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RE: State v
Letter Brief in support of Motion to Suppress
Statements

Dear Judge

Please accept this letter brief in support of the above Defendant's motion to exclude any statements taken while under custodial interrogation. The Fifth Amendment to the United States Constitution prohibits the use of involuntary statements and confessions at trial. The State bears the burden of proof in a motion to suppress a statement allegedly obtained in violation of the Miranda doctrine. New Jersey requires the higher standard of beyond a reasonable doubt when the court determines if Miranda has not been fully complied with. State v Yough 49 NJ 587, 600-601 (1967), State v Whittington 142 NJ Super. 45, 49-50 (App. Div. 1976), State v Flower 224 NJ Super. 208, 213 (Law Div 1987) aff'd per curiam 224 NJ Super. 90 (App. Div. 1988).

WHAT IS INTERROGATION?

As set forth in NJ Practice , Vol. 32 Criminal Practice and Procedure (West 1998) Section 755, the United States Supreme Court in Rhode Island V Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980) held that the term "interrogation" under Miranda refers not only to express questioning but also to any 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.

It is "an established principle of our federalist system that states may afford "individual liberties more expansive than those afforded by the federal constitution." State v Novembrino 105 NJ 95, 144-145 (1987).

Generally, a statement given by a defendant is not admissible in a criminal case unless the court is satisfied beyond a reasonable doubt that the defendant was informed of his Miranda rights before giving the statement and "in light of all the circumstances attending the confession it was given voluntarily." State v Hampton 61 NJ 250, 272 (1972). What is at stake is ensuring the use of effective procedural safeguards to secure the right of the Fifth Amendment to the United States Constitution that " no person shall be.... compelled in any criminal case to be a witness against himself," which is now made applicable to state action by the Due Process Clause of the Fourteenth Amendment. However, once informed of his rights " a defendant may waive effectuation of these rights provided the waiver is made voluntarily, knowingly and intelligently." State v Flower 224 NJ Super. 208, 213 (Law Div 1987) aff'd per curiam 224 NJ Super. 90 (App. Div. 1988). citing Miranda v Arizona 384 US 436, 444, 86 S. Ct 1602, 1612, 16 L. Ed 2d 694 (1966); emphasis in Flower.

In State v Flower 224 NJ Super. 208, 213 (Law Div 1987) aff'd per curiam 224 NJ Super. 90 (App. Div. 1988), the defendant had a low IQ and limited vocabulary. He gave confessions to police and a confession to DYFS. The court excluded the confession to the police, even though Miranda warnings were given and there was lack of coercion and an admitted waiver of rights by the defendant. The court concluded that since the Defendant could not understand his Miranda rights, he could not waive them. One cannot knowingly and intelligently waive a right that he cannot understand or appreciate. 224 NJ Super. at 216. The court also excluded confessions to a DYFS investigator on the same grounds since she was acting in a law enforcement capacity and failed to inform Defendant of his Miranda rights. Id at 220.

Where it is charged that a confession was given under the influence of narcotics or during a withdrawal period, the central question of voluntariness remains the same, and the trial court must scrutinize all the pertinent facts attending the confession with particular focus on Defendant's demeanor, coherence, articulateness, capacity to full use of his faculties, his memory and his overall intelligence. State v Arcediano 371 F. Supp. 457 (D. NJ 1974); See also Wade v Yeager 245 F. Supp 62 (D. NJ 1964).

The State must prove beyond a reasonable doubt that the waiver was made knowingly and intelligently. If the suspect is intoxicated or under the influence of drugs to the point that he cannot understand his constitutional rights, then any waiver is void. If the suspect is suffering from a mental disability which renders him incapable of understanding his constitutional rights, then any waiver is void. The level of mental disability which would render a suspect incapable of understanding his constitutional rights is probably close to the point at which the suspect could be said to be incapable of managing his own affairs.

Where circumstances cast doubt on knowing and intelligent quality of alleged waiver of right to counsel, there can be no waiver. State vs. Dickens 192 NJ Super. 290 (App. Div. 1983).

Intoxication is grounds to suppress statements. See e.g. Common vs. Brithsher 563 A.2d 502, App granted 575 A.2d 107. (If Defendant's intoxication combined to render him incapable of understanding Miranda warning waiver of Miranda rights would be invalid); Common vs. Andel 477 A.2d 13 56 (1984); (Defendant's waiver of his Miranda rights was vitiated by his intoxication, his eyes glaring and had a strong odor of alcohol. Statements made by defendant while in custody should suppressed.)

The court has always set high standards of proof for the waiver of constitutional rights Johnson vs. Zerbst 304 US 458 58 S. Court 1019, 82 Ed 146 (1938). In Common vs. Hosey 334 NE 2d 44 (Mass 75) the court reversed and remanded a matter where

tried judge allowed admission of defendant's statement to police where defendant was extremely high, extremely emotional and detached from reality.

Due process requires not only that a conviction not be based on an involuntary confession but also that a trial court hold what has become known as a Jackson Denno hearing when a defendant contests the voluntariness of his statement. Miller vs. Dugger 838 F. 2d 1530 (11 Cir. 1988) cert. den 486 US 1061. 1085.S. Ct. 2832 100 L. Ed 2d 933 (1988).

At the Jackson- Denno hearing and at oral argument, we will explain through cross-examination and witnesses the involuntary nature of any statements the state intends to produce.

Very truly yours,

KENNETH A. VERCAMMEN
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cc: Prosecutor
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