



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

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Elizabeth A. Brown
Clerk of Supreme Court

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

September 17, 2019

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. ARTHUR SEWALL
S.C. CASE: 79437
D.C. CASE: C-18-330650-1

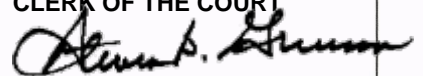
Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order, dated August 27, 2019, enclosed is a certified copy of the Order Granting in Part Defendant's Motion to Suppress Statement filed September 16, 2019 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk



1
2 ORDR
3

4 EIGHTH JUDICIAL DISTRICT COURT
5 CLARK COUNTY, NEVADA

6
7 STATE OF NEVADA,

8 Plaintiff,

9 v.

10 ARTHUR SEWALL,

11 Defendant.

Case No.: C-18-330650-1
Dept. No.: XXI

12
13 ORDER GRANTING IN PART DEFENDANT'S MOTION TO SUPPRESS
14 STATEMENT

15 On October 12, 2018, Defendant Arthur Sewall (Defendant) filed a Motion to
16 Suppress Illegally Obtained Statements (Defendant's Motion), alleging violations of
17 *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966) from a January 11, 2018 interview with
18 Las Vegas Metropolitan Police Department (LVMPD) detectives. The State filed its
19 Opposition to Defendant's Motion (State's Opposition) on November 21, 2018. Defendant
20 filed his Reply to the State's Opposition (Defendant's Reply) on December 21, 2018. In his
21 Motion and Reply, Defendant argues that he was entitled to, and did not receive a reading
22 of his *Miranda* rights, that he invoked his Fifth Amendment right to an attorney, that the
23 request was ignored, and that his entire statement was involuntary and the product of
24 coercive police tactics.¹ The State argues that Defendant voluntarily spoke with Detectives,
25 was not entitled to his *Miranda* rights, and that officers had no duty to cease questioning
26

27 ¹ Defendant's Motion, at 8:5-10. Defendant's Reply, at 2:6-19.

1 when Defendant asked for an attorney because he was not in custody when he made the
2 request.²

3 This Court considered the Motion and Opposition and scheduled a *Jackson v. Denno*
4 hearing at the request of counsel. That hearing took place on January 18, 2019 then
5 continued and concluded on March 8, 2019, with Pamela Weckerly and Giancarlo Pesci,
6 Chief Deputy District Attorneys, appearing on behalf of the State; and Joel Mann and
7 Christopher Oram, appearing on behalf of Defendant. In preparation for the evidentiary
8 hearing, this Court considered Defendant's Motion, the State's Opposition, Defendant's
9 Reply, and a recording of the questioning that took place on January 11, 2018 (and
10 transcript of the same). At the evidentiary hearing, this Court heard testimony from retired
11 Las Vegas Metropolitan Police Department (LVMPD) Detective Dean O'Kelley and
12 LVMPD Detective Ken Hefner.

13 At the conclusion of the evidentiary hearing, counsel for Defendant requested the
14 opportunity to file supplemental briefing on Defendant's Motion, which this Court
15 allowed. Defendant filed his Supplemental Briefing (Defendant's Supplement) on May 21,
16 2019, wherein he reiterated his request to suppress his statements due to alleged violations
17 of *Miranda v. Arizona*. The State filed its Supplemental Opposition (State's Supplement) to
18 Defendant's Motion on June 10, 2019.

19 Based on the papers and pleadings on file in this matter, the arguments of counsel,
20 and the testimony of the witnesses at the evidentiary hearing, the Court makes the
21 following findings, conclusions, and orders as follows:

22 FINDINGS OF FACT

23 Cold case detectives connected Defendant to the 1997 murder of Nadia Lynn
24 Iverson, a prostitute found dead from a gunshot wound to the head, when they matched
25 Defendant's DNA to that found on Iverson's body.³ On January 11, 2018, LVMPD

26 ² State's Opposition, at 4: 19–23.

27 ³ State's Opposition, at 2: 2.

1 Detectives Hefner and O'Kelley approached Defendant, a former LVMPD officer, outside of
2 his home in Reno, Nevada and asked Defendant if he would voluntarily speak with them at
3 the Reno Police Station.⁴ Defendant agreed and Reno Police detectives drove him to the
4 station.⁵ At the station, detectives placed Defendant in an interview room containing a
5 couch, and a round table with three chairs.⁶ This interview room was used by Reno police
6 to interview child abuse victims. Detective Hefner sat against the wall closest to the door,
7 Detective O'Kelley sat at the table in the chair farthest from the door, and Defendant sat at
8 the table in between the two.⁷

9 The interview lasted about two hours. For the first hour and a half, Detectives
10 attempted to convince Defendant to tell them about his involvement in Iverson's death.
11 Detectives told Defendant that his DNA was found on Iverson's body,⁸ that a spent
12 cartridge casing recovered from the scene matched the caliber gun he carried at the time,⁹
13 and that the Reno Police Department could arrest him that night for failing to register as an
14 ex-felon.¹⁰ Detectives also spoke with Defendant about his daughter's murder and asked
15 Defendant to understand what the Iverson's family must be going through.¹¹

16 Throughout the interview, Defendant acknowledged that he was voluntarily
17 speaking to Detectives.¹² Defendant also stated that he thought he needed an attorney
18 within fifteen minutes of the interview beginning.¹³ Detective Hefner explained that he
19 could not leave until they executed a warrant for his DNA, and Detective O'Kelley
20

21 ⁴ Defendant's Motion, at 3:15–28. Recorder's Transcript of *Jackson v Denno* Hearing, Jan. 18, 2019
(Transcript) at 5:17– 8:9.

22 ⁵ Defendant's Motion, at 4:2. Transcript at 8:13–15.

23 ⁶ Defendant's Motion, at 4:8–11. Exhibits A and B (photos) to State's Opposition. Transcript at 10:5–
22.

24 ⁷ Defendant's Motion, at 4:11–14. Transcript at 10:20–22.

25 ⁸ Surreptitious Recording at 8, 10, & 11.

26 ⁹ Surreptitious Recording at 10.

27 ¹⁰ Surreptitious Recording at 39.

28 ¹¹ Surreptitious Recording at 17.

¹² Surreptitious Recording at 13 & 42.

¹³ Surreptitious Recording at 13.

1 continued asking Defendant about his involvement in the murder.¹⁴ As the interview
2 progressed, Defendant stated that he believed that he was going to jail that night and asked
3 to call his wife. Detective O'Kelley explained that Defendant was not under arrest in this
4 case, but Detective Hefner informed Defendant that the Reno Police Department could
5 arrest him that night for failure to register as an ex-felon:

6
7 Defendant: 'Cause from my perspective (unintelligible) layin' up in a jail cell
8 tonight.

9 Detective O'Kelley: mm-hm. No, I mean, well we still – like we said we gotta –
10 things gotta get typed up and approved and all that. So ...

11 Detective Hefner: If – if – if you, I mean, didn't say another word to use, we'll go
12 back to - back to Las Vegas and we'll submit the case. And I have every
13 confidence that an I – a warrant will be issued.

14 Defendant: Oh I'm quite sure it will be.

15 Detective Hefner: Now what Reno might do on their own with this is, you know,
16 you did not register as an ex-felon and that is a crime. It's a misdemeanor but it's a
17 crime. Now if – if they decide want do that – that's up to them. We don't have any
18 control over that, um, you know, jurisdiction.¹⁵

19 When Defendant asked again to speak to his wife because he believed he was
20 "gonna end up in a jail cell," Detective O'Kelley acknowledged his arrest as a possibility and
21 Detective Hefner made clear that he could not talk to his wife until he was through talking
22 to them:

23 Defendant: I need to talk to my wife. Is that possible? Because once again and that
24 way that I see this scenario playing out - I'm gonna end up in a jail cell tonight.

25 Detective O'Kelley: What n- now what you're sayin'...

26 Defendant: Even though I'm here voluntarily...

27 ¹⁴ Surreptitious Recording at 14-15.

28 ¹⁵ Surreptitious Recording at 39.

1 Detective O'Kelley: Right. But to say to talk to your wife before you talk to us ...

2 Detective Hefner: "Uh, we'll let you w- talk to your wife quite a bit after we're
3 done."¹⁶

4
5 Defendant and Detectives continued discussing the possibility that Reno Police
6 could arrest Defendant that night and, for a third time, Defendant stated, "So I am going to
7 jail today." Detective Hefner replied, "If you give us a statement – a confession tonight, yeah
8 you'll go to jail, um, tonight."¹⁷ Defendant then agreed to speak with Detectives and
9 confessed to shooting Iverson.¹⁸ At no point did Detectives inform Defendant of his rights
10 under *Miranda*.

11 CONCLUSIONS OF LAW

12 1. "A confession is inadmissible unless freely and voluntarily given." *Chambers v. State*,
13 113 Nev. 974, 981, 944 P.2d 805, 809 (1997). The totality of the circumstances is the primary
14 consideration for determining voluntariness. *Blackburn v. Alabama*, 361 U.S. 199, 206, 80 S.Ct.
15 274, 4 L.Ed.2d 242 (1960) (quoting *Fikes v. Alabama*, 352 U.S. 191, 197, 77 S.Ct. 281, 1 L.Ed.2d
16 246 (1957)). The question in cases involving a challenge to the voluntariness of a statement
17 is whether the defendant's will was overborne at the time of the confession. *Passama v. State*,
18 103 Nev. 212, 214, 735 P.2d 321, 323 (1987). To evaluate whether a defendant's will was
19 overborne, a Court must consider factors such as "the youth of the accused; his lack of
20 education or his low intelligence; the lack of any advice of constitutional rights; the length
21 of detention; the repeated and prolonged nature of questioning; and the use of physical
22 punishment such as the deprivation of food or sleep." *Id.* Though courts should consider
23 police deception when evaluating voluntariness of a confession, it is not automatic grounds
24 for suppression, and is permissible if "the methods used are not of a type reasonably likely

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26 ¹⁶ Surreptitious Recording at 42–43.

27 ¹⁷ Surreptitious Recording at 48.

28 ¹⁸ Voluntary Statement at 4.

1 to procure an untrue statement.” *Carroll v. State*, 132 Nev. 269, 280, 371 P.2d 1023, 1031 (2016)
2 (quoting *Sheriff, Washoe Cty. v. Bessey*, 112 Nev. 322, 325, 914 P.2d 618, 619 (1996)).

3
4 2. A *Jackson v. Denno* “hearing is required only when the defendant challenges the
5 voluntariness of his confession.” *Guynes v. State*, 92 Nev. 693, 695 (1976). The State has the
6 burden of showing, by a preponderance of the evidence, that the confession was voluntary.
7 *Falcon v. State*, 110 Nev. 530, 874 P.2d 772 (1994). If the court finds that the statement was
8 involuntary, it ceases to exist legally and cannot be used for any purpose. *Mincey v. Arizona*,
9 437 U.S. 385, 98 S. Ct. 2408 (1978).

10 3. A person is entitled to *Miranda* warnings whenever they are in custody and
11 subjected to interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444, 8 S. Ct. 1602, 1624 (1996). A
12 person is in custody when the situation would lead a reasonable person to believe they
13 were not free to leave. *Id.* To determine whether a person was in custody and entitled to
14 *Miranda*, courts should look to the “totality of the circumstances, ‘includ[ing] the site of the
15 interrogation, whether the objective indicia of arrest are present, and the length and form of
16 the questioning.’” *Carroll*, 371 P.3d at 1032. Courts are more likely to determine that a
17 suspect is in custody if the suspect is not permitted to make a phone call, despite a request
18 to do so. *Silva v. State*, 113 Nev. 1365, 1370, 951 P.2d 591, 951 (1997). If a person is questioned at
19 a police station, courts should consider whether police withheld food or drink or made
20 promises they could not keep, and the position of the parties in the interview room. *Id.*

21 4. If a person is not in custody, they are not entitled to a Fifth Amendment right to
22 counsel, and police can continue questioning the suspect as long as the statements remain
23 voluntary. *Silva v. State*, 113 Nev. 1365, 1370-71, 951 P.2d 591, 594-95 (1997). If a statement is
24 voluntary, but *Miranda* is violated, that statement can only be used for impeachment if the
25 defendant testifies and contradicts the statement. *Harris v. New York*, 401 U.S. 222, 91 S. Ct.

1 643 (1971); *Oregon v. Hass*, 420 U.S. 714, 95 S.Ct. 1215 (1975); *McGeev. State*, 105 Nev. 718, 782
2 P.2d 1329 (1989).

3 5. The Court concludes that Defendant's statements were voluntary. Defendant was
4 not formally arrested when detectives first made contact with him outside his apartment
5 and Defendant agreed to accompany them to the police station to answer questions. At the
6 police station, Detectives confirmed—and Defendant agreed—that he was speaking with
7 them voluntarily. The room where detectives interviewed Defendant was not an
8 interrogation room and Defendant was not handcuffed. During the interview, Detectives
9 did not yell, threaten or deceive Defendant. Though Detectives mentioned the murder of
10 Defendant's daughter and appealed to his sense of empathy, this was not coercive.

11 6. The Court concludes that as the interview progressed, Defendant was entitled to
12 his *Miranda* warnings because he stated that he reasonably believed he was going to jail and
13 Detectives failed to correct his statement. Defendant first stated that he believed he was
14 going to jail that night at page 39 of the surreptitious recording. Instead of contradicting
15 him, Detectives told him that the Reno police could arrest him for his failure to register as
16 an ex-felon. Defendant made two other comments that he believed he was going to jail that
17 night and needed to call his wife, presumably to inform her that he would not be coming
18 home. Detectives not only refused to let him call his wife, but again failed to correct his
19 statements about his custodial status. Under the totality of the circumstances, the Court
20 finds that a reasonable person would believe, as the Defendant did, that he was not free to
21 leave and in custody. Therefore, Defendant was entitled to his *Miranda* warnings after page
22 39 of the surreptitious recording. Because Detectives failed to issue those warnings, all
23 subsequent statements must be suppressed.

24 7. The Court further concludes that that Defendant did not invoke his right to an
25 attorney. While Defendant initially stated he needed an attorney, he was not in custody
26 when he made that request and therefore had no Fifth Amendment right to invoke.

1 Defendant was not in custody until detectives informed him that he could be arrested by
2 Reno police, Defendant told them he believed he was going to jail, and detectives did not
3 contradict that statement. Defendant did not then ask for an attorney.

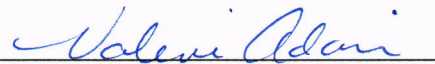
4 CONCLUSION

5 The Court concludes that all statements made after page 39 of the Surreptitious
6 Recording and all statements in the Voluntary Statement must be suppressed. Defendant
7 reasonably believed he was in custody and was therefore entitled to his *Miranda* warnings.
8 Detective's failure to issue those warnings renders his statements inadmissible. The Court
9 further concludes that Defendant's statement was voluntary and not the product of
10 coercive police tactics and, thus, may be used for impeachment.

11
12 ORDER

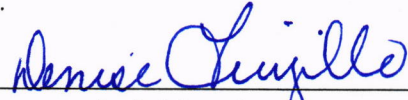
13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Arthur
14 Sewall's Motion to Suppress Illegally Obtained Statements is GRANTED as to any
15 statement made past page 39 of the Surreptitious Recording and the entire Voluntary
16 Statement.

17
18 Dated this 16 day of September, 2019.

19
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21 DISTRICT COURT JUDGE
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1 I hereby certify that on or about the date signed, a copy of this order was electronically
2 served and/or placed in the attorney folder maintained by the Clerk of the Court and/or
mailed by U.S. mail to the following:

3 Pamela Weckerly, Deputy District Attorney
4 Joel Mann, Esq, Law Office of Joel Mann.

5 
6 for Susan Schofield, Judicial Executive Assistant



Clerk of the Courts
Steven D. Grierson

200 Lewis Avenue
Las Vegas, NV 89155-1160
(702) 671-4554

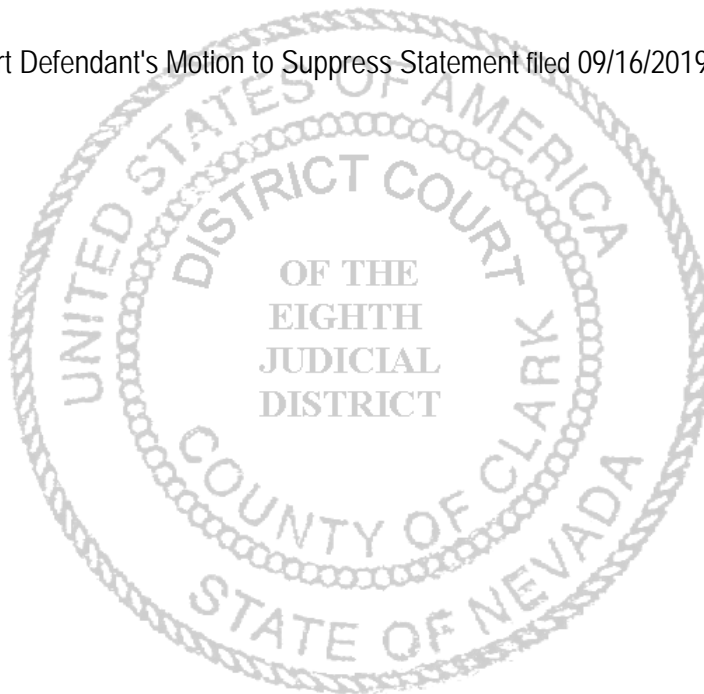
September 17, 2019

Case No.: C-18-330650-1

CERTIFICATION OF COPY

Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full, and correct copy of the hereinafter stated original document(s):

Order Granting in Part Defendant's Motion to Suppress Statement filed 09/16/2019



now on file and of

In witness whereof, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, at 6:28 AM on September 17, 2019.


STEVEN D. GRIERSON, CLERK OF THE COURT