

ENTRY FORM  
ST. JOSEPH SUPERIOR COURT

Date: November 7, 2014  
Cause No. 71D08-1307-FA-00017  
Parties: STATE OF INDIANA

- FILED -  
NOV 07 2014  
Clerk  
St. Joseph Superior Court

v.

PURVI PATEL

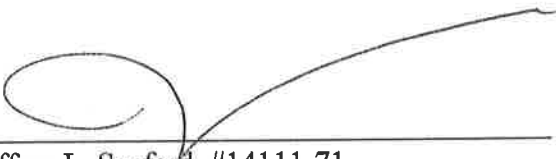
THE CHRONOLOGICAL CASE SUMMARY ENTRY UNDER THIS CAUSE NUMBER:

**Defendant, by counsel, files Motion in Limine.**

A FULL TEXT FOR THE RECORD OF JUDGMENTS AND ORDERS IS ATTACHED:

YES \_\_\_\_ NO X

SUBMITTED BY:

  
\_\_\_\_\_  
Jeffrey L. Sanford #14111-71  
Attorney for Defendant  
212 S. Taylor St.  
South Bend, IN 46601  
574/233-7280

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\_\_\_\_\_  
JUDGE, St. Joseph Superior Court

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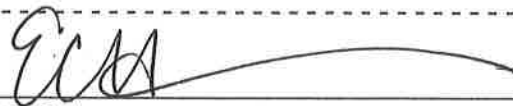
**Defendant, by counsel, files Motion to Suppress Evidence.**

A FULL TEXT FOR THE RECORD OF JUDGMENTS AND ORDERS IS ATTACHED:

YES \_\_\_\_ NO X

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STATE OF INDIANA            )  
                                      )  
ST. JOSEPH COUNTY        )  
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IN THE ST. JOSEPH SUPERIOR COURT  
  
CAUSE NUMBER: 71D08-1307-FA-00017

STATE OF INDIANA            )

v.                                )

PURVI PATEL                    )

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**MOTION TO SUPPRESS EVIDENCE**

The Defendant, Purvi Patel, by counsel, respectfully requests that this Court suppress all statements made by the Defendant to police, and in support of this Motion, states the following:

1. The Defendant is charged with Count I, Neglect of a Dependent, a Class A Felony, and Count II, Feticide, a Class B Felony.
2. On July 14, 2013, the Defendant gave a statement to Detectives Galen Pelletier and James Taylor.
3. The Defendant's statement was unlawfully obtained because:
  - a. At the time the Defendant was questioned by Detectives Pelletier and Taylor, she was in custody. St. Joseph County Police Officer David Fazio guarded the Defendant, at the direction of Captain Randy Kaps. While under guard, access to the Defendant was restricted. Detective Pelletier relieved Officer Fazio from what he described as "watch duty," and immediately began questioning the Defendant. At no point, did Detective Pelletier or Detective Taylor advise the Defendant of her Miranda rights during her custodial interrogation.
  - b. As a result, the Defendant's statement was obtained in violation of her Fifth Amendment right against self-incrimination, which was made applicable to the States through the Fourteenth Amendment to the United States Constitution. Since the Defendant's statement violated her privilege against self-incrimination, it must be suppressed from evidence.

WHEREFORE, the Defendant respectfully requests that this Court suppress and bar from use as evidence in trial the Defendant's statement to investigating officers, any testimony regarding observations made by investigating officers while taking her statement, and evidence gathered as a result of the officers' illegal interrogation.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS  
STATEMENT OF THE FACTS**

On July 14, 2013, at approximately 3:32 a.m., Detective Galen Pelletier interviewed the Defendant in her hospital room at the St. Joseph County Regional Medical Center. Before taking the Defendant's statement, she underwent a surgical procedure, and upon exiting surgery, St. Joseph County Police Officer David A. Fazio, who was in full uniform, was stationed at her bedside, at the direction of St. Joseph County Police Captain Randy Kaps. Captain Kaps noted in his report that due to the surgical procedure, Ms. Patel was in no condition to leave the hospital. After a couple of hours stationed next to the Defendant's bed in recovery, Officer Fazio accompanied the Defendant to her hospital room. Once in her room, he stood guard at the foot of her bed. When Ms. Patel asked why Officer Fazio was stationed in her room, he informed her that she had to wait until additional officers came to speak with her before being given any information. Officer Fazio remained there until Detective Pelletier entered the room and relieved Officer Fazio of "watch duty."

While guarding Ms. Patel, her friend, Felicia Turnbo, attempted to visit her; however, Ms. Turnbo was told by Officer Fazio that the Defendant was not allowed visitors, so it was futile for her to wait. The Defendant's parents were not permitted to see their daughter until after St. Joseph County Metro Homicide Unit Detectives interrogated her. They were instructed by police to wait downstairs in the lobby of the Saint Joseph County Regional Medical Center until after detectives

had the opportunity to interrogate their daughter. During this time, the hospital records state Ms. Patel was being “held on [the] floor for police investigation.”

### **STATEMENT OF THE LAW**

The Fifth Amendment requires a Miranda warning before conducting a “custodial interrogation.” Ritchie v. State, 875 N.E.2d 706, 716 (Ind. 2007), cert denied, 546 U.S. 828 (2005) (citing Illinois v. Perkins, 496 U.S. 292, 296 (1990)). The Miranda warning is derived from the United States Supreme Court’s decision in Miranda v. Arizona, which “held in part that absent an intelligent waiver...statements...incriminating or in the nature of a confession, obtained from a person during custodial interrogation are inadmissible as evidence as is the fruit of such statements.” Green v. State, 274 N.E.2d 267, 270 (Ind. 1971)(citing Miranda v. Arizona, 384 U.S. 436 (1966)); see also Cliver v. State, 666 N.E.2d 59, 66 (Ind. 1996). Before being subjected to interrogation by law enforcement officers, a person, who has been “taken into custody or otherwise deprived of his freedom of action in any significant way,” must be advised of his rights to remain silent and be warned that any statement may be used as evidence against him. Loving v. State, 647 N.E.2d 1123, 1125 (Ind. 1995) (quoting Miranda, 384 U.S. at 444)). Whether the Miranda warnings are required involves a two-part inquiry by the Court: first, was the defendant in custody and second, if so, did the police interrogate the defendant? Morales v. State, 749 N.E.2d 1260, 1265 (Ind. Ct. App. 2001).

A person need not be formally arrested by police officers or even placed in handcuffs to be in custody for purposes of Miranda. Morris v. State, 871 N.E.2d 1011, 1018 (Ind. Ct. App. 2007). A determination regarding custody mandates an evaluation of all the circumstances. Stansbury v. California, 511 U.S. 318, 322 (1994) (per curiam). The Seventh Circuit has summarized the factors to be considered when determining whether under the totality of the circumstances a person is in custody as follows:

whether and to what extent the person has been made aware that he is free to refrain from answering question; whether there has been prolonged, coercive, and accusatory questioning, or whether police have employed subterfuge in order to induce self-incrimination; the degree of police control over the environment in which the interrogation takes place, and in particular whether the suspect's freedom of movement is physically restrained or otherwise significantly curtailed; and whether the suspect could reasonably believe that he has the right to interrupt prolonged questioning by leaving the scene. Sprotschy v. Buchler, 79 F.3d 635, 641 (7<sup>th</sup> Cir. 1996) (internal citations omitted).

The final determination regarding custody rests on whether a reasonable person in the defendant's position would feel that she was free to leave. Torres v. State, 673 N.E.2d 472, 474 (Ind. 1996).

Pursuant to Miranda, "interrogation includes express questioning and words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating response from the suspect." White v. State, 722 N.E.2d 408, 412 (Ind. 2002). There are some instances where a Miranda warning is not required, such as general on-the-scene questioning related to obtaining the facts of a crime, Orr v. State, 472 N.E.2d 627, 636 (Ind. 1984); routine questions for the purpose of obtaining basic identifying information, Hatcher v. State, 410 N.E.2d 1187, 1189 (Ind. 1980); or voluntary, unsolicited statements, State v. Bowen, 491 N.E.2d 1022, 1024-25 (Ind. Ct. App. 1986). Although not every question asked by a police officer is interrogation, "a process of questioning by law enforcement officials which lends itself to incriminating statements" is the very definition of interrogation. Johnson v. State, 380 N.E.2d 1236, 1240 (Ind. 1979) (citing Escobedo v. Illinois, 378 U.S. 478, 485 (1964)).

## ARGUMENT

### **1. When detectives questioned the Defendant, she was in police custody.**

In Green, the Court held a defendant was in custody when a guard was stationed outside his hospital room door. Green, 274 N.E.2d at 269. Officer Fazio was posted either outside Ms. Patel's room or at her bedside the entire time she was at the hospital before detectives arrived. During that time, she was not free to leave or allowed to speak to friends or family. Also, her purse containing

her phone and car keys were held by police and only made accessible during her interview, because the police wanted her keys to execute a search warrant. To be in "custody," a defendant's freedom must be significantly deprived; or the defendant must reasonably believe that she could not leave. Cliver, 666 N.E.2d at 66; Green v. State, 753 N.E.2d 52, 58 (Ind. Ct. App. 2001); see also McIntosh v. State, 829 N.E.2d 521, 538 (Ind. Ct. App. 2005) (finding that defendant was in custody where police denied her access to her purse, keys, and car, after putting her in an interrogation room where at least one officer was present at all times). Access to the Defendant was restricted. Hospital records note that she was being "held" on the floor of the Maternity Ward at the behest of the police as part of their investigation. A reasonable person in the Defendant's position would not feel free to leave.

A defendant subject to custodial interrogation is entitled to the procedural safeguards of Miranda. Oregon v. Mathiason, 429 U.S. 492, 494 (1997). Though an officer's knowledge and beliefs regarding the defendant's status are relevant if they are conveyed, they are not dispositive. Loving, 647 N.E.2d at 1125. While Detective Pelletier began his questioning of the Defendant by explaining to her that she was not in police custody, she did not have to speak with him, and finally she was free to instruct him to leave at any time, his statements were contrary to how the police were treating her; Ms. Patel was in custody. In addition, this is supported by the statements conveyed to Ms. Patel, her friend, her family, and to hospital staff.

Police are not entitled to execute an end-run around Miranda by telling a defendant she is not in custody when their actions clearly indicate otherwise. Police officers are not allowed to dispense with Miranda warnings by taking a person that they have placed in custody and then waiving a verbal magic wand, and claiming custody has ceased.

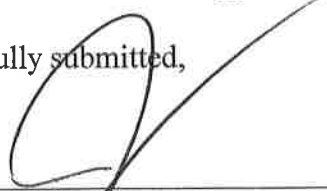
**2. The Defendant's interview by police constituted an interrogation requiring Miranda warnings.**

Ms. Patel was asked a series of questions designed to elicit incriminating statements from her. Though she responded to police questions, her statements were not that of a voluntary or unsolicited narrative. The Defendant was at times visibly reluctant to respond and only did so after repeated inquiry by the detectives. The interrogation did not involve questions designed to obtain identifying information from her nor was it akin to general on the scene questioning. The Defendant was specifically questioned about evidence already gathered against her and what the officers thought were inconsistencies between Ms. Patel's account and physical evidence already gathered. Under these circumstances, courts have held that the police are required to give the Miranda warning. Loving, 647 N.E.2d at 1126 (holding that officer's comments about inconsistency between the defendant's account of the crime and physical evidence necessitated that the defendant be advised of his Miranda rights); Alford v. State, 699 N.E.2d 247, 250 (Ind. 1998) (holding that confronting a defendant with incriminating information amounted to interrogation).

**CONCLUSION**

The Defendant was subject to a custodial interrogation. At no time during the interrogation did the Defendant receive Miranda warnings. As a result, her statement was obtained in violation of her Fifth Amendment right against self-incrimination and must be suppressed.

Respectfully submitted,

  
\_\_\_\_\_  
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Attorney for Defendant  
212 S. Taylor Street  
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(574)233-7280

14111-71



CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing Motion to Suppress Evidence was served upon the Deputy Prosecuting Attorney by placing the same in the Prosecutor's drawer located in the St. Joseph County Courthouse, South Bend, Indiana on the 7 day of Nov, 2014.

  
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Jeffrey L. Sanford