IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
vs.	)	**No. 06-CR-159-HDC**
	)	
MARCO DEWON MURPHY,	)	
SHEQUITA REVELS,	)	
Defendants.	)	

MOTION TO SUPPRESS

Comes now the Defendant, Shequita Revels, by and through her undersigned counsel, and for her motion to suppress any and all custodial statements made by her to law enforcement officials during or contemporaneously with the execution of a search warrant at a residence located at 1353 N. 76th East Avenue, Tulsa, Oklahoma, states the following:

On August 2, 2006, at 0605 hours, law enforcement officers executed a search warrant at the above address, while Ms. Revels was physically present at the residence. (A photocopy of the report by Tulsa Police Detective S.E. Hickey is attached hereto as Exhibit A). As stated in the report, approximately 20 seconds after forced entry into the residence, the officers came in contact with Ms. Revels and Co-Defendant Murphy, and the two were immediately "taken into custody" by the officers (see Page 2 of report).

Subsequent thereto, at 0630 hours, following the initial search of the residence, Detective Hickey, Detective Henderson, and Special Agent McFadden escorted Ms. Revels to the "middle bedroom" of the residence, and "asked if she would agree to cooperate with this investigation". In response thereto, Ms. Revels made a number of testimonial statements (See Page 3 of report).

It is an undisputed fact that Ms. Revels was not given a *Miranda* warning by the officers prior to their questioning of her at the residence. At a recent detention hearing held on October 10, 2006, Special Agent McFadden testified during cross-examination that Ms. Revels was not given a *Miranda* warning prior to their interviewing her at the residence, and McFadden also testified that Ms. Revels was not "free to leave" during the questioning.

ARGUMENT AND AUTHORITY

Ms. Revels hereby moves to suppress all statements made by her during her interview by officers at the residence, for the reason that the officers failed to provide her a *Miranda* warning prior to, or anytime during, the interview.

There is a plethora of Federal common law enforcing the duty of law enforcement officers to provide *Miranda* warnings prior to custodial questioning of defendants.

In *U.S. v. Perdue*, 8 F.3d 1455 (10th Cir. 1993), state and local law enforcement officers executed a search warrant at a rural location in Jefferson

County, Kansas. Two helicopters and fifteen to twenty law enforcement officers were involved in the search. Inside a metal building on the property, police found roughly 500 marijuana plants, weighing scales, containers and plastic bags with marijuana, and other paraphernalia. Inside the bedroom of the building, police found a loaded 9 mm. pistol lying on the bed and an unloaded 12-gauge shotgun with shells nearby.

While the officers were conducting the search, a car entered a dirt road leading to the property, and subsequently turned toward the metal building being searched. Once the occupants of the car observed the large gathering of police officers surrounding the shed, the car quickly stopped and reversed its direction. With weapons drawn, two of the officers stopped the car and ordered the occupants, the Defendant Perdue and his fiancée, to get out of the car and lie face down. With guns still drawn, and with Perdue lying face down on the road, one of the officers asked Perdue what he was doing on the property, and Perdue replied that he was there to check on his stuff. The officer then asked Perdue "What Stuff?" and Perdue replied, "The marijuana that I know that you guys found in the shed." The officer further inquired whose marijuana it was, and Perdue replied that it was his and his fiancée's. A *Miranda* warning was not given to Perdue prior to his making those statements.

Perdue was indicted in the United States District Court of Kansas with possession of marijuana with intent to distribute and use of a firearm in relation to drug trafficking offenses. At trial, Perdue challenged the admissibility of the above-statements, which was denied, and he was subsequently convicted by the jury. On appeal, the Tenth Circuit reversed Perdue's conviction, finding that the District Court erred in admitting the statements.

The Tenth Circuit stated the following:

> **"Mr. Perdue also asserts that his statements to Officer Carreno during the road stop were involuntary in violation of his due process rights and were not proceeded by the procedural safeguards required by *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The government counters Officer Carreno obtained the statements during a valid Fourth Amendment seizure of Mr. Perdue as authorized by *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d. 889 (1968). The district court concluded that since Mr. Perdue was interrogated by Officer Careno during a valid *Terry* stop, the statements were voluntary and *Miranda* warnings were not required. We disagree."**

U.S. v. Perdue, supra, at 1461.

The Court of Appeals cited the following rule of law:

> **"*Miranda* requires that procedural safeguards be administered to a criminal suspect prior to 'custodial interrogation.' *Miranda v. Arizona,* 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966). Thus two requirements must be met before *Miranda* is applicable; the suspect must be in 'custody,' and the questioning must meet the legal definition of 'interrogation."**

U.S. v. Perdue, supra, at 1463.

As to the definition of "interrogation", the Tenth Circuit stated:

> **"The second requirement is that the suspect must have been subjected to 'interrogation.' The Court has explained that 'interrogation' includes 'any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.' *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980)."**

U.S. v. Perdue, supra, at 1464.

Applying the above rules of law to the matter at bar, Ms. Revels was certainly in custody when she was questioned and made responsive statements, the police report clearly states that she was taken into "custody" prior to and well before her being escorted into the middle bedroom for questioning. And the questioning in the middle bedroom was definitely within the legal definition of an "interrogation", as the officers' questioning of Ms. Revels was well more than reasonably likely to elicit incriminating responses from her. Three officers were present and simultaneously asking questions, and the interview began with one of the officers asking her if she would like to "cooperate". Accordingly, Ms. Revels statements during the interview in the middle bedroom must be suppressed, as they were custodial statements made during an interrogation.

Another decision of import is that of *U.S. v. Orso*, 234 F.3d 436 (9th Cir. 2000), where Jody Orso approached a U.S. Postal letter carrier, Vicki Orr, and demanded that Orr produce her arrow keys, which were used to open Postal Service collection boxes and group mailboxes at apartment buildings. Orr gave Orso her keys and attempted to give Orso her mail satchel as well, but Orso

refused the satchel. Orso then fled on foot. Subsequently, a Federal arrest warrant was issued for Orso. More than two months later, Orso was arrested by municipal police officers on an unrelated charge and taken to the Redondo Beach Police Department. The officers notified the Postal Inspection Service that they were holding Orso, and two United States Postal Inspectors subsequently took her into custody and began transporting her to their office for an interview.

Orso was handcuffed (with her hands cuffed behind her back) and placed in the back seat of the vehicle for the length of the drive, which took 25-35 minutes. The Postal Inspectors questioned Orso about the crime during the drive, but did not give her a *Miranda* warning prior to questioning her. One of the Inspectors, Galetti, testified that they chose not to give a *Miranda* warning because, "we wanted to eventually speak with Miss Orso and thought that if we Mirandized her right away that she might not want to speak with us." Orso eventually made several self-incriminating statements to the Inspectors during the drive, and in one such statement she said "Well, if the letter carrier said it's me, then it must be me." *U.S. v. Orso*, at 439. And when told that an individual named "Main" was believed to have been the driver of her getaway car after the robbery, Orso said that she did not know anyone by that name; but after the Inspector subsequently described Main's appearance, Orso said "Oh, the gold-toothed boy." *U.S. v. Orso*, at 439.

Orso was indicted for robbery of a Postal letter carrier. She moved to suppress the statements that she made in the car prior to receiving the *Miranda* warning, and the District Court denied the motion. On appeal, the Government conceded that the Inspectors committed a *Miranda* violation, but argued that the statements were not self-incriminating. The Ninth Circuit disagreed with the Government's argument, and reversed Orso's conviction on the basis that her *Miranda* rights were violated.

The Ninth Circuit stated the following:

> **"Although the government concedes that the inspectors violated *Miranda*, it contends that Orso's statements were not actually incriminating. We disagree. Orso stated that if the letter carrier identified her, then 'it must be me.' Her other statements, while insufficient to constitute a confession, were certainly inculpatory as well. She states that she knew someone who had been implicated in the crime, expressed surprise at the possibility of receiving a long sentence for the crime, and opined that she could serve a shorter sentence for it. Statements are incriminating under *Miranda* as long as they 'incriminate [the defendant] in any manner,' because the privilege against self-incrimination 'does not distinguish degrees of incrimination.' *Miranda*, 384 U.S. at 476, 86 S.Ct. 1602. Therefore, we have no doubt that the statements in the car were incriminating."**

U.S. v. Orso, at 440.

Applying the Ninth Circuit's analysis to the matter at bar, Page Three of the Tulsa Police Officer's report list several statements made by Ms. Revels during the interview in the middle bedroom. A review of those listed statements reveals that most of them are undoubtedly self-incriminating.

Another Ninth Circuit decision of import is that of *U.S. v. Henley*, 984 F.2d 1040 (9th Cir. 1993). Following an armed robbery of a savings and loan, it was determined the gunman wore a cap and sunglasses, and the getaway car was a 1974 Plymouth Duster. Subsequently, police found that vehicle and arrested Henley. While Henley sat inside a police car, handcuffed, he was questioned by an FBI agent whom asked him whether he owned the automobile. Henley replied that he did. Following his conviction of armed robbery and firearm charges in the U.S. District Court of Arizona, Henley appealed, contending that the admission into evidence of his statement that he owned the car violated his *Miranda* rights. The Ninth Circuit agreed and reversed his conviction, stating that "[a]lthough the district court found that the statement was voluntary, . . .this finding does not alter our conclusion that Henley's admission of ownership should have been suppressed. *Miranda* presumes conclusively that all responses to custodial interrogation are involuntary unless preceded by the prescribed warnings." *U.S. v. Henley*, supra, at 1043.

Accordingly, in the matter at bar it is of no consequence whether or not Ms. Revels' statements during the interview were actually voluntary, as her statements are deemed involuntary since they were not preceded by a *Miranda* warning.

The Eleventh Circuit addressed the issue of failure to provide a *Miranda* warning in *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992). Jacobs was

sentenced to two concurrent life sentences for first degree murder in Florida State Court. She filed a writ of habeas corpus in the United States District Court for the Southern District of Florida, contending (among other assertions of error) that the state violated her Fifth Amendment rights by introducing post-arrest statements. The District Court denied the petition. On appeal, the Eleventh Circuit reversed, finding that the trial court's admission of Jacobs' statements were improper and prejudicial error under *Miranda*.

Jacobs had emerged from a crashed car that had attempted to run a police roadblock and that had been fired upon by law enforcement officials. All of the officers present had weapons drawn. One of the officers, Trooper Trice, testified that at that point he "grabbed her" and had placed her "in custody." Subsequently, without informing Jacobs of her *Miranda* rights, Trooper Trice asked her, "Do you like shooting troopers?" -- and Jacobs responded that "We had to." *Jacobs v. Singletary*, supra, at 1291. In her petition for habeas corpus, Jacobs contended that the trial court erred in admitting that statement into evidence.

The Eleventh Circuit agreed, and stated the following:

> **"We find that a reasonable person in Jacobs' position clearly would not have felt free to leave. Because she had not been informed of her *Miranda* rights before answering Trooper Trice, the trial court should have excluded this statement."**

Jacobs v. Singletary, supra, at 1291.

In the case at bar, it is undisputed that Ms. Revels was in custody and had not received a *Miranda* warning from the officers when she was interviewed/interrogated in the middle bedroom of the residence. Accordingly, her statements made during the course of the interview are not admissible under the Supreme Court decision of *Miranda v. Arizona*, supra, and plethora of subsequent common law enforcing the requirement that officers provide a *Miranda* warning during custodial interrogations of suspects/defendants.

CONCLUSION

Wherefore, for the reasons stated above, Shequita Revels hereby moves to suppress all of her statements made during the above-described custodial interview/interrogation of her by law enforcement officers in the middle bedroom of the residence, as well as any other statements made by her while in custody at the residence, as she was not given the constitutionally required *Miranda* warning.

Respectfully submitted,

/s/ J. Lance Hopkins
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CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the above and foregoing document to: Janet S. Reincke, Assistance U.S. Attorney, at 110 West 7th Street, Suite 300, Tulsa, Oklahoma, 741119; and, Stephen Knorr, Attorney for Marco Dewon Murphy, 4815 S. Harvard Ave, Suite 523, Tulsa, OK 74135.

/s/ J. Lance Hopkins
J. Lance Hopkins