter's plurality opinion, contains the precedential holding of the case. *Wass*, 162 Idaho 366. Justice Kennedy's opinion provides that, where a two stage-interrogation was the result of an intentional tactic to induce a confession and not due to mistake or accident, the question is whether the midstream warnings reasonably convey to a suspect his *Miranda* rights. *Id.* at 367; *Seibert*, 542 U.S. at 611. Relevant facts that bear on this effectiveness include:

> [T]he completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first.

Seibert, 542 U.S. at 615. Unless the subsequent warnings could place a suspect who has just been interrogated in a position to make an informed choice, the second stage of interrogation will not be treated as distinct from the first unwarned and inadmissible segment. *Id*. at 611.

Compare Wass, 162 Idaho 361 (2017) (where officer made a mistake questioning defendant before giving him his *Miranda* rights, realized his mistake, and immediately attempted

to correct his mistake by giving the defendant his *Miranda* warnings and questioning him again, district court did not err in determining that officer did not intentionally use a two-stage interrogation technique to induce a confession) and *Seibert*, 542 U.S. 600 (post-warning statements were inadmissible where the unwarned interrogation was conducted in the station house; the questioning was systematic, exhaustive, and managed with psychological skill; and there was little, if anything, of incriminating potential left unsaid).

In Mr. Kaylor's interview, this was no mistake: despite being prompted to Mirandize Mr. Kaylor by Captain Lee, Detective Klitch ignored his colleague and instead employed a two-part technique by immediately bringing up concerns regarding pedophiles and Mrs. Kaylor's Facebook post about the neighbor's inappropriate conduct towards their children. Only after he had invoked sufficient emotion from Mr. Kaylor so that Mr. Kaylor made incriminating statements regarding the situation did he read him *Miranda*. Then, he continued the same line of questioning, essentially asking about the feud with the neighbors and how it escalated until shots were fired. Mr. Kaylor's statements overlapped, the police presence was continuous, and the second round was essentially an extension of the first.

This situation was not demonstrative of the balanced and pragmatic approach to *Miranda* envisioned by Justice Kennedy, which accommodates circumstances where officers aren't planning to question a suspect or may not realize that warnings are required. Rather, this amounted to an intentional misrepresentation of *Miranda*, and it permitted Mr. Kaylor to conclude that that "the right not to respond did not exist when the earlier incriminating statements were made." *Seibert*, 542 U.S. at 620 (Kennedy, J., concurring). Thus, the statements following the midstream

warning should not be considered distinct from the initial statements, and this Court should find them inadmissible.

CONCLUSION

For the foregoing reasons, Mr. Kaylor respectfully requests that this Court grant his *Motion to Suppress Evidence*. Mr. Kaylor was not properly read his *Miranda* rights prior to the custodial interrogation by Sgt. Bilaski, and these unwarned statements at the scene are not admissible. In addition, Mr. Kaylor's statements to Detective Klitch were not voluntary, and Detective Klitch's midstream *Miranda* warnings did not effectively apprise Mr. Kaylor of his rights. Consequently, the post-*Miranda* statements should not be distinguished from those that happened before *Miranda*, and all of Mr. Kaylor's interview should be suppressed.

DATED this 20 day of October, 2023.

SCHWARTZ LAW, PC

CHRISTOPHER D. SCHWARTZ
ATTORNEY AT LAW

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on this 20th day of October, 2023 addressed to:

Shoshone County Prosecutor: via iCourt to:prosecutor@co.shoshone.id.us