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| District Court, Adams County, Colorado1100 Judicial Center Drive DATE FBrighton, CO 80601 FILING | ILED: February 22, 2017 2:42 PM ID: EE22CFFA27BBEUMBER: 2016CR3773 COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO, CASE NPlaintiff v.SATURNINO PADILLA,Defendant |
| Douglas K. Wilson, Colorado State Public Defender Hillary Aizenman, No. 42351Brighton Regional Public Defenders4710 East Bromley Lane, Brighton CO 80601Phone: (303) 659‐4274 Fax: (303) 659‐6935E‐mail: Hillary.Aizenman@coloradodefenders.us | Case No. 16CR3773Division No. G |
| **MOTION TO SUPPRESS****MR. PADILLA’S STATEMENTS TAKEN IN VIOLATION OF THE UNITED STATES AND COLORADO CONSTITUTIONS** |

Saturnino Padilla, by and through defense counsel, moves this Court to suppress any statements made by Mr. Padilla during custodial interrogation. The grounds for the request are as follows:

# Facts

* 1. On July 21, 2016, Ladee Norton reported to Thornton police that Mr. Padilla struck her face.
	2. Police officers called Mr. Padilla and asked him to meet with them.
	3. Mr. Padilla met with an unknown number of police officers at a gas station.
	4. Officers proceeded to interrogate Mr. Padilla and then place him under arrest.

# Authority

* 1. The Fifth Amendment to the United States Constitution protects individuals against self‐incrimination: no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend V; *see also* Colo. Const. Art. II, § 18.
	2. Prior to any custodial interrogation, the person must be warned that he has the 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. *Miranda v. Arizona*, 384 U.S. 436, 478‐68 (1966); *People v. Jewell*, 175 P.3d 103, 105 (Colo. 2008).
	3. The *Miranda* requirements are not limited to formal arrests, but also include police interrogations conducted under circumstances where the person interrogated has been significantly deprived of his freedom of action to the degree associated with formal arrest. In determining whether *Miranda* warnings are required, the courts must make two inquiries: (1) what were the circumstances surrounding the interrogation; and (2) given those circumstances, would a reasonable person have felt he was at liberty to stop the interrogation and leave. *Effland v. People*, 240 P.3d 868, 874 (Colo. 2010).
	4. In determining whether a suspect has been subjected to a custodial interrogation, the court must consider the totality of circumstances surrounding the interrogation. The more prominent factors for consideration include the following: (1) the time, place, and purpose of the encounter; (2) the persons present during the interrogation; (3) the words spoken by the officers to the suspect; (4) the officer’s tone of voice and general demeanor; (5) the length and mood of the interrogation; (6) whether any limitation of movement or other form of restraint was placed on the suspect during the interrogation; (7) the officer’s response to any questions asked by the suspect; (8) whether directions were given to the suspect during the interrogation; and (9) the suspect’s verbal or nonverbal response to such directions. *Id.*; *People v. Trujillo*, 784 P.2d 788, 791 (Colo. 1990).
	5. No single factor is determinative and the court can also consider other factors that may be relevant to a specific set of facts. *People v. Minjarez*, 81 P.3d 348, 353 (Colo. 2003).
	6. Once custody is established, the next requirement for *Miranda* warnings to apply is interrogation. *People v. Rivas*, 13 P.3d 315, 319 (Colo. 2000). Interrogation includes not only express questioning, but its functional equivalent. *Id.* Interrogation includes “words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* This is also based on the totality of the circumstances surrounding the questioning. *Id.*
	7. Before a custodial interrogation can occur, an officer must “read the *Miranda* advisement to the accused, so the accused is informed of his constitutional rights.” *Jewell*, 175 P.3d at 105. The accused may waive his *Miranda* rights, but this waiver must be voluntary, knowing, and intelligent. *Id.* (citing *People*

*v. Hopkins*, 774 P.2d 849, 851 (Colo. 1989)). A waiver of *Miranda* is knowing and intelligent when the person has “full awareness of the nature of the right being abandoned and the consequences of its abandonment.” *Id.*

* 1. To determine whether there was a valid waiver of *Miranda* rights, the court should consider any and all relevant factors. *Id.* at 106. These factors should be case specific and will vary greatly given the facts of an individual case. *See id.*
	2. Factors courts will often consider to determine whether the waiver was voluntary, knowing, and intelligent are, among others: (1) the lapse of time between the *Miranda* advisement and interrogation; (2) whether, and to what extent, the police officer asked the person if he recalled his rights, understood them, or wanted an attorney; (3) the clarity and form of the person’s acknowledgment and waiver, if any; (4) the background and experience of the person in connection with the criminal justice system; (5) the person’s age, experience, education, background, and intelligence; (6) whether the person has any language barrier in understanding the advisement; (7) and whether the person was intoxicated at the time of the *Miranda* warning. *Id*.
	3. In every case, the prosecution bears the burden of proving, by a preponderance of the evidence, that the accused made a knowing, intelligent, and voluntary waiver of his rights under the totality of the circumstances. *Id.*
	4. Here, Mr. Padilla had been deprived of his freedom of action to the degree associated with formal arrest. A reasonable person in Mr. Padilla’s position would not have felt he was at liberty to stop the interrogation and leave. Therefore, Mr. Padilla was interrogated while in custody without proper *Miranda* advisement and his statements must be suppressed.

WHEREFORE, Mr. Padilla requests a hearing on the matter and moves to suppress all statements and evidence illegally obtained under the Fifth and Fourteenth Amendments to the United States Constitution and Article II of the Colorado Constitution.

DOUGLAS K. WILSON

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**Certificate of Service**

I hereby certify that on this 22nd day of February, 2017, a true and correct copy of the foregoing MOTION TO SUPPRESS MR. PADILLA’S STATEMENTS TAKEN IN VIOLATION OF THE UNITED STATES AND COLORADO CONSTITUTIONS was

Dated: February 22, 2017 served via ICCES on all parties who appear of record and have entered

their appearances herein according to ICCES. /s/ Hillary Aizenman