IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA,

v.

DYLAN M. WARD,
JOSEPH R. PRICE,
and
VICTOR J. ZABORSKY,

Defendants.

Criminal Nos. 2008-CF1-26996
2008-CF1-27068
2008-CF1-26997

Judge Lynn Leibovitz

Status Hearing – March 12, 2010

DEFENDANT JOSEPH R. PRICE'S MOTION AND INCORPORATED MEMORANDUM TO SUPPRESS INVOLUNTARY, CUSTODIAL STATEMENTS

Defendant Joseph R. Price, by and through counsel, respectfully moves this Court for an order suppressing his statements to the Metropolitan Police Department on the grounds that they were obtained in violation of his Fourth, Fifth, and Sixth Amendment rights because he was unlawfully seized and the statements were made in response to custodial interrogation before he had been advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and because the statements were involuntary.

I. FACTUAL BACKGROUND

On August 2, 2006, Mr. Price and Victor Zaborsky, committed domestic partners, owned a home at 1509 Swann Street, N.W., Washington, D.C., where they resided with their longtime friends and tenants, Dylan Ward and Sarah Morgan.

Robert Wone, Mr. Price's friend of more than fifteen years, made arrangements to spend the night of August 2, 2006, at the Swann Street home. Mr. Wone, who served as General Counsel for Radio Free Asia, planned to visit with the radio station's night crew that evening and asked to spend the night at Messrs. Price and Zaborsky's home, rather than commute to Oakton,

Virginia, where he resided with his wife, Katherine Wone. Mr. Wone arrived at 1509 Swann Street at approximately 10:30 p.m. At 11:49 p.m., Mr. Zaborsky called 9-1-1 and reported that Mr. Wone had been stabbed.

Paramedics arrived on the scene approximately five minutes and forty seconds into the 9-1-1 call. Metropolitan Police Department ("MPD") officers arrived on the scene at about the same time. Mr. Price spoke with one or both of the EMS responders and with a number of the MPD officers who responded to 1509 Swann Street.

Shortly after MPD's arrival, one of the MPD officers directed Messrs. Price, Ward, and Zaborsky to sit down in the living room. Eventually, after more than a dozen officers had arrived at and entered the home, one of them directed a uniformed MPD officer to escort Messrs. Price, Ward, and Zaborsky, one at a time, upstairs to get dressed. Each of the three was then escorted, individually, to the Violent Crimes Branch for questioning.

Mr. Price was not asked if he wanted to go to the police station, or whether he wished to make a statement, nor was he informed that he had a right not to go to the station. Instead, Price was placed in a patrol car by a uniformed MPD officer.[1]

Mr. Price arrived at MPD's Violent Crimes Branch in Anacostia sometime between 12:30 and 1:00 a.m. on August 3, 2006, and was escorted inside where he was placed in an interrogation room. The room was small and furnished with three chairs: two office chairs and one metal chair. Eventually, two MPD officers, Sergeant Wagner and Detective Norris, entered the room and immediately began to interrogate Mr. Price.[2] The detectives did not advise Mr.

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[1] Messrs. Price, Ward, and Zaborsky were all transported in separate police cars to the police station.

[2] Mr. Price's complete interrogation was not recorded. Instead, MPD interrogated Mr. Price for a considerable period of time before beginning to videotape the interrogation. As the videotape

Price of his *Miranda* rights or indicate at any time that Mr. Price had a right not to make a statement, that anything he said could be used against him, that he had a right to counsel, or that counsel would be appointed for him if he could not afford it. Nor did the detectives indicate that Mr. Price could leave if he chose to. To the contrary, at various points during the interrogation, Mr. Price asked to leave, and his requests were either ignored or denied.

Specifically, the detectives asked Mr. Price to recount what had happened and repeatedly asked him the same questions, often purposefully misstating something Mr. Price had said earlier, requiring that Mr. Price repeatedly correct the misstatement. Occasionally, one or both of the detectives would leave the room for long periods of time and return with a claim that Mr. Zaborsky or Mr. Ward had told them something that contradicted what Mr. Price had said.

The detectives openly challenged Mr. Price's account of what happened and accused him of killing Mr. Wone. Mr. Price asked the two detectives if he could leave or if he needed a lawyer. Both detectives ignored Mr. Price's question about whether he was free to leave and they simply continued the interrogation. A short while later, around 5:00 a.m., Mr. Price asked again if he could see Messrs. Ward and Zaborsky. Detective Norris responded by asking when Mr. Price would submit to a polygraph he had agreed to take earlier. *See* Tr. 108:10-11; 49:6. Detective Norris continued questioning Mr. Price; Mr. Price, however, knocked on the interrogation room door, which was opened by Detective Wagner from the outside, and told him that he wanted to see Messrs. Ward and Zaborsky or he wanted to leave. The interview officially ended at 5:20 a.m.

At approximately 8:00 a.m., Detective Brian Waid approached Mr. Price, who was waiting with Mr. Zaborsky, stated that he was the detective in charge of the case, and told

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and transcript of Mr. Price's interrogation reflect, Mr. Price is mid-sentence when the recording actually starts. Tr. 2:1.

Messrs. Price and Zaborsky that he needed to personally question them about Mr. Wone's murder. Detective Waid then escorted Messrs. Price and Zaborsky into two separate interrogation rooms. Detective Waid did not advise Mr. Price of his rights, nor did he indicate that Mr. Price was free to leave before questioning him in a manner identical to that of Sergeant Wagner and Detective Norris. Detective Waid then left Mr. Price locked in the interrogation room alone for a prolonged period of time.

Mr. Price finally banged on the interrogation room door, at which point Detective Castle entered the room. Detective Castle first clarified that Mr. Price's interrogation by Sergeant Wagner and Detective Norris ended when Mr. Price requested a lawyer. Detective Castle then attempted to have Mr. Price state that he had initiated the interview with Detective Waid, notwithstanding the fact that Mr. Price had – just seconds earlier – related to Detective Castle that Detective Waid initiated the second interview; Mr. Price again confirmed that fact. Ironically, Detective Castle told Mr. Price: "certainly we inform everybody what their rights are – . . . – at the appropriate times." Tr. 147:12-16. Mr. Price's second interview concluded at approximately 10:25 a.m.

II. ARGUMENT

A. MR. PRICE'S STATEMENTS TO POLICE WERE OBTAINED IN VIOLATION OF *MIRANDA V. ARIZONA*.

Among the oldest and most sacrosanct rights of every American citizen are those "basic rights that are enshrined in our Constitution that '[n]o person shall be compelled in any criminal case to be a witness against himself,' and that 'the accused shall have the Assistance of Counsel.'" *Miranda v. Arizona*, 384 U.S. 436, 442 (1966). In *Miranda*, the Supreme Court held that, in order "to use statements obtained during custodial interrogation of the accused, the State must warn the accused prior to such questioning of his right to remain silent and his right to have

counsel, retained or appointed, present during interrogation." *Fare v. Michael C.*, 442 U.S. 707, 717 (1979) (citing *Miranda*, 384 U.S. at 473). "[S]pecifically, the Court held that 'the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.'" *Rhode Island v. Innis*, 446 U.S. 291, 297 (1980) (citing *Miranda*, 384 U.S. at 444). Moreover, warnings of an individual's rights are the only effective procedural safeguard: they are "an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right." *Miranda*, 384 U.S. at 471-72. Absent such safeguards, statements made during a custodial interrogation offend both the Fifth Amendment's guarantee that no person "shall be compelled in any criminal case to be a witness against himself," and the Sixth Amendment's guarantee to assistance of counsel. *See Id.* at 461-62, 472; U.S. CONST. amends. V & VI. Here, Mr. Price was subjected to custodial interrogation but was never advised of his *Miranda* rights. The statements he made to the police are therefore inadmissible and must be suppressed.

1) Mr. Price was in Custody for Purposes of *Miranda*.

The procedural safeguards mandated by *Miranda* are triggered "*when the individual is first subjected to police interrogation while in custody at the station* or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 477 (emphasis added). To determine whether a person is in custody, "'the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.'" *In re I.J.*, 906 A.2d 249, 256 (D.C. 2006) (quoting *Berkemer v. McCarthy*, 468 U.S. 420, 422 (1984)). In *Thompson v. Keohane*, the

Supreme Court articulated a two-party custody test: first, the court must consider the circumstances surrounding the interrogation; second, in light of those circumstances, the court must consider whether "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." *Yarborough v. Alvarado*, 541 U.S. 652, 663 (2004) (citing *Thompson*, 516 U.S. 99, 112 (1995)). "The test is whether under all of the circumstances a 'reasonable man' innocent of any crime would have thought he was not free to leave." *Griffin v. United States*, 878 A.2d 1195, 1198 (D.C. 2005) (quoting *United States v. Gayden*, 492 A.3d 868, 872 (D.C. 1985)).

The courts have identified various factors which affect an inquiry into the circumstances of an interrogation; included among them are: police domination of the scene, location of the interrogation, whether the subject availed him or herself for the purpose of interrogation, separation of the subject from others, and knowledge by the subject that he is a primary target of the investigation. Moreover, the Supreme Court has identified station house interrogations as "the standard against which all potentially custodial situations are to be measured. Police questioning of a suspect in . . . any police facility . . . raises significant concerns for which *Miranda* warnings are an appropriate prophylactic against compelled self-incrimination." *United States v. Turner*, 761 A.2d 845, 852 (D.C. 2000) (citing *Berkemer*, 468 U.S. at 438).

All of the circumstances here point to the fact that the defendant was in custody – both while in his home and while being interrogated at the police station. The exercise of physical control by police over a suspect by telling him where to sit and escorting him on any occasion he is permitted to move weighs heavily towards a finding of custody. *See United States v. Mittel-Carey*, 493 F.3d 36, 40 (1st Cir. 2007); *see also United States v. Longbehn*, 850 F.2d 450, 452 (8th Cir. 1988) (finding custody where the defendant was transported under supervision in a

police vehicle, and was continuously chaperoned while police searched his home). Moreover, removal of a suspect from the presence of family, friends, or colleagues during the interrogation is a strong indicator of police domination. *See Miranda*, 384 U.S. at 451. Here, the defendant was in a police-dominated, custodial atmosphere from the moment MPD arrived on the scene at 1509 Swann Street; the defendant was "deprived of his freedom of action in [] significant ways." *Miranda*, 384 U.S. at 477. The defendant was not permitted to move about his house; instead, he was told to sit in a specific area in his home. When Mr. Price needed to go upstairs, he was individually escorted by a uniformed MPD officer. He was subsequently taken from his home, separated from his partner and his roommate, and placed in a police car[3] for transport to the police station.

Mr. Price was unquestionably in custody once he arrived at the police station. Under the clear holding of *Miranda* itself, the "protection which must be given to the privilege against self-incrimination [attaches] when the individual is first subjected to police interrogation *while in custody at the station* or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 477. Mr. Price was locked in a room at the police station, where he was interrogated by officers and detectives for hours. He was aware that he was a primary target of the police investigation, and he was not permitted to leave or to see his friends. *See infra* pp. 4-5. Under these circumstances, no reasonable man would have thought he was free to leave; Mr. Price was therefore in custody for purposes of *Miranda*.

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[3] As the Supreme Court made clear in *Rhode Island v. Innis*, a defendant can be "in-custody" for *Miranda* purposes in a variety of circumstances, including when placed in a police vehicle for transport to a police station. 446 U.S. at 298 ("It is also uncontested that the respondent was 'in custody' while being transported to the police station.").

2) Mr. Price was Interrogated Within the Meaning of *Miranda*

The Supreme Court explained in *Innis* 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 (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. The latter portion of this definition focuses primarily upon the perceptions of the subject, rather than the intent of the police." 446 U.S. at 291. "In determining whether a query on the part of the investigating officer rises to the level of interrogation, the focus is not merely on the language employed by the officer, but the factual context in which it was spoken." *In re I.J.*, 906 A.2d at 264 (citing *In re E.G.*, 482 A.2d 1243, 1247-48 (D.C. 1984)).

Here, there is no question that Mr. Price was interrogated by the MPD. He was repeatedly asked the same questions. The detectives openly challenged his account of what happened and accused him of having been involved in assaulting and killing Mr. Wone, and then trying to cover it up. The questioning went on through the night, for almost eight hours in total. This situation is precisely that against which the procedural safeguards of *Miranda* were designed to protect.

Notwithstanding the extreme duration of the custodial interrogation to which Mr. Price was subjected, he was never advised of his *Miranda* rights. These warnings are "an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead." *Miranda*, 384 U.S. at 471-72. (*See also Longbehn*, 850 F.2d at 453 ("The requirement of *Miranda* warnings is not contingent either upon a defendant's actual or presumed knowledge of his rights or on his status but, rather, must be honored in *all* instances of custodial interrogation."). Apparently, the MPD didn't feel at any

point during the hours of custodial, targeted interrogation at the station house that it was the "appropriate time" to inform Mr. Price of his rights. The detectives chose not to advise him that he had the right to remain silent. The detectives chose not to advise him that anything he said could be used against him in court. And, the detectives chose not to advise him that he had a right to an attorney, or the right to have one appointed for him. In short, the detectives chose to interrogate Mr. Price without advising him of his *Miranda* rights at any time, and consequently, all of his statements to the detectives were in violation of the Fifth and Sixth Amendments and must be suppressed.

3) Mr. Price was Re-interrogated After Asserting His Right to Counsel, in Violation of the Sixth Amendment.

Following his assertion of his Sixth Amendment right to counsel, Mr. Price was interrogated by Detective Waid for a second time in violation of his Sixth Amendment right to assistance of counsel. Once a suspect "asserts his right to counsel, interrogation must cease and the police may not reinterrogate the suspect until counsel is present, unless the suspect himself initiates further conversation. *United States v. Ortiz*, 177 F.3d 108, 109 (1st Cir. 1999) (citing *Miranda*, 384 U.S. at 473-74; *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981)). Moreover, "a valid waiver of [the right to counsel] cannot be established by showing only that [an accused] responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Edwards*, 451 U.S. at 484.

Mr. Price's initial interview concluded when he stated that he wanted to leave and he wanted a lawyer. Tr. 109:1-5. Approximately two and a half hours later, Detective Waid arrived at the station and told Mr. Price that he needed to personally question him. Subsequent to Detective Waid's interrogation of Mr. Price, Detective Castle – who was apparently assigned clean-up duty – confirmed with Mr. Price the MPD's view that Mr. Price's first interview had

ended with the assertion of his right to counsel, and attempted to confirm that Mr. Price had initiated the interview with Detective Waid. Nevertheless, Mr. Price's account remained consistent: Detective Waid initiated the second interview. Mr. Price responded to custodial interrogation that was initiated by Detective Waid, which does not constitute a valid waiver of his right to counsel – nor would it have, even if Detective Waid had advised Mr. Price of his rights, which he did not. Therefore, the second interrogation was also conducted in violation of Mr. Price's Fifth and Sixth Amendment rights and must be suppressed.

B. MR. PRICE WAS SEIZED IN VIOLATION OF THE FOURTH AMENDMENT, AND ALL FRUITS OF THAT SEIZURE MUST BE SUPPRESSED.

Mr. Price was unlawfully seized when his movements were restricted by MPD in his own home, when he was involuntarily transported to the police station, and when he was subjected to custodial interrogation at the police station. The Fourth Amendment guarantees "[t]he right of people to be secure in their persons." U.S. CONST. amend. IV. The Supreme Court has clarified that a "seizure" has occurred when an officer "by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (citing *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). In other words, the court must consider whether "a reasonable person would have believed that he was not free to leave" or "*to decline the officers' requests*" to determine whether that person has been "seized" in violation of the Fourth Amendment. *In re I.J.*, 906 A.2d at 258 (internal citations omitted) (emphasis added); *Bostick*, 501 U.S. at 439.

Here, Mr. Price's person was seized in violation of the Fourth Amendment from the moment the MPD ordered him to sit and not to move. He was physically constrained by MPD at his home, and he was not permitted to go to the hospital with his fatally injured friend. Rather, he was separated from his partner and his roommate, escorted individually by MPD to the police

station, and locked in an interrogation room at the police station for close to eight hours. There is no question that Mr. Price's encounter with the MPD in his home was not in any way consensual, or that a reasonable person in Mr. Price's position would have believed he was not free to leave. Therefore, Mr. Price was seized in violation of the Fourth Amendment when he was physically constrained at his home, when he was transported to the police station, and when he was locked in an interrogation room and interrogated for close to eight hours; all fruits of that seizure: his statements, must consequently be suppressed.

C. MR. PRICE'S STATEMENTS OFFEND DUE PROCESS BECAUSE THEY WERE INVOLUNTARY.

As an alternative basis for suppression, Mr. Price's statements are inadmissible because they were involuntarily made. The Supreme Court has explained that the "ultimate test" for constitutionally permissible interrogation is that of voluntariness: "[i]s the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973) (citing *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961) (plurality opinion)). The prosecution bears the burden of proving by a preponderance of the evidence that a statement was voluntary. *See Lego v. Twomey*, 404 U.S. 477, 489 (1972).

The Supreme Court takes many factors into account when assessing the voluntariness of a statement, including the length of the detention and the repeated and prolonged nature of the questioning. *See Schneckloth*, 412 U.S. at 226. Interrogation in the police station alone implicates concerns of voluntariness:

> In the police station a prisoner is surrounded by known hostile forces. He is disoriented from the world he knows and in which he finds support. He is subject to coercing impingements, undermining even if not obvious pressures of every variety. In such an atmosphere, questioning that is long continued – even if it is

> only repeated at intervals, never protracted to the point of physical exhaustion – inevitably suggests that the questioner has a right to, and expects, an answer. This is so, certainly, when the prisoner has never been told that he need not answer and when, because his commitment to custody seems to be at the will of his questioners, he has every reason to believe that he will be held and interrogated until he speaks.

Columbe, 367 U.S. at 575-76. Importantly, the Court should "assess[] the psychological impact [of the surrounding circumstances] on the accused, and evaluate[] the legal significance of how the accused reacted." *Schneckloth*, 412 U.S. at 226 (citing *Culombe*, 367 U.S. at 603).

Here, the circumstances surrounding Mr. Price's interrogation, as well as the psychological effect of those circumstances on him, indicate that Mr. Price's will was overborne and his statements must therefore be suppressed. Mr. Price was separated from his partner and roommate and held in an interrogation room at the police station – all while dealing with the emotional shock and tragedy of having just lost one of his closest friends. The police interrogated Mr. Price for close to eight hours; significantly, through the night. During the course of that interrogation, Mr. Price was repeatedly accused of lying to the police, having been involved in Mr. Wone's death, of covering up the circumstances of Mr. Wone's death, and he was continuously demeaned and belittled because of his sexual orientation. All of these circumstances, taken together, demonstrate that Mr. Price's will was overborne, that the detectives' interrogation of Mr. Price was constitutionally impermissible, and that all statements made by Mr. Price in response to this unconstitutional interrogation must be suppressed.

III. CONCLUSION

For the foregoing reasons, defendant respectfully moves the Court to suppress all statements made to the police because they occurred in violation of the Fourth, Fifth, and Sixth Amendments, and because they were involuntary.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant Joseph R. Price's Motion and Incorporated Memorandum to Suppress Involuntary, Custodial Statements was served by hand, this 26th day of February, 2010, upon:

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IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
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ORDER

Upon consideration of Defendant Joseph R. Price's Motion And Incorporated Memorandum To Suppress Involuntary, Custodial Statements, it is hereby ORDERED this ___ day of February 2010 that defendant Price's motion is GRANTED; and it is

FURTHER ORDERED that all statements made by Joseph R. Price to members of the Metropolitan Police Department are hereby suppressed.

_____
D.C. Superior Court Judge Lynn Leibovitz

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