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IN THE EIGHTH JUDICIAL DISTRICT COURT, DUCHESNE COUNTY

STATE OF UTAH

STATE OF UTAH, **Plaintiff,** **vs.** **RYAN DANIEL MILLS,** **Defendant**	**MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS URCP 12(d)** **ORAL ARGUMENT REQUESTED** **Case No.: 101800163** **Judge:**

COMES NOW, Defendant, by and through his attorney of record, Brian E. Arnold of ARNOLD & WADSWORTH, and hereby submits his Memorandum in Support of Motion to Suppress. Defendant moves to suppress the evidence obtained through unlawful contact with Defendant under Utah Rules of Criminal Procedure 5 and Utah Rules of Criminal Procedure 6. The basis of said Motion to Suppress is as follows:

POINTS AND AUTHORITIES

I. MIRANDA WARNINGS

The Sixth Amendment of the United States Constitution guarantees a defendant's right to counsel. There are procedural safeguards that are established to protect these fundamental rights. The Fifth Amendment to the United States Constitution guarantees that a person shall not be "compelled in any criminal case to be a witness against himself."

Courts protect this right by excluding from a defendant's criminal trial any incriminating statement that the defendant made to police officers if the officers did not give a Miranda warning, so long as the facts of the case meet certain criteria. Rhode Island v. Innis, 446 U.S. 291, 297, 300-01, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980); Miranda v. Arizona, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Chief Justice Durham of the Utah Supreme Court stated in Salt Lake City v. Carner that

> "the courts have developed two tests for determining at what point Miranda applies: (1) the "focus" test of Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964), and (2) the objective-subjective test. *See* Smith, The Threshold Question in Applying Miranda: What Constitutes Custodial Interrogation, 25 S.C.L.Rev. 699 (1974). See also, State v. Paz, 31 Or.App. 851, 572 P.2d 1036 (1977). Under the "focus" test, Miranda applies when the investigation focuses on a particular suspect and the officer has probable cause to believe that a particular crime has been committed. See, e.g., State v. Simpson, Utah, 541 P.2d 1114 (1975). See also, Annot., 31 A.L.R.3d 565 (1970). Under the objective-subjective test, Miranda applies if the actions of the police and the surrounding circumstances, fairly construed, would reasonably have led the defendant to believe that he was not free to leave at will. See Smith, supra, at 710-14." Salt Lake City v. Carner, 664 P.2d 1168 (1983).

Based on the foregoing, both the Escobedo 'focus' test and Paz 'objective-subjective' test require a Miranda warning to be given. If the Miranda warnings are not given, then any

information obtained from the subsequent questioning should be deemed the "fruit of the poisonous tree" and should be suppressed.

II. THE 'FOCUS' TEST OF ESCOBEDO.

"An accused **must** be apprised of his Miranda rights if the setting is custodial or accusatory rather than investigatory. In other words, at the point the environment becomes custodial or accusatory, a police officer's questions **must** be prefaced with a Miranda warning." Salt Lake City v. Carner, 664 P.2d 1168, 1170 (Utah 1983) (emphasis added).

The US Supreme Court, in Escobedo v. State of Illinois, held that "when the process shifts from investigatory to accusatory-when its focus is on the accused and its purpose is to elicit a confession-our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer." Escobedo v. State of Ill., 378 U.S. 478, 492, 84 S. Ct. 1758, 1766, 12 L. Ed. 2d 977 (1964).

This right to consult with a lawyer when an investigation shifts to adversarial was later expanded to fall under the Miranda warnings. This fact was solidified in the case of Salt Lake City v. Carner, in which the states that "the courts have developed two tests for determining at what point Miranda applies: (1) the "focus" test of Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964) … " Salt Lake City v. Carner, 664 P.2d 1168 (1983).

"Under the "focus" test, Miranda applies when the investigation [1.] focuses on a particular suspect and [2] the officer has probable cause to believe [3] that a particular crime has been committed." Salt Lake City v. Carner, 664 P.2d 1168 (1983).

II. THE OBJECTIVE-SUBJECTIVE TEST OF PAZ.

"Under the objective-subjective test, Miranda applies if the actions of the police and the surrounding circumstances, fairly construed, would reasonably have led the defendant to believe

that he was not free to leave at will." Salt Lake City v. Carner, 664 P.2d 1168 (1983), See Smith, supra, at 710-14.

The objective-subjective test is broken into two separate subcategories, which were specifically set forth in Miranda. Miranda v. Arizona required that an accused be advised that he has the right to remain silent, that anything he says can be used against him, that he has the right to an attorney, and the officer must ask whether the accused understands these rights. Miranda warnings are required prior to a custodial interrogation. To determine whether a custodial interrogation existed, the Court must apply the objective-subjective standard. Generally, custodial interrogation consists of questioning or use of other techniques of persuasion " '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.' " State v. Levin, 2006 UT 50, 144 P.3d 1096, 1105 (quoting Innis, 446 U.S. at 298-99, 100 S.Ct. 1682 (quoting Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966))); accord Stansbury v. California, 511 U.S. 318, 323, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994).

Thus, custodial interrogation occurs where there is both (1) custody or other significant deprivation of a suspect's freedom and (2) interrogation.

a. When a suspect is considered "in custody"

Courts often describe the first element as an inquiry into whether a suspect was "in custody." A person is in custody when "[the person's] freedom of action is curtailed to a degree associated with formal arrest." State v. Levin, 2006 UT 50, 144 P.3d 1096, 1109 quoting Berkemer v. McCarty, 468 U.S. 420, 440, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) (internal quotation marks omitted); see also State v. Mirquet, 914 P.2d 1144, 1147 (Utah 1996).

The inquiry into whether a suspect was "in custody" is objective and considers "how a reasonable man in the suspect's position would have understood his situation." Stansbury, 511 U.S. at 324, 114 S.Ct. 1526 (internal quotation marks omitted); accord Mirquet, 914 P.2d at 1147. A suspect may understand himself or herself to be in custody based either on physical evidence or on the nature of the officer's instructions and questions. Therefore, a Court must focus on both the evidence of restraint and on objective evidence of the officers' intentions. State v. Levin, 2006 UT 50, 144 P.3d 1096, 1109 See also Berkemer, 468 U.S. at 442, 104 S.Ct. 3138; Salt Lake City v. Carner, 664 P.2d 1168, 1170 (Utah 1983).

As stated by the U.S. Supreme Court,

> "[A]n officer's views concerning the nature of an interrogation, or beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment whether that individual was in custody, but only if the officer's views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave. Stansbury, 511 U.S. at 325, 114 S.Ct. 1526.

"For instance, when investigatory questioning shifts to accusatory questioning, the existence of custody is likely because this often indicates to the defendant that he or she is not free to leave. By making accusations, the police officer indicates that there are reasonable grounds to believe that a crime has been committed and that the defendant committed it." State v. Levin, 2006 UT 50, 144 P.3d 1096 See also Mirquet, 914 P.2d at 1148 (indicating that accusatory questioning is relevant, but does not necessarily establish a coercive environment); Carner, 664 P.2d at 1170 (recognizing import of accusatory statements); State v. Snyder, 860 P.2d 351, 357 (Utah Ct.App.1993)(same).

In Salt Lake City v. Carner, Chief Justice Durham set forth four factors that aid in determining whether a defendant is "in custody" for purposes of the Miranda protections: "(1)

the site of interrogation; (2) whether the investigation focused on the accused; (3) whether the objective indicia of arrest were present; and (4) the length and form of interrogation." State v. Wood, 868 P.2d 70, 82 (Utah 1993); quoting Salt Lake City v. Carner, 664 P.2d 1168, 1171 (Utah 1983)); see State v. Bishop, 753 P.2d 439, 465 (Utah 1988); State v. Kelly, 718 P.2d 385, 391 (Utah 1986), see Mirquet, 914 P.2d at 1147 n. 2 (explaining that although Carner was decided under Article I, section 12 of the Utah Constitution, the same test applies under the Fifth Amendment of the United States Constitution).

b. Whether the incriminating statement was the product of interrogation.

Once a trial court determines that the defendant was "in custody," it must then decide whether the incriminating statement was the product of interrogation. Rhode Island v. Innis, 446 U.S. 291, 298-301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). Interrogation is "either express questioning or its functional equivalent" and it incorporates any "words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response." Id. at 300-02, 100 S.Ct. 1682.

In Muzychka, the United States Court of Appeals found that the sixth amendment right to counsel attaches " 'at or after the initiation of adversary judicial criminal proceedings-whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.' " Moore no previous cite*,* 434 U.S. at 226, 98 S.Ct. at 463, quoting *Kirby,* 406 U.S. at 689, 92 S.Ct. at 1882. United States v. Muzychka, 725 F.2d 1061, 1068 (3d Cir. 1984). *See also*, Brewer v. Williams, 430 U.S. 387, 398, 97 S.Ct. 1232, 1239 (1977). Further, "Until adversary judicial proceedings have commenced, coercive methods of eliciting information from a defendant are governed by Miranda and due process and self-incrimination analyses." United States v. Muzychka, 725 F.2d 1061, 1069 (3d Cir. 1984).

RULE 6 of the Utah Rules of Criminal Procedure:

(a) Upon the return of an indictment the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused. Upon the filing of an information, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused. Utah R. Crim. P. 6

RULE 5 of the Utah Rules of Criminal Procedure:

(a) Unless otherwise provided, all criminal prosecutions whether for felony, misdemeanor or infraction shall be commenced by the filing of an information or the return of an indictment. Prosecution by information shall be commenced before a magistrate having jurisdiction of the offense alleged to have been committed unless otherwise provided by law.(b) Unless otherwise provided, no information shall be filed before a magistrate charging the commission of a felony or class A misdemeanor unless the prosecuting attorney shall first authorize the filing of such information. This restriction shall not apply in cases where the magistrate has reasonable cause to believe that the person to be charged may avoid apprehension or escape before approval can be obtained. Utah R. Crim. P. 5

Utah Constitution Article I Section 12 states:

Article I, Section 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

FACTS

1. On April 28th 2010, Detective Butterfield signed and submitted an Affidavit of Probable Cause to District Court Judge. (See Exhibit A). Because the first contact any police officer made with Defendant was on April 29, 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause, the Affidavit of Probable Cause was based *solely* on information obtained through interviews with Corey Doering, the alleged victim.

2. On April 28th 2010 in a recorded conversation with Corey Doering, Detective Butterfield states that they are going to arrest Ryan Mills and get a warrant for his arrest, all of which is before the phone call with Ryan Mills. Further in that recorded conversation Detective Butterfield states that he is going to try and get the Defendant to tell his side of the story even though Detective Butterfield has decided to arrest the Defendant and has already filed an Affidavit of Probable Cause.

3. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, Detective Wade Butterfield called the Defendant and elicited self incriminating information without giving the Defendant his Miranda Warnings, or telling the Defendant that he had a specific right to counsel.

4. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call Detective Butterfield informed the Defendant that Corey Doering had come to him with a "wild ass story" about the Defendant raping Corey Doering.

5. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call Detective Butterfield informed the Defendant that he had some "serious doubts" of Corey Doering's accusations.

6. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call Detective Butterfield informed the Defendant that he believed the sex between the Defendant and Corey Doering was consensual to which the Defendant agreed.

7. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call the Defendant admitted to having consensual sex with Corey Doering.

8. On April 29th, 2010 the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call the Defendant admitted to having consensual sex with Doering on or about January 2009.

9. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call Detective Butterfield informed the Defendant that he was relieved that there was not a rape type situation between Doering and the Defendant.

10. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call Detective Butterfield informed the Defendant that he was glad that the Defendant did not force Doering to have sex with the Defendant.

11. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call the Defendant admits to receiving 30 partially nude photos from Doering.

12. On April 29th 2010, the day after Detective Butterfield submitted the Affidavit of Probable Cause to the Court, during the recorded phone call Detective Butterfield informed the

Defendant that he was still compiling his findings and that he was going to "run it up the flag pole" to see if it would go any further, when in fact an affidavit of probable cause that Detective Butterfield submitted himself had been signed by a District Court Judge on April 28th 2010, a day before the alleged incriminating phone call was made.

13. On April 29th 2010 a Warrant for Arrest was filed clearly showing that Detective Butterfield knew that at the time the phone call was made that they intended to arrest Ryan Mills.

14. On April 29th 2010 a Information Sheet was filed clearly showing that Detective Butterfield knew that at the time the phone call was made that they intended to arrest Ryan Mills.

15. During the April 29th phone call Detective Butterfield had an employee of Child Protective Services in the room with him, clearly evidencing that the case had focused on Ryan Mills and the alleged conduct with Corey Doering.

ISSUES

1. Should the Defendant have been given his Miranda warnings at the beginning of the phone call between Detective Butterfield and the Defendant on April 29th 2010?

    a. Did the "focus" test of Escobedo apply?

    b. Did the "objective-subjective" test of Paz apply?

2. Had the Defendant's sixth amendment right to counsel attached at the time of the phone call on April 29th 2010 between Detective Butterfield and the Defendant?

ARGUMENT

"[W]hether a defendant was subjected to custodial interrogation is a mixed question of fact and law…" State v. Levin, 2006 UT 50, 144 P.3d 1096, 1105

I. THE DEFENDANT WAS THE SOLE FOCUS OF THE INVESTIGATION, AND THEREFORE SHOULD HAVE BEEN GIVEN HIS MIRANDA WARNINGS.

"Under the "focus" test, Miranda applies when the investigation [1.] focuses on a particular suspect and [2] the officer has probable cause to believe [3] that a particular crime has been committed." Salt Lake City v. Carner, 664 P.2d 1168 (1983).

a. The investigation focused solely on Mr. Mills.

"An accused must be apprised of his Miranda rights if the setting is custodial or accusatory rather than investigatory. In other words, at the point the environment becomes custodial or accusatory, a police officer's questions must be prefaced with a Miranda warning." Salt Lake City v. Carner, 664 P.2d 1168, 1170 (Utah 1983) (emphasis added).

In the case at bar, the facts could not be clearer: 1) on April 28, 2010 an Affidavit of Probable Cause was signed by a Judge based solely on Detective Butterfield's statements; 2) the day after the Affidavit of Probable Cause was signed by a Judge, Detective Butterfield called Defendant, did not advise him that adversarial proceedings had commenced, did not advise him of his right to counsel, did not advise him of his required Miranda warnings, nor did he advise Mr. Mills that a warrant for Mr. Mills' arrest had been issued that same day as the telephone call. There were no investigatory questions that Detective Butterfield needed to ask, because he had already pinpointed the individual he thought committed the crime, and the elements of the crime. There was not any more evidence or information that Detective Butterfield needed at the time of the phone call There were no other individuals that Detective Butterfield suspected of the rape,

nor were the questions directed in a manner indicating that the investigation was ongoing and that other individuals were likely suspects; rather, Detective Butterfield asked questions like 'did you rape Corey', 'how many pictures did she send to you', and 'how many times did you have sex with Corey'. None of these questions indicate that the focus of the investigation was on anyone except Mr. Mills. This fact is further clarified by Ms. Doering's interviews wherein she only discusses one person that she alleges was involved in criminal activity: Mr. Mills. It is hard to find a sentence where Ms. Doering does not refer to Mr. Mills by his first name, Ryan, or by use of a pronoun: he, him, we, or us.

Detective Butterfield even had an employee of Child Protective Services listening in on the phone call while talking to Mr. Mills. This also shows that Detecitive Butterfield had moved past the investigation phase to the arrest phase, therefore entitling Mr. Mills to his Miranda warnings.

Because the investigation focused solely on Mr. Mills, it is clear that Mr. Mills should have been read his Miranda warnings prior to Detective Butterfield questioning him. Because Detective Butterfield did not read Mr. Mills his Miranda warnings, any information obtained during the phone call with Mr. Mills must be suppressed.

b. Adversarial proceedings had been commenced prior to the phone call.

The day prior to the telephone call between Detective Butterfield and Mr. Mills, the state had commenced adversarial proceedings against Mr. Mills. (Ut R. Criminal Procedure Rule 5) The fact that Detective Butterfield had specifically requested that the Court issue an arrest warrant for Mr. Mills indicates that there was only one individual who was the focus of the investigation: Mr. Mills. As such, Mr. Mills should have been read his Miranda warnings.

c. There is no evidence which points to the investigation focusing on anyone other than Mr. Mills.

Upon filing his Probable Cause Affidavit, Detective Butterfield clearly felt that he built a case against Mr. Mills so strong that he did not need to elicit any material from Mr. Mills. The Court even felt that Detective Butterfield had built a case which was sufficiently strong to issue a warrant, as evidenced by the docket on April 29 ("[Warrant] Issue reason: Based on the probable cause statement"). The record simply indicates that Mr. Mills was verbally accused of the crimes by Ms. Doering, that based solely on verbal statements made by Ms. Doering, Detective Butterfield filed a Probable Cause Affidavit indicating that he believed that Mr. Mills perpetrated " … Rape, Unlawful Sexual Conduct with a 16 or 17 Year Old, Enticing a Minor and Sexual Exploitation of a Minor … " (Affidavit at ¶11), and that based on Detective Butterfield's observations, Mr. Mills should be arrested.

Because the investigation never focused on anyone except Mr. Mills, Mr. Mills was the focus of the State's investigation, and prior to questioning Mr. Mills the State should have read Mr. Mills his Miranda warnings. Because the State did not, Mr. Mills' statements made during the phone call must be suppressed.

II. THE OBJECTIVE-SUBJECTIVE TEST SETS FORTH THE BASIS UPON WHICH DEFENDANT SHOULD HAVE BEEN GIVEN HIS MIRANDA WARNINGS.

The objective-subjective test is broken into two separate subcategories, which were specifically set forth in Miranda. Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). *Miranda* requires that an accused be advised that he has the right to remain silent, that anything he says can be used against him, that he has the right to an attorney, and the officer must ask whether the accused understands these rights. Id. Miranda warnings are required

prior to a custodial interrogation. Id. To determine whether a custodial interrogation existed, the Court must apply the objective-subjective standard. Generally, custodial interrogation consists of questioning or use of other techniques of persuasion " '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.' " State v. Levin, 2006 UT 50, 144 P.3d 1096, 1105 (quoting Innis, 446 U.S. at 298-99, 100 S.Ct. 1682 (quoting Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966))); accord Stansbury v. California, 511 U.S. 318, 323, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994).

a. Mr. Mills was in custody at the time he was being questioned by Detective Butterfield.

In Salt Lake City v. Carner, Chief Justice Durham set forth four factors that aid in determining whether a defendant is "in custody" for purposes of the Miranda protections: "(1) the site of interrogation; (2) whether the investigation focused on the accused; (3) whether the objective indicia of arrest were present; and (4) the length and form of interrogation." Salt Lake City v. Carner, 664 P.2d 1168 (Utah 1983). Therefore, we will weigh each of the four factors found in Carner to determine whether Mr. Mills was in custody at the time of the phone call.

1. The site of the interrogation.

The telephone call on April 29, 2010 was initiated by Detective Butterfield. He indicated to Mr. Mills that he was a detective and that he was investigating Ms. Doering's "wild ass" story, and wanted Mr. Mills' side. Detective Butterfield did not inform the Defendant that an Affidavit of Probable Cause had already been filed against the Defendant, instead Detective Butterfield called Corey Doering's accusations "wild ass" and told the Defendant that he wasn't sure if charges would be filed when instead Detective Butterfield knew that charges were already filed.

2. Whether the investigation focused on the accused.

During each of the discussions between officers and Ms. Doering, there was no discussion of any other individuals which the investigation would have focused on. From the beginning through the phone call, the police focused their entire investigation on Mr. Mills. Ms. Doering accused Mr. Mills of raping her, the police filed an Affidavit of Probable Cause and requested that a Warrant be granted, Ms. Doering had written a rather lengthy statement detailing her entire relationship with Mr. Mills (including where they went on their first date, how she felt about Mr. Mills, how she felt about all the things he told her, and other information which is completely irrelevant to this matter). As a matter of fact, the first three words of Ms. Doering's Voluntary Witness Statement are "I met Ryan". Throughout her 10 pages of Voluntary Witness Statement, Ms. Doering references specifically to Mr. Mills more than 147 times, and quite a bit more to her and Mr. Mills collectively as "we". Further, at the top of the police report dated April 5, 2010 (the first report made), it lists Mr. Mills as "S1" (Suspect 1), and there is no S2 (Suspect 2). It is hard to find a sentence in Ms. Doering's Voluntary Witness Statement where she does not reference, either directly or indirectly, to Mr. Mills.

Due to the overwhelming evidence, it is clear that the investigation certainly focused solely on Mr. Mills. Because Mr. Mills was the focus of the investigation, the evidence weighs heavily toward the fact that Detective Butterfield should have given Mr. Mills his Miranda warnings.

3. Whether the objective indicia of arrest were present.

Although Mr. Mills was not sitting, handcuffed, in a police station, Mr. Mills did have a detective call him, inform Mr. Mills that he was the complete focus of the investigation, that Ms. Doering had made accusations regarding a rape and other things, and implied that if Mr. Mills

did not cooperate that he would be immediately subject to arrest. It is clear, however, based on the objective facts of this case, that Detective Butterfield objectively requested that the Court issue an arrest warrant, granting the arrest of Mr. Mills.

Because Detective Butterfield had already asked that Mr. Mills be arrested (placing Detective Butterfield in an adversarial position from Mr. Mills), and because Detective Butterfield questioned Mr. Mills knowing that Mr. Mills was the only suspect, the objective indicia of arrest are also present.

4. The length and form of interrogation.

Even though the length of the conversation was not long, it was definitely in the form to get Mr. Mills to incriminate himself. Detective Butterfield through his actions with the court, (affidavit of probable cause, and arrest warrant) already had enough information and permission from the Court to arrest Mr. Mills, but Detective Butterfield wanted to purposefully solicit incriminating testimony and evidence from Mr. Mills before he was arrested without giving Mr. Mills his Miranda Warnings. The intentional mistake Detective Butterfield made was he put his personal plans ahead of Mr. Mills' constitutional rights. Detective Butterfield acted in bad faith, trying to manipulate the system and therefore the form of the interrogation was to solicit incriminating evidence while ignoring Mr. Mills' constitutional rights.

CONCLUSION

Due to the overwhelming evidence that this case passed both the "focus" test of Escobedo and the "objective-subjective" test of Paz, it is clear that this matter warranted Detective Butterfield to read Mr. Mills his Miranda warnings. Detective Butterfield did not, clearly so that he could manipulate Mr. Mills into waiving his constitutional right against self incrimination. Because Detective Butterfield elicited information in direct noncompliance with established case

law and constitutional rights, Detective Butterfield's phone call with Mr. Mills must be suppressed.

DATED this ____ day of November, 2010.

ARNOLD & WADSWORTH PLLC

_____
Brian E. Arnold, Esq.

CERTIFICATE OF MAILING

I hereby certify that I personally cased to be mailed by First-Class Mail, postage prepaid, a true and correct copy of the foregoing to the following, on this ____ day of _____, 2010:

Grant Charles
Deputy County Attorney
PO Box 206
Duchesne, UT 84021

_____
Legal Assistant