

[CAPTION]

MOTION TO SUPPRESS STATEMENTS (INVOLUNTARY CONFESSION)

The Defendant, by counsel, respectfully requests this Court to suppress as evidence in this cause any and all oral and written communications, confessions, statements, admissions or tests, alleged to have been made by the Defendant prior to, at the time of, or subsequent to his/her arrest in this cause. In support of this Motion, the Defendant states the following:

1. The Defendant is charged with [insert offenses].
2. On [insert date], in response to an interrogation conducted by the police or its agents, the Defendant gave a statement. The Defendant was in custody at the time of the interrogation.
3. The statement was involuntary, and thus obtained in violation of the Fourteenth and Fifth Amendments of the United States Constitution and Article I, Sections 12, 13, and 14 of the Indiana Constitution for the following reasons:

[CHOOSE APPROPRIATE REASONING]

- a. The statement sought to be suppressed was obtained as a result of physical coercion illegally directed against the Defendant and such statements were, therefore, involuntarily given.
- b. The statements sought to be suppressed were obtained as a result of psychological and mental coercion illegally directed against the Defendant and such statements were, therefore, involuntarily given.
- c. The statements sought to be suppressed were obtained as the product of and as the direct and proximate result of confronting the accused with certain material misrepresentations of fact known by the interrogator to be misrepresentations.
- d. The statements sought to be suppressed were obtained as a result of promises of leniency and/or immunity to him/her that were not fulfilled and such statements were, therefore, involuntarily given. The promises included suggestions and offers of leniency, inferences that charges could be "dropped," and inferences that in exchange for statements and self-incriminating actions the number and severity of possible charges against Defendant would be limited.

Therefore, any and all communications, confessions, statements, admissions or tests executed by the Defendant were elicited in violation of his/her constitutional rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and his/her rights under Article 1, § 12, 13 and 14 of the Indiana Constitution.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court:

1. Conduct a pre-trial hearing to determine if the statements alleged to have been given were voluntary in nature; and
2. Suppress as evidence in this cause any and all communications, confessions, statements, admissions or tests, written or oral, made by him/her prior to, at the time of, or subsequent to his/her arrest in this cause.

(Signature)

REFERENCES

CASEBANK I.1.a.1; I.1.a.2; I.1.a.3; I.8

U.S. Constitution, 4th, 5th, 6th and 14th Amendments

Indiana Constitution, Article 1, §12, §13, §14

“A confession must be voluntary in order to be admissible under the Fourteenth Amendment due process provision. This requirement of voluntariness is distinct and separate from the requirement of voluntariness under the Fifth Amendment privilege against self-incrimination, but the two requirements are otherwise essentially the same.” Kerr, 16 Indiana Practice, 7.4(b), 586 (1991).

CASE LAW

Carroll v. State, 438 N.E.2d 745 (Ind. 1982) (voluntariness of confession is determined by totality of circumstances surrounding the confession, including whether statement was induced by any violence, threats, promises or other improper influence).

Lego v. Twomey, 404 U.S. 477, 489, 92 S.Ct. 619, 626-27, 30 L.Ed.2d 618, 627 (1972) (under the U.S. Constitution, the State must prove the voluntariness of the confession by a preponderance of the evidence). See also Smith v. State, 689 N.E.2d 1238 (Ind. 1997).

Magley v. State, 335 N.E.2d 811, 817 (Ind. 1975) (under the Indiana Constitution, the State must prove the voluntariness of a confession beyond a reasonable doubt), *overruled on other grounds by Smith v. State*, 689 N.E.2d 1238 (Ind. 1997) (the majority of the Indiana Supreme Court approving of the reasonable doubt standard).

Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (confession of prisoner motivated by fear of violence absent protection from his "friend," a paid informant for the FBI, held involuntary and its admission in evidence was not harmless error; a different majority held the harmless error rule applied to involuntary confessions and lack of harmlessness determined on basis of whether beyond a reasonable doubt the admission of the confession did not contribute to the conviction; because of the profound impact a confession has on the jury, a reviewing court should exercise extreme caution before finding its admission harmless).

Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (coercive police activity is a necessary predicate to a finding that the confession is involuntary within the meaning of the Due Process Clause).

Hastings v. State, 560 N.E.2d 664 (Ind.Ct.App. 1990) (statement made to caseworker during court-ordered therapy in CHINS case could not be used against the Defendant in the criminal case where statutes required the Defendant to cooperate and the Defendant was advised that full cooperation was required to avoid termination of parental rights). NOTE: Although the Hastings Court used a Fourteenth Amendment analysis, the Court decided the case under the Fifth Amendment. Thus, include both the Fourteenth and Fifth Amendments in the Suppression Motion.

Henry v. State, 738 N.E.2d 663 (Ind. 2000) (police deceit during interrogation is not condoned and is not conclusive on the issue of voluntariness, but it weighs heavily against the determination of voluntariness).

Edwards v. State, 412 N.E.2d 223 (Ind. 1980) (where police had female clerk at police station pretend to be eyewitness by appearing at the door and saying “yes, that’s the man,” confession was involuntary).

Roehling v. State, 776 N.E.2d 961 (Ind.Ct.App. 2002) (where police incorrectly suggested they had a warrant to search all vehicles on premises and suggested suspects disclose all contraband before the search began, the Defendant's post-Miranda admission that he had unlicensed handgun was involuntary).

Frazier v. Cupp, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) (fact that officers falsely told the Defendant that the accomplice had been arrested and made a confession did not render the Defendant's confession involuntary, considering the totality of the circumstances).

A.A. v. State, 706 N.E.2d 259 (Ind.Ct.App. 1999) (juvenile's confession was involuntary because the officer insisted the juvenile confess to an incident of child molesting or the State would not prosecute his uncle who had allegedly abused him). See also Hall v. State, 266 N.E.2d 16 (Ind. 1971) (where officers told Defendant that his wife was also prime suspect in burglaries, and where Defendant's children then would by necessity have been cared for by persons other than his wife, Defendant's confession could not have been given freely or voluntarily as a matter of law).

Ashby v. State, 354 N.E.2d 192 (Ind. 1976) (a confession obtained by promises of immunity or leniency is inadmissible). See also Walker v. State, 233 N.E.2d 483 (Ind. 1968).

Hampton v. State, 468 N.E.2d 1077 (Ind.Ct.App. 1984) (vague or indefinite statements as to leniency made by the police are not sufficient inducements to render a confession inadmissible).

Mays v. State, 982 N.E.2d 387 (Ind.Ct.App. 2013) (the use of Defendant's statements during SVP evaluation process did not violate his right against self-incrimination as to constitute fundamental error, where the SVP procedure did not produce any admissions that contributed to any criminal convictions and Defendant was informed prior to trial that he had right to remain silent and that anything he said could be used against him).

Smith v. State, 983 N.E.2d 226 (Ind.Ct.App. 2013) (officer's statement that he was going to "bury" the Defendant referred to the amount of evidence police had against Defendant, and did not amount to coercive tactics).

Malloch v. State, 980 N.E.2d 887 (Ind.Ct.App. 2012) (use of two-part Reid Technique, where detective first used non-accusatory questioning, and then claimed that the investigation clearly showed that Defendant committed the crime, did not result in involuntary confession).

State v. Banks, 2 N.E.3d 71 (Ind.Ct.App. 2014) (coercive police conduct is not prerequisite to establishing that confession was involuntary under state constitutional privilege against self-incrimination; where police obtained confession while Defendant was involuntarily medicated for schizoaffective disorder, in restraints, and housed in psychiatric ward of correctional facility, confession was involuntary).

Weisheit v. State, 28 N.E.3d 3 (Ind. 2015) (Defendant's concussion and hospitalization did not render his statement to police involuntary, where Defendant had sustained only a minor injury and remained conscious throughout the brief interview, Defendant was fully aware of his surroundings, and Defendant selectively responded to certain questions in great detail).

Bond v. State, 9 N.E.3d 134 (Ind. 2014) (Defendant's confession was involuntary where detective told him he might not receive a fair trial and impartial jury in Lake County due to his race).

Williams v. State, 997 N.E.2d 1154 (Ind.Ct.App. 2013) (Defendant's statements were voluntary and not coerced although Defendant had only ninth-grade education and claimed not to understand what "having

a lawyer” meant in terms of understanding Miranda rights; officers’ statements that they wished to “help” Defendant were not implied promises of leniency but instead appeared to refer to Defendant’s need for help with his pedophilia).