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Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF _____

PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No.
	)	
	)	MOTION AND MEMORANDUM
Plaintiff,	)	OF POINTS AND
	)	AUTHORITIES IN SUPPORT
vs.	)	OF MOTION TO SUPPRESS
	)	INVOLUNTARY STATEMENT
,	)	
	)	Date:
Defendant.	)	Time:
_____	)	Dept.

To: The District Attorney for the County of _____.

At the above date and time the Defendant, _____, by and through is attorney of record, _____, will move this court for an order suppressing the involuntary statements of the Defendant more particularly set out in the statement of facts. Said motion will be based upon the testimony of _____, the attached points and authorities, and all papers previously filed in this action.

Dated:

_____
Attorney for Defendant

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TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

STATEMENT OF FACTS

The defendant, _____, is accused by the prosecution of

NO ADMISSION/CONFESSION PRIOR TO THREATS

THREATS

The treats consisted of:

"...

II

FEDERAL AND STATE CONSTITUTIONAL GROUNDS

This motion to suppress an involuntary confession or admission is based upon both the U.S. Constitution and the California Constitution.

> "The use of confessions in a criminal prosecution obtained by force, fear, promise of immunity or reward constitutes a denial of due process of law both under the federal and state constitutions requiring a reversal of the conviction although other evidence may be consistent with guilt."

> "Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community's sense of fair play and decency...Nothing would be more calculated to discredit law and thereby to brutalize the temper of society. (Rochin vs. California, 342 U.S. 165, 173-174 [72 S.Ct. 205, 96 L.Ed. 183, 25 A.L.R.2d 1396].)" People vs. Berve (1958) 51 C2d 286, 290.

III

MAGNITUDE OF THE RIGHT

(INCLUDES THE RIGHT AGAINST SELF-INCRIMINATION)

The right to not have an involuntary admission used against a defendant is based not only upon the Fifth Amendment of the U.S. Constitution. It has been held to be a fundamental right reflecting our most noble aspirations for our society.

> "The privilege against self-incrimination, which is guaranteed by both the federal and California Constitutions, protects an accused against use by the prosecution of his confession unless it is shown to be the product of a rational intellect and a free will. (Blackburn vs. Alabama (1960) 361 U.S. 199, 208 [4 L.Ed.2d 242, 249, 80 S.Ct. 274].) It has been said that the privilege against self-incrimination is the `essential mainstay' of our system of criminal justice (Malloy vs. Hogan (1964) 378 U.S. 1, 7 [12 L.Ed.2d 653, 659, 84 S.Ct. 1489].), and reflects many of the fundamental values and most noble aspirations of our society, including: `our willingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminatory statements will be elicited by inhumane treatment and abuses;...our respect for the inviolability of the human personality...; our distrust of self-deprecatory statements; and our realization that the privilege, while sometimes `a shelter to the guilty' is often a `protection to the innocent'. Quinn vs. United States 349 U.S. 52, 55 [12 L.Ed.2d 678, 681, 84 S.Ct. 1594].)" People vs. Jimenez (1978) 21 C3d 595, 606; 147 Cal.Rptr. 172, 177.

IV

THREE GROUNDS FOR RATIONALE OF RULE

(STATEMENTS ARE UNTRUSTWORTHY; UNFAIR; DETER PRESSURE)

The deterrence of police misconduct is not the only rationale of the rule to suppress involuntary confessions or admissions nor is the unfairness. One of the basic reasons is that the statements thus obtained are untrustworthy.

> "And it is uniformly held that involuntary confessions are inadmissible as affirmative evidence not only because they are untrustworthy but also because it offends the community's sense of fair play and decency to convict a defendant by evidence extorted from him and because exclusion serves to discourage the use of physical brutality and other undue pressures in questioning those suspected of crime. (

People vs. Ditson, 57 Cal.2d 415
People vs. Underwood (1964) 61 C3d 113

It is the function of the trial court to determine if a confession or admission is involuntary.

"In order to further guarantee that coerced confessions will not be used against the accused, before the jury is permitted to hear a confession, the trial court must first determine that a confession was in fact voluntarily rendered. (Evid. Code Section 405; Jackson vs. Denno, supra, 378 U.S. 368."

People vs. Carroll (1979) 4 C.A.3d 52People vs. Carroll 4 C.A.3d 60.) The jury should therefore be allowed to take into account whether the confession is true, partially true of false, but may not treat the confession as "nonevidence" by disregarding it. (People vs. Carroll, 4 C.A.3d 60.)

(c) Even though the same evidence relates to admissibility as to integrity, the jury should not be informed of the judge's factual resolution in the voir dire hearing. In that way, the judge does not impinge on the jury's fact-finding province as to guilt or innocence. (People vs. Carroll 4 C.A.3d 60.) (See also, People vs. Burton (1971) 6 C.3d 375, 389, 99 C.R. 1, 491 P.2d 793 ["The Legislature's finding that a defendant will be better protected by thrusting the full responsibility upon the trial judge is entirely reasonable"].

VI

EVIDENCE

The procedure is controlled by Evidence Code Sec. 405 which states:

"Determination of foundational and other preliminary facts in other cases. With respect to preliminary fact determinations not governed by Section 403 or 404:

(a) When the existence of a preliminary fact is disputed, the court shall indicate which party has the burden of producing evidence and the burden of proof on the issue as implied by the rule of law under which the question arises. The court shall determine the existence or nonexistence of the preliminary fact and shall admit or exclude the proffered evidence as required by the rule of law under which the question arises.

(b) If a preliminary fact is also a fact in issue in the action:

(1) The jury shall not be informed of the court's determination as to existence or nonexistence of the preliminary fact.

(2) If the proffered evidence is admitted, the jury shall not be instructed to disregard the evidence if its determination of the fact differs from the court's determination of the preliminary fact."

VII

TRUTH OR FALSITY OF ADMISSION OR CONFESSION
NOT RELEVANT TO ISSUE OF VOLUNTARINESS

The defendant has a "constitutional right at some stage in the proceedings to object to the use of the confession or admission and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination **uninfluenced by the truth or falsity of the confession.**" (Jackson vs. Denno (1964) 378 U.S. 368, 84 S.Ct. 1774, 1780, 12 L.Ed.2d 908, 915.) In this case, the

Supreme Court rejected long approved state procedures and imposed a new requirement of determination of the issue by the judge.

VIII

BURDEN OF PROOF IS ON PROSECUTION TO SHOW VOLUNTARINESS

It has long been established that the burden to prove an admission is voluntary is on the prosecution and not on the defense.

> "In exercising this function the court recognizes that the burden is on the prosecution to show that a confession was voluntarily given without previous inducement, intimidation or threat. (People vs. Rogers, 22 Cal.2d 787, 804 [141 P.2d 722]; People vs. Jones, supra, 24 Cal.2d at 608.)" People vs. Haydel (1974) 12 C3d 198

In People vs. Markham (1989) 49 C.3d 63, 260 C.R. 273, 775 P.2d 1042, the court held that Cal.Const.,Art. I, Sec 28(d)). The new standard was the Federal standard of preponderence of the evidence.

X

INDEPENDENT REVIEW OF VOLUNTARINESS BY APPELLATE COURTS ON UNCONTRADICTED FACTS

A reviewing court is required to make an independent review of the voluntariness of a confession or admission if the facts are uncontradicted according to both U.S. and California cases.

> "Before confessions or admissions may be used against a defendant the prosecution has the burden of showing that they were voluntary and not the result of any form of compulsion or promise of reward, and it is the duty of a reviewing court to examine independently whether thePeople vs. Adams (1983) 143 CA 970People vs. McClary (1977) 20 C3d 218People vs. Sanchez (1969) 70 C2d 562

In People vs. Cahill (1993) 5 C.4th 478, 20 C.R.2d 582, 853 P.2d 1037, Cal. Crim. Law, 2d, Supp., Sec. 3310, a capital homicide prosecution, the trial judge admitted defendant's confession, which had been elicited through an implied promise of benefit or leniency. Held, assuming that the confession was involuntary and thus should not have been admitted, such erroneous admission was not reversible per se. The prejudicial effect of the erroneous admission of a coerced confession must be determined for purposes of California Law under the reasonable-probability test of Payne vs. Arkansas (1958) 356 U.S. 500Payne vs. Arkansas (1958) 356 U.S. 560, 78 S.Ct. 844, 850, 2 L.Ed.2d 975, 981.)

XII

RARE CASE EXCEPTION

In the case of People vs. Hinds (1984) the court discussed the "rare case" exception. The "rare case" exception is when a confession in violation of right to counsel under Escobedo vs. Illinois (1964) 378 U.S. 478 is wrongfully admitted but a second voluntary confession not in violation of right to counsel was properly admitted.

First of all, the "rare case" exception doesn't apply in this case because XXX made no second

admission or confession that was not induced by an invalid admission or confession. In fact all statements in XXX'sstatement to the police that we are moving to suppress came from being directly confronted with the transcript of the pre-text phone call.

> "However, prior California cases have recognized a limited exception to this rule in the `rare case' in which, although one or more confessions were admitted erroneously, the jury also had before it other valid confessions by the defendant containing substantially the same details, the erroneously admitted confessions were not unduly emphasized at trial, and the legally obtained confessions were lot induced by an invalid confession. (People vs. Quicke (1969) 71 Cal.2d 502, 516-518, 78 Cal.Rptr. 683, 455 P.2d 787; People vs. Jacobson (1965) 63 Cal.2d 319, 330-331, 46 Cal.Rptr. 515, 405 P.2d 555.)" People vs. Hinds (1984) 154 CA3d 222, 240, 201 Cal.Rptr. 104, 115.

Secondly, the court noted that the California Supreme Court had expressly declined to rule on whether the "rare case" exception might apply where an involuntary confession was used.

In determining if a confession is involuntary the trial court must look at the totality of the circumstances and determine if the slightest pressure was used in obtaining the statement.

> "The test for voluntariness of a confession is whether or not the accused exercised `mental freedom' in confessing or whether the confession was the expression of free choice. `The slightest pressure, whether by way of inducement to confess, or threat if confession is withheld, is sufficient to require the exclusion of the confession.' (Emphasis added; People vs. Siemsen, supra, 153 Cal. at 394.) The prosecution must show that such coercive conditions as once existed, no longer prevailed at the time the confession was uttered." People vs. Haydel (1974) 12 C3d 190, 198, 115 Cal.Rptr. 394.

> "Another is the rule that requires the exclusion at trial of all coerced confessions, even those confessions that may be independently established as true, because the method used to extract them offend due process (Rogers vs. Richmond (1961) 365 U.S. 534 [5 L.Ed.2d 760, 81 S.Ct. 735].) Under this rationale it has been held that even `[T]he slightest pressure, whether by way of inducement to confess or threat if confession is withheld, is sufficient to require the exclusion of the confession..." People vs. Adams (1983) 143 CA 970, 984, 192 Cal.Rptr. 290.

In other words, the prosecution has the burden to prove that not the slightest pressure by way of inducement or threat were used to obtain a confession or admission from _____.

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XIV

TYPES OF IMPERMISSIBLE PRESSURE

MAKING CONFESSION INVOLUNTARY

There are thousands of cases on what pressures make a confession involuntary. Each case usually has hundreds of individualized facts. It is therefore impossible to find cases with the same facts. I, therefore, am only giving the general rules about impermissible pressure. The primary improper pressure is that a confession cannot be elicited by any promise of benefit or leniency whether expressed or implied.

> "It is well settled that a confession is involuntary and therefore inadmissible if it was elicited by any promise of benefit or leniency whether express or implied. (People vs. Johnson (1969) 70 Cal.2d 469, 479 [74 Cal.Rptr. 889, 450 P.2d 265]; People vs. Brommel (1961) 56 Cal.2d 629 [15 Cal.Rptr. 909, 364 P.2d 805]; People vs. Carr, supra, 8 Cal.3d 287, 296; see also People vs. Hill (1967) 66 Cal.2d 536, 549 [58 Cal.Rptr. 340, 426 P.2d 908].)" People vs. Hill (1967) 66 C2d 536People vs. Flores (1983) 144 CA3d 249People vs. Hinds 154 CA3d 222, 239, 201 Cal.Rptr. 104, 114.

The third improper pressure is psychological in that a confession cannot be elicited by use of psychological coercion.

> "A confession is involuntary whether coerced by physical intimidation or psychological pressure. [Citation.] Law enforcement conduct which renders a confession involuntary does not consist only of express threats so direct as to bludgeon a defendant into failure of the will. Subtle psychological coercion suffices as well, and at times more effectively, to overbear `a rational intellect and a free will.' As the Supreme Court noted in Malloy, `[w]e have held inadmissible even a confession secured by so mild a whip as the refusal, under certain circumstances, to allow a suspect to call his wife until he confessed.' [Citations.] (United States vs. Tingle (1981) 658 F.2d 1332, 1334-1335.)" People vs. Berve (1958) 51 C2d 286.

XV

CIVILIAN INTERROGATORS VS. POLICE INTERROGATORS

GROUND NO. 1

The California Supreme Court has held that an involuntary confession is suppressed whether a civilian was the interrogator or the police. The law is not only designed to deter police misconduct but also to insure a fair trial and prevent the use of unreliable statements.

> "No valid grounds for distinction are to be found in the fact that the coercion in this case was inflicted by civilians, and not the police. Decisions holding that confessions are inadmissible because...were rendered...by civilians against an accused clearly imply such conclusion. The prohibition which bars the use of involuntary confessions is not only designed as a regulation of the conduct of police officers, but also to insure that an accused's right to a fair trial is protected. 116(Rochin vs. California, supra, 342 U.S. at 173-174.) The absence of volition condemns an enforced confession. Due process requires that it be given voluntarily and without promises of immunity or reward. On the record before us the confession here must be excluded." People vs. Haydel (1974) 12 C3d 190, 198-199, 115 Cal.Rptr. 394, 397.

The law laid out in People vs. Haydel, supra, remains the law in California.

In People vs. Brown (1981) 119 Cal.App.3d 116, 128-129, 173 Cal.Rptr. 877, the court stated:

"In People vs. Berve (1958) 51 Cal.2d 286 [332 P.2d 97], the defendant was severely beaten by the vengeful relatives of the victim and repeatedly told during the course of the beatings that he and his family would be killed if defendant did not confess. The police rescued defendant from his attackers, and defendant confessed to the police shortly thereafter. The court ruled that the confession was involuntary, stating that the coercive effects of the recent beatings and threats affected the later confession. Thus, it is not necessarily determinative that the alleged coercive force was the product of a third person and not the police. All that is important is the question whether the confession was the product of a rational intellect and free will. (Blackburn vs. Alabama (1960) 361 U.S. 199, 208 [4 L.Ed.2d 242, 249, 80 S.Ct. 274]; People vs. Haydel (1974) 12 Cal.3d 190, 197 [115 Cal.Rptr. 394, 524 P.2d 866].}"

> In In re Deborah C. (1981) 30 Cal.3d 125, 635 P.2d 446; 177 Cal.Rptr. 852, the court stated:
> "Thus it appears that shoplifting convictions routinely may depend more on eyewitness testimony and physical evidence than on the suspect's inculpatory statements. Store Detectives' incentive to extract confessions is diminished even when the basic intent is to prosecute. Should psychological or physical abuse produce a confession, the exclusionary remedy is of course available. (In re Deborah C. (1981) 30 Cal.3d 125, 635

P.2d 446; 177 Cal.Rptr. 852, the court stated:

> "Zelinski's `color of law' analysis responded to arguments that illegal searches by private guards are not state action and thus are unaffected by the Fourth Amendment and article I, section 13 of the California Constitution. (Pp. 366-367.) But the mere asking of questions is not illegal. And guarantees against self-incrimination do not turn solely on whether interrogators are state agents. Rather, they prevent the state from using involuntary answers as evidence (see Jackson vs. Denno (1964) 378 U.S. 368, 385-386 [12 L.Ed.2d 908, 920-921, 84 S.Ct. 1774, 1 A.L.R.3d 1205]; People vs. Varnum (1967) 66 Cal.2d 808, 812-813 [59 Cal.Rptr. 108, 427 P.2d 772], app. dism. and cert. den. (1968) 3980 U.S. 529 [20 L.ed.2d 86, 88 S.Ct. 1208]) whether obtained by government or private conduct (People vs. Haydel (1974) 12 Cal.3d 190, 197 [115 Cal.Rptr. 394, 524 P.2d 866]). Statements obtained without manifest physical or psychological coercion usually are deemed voluntary, though defendant never knew or waived his rights to silence and counsel."

In People vs. Whitt (1984) 36 Cal.3d 724, Fn 16, 685 P.2d 1161; 205 Cal.Rptr. 810, the court stated:

> "FOOTNOTE 16. Had deLoach in some way coerced these statements, they would of course be inadmissible regardless of deLoach's status as a private citizen. (People vs. Haydel (1974) 12 Cal.3d 190 [115 Cal.Rptr. 394, 524 P.2d 866]; see also In re Deborah C., supra, 30 Cal.3d at p. 132.) There is no suggestion in the record that he did so."

XVI

POLICE AGENT

GROUND NO. 2

Det. XXX was a "police agent".

There is a line of cases that "police agents" must comply with the Sixth Amendment to the U.S. Constitution regarding involuntary confessions and admissions. The particular aspect of the cases deals with the "police agent" failing to give a Miranda Warning, thus making the statement

involuntary. An involuntary statement caused by threats and offers of benefits receives more protection than an involuntary statement caused by a failure to give Miranda Warning since the former cannot even be used for impeachment.

In United States vs. Henry (1980) 447 U.S. 264, 65 L.Ed.2d 115, 100 S.Ct. 2183, the police had a paid informant in the defendant's cell. The informant was told not to question the defendant. However, the informant on his own "stimulated" the conversation. (See pp. 271, fn 9, 273 [65 L.Ed.2d at pp. 122-124]. The court held that he was a police agent and found that there was a failure to give Miranda warnings under Massick vs. United States (1964) 377 U.S. 201, 12 L.Ed.2d 246, 84 S.Ct. 1199. See also Maine vs. Moulton (1985) 474 U.S. 159, 88 L.Ed.2d 481, 1065 S.Ct. 477.

In People vs. Walker (1972) 28 CA3d 1042, 105 Cal.Rptr. 672, the court found that a psychiatrist hired to interview the defendant was a "agent" of the government.

(Facts of this case.....) XXX's conduct as a "police agent" in deliberately attempting to elicit incriminating statements is attributable to the state. XXX's acts of using threats and benefits to obtain an involuntary admission are attributable to the state.

XVII

USE OF INVOLUNTARY STATEMENT FOR IMPEACHMENT

The law in California is well established that an involuntary confession or admission cannot be used to impeach a defendant that testifies.

> "It is also established in California and many other jurisdictions that involuntary confessions may not be used for purposes of impeaching the testimony of an accused. (People vs. Byrd, 42 Cal.2d 200, 210 [266 P.2d 505]; People vs. Rodriguez, 58 Cal.App.2d 415, 418 et seq. [136 P.2d 9]; 89 A.L.R.2d 478, 479-480.)"
>
> "We believe a similar rule should operate to exclude involuntary admissions when they are offered for that purpose, and it has been so held in a number of jurisdictions. (People vs. Hiller, 2 Ill.2d 323 [118 N.E.2d 11, 13]; State vs. Palmer, 232 La.468 [94 So.2d 439, 444-445]; State vs. Burnett, 357 Mo. 106 [206 S.W.2d 345, 347-348]; see 89 A.L.R.2d 478, 489.) The credibility of an accused who takes the stand may be of critical importance to the trier of fact in determining whether or not a defense has been established, and we should not permit an accused's credibility to be attacked by use of an involuntary statement which would be inadmissible as affirmative evidence under the rule of People vs. Atchley, supra, 53 Cal.2d 160, 170." Harris vs. New York (1971) 401 U.S. 222People vs. May (1988) 44 C3d 309People vs. Rodriguez (1943) 58 C.A.2d 415People vs. Speaks (1957) 156 C.A.2d 25
>
> In People vs. Ditson 57 C.2d 439.) (See 50 Cal.L.Rev. 723; 56 Cal.L.Rev. 611; 1962 A.S. 364.)

CONCLUSION

Dated:

Respectfully submitted,

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