

In further support hereof, the defendant refers to his Affidavit annexed hereto as **Exhibit A**.

I. STATEMENT OF FACTS

Through various police officers reports ranging from Officer Leduc to Officer Hernandez, the Marlborough Police assert that they responded on 7/4/2020 to the vicinity of 51 Lincoln Street for a report of a motor vehicle accident involving a Ford F150 of 2015 vintage, which had been damaged on the passenger side and was resting in front of 55 Lincoln Street in Marlborough. Responding to the scene, the police interviewed four witnesses at the scene, who described only a Hispanic male with a medium build and dark color shirt and grey shorts, as the purported driver. Yet, three of the four witnesses had not even seen this person inside the vehicle, so the police hyperbole should be lost upon this Honorable Court. Those same three were never able to identify him at the scene, according to the police report.

Acting upon this vague and ambiguous information, provided by the four alleged post-accident witnesses, Officer Leduc began cruising the neighborhood in the midst of this Hispanic section of Marlborough and suddenly perceived the defendant, a Portuguese male, walking down the street. This would not be surprising given the fact that this is a Hispanic neighborhood of Marlborough. Immediately, Officer Leduc exited his cruiser and began hustling towards the defendant, which would certainly be an intimidating sight for any citizen, let alone a Portuguese only speaking citizen.

Without any demonstrated probable cause, the officer immediately seized and handcuffed the defendant, without any explanation. When the defendant complained that “I’m okay, I’m okay,” the officer then attempted to explain the seizure to the Portuguese speaking Senra. However, according to his own affidavit, the defendant does not understand English and certainly did not understand the reasons for his seizure, which were unconstitutional at best. The complete absence of probable cause services to vitiate the seizure and subsequent arrest of the defendant.

II. STATEMENT OF LAW

A. CUSTODIAL INTERROGATION AND MIRANDA RIGHTS

Indeed, it is well-established under Massachusetts jurisprudence that “custodial interrogations are questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his or her freedom of action in a significant way.” Commonwealth v. Tejada, 484 Mass. 1

(2020), citing to Commonwealth v. Jung, 420 Mass. 675, 688, 651 N.E.2d 1211 (1995). Based upon Officer Leduc's own report, it is incontrovertible that the defendant was seized, without probable cause and then subjected to custodial interrogation, without the benefit of Miranda warnings. Further scrutiny of the Officer Leduc report does not reveal any evidence of Miranda warnings being accorded to the defendant, either at the point of the initial seizure or at the subsequent juncture where the police officer transports the defendant to the accident scene and then conscripts a local unknown, unnamed "citizen who spoke Portuguese" to supposedly assist in "questioning" the defendant. Even then, at this undeniably custodial moment in time, Miranda warnings were not issued. Thus, to the extent that the defendant made any inculpatory remarks, all such custodial interrogation must be suppressed, because it is the poisoned byproduct of a non-mirandized seizure. In contrast, this is not a case where the police were only initiating field sobriety tests and were not obligated to issue Miranda warnings. See Commonwealth v. Cameron, 44 Mass. App. Ct. 912 (1998). Instead, by their own admission, the police had unconstitutionally seized the defendant, merely because he was a Hispanic male wearing grey shorts and walking down the street in a Hispanic section of Marlborough. They then put him in the rear seat of the police cruiser, fully marked, and then drove him to the scene of an auto accident. There, they began accosting him regarding whether or not he was the driver; whether he had run from the scene, etc. Not only does this undeniably custodial interrogation implicate Miranda rights, but the police did not even know if the "unknown citizen" interpreter properly translated their questions and the defendant's answers at the scene, because the police do not speak Portuguese. Of course, the unknown citizen is now gone, eliminating any chance of verification of the accuracy of their work.

In Massachusetts, custodial interrogation is considered "questioning 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." Commonwealth v. Bryant, 390 Mass. 729, 736, 459 N.E.2d 792 (1984), quoting from Miranda v. Arizona, 384 U.S. at 444, 86 Sup. Ct. at 1612. Whether or not the defendant is being subjected to custodial interrogation is adjudged, from an objective standard with the proper inquiry applied as follows:

"Whether, from the point of view of the person being questioned, the interrogation took place in a coercive environment/by reference to objective indicia." Commonwealth v. Bryant, 390 Mass. at 736, 459 N.E.2d 792 (1984).

Applying these immutable and venerable constitutional law concepts to the facts at bar, it is indisputable that the defendant was in custody when he was handcuffed in the rear of the police cruiser, while the police aggressively interrogated him in a foreign language, without issuing Miranda rights; knowing

full well that the defendant did not understand the police, due to the language barrier. Otherwise, why else would they enlist the assistance of an unidentified “Portuguese speaking citizen” at the accident scene? Indeed, the Government’s conduct is quite egregious in the first instance, at the uncharted location, of the unconstitutional seizure of the pedestrian defendant (Location One). Moreover the police themselves recognized the language barrier, by enlisting the assistance of the unknown interpreter at Location Two, when they brought the defendant to the accident scene. Special care must be taken by the police to ensure the defendant understands and comprehends Miranda warnings and has executed a valid waiver. See Commonwealth v. Colon-Cruz, 408 Mass. 533, 539, 562 N.E.2d 797, 803 (1990). That “special case” was notably absent in the cavalier manner that the police casually conscripted an unknown bystander to “interpret.”

It would strain credulity for the government to suggest that the defendant was not “in custody” or that he was not subject to “custodial interrogation” both at the initial encounter (Location One) and back at the scene of the motor vehicle accident (Location Two). Since the wealth of the persuasive constitutional law adduced in this case supports the conclusion that the defendant was in custody at Location One and Location Two, any alleged statements must be stricken, as not properly mirandized.

Furthermore, in the report of Marlborough Police Officer Hernandez, he admits that the police could not perform standardized field sobriety tests upon this defendant “due to a language barrier” (See Report of Jeffrey Hernandez at Page 1). Yet, simultaneously, Police Officer Leduc in his report states that he used the assistance of an unknown citizen (who allegedly was Portuguese speaking) to communicate with the defendant back at the scene of the accident. The inconsistency between these two reports is palpable, since one would assume that the police would have used these same services of the “unknown interpreter” (if they existed) to assist in allowing the defendant to perform standardized field sobriety tests. It is defendant’s contention that this Honorable Court should draw a most negative inference from these irreconcilable conflicts in the reports of two officers from the same police force. Indeed, the court can reasonably conclude, as Judge Guzman did in the case of Commonwealth v. Jefferson Gandra, Ayer District Court, Docket No. 1848CR001006 (See **Exhibit B**), that the defendant did not understand what Officer Leduc was saying to him, despite the presence of the mysterious Portuguese speaking citizen. Since, if he had, one would presume that Field Sobriety tests could have been performed!

B. QUESTIONING AT THE STATION

We begin with the procedural premise that defense counsel filed extensive discovery motions, whereby the Government produced a signed “Miranda rights”

document. A patent conflict between this document and Hernandez' report exists which serves to vitiate the entire questioning process and should lead this Honorable Court to the conclusion that the defendant likely invoked his right against self-incrimination and that any alleged statements that he made about consuming "beers" should be suppressed. In such circumstances, it is the Government's burden to infuse this Honorable Court with a sufficient degree of confidence in the Government's representations. That confidence is absent here, due to the palpable conflicts between the written Hernandez report and the signed "Miranda rights" document.

Where a defendant invokes his right against self-incrimination during custodial interrogation, that custodial interrogation should halt immediately. The defendant should not be coerced into inadvertently or advertently waiving his right against self-incrimination. Unequivocally, the defendant had invoked his right against self-incrimination in the Miranda rights form itself, because he actually refuses to sign it (See **Exhibit C**). What greater evidence on an invocation than refusing to sign the waiver?

Furthermore, it is a very dangerous situation where the language barrier potentially muddles the defendant's understanding of Miranda rights and his invocation of the right against self-incrimination. How can the police go forward in questioning when the defendant refuses to even sign the form? Does not the absence of signature render the form a legal nullity?

C. DISCOVERY ABUSE

The fact that the Government never produced the name of the alleged Portuguese speaking citizen on scene and never identified the alleged Portuguese interpreter at the barracks, should prove fatal to the Government's ability to use any statements at either location, against Mr. Senra (See Defense Discovery Requests annexed hereto as **Exhibit D**). Prophylactic protections of Miranda must be applied in knowing fashion and any such waiver of Miranda rights can only be done in a knowing fashion, which the Government must prove. By failing to identify the Portuguese interpreter at either Location One or Two, the Government deprives the defense of the right to question the qualifications and/or the accuracy of that interpreter. Such discovery failures on the part of the Government warrant the sanction of suppression of all statements allegedly made by the defendant.

In recognition thereof, this Honorable Court should lean towards suppressing any alleged statements, as unreliable, untrustworthy, and potentially confused due to the language barrier.

CONCLUSION

For the above-stated reasons, the defendant respectfully requests the suppression of his alleged statements at the scene of the subject accident and at the barracks. Such infirmed byproduct of the non-mirandized custodial questioning must clearly be stricken from the record and suppressed as a matter of law in Massachusetts. See Commonwealth v. McGrail, 80 Mass. App. 339 (2011); see also U.S. v. Mahmood, 415 F. Supp 2nd 13 (2006); see further, Commonwealth v. Tejada, 484 Mass. 1 (2020)(citing to Commonwealth v. Jung, 420 Mass. 675, 688, 651 N.E.2d 1211 (1995)). At the barracks, there is no evidence that the defendant properly understood his rights against self-incrimination. Even if he did, he invoked that right against self-incrimination, as part of the Miranda form by refusing to sign it. Thus, that form became a legal nullity, in its final inchoate and unsigned form. It cannot form the basis for alleged waiver of Miranda rights.

WHEREFORE, the defendant respectfully requests that his Motion to Suppress be allowed and that the Government be prevented from attempting to introduce the constitutionally flawed alleged statements and admissions in this case, either at Location One (the seizure), Location Two (the accident scene) or at the Barracks.

Respectfully Submitted,
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