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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF STANISLAUS

13 THE PEOPLE OF THE STATE)
14 OF CALIFORNIA,)
15 Plaintiff,)
16 vs.)
17 CHRISTINA DEFILIPPO, et al.,)
18 Defendant.)

CASE NO. 1490969

MOTION TO EXCLUDE CHRISTINA
DEFILIPPO'S STATEMENT AS
INVOLUNTARY AND IN VIOLATION
OF THE FIFTH AND SIXTH
AMENDMENTS

Date: TBA
Time: 9:30 a.m.
Dept: 26

19 STATEMENT OF FACTS

20 On September 20, 2013, Ms. DeFilippo was a student studying
21 for her Masters degree and attending the Pratt Institute in
22 Brooklyn, New York. Ms. DeFilippo was in the East Hall at the
23 Pratt Institute waiting to enter her classroom. She was gathered
24 in the hallway, outside of her classroom, with a group of her
25 classmates. When the classroom door opened, instead of the
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1 professor walking out, four large men, walked up directly to Ms.
2 DeFilippo and surrounded her. One of these men introduced
3 himself to Ms. DeFilippo as Corey Brown of the Stanislaus County
4 Sheriff's Office. Detective Brown immediately told Ms. DeFilippo
5 that they needed to talk to her about a homicide investigation.
6 Ms. DeFilippo was feeling shocked, intimidated, and blind sided,
7 with all of her classmates watching what was going on. The
8 detectives then ordered her down a nearby stairwell to the lower
9 level of a dimly lit basement with a fluorescent light above.
10 They closed the double doors separating the stairs from the
11 basement. One of the detectives stood directly in front of the
12 double doors barring Ms. DeFilippo's exit. He was also watching
13 out through the glass in the doorway to the stairwell. Ms.
14 DeFilippo, feeling frightened and threatened, immediately
15 informed the detectives that she had a letter instructing that
16 she would not talk to them without a lawyer present. She also
17 told the detectives that she felt very intimidated. The
18 detective told her they could make her life miserable if she did
19 not speak to them. Ms. DeFilippo, feeling intimidated and
20 threatened by these four large men, was coerced into speaking
21 with them.

22 The motion will be made on the grounds that the introduction
23 of such statement is involuntary and violates Ms. DeFilippo's
24 right to counsel, and Fifth Amendment Privilege against self-
25 incrimination, as guaranteed by the Fifth Amendment and Sixth
26 Amendment of the United States Constitution.

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1 interrogation in the absence of counsel is inadmissible unless
2 the defendant initiated the communication. Michigan v. Jackson
3 (1986) 475 U.S. 625, 636.

4 The defendant need not be in custody in order to fall under
5 these protections. Patterson v. Illinois (1988) 487 U.S. 285.

6 The statements were made after Ms. DeFilippo, indicating to
7 the Detectives that she had been directed "not to speak with you
8 without a lawyer present," invoked her Fifth and Sixth Amendment
9 rights. (See Transcript of Interview of Christina DeFilippo by
10 Det. Brown and Det. Jones hereafter referred to as TX p. 2, lines
11 4-5.) Ms. DeFilippo also indicated "Like I really do feel like
12 I'm being put in a very awkward situation. Like this is very
13 intimidating for me. And I don't like this." (See TX p. 2,
14 lines 26-28, p. 3, line 1.) However, the law enforcement
15 officers continued to question Ms. DeFilippo concerning this
16 case. Using psychological coercion, an unidentified Brooklyn
17 Homicide detective that was present during her interrogation
18 with Detectives G. Jones and Detective C. Brown, at Ms.
19 DeFilippo's art school, interrupted Ms. DeFilippo and told her
20 how "It's in your best interest to speak to these gentlemen. You
21 don't have to, but it's in your best interest too because you
22 don't want them to make your life **miserable**. You see they came
23 all the way from California to speak to you...So they're here for
24 a reason...So your best interest is to talk to them." (TX p. 2 ,
25 lines 16-25)

26 The Detectives deliberately bullied and used threatening
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1 tactics sending the message that Ms. DeFilippo's refusal to talk
2 would be incriminating and if she was innocent, a lawyer's
3 presence was not necessary. Det. Brown cunningly told Ms.
4 DeFilippo "unless you have something that you're concerned about
5 being arrested for, why would you need an attorney?" (TX p. 2, 6-
6 8) The Fifth Amendment prohibition against compelled self-
7 incrimination is to guard against such behavior of intimidation
8 and trickery used by the detectives in the case before this
9 court.

10 Furthermore, "the right to have counsel present is
11 indispensable to the protection of the Fifth Amendment
12 privilege." Miranda 384 U.S. at 469. Part of the purpose is to
13 combat the very compelling threats and coercion that Ms.
14 DeFilippo endured. Ms. DeFilippo requested an attorney, invoking
15 the Fifth Amendment Privilege and Sixth Amendment right to
16 counsel. The Police should have honored her desire to remain
17 silent and have an attorney present. Any statement taken after
18 she invoked her privilege cannot be other than the product of
19 compulsion, subtle or otherwise. (See Miranda 384 U.S. at 474.)
20 Additionally, an individual's indication that she wants an
21 attorney is an indication of the decision to remain silent. Id.
22 The rule in Miranda that if an accused indicates in any manner
23 that he wishes to remain silent or to consult an attorney,
24 interrogations must cease. Therefore, a request for an attorney
25 is an invocation of the substantive Fifth Amendment privilege.
26 Fare v. Michael C. 442 U.S. 707, 719-722; Cooper v. Dupnik ,

1 963 F.2d at 1220 (9th Cir. 1992).

2 In Miranda, the Court announced a clear and simple procedure
3 for the police to follow. If the individual indicates in any
4 manner, at any time prior to questioning that he wishes to remain
5 silent, the interrogation must ease." Id. At 473-474. "If the
6 individual states that he wants an attorney, the interrogation
7 must cease until an attorney is present." Id. At 474. It is
8 inconsistent with the Fifth Amendment for the authorities to
9 continue to question an individual who has clearly asserted her
10 right to counsel.

11 **INVOLUNTARY STATEMENTS OBTAINED BY POLICE ARE INADMISSIBLE**

12 Confessions coerced by the police are considered involuntary
13 and are inadmissible. Colorado v. Connelly (1986) 479 U.S. 157.
14 Any statements made by Ms. DeFilippo were not voluntary. An
15 involuntary statement cannot be used against the accused in a
16 criminal proceeding for any purpose. See Schneckloth v.
17 Bustamonte (1973) 412 U.S. 218, 225; Brown v. Mississippi (1936)
18 297 U.S. 278, 286.

19 A statement is obtained involuntarily from a defendant when
20 the accused's abilities to reason, comprehend, or resist were so
21 disabled that he or she was incapable of free or rational choice.
22 In re Cameron (1968) 68 Cal2d 487, 498. To determine this issue,
23 the "totality of the circumstances" surrounding the interrogation
24 must be considered. In re Cameron, supra: People v. Benson
25 (1990) 52 Cal.3d 754. As discussed above, the four detectives
26 swooped down on Ms. DeFilippo, surrounding her in front of her

1 classmates, and took her away down to a dimly lit basement,
2 blocking the door, and used bullying and threatening tactics to
3 make her fearful and intimidated. Any involuntary statements
4 made by Ms. DeFilippo violated her due process (In re Cameron,
5 supra), and is of doubtful reliability. People v. Garner (1961)
6 57 Cal.2d 135, 163). Furthermore, in Colorado v. Connelly (1986)
7 479 U.S. 157, the Supreme Court added the additional requirement
8 that coercive police activity is a necessary predicate to the
9 finding that a confession is involuntary within the meaning of
10 the Due Process Clause of the Fourteenth Amendment. Under the
11 truth-in-evidence provision of the California Constitution (Cal.
12 Const. Art. I, Section 28(f)(2)), federal rather than state law
13 governs admissibility of defendant's statements. See People v.
14 May (1988) 44 Cal.3d 309.

15 Both physical and psychological coercion are also
16 prohibited. Rogers v. Richmond (1961) 365 U.S. 534, 540. In the
17 case before this court, Ms. DeFilippo was surrounded and ordered
18 by four large male detectives down to an isolated and dimly lit
19 basement. One of the detectives physically placed himself in
20 front of the door preventing Ms. DeFilippo's exit from the
21 basement. In addition, using psychological techniques, Ms.
22 DeFilippo was told they could make her life "**miserable**" if she
23 didn't talk to them. This was clearly a threat. A confession is
24 invalid if it results from a police threat. People v. Brommel
25 (1961) 56 Cal.2d 629, 632. Also, the detectives conveyed the
26 message that if Ms. DeFilippo had nothing to hide, then she did

1 not need a lawyer present which impinged on her right to have
2 counsel present. Under the surrounding circumstances, Ms.
3 DeFilippo was not put in a position where she was given a choice
4 to freely speak with the detectives. When a defendant challenges
5 the voluntariness of a statement, the prosecution bears the
6 burden of proof. People v. Lucas (1995) 12 Cal.4th 415, 442.

7 The involuntary statements were taken in violation of Ms.
8 DeFilippo's right to counsel guaranteed her by Fifth and Sixth
9 Amendments to the United States Constitution. The statements
10 were also taken in violation of Ms. DeFilippo's Fifth Amendment
11 right to remain silent.

12 WHEREFORE, Ms. DeFilippo respectfully requests this
13 Honorable Court to exclude her statement on September 20, 2013 as
14 involuntary, and in violation of the Fifth and Sixth Amendments
15 of the United States Constitution.

16
17 Dated: March ____, 2016

Respectfully Submitted,

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21 _____
ROBERT L. FORKNER
Attorney for Defendant
CHRISTINA DEFILIPPO
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF STANISLAUS

3 I am employed in the County of Stanislaus, State of
4 California. I am over the age of 18 and not a part to the within
5 action; my business address is 722 Thirteenth Street, Modesto
6 California 95354.

7 On 3/22/16 I served the document(s) described as:

8 **MOTION TO EXCLUDE CHRISTINA DEFILIPPO'S STATEMENT AS
9 INVOLUNTARY AND IN VIOLATION OF THE FIFTH AND SIXTH AMENDMENTS**

10 on the interested parties in this action by hand delivering a true
11 copy thereof to:

12 **STANISLAUS COUNTY DISTRICT ATTORNEY**

13 (BY MAIL) I am readily familiar with this business's
14 practice for collection and processing of correspondence
15 for mailing, and that correspondence, with postage
16 thereon fully prepaid, will be deposited with the U.S.
17 Postal Service on the date herein above in the ordinary
18 course of business, at Modesto, California.

19 x (BY PERSONAL SERVICE) I caused such envelope to be
20 delivered by hand to the offices of the addressee(s).

21 (BY OVERNIGHT COURIER) I caused the above-referenced
22 envelope(s) to be delivered to an overnight courier
23 service for delivery to the addressee(s).

24 (BY E-MAIL) I caused the above-referenced document(s) to
25 be E-Mailed to the addressee(s).

26 (BY FACSIMILE) I caused the above-referenced document(s)
27 to be faxed to the fax number(s) below.

28 Executed on 3/22/16 at Modesto, California.

X (STATE) I declare under penalty of perjury under the laws
of the State of California that the foregoing is true and
correct.

(FEDERAL) I declare that I am employed in the office of
a member of the bar of this court at whose direction the
service was made.



Robert L. Forkner

PEOPLE v. CHRISTINA DEFILIPPO

Case No.: 1490969

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