

DISTRICT COURT, TELLER COUNTY, COLORADO 101 West Bennett Avenue Cripple Creek, Colorado 80813	DATE FILED: July 18, 2019 10:42 PM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. PATRICK FRAZEE, Defendant	σ COURT USE ONLY σ
DOUGLAS K. WILSON, Colorado State Public Defender Adam Payne Steigerwald, #40092 Deputy State Public Defender 30 East Pikes Peak, Suite 200 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: adam.steigerwald@coloradodefenders.us	Case No. 18CR330 Division 11
MOTION TO SUPPRESS STATEMENTS (D-14)	

Mr. Frazee, by and through Counsel, hereby moves the Court for an order suppressing all statements made by Mr. Frazee to DHS authorities on December 26, 2019, on the following grounds:

STATEMENT OF FACTS

1. On December 21, 2018, Patrick Frazee was arrested at his home and taken into custody at the Teller County Jail. That same day, court-appointed Counsel filed D-004, Notice of Invocation of all Statutory, Case Law, and Constitutional Privileges. Shortly after, the government filed a Response, acknowledging the Notice and laying out their positions.

2. On December 26, 2018, Mr. Frazee, being held in custody at the Teller County Jail, was visited by a case worker for the Department of Human Services, Mary Longmire. Ms. Longmire came at 3:00 but was told she was unable to meet with Mr. Frazee at that time because Mr. Frazee was in a meeting with members of the Public Defenders Office. Without conferring with Mr. Frazee's attorney, Ms. Longmire returned at 7:00 pm that evening to serve upon Mr. Frazee a Notice of the Preliminary Protective Proceeding. Mr. Frazee was directed to sign the form, and provide for the release of documentation from the Teller County Department of Social Services to "All Courts of Teller County," "Aspen Point Health Network & Provider Network," "GAL: Peggy Falks," "Teller County Sheriffs Office," "Woodland Park Police

Department,” “District Attorneys,” and “Public Defenders.” At some point in this meeting, Ms. Longmire conducted a custodial interrogation of Mr. Frazee.

LAW

3. First, the burden is on the prosecution to prove by a preponderance of the evidence that Mr. Frazee made the statement that is attributed to him. *People v. Gay*, 24 P.3d 624 (Colo. App. 2000).

4. Second, if the prosecution meets its initial burden, then the burden is on the prosecution to prove the voluntariness of the statements by a preponderance of the evidence based on the totality of circumstances under which the statements were made. *People v. Gennings*, 808 P.2d 839 (Colo. 1991); *People v. Hutton*, 831 P.2d 486 (Colo. 1992); *People v. Mounts*, 784 P.2d 792 (Colo. 1990); *Lego v. Twomey*, 404 U.S. 477 (1972).

5. The due process clause of the Fifth Amendment dictates that a defendant’s statement is not admissible for any purpose unless it is voluntary. *Mincey v. Arizona*, 437 U.S. 385 (1978). An involuntary statement is inadmissible regardless of the defendant’s custodial situation and whether or not the statement is inculpatory. *People v. Medina*, 25 P.3d 1216 (Colo. 2001).

6. The mental condition of the defendant at the time a statement is made is a relevant factor in determining a suspect’s ability to exercise free will in the face of governmental efforts to obtain a statement if there is some exploitation of the defendant’s condition by authorities that induces the statement. *Colorado v. Connelly*, 479 U.S. 157 (1986); *Brooks v. Florida*, 389 U.S. 413 (1967); *People v. Rhodes*, 729 P.2d 982 (Colo. 1986).

7. Involuntary statements can be obtained through subtle forms of psychological coercion, including direct or implied threats, promises, or deceit, as well psychological duress created by objectively reasonable beliefs that some type of disciplinary consequence would occur if a statement were not made. See generally, *People v. Quintana*, 601 P.2d 350 (Colo. 1979); *People v. Raffaelli*, 647 P.2d 230 (Colo. 1982); *People v. Sapp*, 934 P.2d 1367 (Colo. 1997); *People v. Medina*, 25 P.3d 1216 (Colo. 2001).

8. Custodial interrogation must be preceded by an advisement of the right to remain silent, and any waiver of that right must be voluntarily, knowingly, and intelligently given. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that

the *Miranda* rights have been waived. *Miranda v. Arizona*, 384 U.S. 436 (1966); *People v. Jiminez*, 863 p.2d 981 (Colo. 1993).

9. Caseworker Longmire, although apparently conversational, was the functional equivalent of questioning. *People v. Hamilton*, 831 P.2d 1326 at 1331 (Colo.1992), (interrogation refers not only to express questioning by a police officer, but also to any words or actions on the part of the officer that the officer should know are reasonably likely to elicit an incriminating answer or response); *Rhode Island v. Innis*, 446 U.S. 291 (1980) (For purposes of the *Miranda* rules, the term “interrogation” refers not only to express questioning but also to any words or actions on the part of government agents, other than those normally attendant upon arrest and custody, that the government agent should know are reasonably likely to elicit an incriminating response from the suspect.)

10. Generally, custody depends on whether a reasonable person in the defendant’s circumstances would “believe that his freedom of action had been curtailed to a degree associated with formal arrest.” *People v. Matheny*, 46 P.3d 453, at 464 (Colo. 2002). However, when a person is being held in a jail facility on an unrelated offense, the court must determine whether there was a “change in the surroundings of the prisoner that results in an added imposition on his freedom of movement.” *People v. Denison*, 918 P.2d 1114 (Colo. 1996), *citing Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978). In determining whether an inmate has been restricted so as to require the advisement of *Miranda* rights, *Denison* provides that four factors are to be considered: (1) the language used to summon the individual; (2) the physical surroundings of the interrogation; (3) the extent to which he is confronted with evidence of his guilt; and (4) the additional pressure exerted to detain him. *Id.*

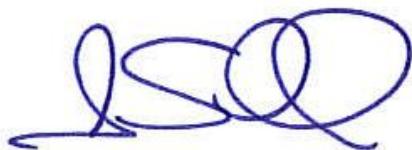
11. The four *Denison* factors are not necessarily dispositive of whether an inmate has been further restricted to such an extent as to be deemed in “custody” during interrogation, for *Miranda* purposes, and a court may also consider: (1) the time, place, and purpose of the encounter; (2) the persons present during the interrogation; (3) the words spoken by the officer to the inmate; (4) the officer’s tone of voice and general demeanor; (5) the length and mood of the interrogation; (6) the placement of any limitation of movement or other form of restraint on the inmate during the interrogation; (7) the officer’s response to any questions asked by the inmate; (8) any directions given to the inmate during the interrogation; and (9) the inmate’s verbal or nonverbal response to such directions. *People v. Parsons*, 15 P.3d 799 (Colo. App. 2000).

12. Mr. Frazee requests a hearing on this motion.

13. Mr. Frazee requests that the District Attorney respond in writing with any case law purported to be relevant to their position at least a week before the scheduled Motions Hearing date.

14. Mr. Frazee makes this Motion and all other motions and objections during all proceedings in this case, whether or not explicitly stated at the time of the motion or objection, pursuant to Due Process, Equal Protection, the Right to Counsel, the Right to Confrontation, *Ex Post Facto*, the Right to Trial by Jury, the Right to Appeal and the prohibition against Cruel and Unusual Punishment of the Federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, 28 of the Colorado Constitution, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Mr. Frazee requests that this Court suppress any statements collected by Mary Longmire because they were involuntary and the result of custodial interrogation.



Adam Payne Steigerwald, #40092
Deputy State Public Defender
Dated: July 18, 2019

Certificate of Service

I certify that on 7/18/19, all parties were served electronically. /s/ APS