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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division - Felony Branch

2013 MAR -7 P 1:10

FILED

UNITED STATES OF AMERICA :

Case No. 2012 CF2 20421
Hon. Judge Stuart Nash
Trial date: March 11, 2013

v. :

DAVID ROBINSON :

MOTION TO SUPPRESS STATEMENTS
AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Mr. David Robinson, by and through undersigned counsel, pursuant to the Fourth and Fifth Amendments to the United States Constitution, Superior Court Rules of Criminal Procedure 12 and 47-I, Miranda v. Arizona, 384 U.S. 436 (1966), and related case law, respectfully moves this Court to suppress all statements made by Mr. Robinson in connection with this matter, including the statements allegedly made to MPD on May 11, 2012 and November 27, 2012. Counsel requests a hearing on this motion. In support of this motion, counsel states the following:

1. Mr. Robinson is charged by indictment with one count carrying a pistol without a license, one count of possession of an unregistered firearm, and one count of unlawful possession of ammunition. These charges stem from allegations that Mr. Robinson possessed a handgun on or about January 3, 2012. Trial is presently set for March 11, 2013.
2. Upon information and belief, Mr. Robinson was unlawfully seized and arrested on May 11, 2012.[1] Following this unlawful seizure, Mr. Robinson was questioned by MPD detectives for several hours while at the police station on May 11, 2012. During the

[1] Counsel has limited information about the circumstances of this arrest and thus reserves the right to supplement this motion upon receiving additional disclosures by the government.

several-hour interrogation, Mr. Robinson stated that in January of 2012 he shot Howard Sampler. Mr. Robinson explained that he fired the gun only after Mr. Sampler threatened his life, brandished a gun, and physically assaulted him. Mr. Robinson explained that he feared for his life and did not have any intention of shooting Mr. Sampler; however, when his life was threatened, he stated that he closed his eyes and shot several times in self-defense until he saw that Mr. Sampler no longer had a gun in his hands. On November 27, 2012, Mr. Robinson was again questioned by the same detectives regarding the circumstances of the shooting of Howard Sampler. During the second interrogation, the detectives repeatedly referenced the statements made during the first interrogation and confronted Mr. Robinson with evidence gathered during the course of the police investigation.

3. The statements made by Mr. Robinson to MPD detectives on May 11, 2012 and November 27, 2012 are fruits of the illegal seizure of Mr. Robinson on May 11, 2012. Thus, any statements allegedly made by Mr. Robinson after his initial seizure – both in May of 2012 and November of 2012 – must be suppressed as fruits of the illegal state action.

4. The Court should regardless suppress any statements allegedly made by Mr. Robinson because they were elicited by the police in violation of Miranda v. Arizona, 384 U.S. 436 (1966). Both sets of statements made by Mr. Robinson were in response to custodial interrogation. Because Mr. Robinson did not voluntarily, knowingly, or intelligently waive his rights as required by Miranda on either occasion, such statements should be suppressed.

5. Moreover, the statements allegedly made by Mr. Robinson were involuntary and were

thus taken in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. For this reason, the Court should suppress the use of these alleged statements for all purposes at trial.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE STATEMENTS MADE MUST BE SUPPRESSED AS FRUITS OF AN ILLEGAL SEIZURE

Probable cause is a necessary prerequisite to all arrests. See Dunaway v. New York, 442 U.S. 200 (1979). Where the government acts without a warrant, it bears the burden of justifying its conduct. Malcolm v. United States, 332 A.2d 917, 918 (D.C. 1975). "[O]therwise there would be little incentive for law enforcement agencies to bother with the formality of a warrant; moreover, the evidence comprising probable cause is peculiarly within the knowledge and control of the police." Brown v. United States, 590 A.2d 1008, 1013 (D.C. 1991) (citing Malcolm, 332 A.2d at 918). Upon information and belief, the officers who arrested Mr. Robinson on May 11, 2012 lacked probable cause to believe that a crime had been committed or that Mr. Robinson had committed it.[2] The officers had not seen Mr. Robinson commit any crime and had no personal knowledge of Mr. Robinson committing any crime. Because the two statements elicited on May 11, 2012 and November 27, 2102 are fruits of that illegal seizure, they must be suppressed at trail. See Wong Sun v. United States, 371 U.S. 471, 488 (1963).

II. MR. ROBINSON'S STATEMENTS WERE OBTAINED IN VIOLATION OF HIS FIFTH AMENDMENT RIGHTS AS SET FORTH IN MIRANDA V. ARIZONA

The Supreme Court held in Miranda v. Arizona, 384 U.S. 436 (1966), that before the government may use a defendant's statements obtained during custodial interrogation, it must

[2] Counsel has not been provided with any discovery related to the arrest of Mr. Robinson on May 11, 2012 and thus is unaware of the circumstances of the arrest, whether a warrant had been secured, and – if a warrant had been secured – whether or not there were any deficiencies in the warrant.

show that: (1) the police adequately warned the defendant of his right to remain silent and to the presence of counsel; and (2) the defendant knowingly, voluntarily, and intelligently waived those rights. See Miranda v. Arizona, 384 U.S. 436, 442; see also Miley v. United States, 477 A.2d 720 (D.C. 1984); Missouri v. Seibert, 542 U.S. 600 (2004).

A. Both Sets of Statements Made by Mr. Robinson Were Made While Mr. Robinson was in Custody

A custodial interrogation is "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 v. Arizona, 384 U.S. at 444. Mr. Robinson was unquestionably in custody for Miranda purposes at the time of his statements to the officers on May 11, 2012, as he was handcuffed, arrested, and transported to the small interrogation room where two detectives questioned him. Similarly, Mr. Robinson was in custody during the November 27, 2012 interrogation. Despite the fact that Mr. Robinson was not shackled, the circumstances of the questioning were in many ways identical to the first interrogation. The same two detectives questioned him for several hours in the exact same setting – a room which had a door that could not be unlocked without a code. Moreover, the detectives spoke and acted in a manner deliberately designed to elicit an incriminating response. See Rhode Island v. Innis, 446 U.S. 291, 300 (1980). An incriminating response is "any response whether inculpatory or exculpatory - that the *prosecution* may seek to introduce at trial." Innis, 446 U.S. at 301 n.5 (emphasis original). Mr. Robinson's alleged statements were not only elicited while in custody, but were the result of interrogation.

B. Mr. Robinson Was Not Properly Warned and Did Not Intelligently, Knowingly, and Voluntarily Waive His Fifth Amendment Rights

If an individual makes a statement in response to interrogation undertaken after the

reading of rights, "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Miranda, 384 U.S. at 475. Further, there is a presumption against waiver. North Carolina v. Butler, 441 U.S. 369, 373 (1979).

A valid waiver depends upon a finding that under the totality of the circumstances (which include the background, experience, and conduct of the defendant) the waiver was voluntary, knowing and intelligent. Id. at 374-75. In order to determine the validity of a waiver, the court must make two inquiries:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.

Moran v. Burbine, 475 U.S. 412, 421 (1986).

The totality of circumstances indicates that Mr. Robinson did not execute a valid waiver during either interrogation. During the first interrogation, Mr. Robinson was surprised by several armed police officers, who transported him to police custody and held him for several hours of questioning. Mr. Robinson was in the intrinsically coercive environment of police custody with two detectives in a small interrogation room that was locked. During that interview, the detectives did not ensure that Mr. Robinson understood the nature of the rights being abandoned; indeed, the detective undermined and misrepresented the rights at issue by claiming that Mr. Robinson would not be provided a lawyer during the interrogation. Just as importantly, when asking Mr. Robinson the questions enumerated in the standard PD47 waiver form, the lead detective omitted the only question dealing with the right to counsel: "are you willing to answer questions *without a lawyer?*" Because the detective skipped this question, Mr. Robinson

never explicitly or implicitly waived his right to counsel. After the detectives secured a full, detailed statement from Mr. Robinson, the same two detectives essentially conducted the same interrogation on November 27, 2012. During this subsequent interrogation, Mr. Robinson was never read any of his rights and thus could not have executed a valid waiver. Moreover, the defective Miranda rights from the May interrogation rendered any waiver during this second interrogation ineffective. See Seibert, 542 U.S. 600. Under these circumstances, Mr. Robinson would have been unable to waive his rights in any meaningful sense. Because the government cannot meet its burden of showing that Mr. Robinson executed a valid waiver of his *Miranda* rights before being subjected to custodial interrogation, his statements must be suppressed.

III. MR. ROBINSON'S STATEMENTS SHOULD BE SUPPRESSED FOR ALL PURPOSES AT TRIAL BECAUSE THEY WERE INVOLUNTARY

Mr. Robinson's statements cannot be used at trial unless the government can show that the statements were a product of Mr. Robinson's rational intellect and free will. Mincey v. Arizona, 437 U.S. 385, 398 (1978). Mr. Robinson has a constitutional right to a fair hearing on this matter at which the government bears the burden of proving the voluntariness of the statements by a preponderance of the evidence. See Lego v. Twomey, 404 U.S. 477, 489 (1972); Jackson v. Denno, 378 U.S. 368, 377 (1964).

The test for voluntariness is whether the statements were a "product of an essentially free and unconstrained choice." Schenckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973). Courts should examine the totality of the circumstances of the interrogation and in the process, appraise the "diverse pressures which sap or sustain [a defendant's] powers of resistance and self-control... " Columbe v. Connecticut, 367 U.S. 568, 602 (1961); see also Jackson v. United States, 404 A.2d 911, 924 (D.C. 1979). The Supreme Court has emphasized that an evaluation of the

admissibility of statements of younger defendants requires special caution. In re Gault, 387 U.S. 1, 45 (1967).

In this case, there are no facts to support a finding that Mr. Robinson's statements were the product of rational intellect and free will. The coercive nature of police custody supports a finding that his statement was not voluntarily given. Officers engaged in actions directed at Mr. Robinson which were designed to elicit an incriminating response. The detectives repeatedly asked the same questions, asked questions while yelling and cursing at times, and confronted Mr. Robinson with potentially incriminating evidence. Importantly, during the interrogation on November 27, 2012, many of Mr. Robinson's answers were simple affirmations of statements that the detective repeated from the first interrogation. These deliberately coercive actions resulted in Mr. Robinson making a statement.

Because there is no evidence that Mr. Robinson's statements were voluntary, they should be suppressed for all purposes, including impeachment, and should be held inadmissible. See Mincey, 437 U.S. at 398

WHEREFORE, for the reasons set forth above and for any other reason that may appear to the Court at a hearing on this Motion, Mr. Robinson requests that this Motion be granted. Counsel reserves the right to supplement this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served, by email, upon Mr. Erik Kenerson, Office of the United States Attorney, 555 Fourth Street, NW, Washington, D.C. 20530, this 5th day of March, 2013.

Tejal Kothari