

District Court, Jefferson County, Colorado 100 Jefferson County Parkway, Golden, CO 80401	DATE FILED January 20, 2025 9:50 AM FILING ID: 661A1F63F761F CASE NUMBER: 2022CR3360 <div style="border: 1px solid black; padding: 5px; text-align: center;"> <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> </div>
THE PEOPLE OF THE STATE OF COLORADO v. DESIREE GONZALEZ Defendant	
MEGAN A. RING, Colorado State Public Defender Sarah Varty, # 45186 Deputy Public Defender Golden Regional Public Defenders 560 Golden Ridge Road, #100, Golden, CO 80401 Phone: (303) 279-7841 Fax: (303) 279-3082 E-mail: sarah.varty@coloradodefenders.us	Case No. 22CR3360 Courtroom: 7/430
MOTION TO SUPPRESS INVOLUNTARY STATEMENTS OBTAINED IN VIOLATION OF MS. GONZALEZ' CONSTITUTIONAL RIGHTS	

DESIREE GONZLAEZ, through counsel, moves to suppress all statements and alleged statements attributed to her by law enforcement as they were uttered involuntarily and were obtained in violation of her constitutional rights and her rights pursuant to *Miranda*. As grounds, Ms. Gonzalez states the following:

I. FACTUAL BACKGROUND:

1. On December 6, 2022, Jefferson County District Court Judge, Philip J. McNulty, signed an arrest warrant for Desiree Gonzalez based on an affidavit submitted by Lakewood Police Detective Jason Saville.

2. The affidavit outlined emails sent to members of the Lakewood City Council from the email address: desireegonzalez1980@gmail.com. Some of the members complained that they perceived the emails as threatening in nature.
3. According to the affidavit, Detective Saville was able to identify the email address as belonging to Desiree Gonzalez because another detective, Detective Brian Paisely, claimed to have communicated with Ms. Gonzalez, through email, on numerous prior occasions.
4. Detective Saville further learned through Investigator Heather Fosler with the Jefferson County Joint Terrorism Task Force (JTTF) and Agent David Love with the Federal Bureau of Investigation (FBI) that Ms. Gonzalez was known to them through prior cooperation with their agencies. According to Agent Love, the FBI stopped working with Ms. Gonzalez because they feared she was suffering from “undiagnosed mental health issues”. Exhibit A. Affidavit for Arrest, Pg. 4-5.
5. Given her prior work with Ms. Gonzalez, Investigator Fosler was recruited to help contact and arrest her because she had, “established a rapport” with her. Exhibit B. Fosler, Supplemental Report.
6. Investigator Fosler established contact with Ms. Gonzalez over the phone and communicated with her via text. Exhibit C. Text Messages. The communications started on December 6, 2022, at approximately 4:27 in the afternoon and continued through to December 7, 2022, at approximately 3:01 in the afternoon, when Ms. Gonzalez was arrested outside of her home. *Id.*
7. During most of the communications, Ms. Gonzalez’s home was surrounded by Lakewood Police so that they could arrest her if she left. The police were presumably armed with loaded guns and other weapons.
8. Very early on in the communication, Ms. Gonzalez explained she did not want to talk and offered to provide her lawyer’s phone number. *Id.* at row 9.

9. The text communications reveal that Ms. Gonzalez was suffering with several physical and mental ailments during the communications. She told Investigator Fosler she just recovered from COVID and her body was, “done.” *Id.* at row 70. She revealed she suffers with PTSD and that it had been triggered. She discussed her insomnia. At one point she texted, “Honestly, eating a bullet sounds better than the cold concrete I am going to react to. I am [on] pain meds they won’t give me.” *Id.* at row 304. She also texted, “I’m in too much pain to think.” *Id.* at row 258.
10. As the communication neared an end during the afternoon of the 7th, Investigator Fosler asked, “Will you answer the phone if I call you?” *Id.* at row 266. Ms. Gonzalez responded “Lawyer- and they can set up a time for [me] to turn myself in and blast the press with their lies. I am not cognitively with it – I am not doing an interview with killer cops.” *Id.*
11. Eventually, Ms. Gonzalez left her home and was immediately arrested by Lakewood Police.
12. Ms. Gonzalez was then taken to the Lakewood Police Department where she was placed in a small interrogation room. There, Investigator Fosler proceeded to ask her questions and made comments that were the functional equivalent of questions. She did not advise Ms. Gonzalez of her rights pursuant to *Miranda* first.
13. After approximately thirty minutes alone inside of the small interrogation room, Investigator Fosler along with Detective Saville entered the room. Instead of advising Ms. Gonzalez of her *Miranda* rights at that point, Detective Saville proceeded to tell Ms. Gonzalez what she was being charged with and included some of the details of the allegations.
14. Finally, after almost five minutes in the room, Detective Saville advised Ms. Gonzalez of her rights. The interrogation then proceeded and lasted for close to two hours.

II. LAW AND ANALYSIS:

A. Ms. Gonzalez Was Subjected to Custodial Interrogation Without the Benefit of the *Miranda* Warnings in Violation of her Constitutional Rights & Later Her “Waiver” Was Not Voluntary and Knowing:

1. The 5th Amendment to the United States Constitution, as applied to the states through the 14th Amendment, guarantees each citizen the privilege against self-incrimination. U.S. Const. Amend. V, XIV. The Colorado Constitution provides the same protection to criminal defendants. Colo. Const. Art. II § 19.
2. The United States Supreme Court, in *Miranda v. Arizona*, 384 U.S. 436 (1966), interpreted the 5th Amendment guarantee to require police officers use effective procedural safeguards to secure the privilege against self-incrimination. *Miranda*, 384 U.S. 436 at 445.
3. Recognizing that, “custodial interrogation exacts a heavy toll on individual liberty and trades on the weaknesses of individuals,” once a suspect is in custody, police must not interrogate him until they have provided him with an advisement of his rights pursuant to *Miranda* and obtain a knowing, Intelligent, and voluntary waiver of those rights by the suspect. *Miranda*, 384 U.S. at 455, 444; *People v. Hopkins*, 774 P.2d 849 (Colo. 1989). If the *Miranda* requirements are not complied with, the statements made by the suspect must be suppressed at trial. U.S. Const. Amends. V, XIV; Colo Const. Art. II, § 25; *Miranda*, 384 U.S. at 479; *Oregon v. Elstad*, 470 U.S. 298 (1985); *People v. Viduya*, 703 P.2d 1281 (Colo. 1985).
4. An objective test is used to determine whether a suspect is in custody. *Yarborough v. Alvarado*, 541 U.S. 642 (2004); *People v. Matheny*, 46 P.3d 453 (Colo. 2002). The court is to determine “whether a reasonable person in the suspect’s position would have considered himself deprived of his freedom of action to a degree associated with formal arrest. *Stansbury v. California*, 511 U.S. 318 (1994); *People v. Begay*, 325 P.3d 1026 (Colo. 2014). Relevant criteria include the time, place, and purpose of the encounter with the suspect, as well as the words and demeanor of the officer and the suspect’s response to directions provided by the police. *People v. Matheny*, 46 P.3d 453 (Colo. 2002);

People v. Trujillo, 938 P.2d 117 (Colo. 1997); *People v. LaFrankie*, 858 P.2d 702 (Colo. 1993); *People v. Milhollin*, 751 P.2d 43, 49 (Colo. 1988).

5. While fact-sensitive and case specific, police questioning inside a home can be custodial in nature. *Orozco v. Texas*, 394 U.S. 324, 325-27 (1969). In the *Orozco* case, the defendant was in his home asleep when four police knocked at 4 a.m. and were granted entrance by another unknown residence. *Orozco*, 394 U.S. 324 at 325. The four officers proceeded to question the defendant. *Id.* The officers admitted that from the moment Mr. Orozco confirmed his name, he was not free to leave. *Id.*
6. While the custody analysis is an objective one and an officer's subjective belief about the suspect being under arrest or not, is not dispositive especially when not conveyed to the suspect, the Supreme Court in the *Orozco* case made it clear that even if a person is in their own home, if they are otherwise deprived of freedom of action in a manner consistent with formal arrest, the *Miranda* warnings are required. *Id.* at 325-27.
7. Interrogation occurs when the words or actions of police "are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Ellis*, 446 U.S. 291, 301 (1980); *People v. Trujillo*, 784 P.2d 788, 790 (Colo. 1990).
8. Here, Ms. Gonzalez submits she was in-custody for the purposes of *Miranda* as soon as her home was surrounded by numerous armed law enforcement officers and Investigator Fosler made it clear that she had to talk to her despite her continued resistant. While Ms. Gonzalez was inside her home, she was essentially trapped there. Here freedom of movement *inside* of the home was intact but she could not leave. *See People v. Sampson*, 404 P.3d 273 (Colo. 2017) (finding that officers standing between the suspect and the exit weighted in favor of custody); *see also, Commonwealth v. Zogby*, 455 Pa.Supper 621 (1997) (finding that officers' demand that the suspect exit his home and talk to them outside was "highly instructive" and cut in favor of a finding of custody).

9. If not while still inside her home, as soon as she left and was physically restrained in handcuffs by the police, she was in custody for purposes of the *Miranda* analysis.
10. The procedural safeguards of the *Miranda* warnings are meant, in part, to ensure that police do not coerce or trick suspects into confessing or providing information that they otherwise may not. See *Berkemer v. McCarty*, 468 U.S. 420, 420-21 (1984).
11. A close review of the surrounding circumstances present when police interrogated Ms. Gonzalez reveal that a reasonable person in her position would feel deprived of their freedom of action to a degree associated with formal arrest. Therefore, her un-mirandized statements should be suppressed.
12. There is a two-part test utilized to determine if a suspect effected a valid waiver of her *Miranda* rights. *People v. May*, 859 P.2d 879 (Colo. 1993); *People v. Jiminez*, 863 P.2d 981 (Colo. 1993). First, the court must determine the waiver was voluntary due to the absence of coercion on the part of the state. *Id.* at 883. The factors involved in the voluntariness of the waiver analysis are essentially the same as those considered under the traditional due process voluntariness test. See *People v. Kaiser*, 32 P.3d 480 (Colo. 2001); See Part B. below.
13. Second, the court must be satisfied that the defendant made a knowing and intelligent choice to waive his rights. *May*, 859 P.2d at 882-83. In order for a waiver of rights to be valid under this prong, the defendant must have actually understood both the nature of the rights at issue and the consequences of giving them up. *May*, 859 P.2d at 883; *People v. Mejia-Mendoza*, 965 P.2d 777 (Colo. 1998); *Jiminez*, 863 P.2d. at 984.
14. A suspect's mental disability or disorder as well as education level should be considered when a court determines whether a waiver is valid. *People v. Kaiser*, 32 P.3d 480 (Colo. 2001).
15. Moreover, suspects who are in pain, intoxicated, or on drugs may not be able to provide a knowing, intelligent, and voluntary waiver. See

People v. Platt, 81 P.3d 1060 (Colo. 2004); *People v. May*, 859 P.2d 879 (Colo. 1993)

16. In the *May* case, the defendant was interrogated by police after he was involved in a car accident. *May*, 859 P.2d at 881-882. The trial court found that while he waived his rights pursuant to *Miranda*, that waiver was not valid because he was unable to fully understand the waiver he gave. *Id.* at 882, 884. While in the *May* case, the defendant was transported to the hospital via flight for life, was still in the hospital during the interrogation, and appeared to be in and out of sleep, there are still similarities to the present case. In particular, Ms. Gonzalez repeatedly told police she was in great pain, suffering from lack of sleep, and professed suicidal ideations.
17. A suspect's emotional state when being interrogated may also play an important role in analyzing whether he could withstand the coercive nature of questioning by police. *See People v. Humphrey*, 132 P.3d 352 (2006); *People v. McIntyre*, 789 P.2d 1108 (Colo. 1990); *see also People v. Garcia*, 409 P.3d 312, 317 (2017). If a person is calm, they are likely not feeling the deprivation of freedom associated with formal arrest. *Id.*; Compare *People v. Klinck*, 259 P.3d 489, 494-95 (Colo. 2011) with *Effland v. People* 240 P.3d 868, 875 (Colo. 2010).
18. Every reasonable presumption against a waiver should be indulged by the courts. *Brewer v. Williams*, 430 U.S. 387 (1977); *People v. Pierson*, 784 P.2d 788 (Colo. 1990).

B. Due Process Demands Exclusion of Ms. Gonzalez's Statements Because They Were Uttered Involuntarily

1. The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty or property, without due process of law." U.S. Const. Amends. V, VI, XIV; Colo. Const., art. II, §§ 16, 25.
2. Thus, separate and distinct from a defendant's Fifth Amendment right to 'not incriminate oneself', statements made by her are inadmissible if they violate her right to due process because they are not the product of her free and unconstrained choice. U.S. Const.

Amends. V, VI, XIV; Colo. Const., art. II, §§ 16, 25; *Jackson v. Denno*, 378 U.S. 368 (1964); *Mincey v. Arizona*, 437 U.S. 385 (1978); *People v. Mendoza-Rodriguez*, 790 P.2d 810, 816 (1990); *see also People v. Connelly*, 479 U.S. 157, 519-22 (1986); *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

3. The prohibition against involuntary statements applies to both exculpatory and inculpatory declarations. *Rhode Island v. Innis*, 446 U.S. 291, 301 n. 5, (1980).
4. In the *Connelly* case, the Supreme Court held that coercive police activity is a necessary predicate to the finding that a confession is not voluntary, but they also point out that even *subtle* forms of psychological persuasion can result in an involuntary statement. *See Connelly*, 479 U.S. at 520.
5. It is also important to note, that the pre-requisite that there be coercive police activity, does not attach specifically, to Article II, Section 18 of the Colorado Constitution (the counter part to the Federal Constitution's Fifth Amendment).
6. The central focus for the Court in analyzing whether a particular statement of a defendant is admissible is, "whether the behavior of the state's law enforcement officials was such as to overbear the defendant's will to resist..." *Effland v. People*, 240 P.3d 868, 877 (quoting *Rogers v. Richmond*, 365 U.S. 534 (1961), (citing *Colorado v. Connelly*, 479 U.S. 157). In other words, while a defendant's physical pain or injury alone would not end the analysis, the exploitation of those conditions by the interrogator may render his statements involuntary. *See People v. Gennings*, 808 P.2d 839, 844 (1991) (quoting *Colorado v. Connelly*, 479 U.S. 157, 164 (1986)).
7. Colorado Courts have adopted a totality of the circumstances approach in determining whether a defendant's statements were voluntary. *People v. Gennings*, 808 P.2d 839 (1991).
8. The totality of the circumstances includes all significant details "surrounding and inhering in the interrogation", *Gennings*, 808 P.2d at

844, including: (1) whether defendant was in custody or free to leave and whether he was aware of this status; (2) whether *Miranda* warnings were given prior to interrogation and whether the defendant understood and waived his rights; (3) whether the defendant had the opportunity to confer with counsel or anyone else prior to the interrogation, (4) whether the defendant's statement was made during interrogation rather than volunteered, (5) whether any overt or implied threat or promise was directed toward the defendant, (6) the method and style employed in the interrogation and the length and place of the interrogation, (7) the defendant's mental and physical condition immediately prior to and during the interrogation, and (8) the defendant's educational background, employment status, prior experience with law enforcement and the criminal justice system. *Gennings*, 808 P.2d at 844; *Effland v. People*, 240 P.3d 866, at 87; see also *Culombe v. Connecticut* 367 U.S. 568 (1961); *People v. Raffaelli*, 647 P.2d 230 (Colo. 1982).

9. The totality of the circumstances in this case supports a finding that Ms. Gonzalez's statements were involuntary in nature and that officers violated her due process rights. As outlined above, Ms. Gonzalez asserts she was in custody for all or, at least, most of the interrogation and more importantly, Ms. Gonzalez was directly advised that she had to talk to the police, and, at one point, that there was an arrest warrant for her. Ms. Gonzalez was not advised of her rights pursuant to *Miranda* until she was in the small interrogation room and then only after more than thirty minutes had passed. While inside her home, Ms. Gonzalez could have made phone calls to others but once she was physically arrested, she was not offered the chance to confer with someone prior to questioning. Ms. Gonzalez asserts that she would not have offered any information to the police had they not initiated contact with her and then asked questions. While at times, she elaborated on topics raised by the police, they, in fact, raised them. As outlined above, the text conversation took place over the course of more than 24-hour hours. Once arrested, the interrogation lasted over an hour inside of a small room. During the interrogation, Detective Saville was largely calm, but he did accuse Ms. Gonzalez of knowing more than she was sharing and of being dishonest. Finally, as outlined above, Ms. Gonzalez made it clear she

was suffering mentally and physically from several different conditions during the entire event.

10. Government exploitation of a defendant in a mentally and emotionally fragile state may render a statement involuntary. *See People v. Humphrey*, 132 P.3d 352 (2006); *People v. McIntyre*, 789 P.2d 1108 (Colo. 1990).
11. The prosecution bears the burden of proving, by at least a preponderance of the evidence, that a statement is voluntary. *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *People v. Valdez*, 969 P.2d 208, 211 (Colo. 1998); *Colorado v. Connelly*, 479 U.S. 157 (1986).
12. Any evidence derived from or obtained as the result of the illegal conduct of the law enforcement officers is improperly obtained fruits of the conduct in violation of defendant's rights. *Wong Sun v. U.S.*, 371 U.S. 471 (1963); *People v. Hopkins*, 774 P.2d 849 (Colo. 1989). Any fruits gained from an illegal action are from the poisonous tree and should therefore be suppressed. *Id.*; *People v. Corpany*, 859 P.2d 865 (Colo. 1993); *People v. Sprowl*, 790 P.2d 848 (Colo. App. 1989). Any evidence which was obtained as a consequence of improper police compliance with the *Miranda* requirements must also be suppressed as an illegal fruit of police activity. *People v. Trujillo*, 784 P.2d 788 (Colo. 1990).

WHEREFORE, Ms. Gonzalez requests an Order suppressing any statements and alleged statements made by her to the police and detectives and all evidence which is a direct or indirect fruit of the above described evidence and statements, all pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, Article II, Section 7, 16, and 25 of the Colorado Constitution, and the laws of the State of Colorado.

Respectfully Submitted,

/s/ Sarah Varty

Sarah Varty, # 45186

Deputy State Public Defender

Certificate of Service

I hereby certify that on January 20, 2025, a true and correct copy of the foregoing document was served via ICCES on all parties who appear of record and have entered their appearance herein according to ICCES.

//s// Sarah Varty