

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.(Northern Division)

SEPTEMBER TERM, 2010

STATE OF NEW HAMPSHIRE

V.

CHRISTOPHER GRIBBLE
10-S-0230-0235

MOTION TO SUPPRESS STATEMENTS OF THE DEFENDANT

NOW COMES the defendant, Christopher Gribble, by and through counsel, Donna J. Brown and Matthew Hill, Public Defenders, and respectfully requests this Honorable Court suppress the statements made by Christopher Gribble to the police as the admission of these statements at trial would violate the defendant's constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution and Part I, Article 15 of the New Hampshire Constitution.

As grounds for this motion, it is stated:

FACTS

1. Christopher Gribble is charged with two counts of first degree murder, one count of attempted murder, one count of conspiracy to commit murder, one count of tampering with witnesses and informants and one count of conspiracy to commit burglary.
2. On October 5, 2009, Troopers Ardini and Encarnacao of the New Hampshire State Police questioned Christopher Gribble about his alleged involvement in the murder of Kimberly Cates and the assault of her daughter, Jaime. (Discovery pg. 6763.)

3. Christopher Gribble was 19 years old at the time of the interview. Prior to this interview, Christopher Gribble had no previous criminal or juvenile record and had no prior contact with law enforcement other than a few motor vehicle stops that did not result in arrest. (Discovery pg. 6960-6962). Christopher Gribble was not represented by counsel during his meeting with the state troopers on October 5, 2009 and he was read his Miranda rights and waived them.
4. The interrogation of Christopher Gribble took place at the N.H. State Police barracks in Milford. (Discovery pg. 6763). The troopers' interrogation of Christopher Gribble was recorded by audio recording device, but there was no video recording of the interrogation.
5. According to the discovery, there were five parts to this interrogation. (Discovery at pg. 6763) The first part went from 1:10 pm until about 2:05 pm. The second part went from 2:07 pm until 4:35 pm. The third part went from 4:53 pm until 5:26 pm. The fourth part went from 6:45 pm until 7:47 pm. The fifth part went from 8:25 pm until 9:35 pm. The breaks between these five parts of the interrogation were not recorded.
6. During the first, second and third parts of the interrogation, Christopher Gribble denied any involvement in the break-in at the Cates' home in Mont Vernon.
7. About a third of the way into this second interview Trooper Ardini attempts to convince Christopher Gribble to confess to the crimes at issue by stating:

JA: Look Chris, John (Encarnacao) is throwing you a lifeline right now, ok. You are floating in the middle of a lake and John is in it,

John and I are in a canoe coming out to you because you're getting tired and you can't keep swimming. What's going to happen when you stop swimming?

CG: I'm going to drown. I get the analogy.

(Discovery pg. 6831)

8. A short time later in the interview, Trooper Ardini again suggests that he and Trooper Encarnacao can "help" the defendant if he would only confess to his involvement in the crime at the Cates' home:

JA: ...you are not dumb. You are a bright kid. Save yourself man. Save yourself. Get ahead of the wave that they're, that they're sending your way. Because if you don't get up off the, up the beach away from where that wave is about to crash, John and I can't help you. John and John and I are trying, we're rowing, we're coming out there. You're swimming, but you're tiring and we're coming and John's got the rope and he's going to throw it to you. But if you don't grab the rope and give us a chance to help you explain this and get ahead of that wave that they're sending your way, I don't know what we're going to be able to do for you.

(Discovery pg. 6836)

9. By the end of this second interview Christopher Gribble articulates his understanding that the troopers' statements are an invitation to get his sentence lowered by admitting to the crimes in question:

CG: Tell me why are you asking about a machete? Because if, all things considered you're, you're, you seem to be trying to get me to say that we were doing something less than just going and killing people. We didn't do anything but it seems like you're trying to have me help myself so to speak and lower [it] right? Well then why would someone bring a machete into a robbery? If you really think we had a machete and that we did it, that doesn't make any sense.

(Discovery pg. 6876 - the transcript does not say "it" but the tape has that word in it.)

10. The third break in the interrogation occurred when Mr. Gribble told the troopers, "I have the right not to say anything...So I won't say anything." (Discovery pg. 6891.)
11. The troopers acknowledge the end of the interview and the invocation of the right to remain silent in the following exchange:

JE: So what you're saying is you don't want to talk to us any longer?

You have to speak.

CG: Yes.

JE: This interview is over then?

JA: At Chris' request we are ending the interview and the recording. The time by my watch is 17:26.

(Discovery pg. 6891)

12. After Mr. Gribble asserted his right to silence, he was left in the same interrogation room, apparently under the watchful eye of the troopers. After about 45 minutes, Tpr. Encarnacao and Mr. Gribble began talking. According to Tpr. Encarnacao's report, this conversation was initiated by Mr. Gribble by his motioning to get Encarnacao's attention. The conversation did not involve the events of October 4 and 5, but rather events in Mr. Gribble past. Eventually, according to the report of Tpr. Encarnacao, the conversation turned to Tpr. Encarnacao's job. According to the report of Tpr. Encarnacao, when this subject was raised, he responded:

“I told him that my work is hard at times but like any job there are good days and bad days. I told him that the hardest part was trying to understand why something happens. I told him that even when a case is solved and there is a conviction, I still get a terrible feeling in my stomach when unresolved questions remain. Gribble stated “that must be hard”. I told him that it is enough to drive me crazy but I just deal with it as best I can.”

According to Tpr. Encarnacao's report, Mr. Gribble commented that “this seemed like a pretty bad case” then turned the conversation to the potential for application of the death penalty and to the differences between first and second degree murder.

13. After this conversation about the possible punishments for murder, Mr. Gribble allegedly said, “You know what? I'll tell you everything. You want to get your recorder and I'll tell you everything?” This statement was not recorded. The recorded questioning resumed at 6:45 pm. (Discovery pg. 6892-6893) At the outset of the recording, Tpr. Encarnacao put on the record, “Is it true that you

have come to me and would like to talk again?”, to which Mr. Gribble responded, “Yes I would.” Nothing was placed on tape regarding the details of the conversations between Tpr. Encarnacao and Mr. Gribble that led to Mr. Gribble’s purported reinitiation.

14. It was during this interview and the subsequent interviews that Christopher Gribble confessed his involvement in the murder of Kimberly Cates and the assault on Jaime Cates.
15. After Mr. Gribble makes the above-mentioned statements admitting to involvement in the crimes at the Cates’ home, he leads the police into the woods to locate certain items associated with this case. This discussion with the defendant is also not videotaped, but there is an audiotape.

Legal Argument

16. Mr. Gribble asserts that the entirety of the recorded statement should be suppressed as it was not voluntarily made. In addition, even if the statement originally was voluntary, the portion of the recording made after Mr. Gribble asserted his right to silence must be suppressed as it was obtained in violation of that assertion. Finally, Mr. Gribble asserts that the portion of the recording made after he asserted his right to silence was the result of the functional equivalent of interrogation resulting in improper prompting by the police.
17. Voluntariness: Under the New Hampshire Constitution, the standard by which the voluntariness of a confession is judged is whether it is the “product of an essentially free and unconstrained choice” and was not “extracted by any sort of

threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of any improper influence." State v. McDermott, 131 N.H. 495, 500 (1989). The test this Court must use is the totality of the circumstances test.

18. This Court should consider the following factors in analyzing this issue: 1) the nature of the promise; 2) the context in which it was made; 3) the characteristics of the individual defendant; 4) whether the defendant was informed of his *Miranda* rights; and 5) whether counsel was present. State v. Parker, ___ N.H. ___ (May 6, 2010); citing State v. Rezk, 150 N.H. 483, 488 (2004).
19. As to the third prong of this analysis, it is significant that the defendant had no prior significant contact with the police and was nineteen years old at the time he was interrogated.
20. As to the nature and context of the inducements to confess in this case, the repeated offer to provide Mr. Gribble with a "life line" in conjunction with the description of drowning/dying, and "if you don't grab the rope and give us a chance to help you explain this and get ahead of that wave that they're sending your way, I don't know what we're going to be able to do for you", makes the confession in this case involuntary. What other interpretation could a person have with this analogy other than that the interrogators were promising to provide a benefit for a confession – if you grab the rope, we will help you, if you don't we won't. And there is no other interpretation for the help offered, than that they could provide a better outcome for him if he confessed. The recording clearly

shows that that was Mr. Gribble's interpretation, and the detectives did nothing to dispel it.

21. Invocation of Miranda right to silence: Under federal constitutional standards, if at any time before or during interrogation, the defendant asserts the right to remain silent, the police must cease all questioning. Miranda v. Arizona, 384 U.S. 436, 473-474 (1966). Further questioning may commence only if the police "scrupulously honor" the defendant's assertion of the right to remain silent. Michigan v. Mosley, 423 U.S. 96 (1975). The defendant's right to silence encompasses his right to cut off questioning, to control the time at which questioning occurs, subjects discussed, and duration.

22. The New Hampshire Supreme Court is equally clear:

In order to determine whether, after initially waiving his constitutional rights under *Miranda*, the defendant subsequently invoked his right to remain silent, we examine the defendant's statements by considering the totality of the circumstances. When a defendant invokes his right to remain silent, the police must "scrupulously honor" that invocation.

State vs. Jeleniewski, 147 N.H. 462, 466 (2002).

23. Here there was a clear invocation of the right to remain silent articulated by the defendant and recognized as such by the police interrogators. The police were required to refrain from any further interrogation and to scrupulously honor this invocation. Instead, the police engaged in the functional equivalent of interrogation which lead back to a recorded formal interrogation
24. Trooper Encarnacao represents in his report that Mr. Gribble initiated contact with him after Mr. Gribble asserted his right to silence. However, the contact

that Tpr. Encarnacao had with Mr. Gribble after he asserted his right to remain silent quickly turned into the functional equivalent of interrogation. It was during this interrogation that Mr. Gribble was prompted to “reinitiate.”


25. 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 suspect, rather than the intent of the police. This focus reflects the fact that the Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. Rhode Island vs. Innis, 446 U.S. 291, 300 (1980). The interaction between Mr. Gribble and Tpr. Encarnacao rises to the functional equivalent level and is expressly in violation of the invocation of the right to counsel.
26. The conduct and comments of Tpr. Encarnacao were intended to persuade Mr. Gribble to have a change of heart and waive his invoked right to silence as there can be no serious doubt that the trooper deliberately and designedly set out to elicit information from Mr. Gribble. This is plain from the physical location of the various officers, the isolation of the defendant and the conduct of Tpr. Encarnacao once he reentered the interrogation room where Mr. Gribble had remained for more than four hours. These circumstances are the type of conduct

identified as designed to elicit a response in State vs. Pich, 149 N.H. 608 (2003).

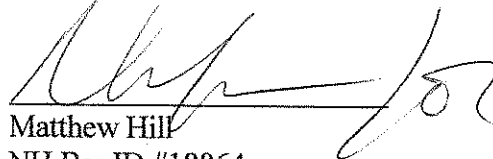
27. Depositions: All of the relevant facts as to the circumstance where Mr. Gribble allegedly initiated further questioning were not tape recorded and only summarized by a one and a half page report by Trooper Encarnacao. Mr. Gribble previously filed a motion for deposition of Troopers Encarnacao and Ardini to ascertain all of the details of this exchange. There was a hearing on that motion on August 23, 2010 and the matter was taken under advisement. As of the writing of this motion, the Court has not ruled on the motion requesting depositions and consequently the defendant is not able to fully address the issue of the troopers' further questioning of Mr. Gribble after he exercised his right to remain silent as the motion deadline is September 3, 2010. If this Court grants a deposition of these two witnesses, counsel for Mr. Gribble reserves the right to supplement this motion on this issue. If the Court does not grant the motion for deposition, counsel for Mr. Gribble reserves the right to supplement this motion after a hearing on this motion to suppress.

WHEREFORE, for the above stated reasons, Christopher Gribble, by and through counsel respectfully requests this Honorable Court schedule a hearing on this Motion and order that any statements from Christopher Gribble taken in violation of his constitutional rights and any evidence obtained as the fruits of those statements be suppressed as evidence at trial in this matter.

Respectfully submitted,




Donna J. Brown
NH Bar ID # 387
N.H. Public Defender
10 Ferry Street, Suite 202
Concord, NH 03301
(603) 224-1236



Matthew Hill
NH Bar ID #18864
1 West Street
Keene, NH 03431
(603) 357-4891

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been forwarded this 2 day of September, 2010, to Attorney Jeffrey Strelzin, Attorney Lucy Carrillo, and Attorney Peter Hinckley of the Office of the Attorney General.



Donna J. Brown

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.(Northern Division)

SEPTEMBER TERM, 2010


STATE OF NEW HAMPSHIRE

V.

CHRISTOPHER GRIBBLE
10-S-0230-0235


AFFIDAVIT IN SUPPORT OF MOTION TO SUPPRESS

Undersigned counsel hereby represents that she has reviewed the discovery provided by the State in this matter and the facts alleged in the Motion to Suppress Statements of the Defendant are true and accurate to the best of my knowledge and belief.



Donna Brown

Subscribed and sworn before me this 2nd day of September, 2010.

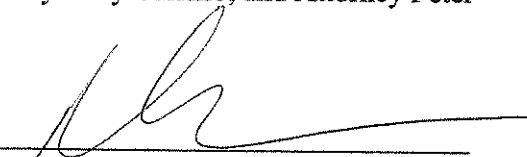


Justice of the Peace

PAMELA B. SHEPHARD
Justice of the Peace - New Hampshire
My Commission Expires March 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been forwarded this 2 day of September, 2010, to Attorney Jeffrey Strelzin, Attorney Lucy Carrillo, and Attorney Peter Hinckley of the Office of the Attorney General.



Donna J. Brown