

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

)

**MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS**

Plaintiff,

)

vs.

)

Eyuael Kebede,

)

MNCIS File No. 27-CR-20-13495

Defendant.

)

)

)

TO: THE HONORABLE JUDGE BEV BENSON, HENNEPIN COUNTY DISTRICT JUDGE;
AND ASSISTANT COUNTY ATTORNEY MEGAN SCHOUVIELLER.

STATEMENT OF FACTS

On April 25, 2020, Officer Anthony Rodin with the Minneapolis Police Department responded to a report of a traffic accident at 5219 Newton Avenue North. Officer Rodin went to the scene of the accident where a grey sedan appeared to have hit a black sedan that was parked; the grey sedan was still positioned immediately next to the black sedan. Apr. 25, 2020, Officer Anthony Rodin Body Camera Video, at 21:32:47 (Exh A).¹ Officer Rodin got out of his squad car and a man later identified as Eyuael Kebede walked up to him. *Id.* at 21:32:10. Mr. Kebede said the silver sedan was his car but said he did not know who had driven the car. *Id.*

Officer Rodin told Mr. Kebede to sit down on the curb, and Officer Rodin walked up to a man and woman who were standing next to the crash. *Id.* at 21:32:50. The man said did not see anything. *Id.* at 21:33:10. The woman said she did not see the crash, but she heard a noise. *Id.* at 21:33:20. The woman said the neighbors told her that someone hit the car. *Id.* She said she looked out the window and saw Mr. Kebede in the driver's seat with several people trying to push the car

¹ The timestamps for the body camera video and squad videos are not synced correctly, so the timestamps for the exhibits are listed as they appear on the video.

back. *Id.* Mr. Kebede said he had been at home, and he thought that either his brother took the car or someone started stealing his car. *Id.* at 21:32:15, 21:34:00. Mr. Kebede consistently said he had not been driving the car.²

Officer Rodin said, “How much you been drinking today? Nothing at all? Will you blow into a PBT to prove to me that you haven’t been drinking? Then I don’t have to arrest you.” Exh. 1, at 21:37:58. Mr. Kebede refused to blow into a PBT, and then Officer Rodin and another officer placed Mr. Kebede in handcuffs, searched his person, put him in the back seat of a marked squad car, and closed the door. *Id.* at 21:38:55-21:40:10. Both officers were in full uniform. *Id.* Sergeant Andrew Schroeder later arrived and told Mr. Kebede, “Right now, you are under arrest for DWI.” *Id.* at 22:07:34.

Sergeant Schroeder moved Mr. Kebede to his squad car and asked Mr. Kebede a series of questions. *Id.* at 22:08:00. The following exchange occurred after Mr. Kebede had been sitting in the back of the squad car silently for half a minute:

Schroeder: Where are you from bud?”

Mr. Kebede: Ethiopia.

Schroeder: Oh. When did you come here?

Mr. Kebede: Twelve, thirteen years ago.

Schroeder: Ok. Where do you live then?

Mr. Kebede: Right where you picked me up from bro.

Schroeder: Oh. You live right there huh?

Mr. Kebede: Yup. Somebody else drove my car.

Schroeder: Well, somebody saw you in the driver’s seat, that why ...

Mr. Kebede: Cause I'm trying to get the fucking car out the way, because I'm caught up in this bullshit.

Apr. 25, 2020, Squad Camera Video, at 22:42:55-22:43:50 (Exh. B). At no point did the police give Mr. Kebede *Miranda* warnings. *See* Exh. A; Exh. B.

² Mr. Kebede denied driving the car at the following times: 21:34:00, 21:34:13, 21:35:42, 21:38:12, 21:49:33, 21:50:20, 21:50:25, 22:07:20

Sergeant Schroeder applied for and received a search warrant for Mr. Kebede's blood. Apr. 24, 2020, Search Warrant Application, at 1-3 (Exh. C). The relevant portion of Sergeant Schroeder's application in support of the blood draw warrant is excerpted below:

The facts establishing the grounds for issuance of a search warrant are as follows:

I am a licensed peace officer in the State of Minnesota employed with the Minneapolis Police Dept. I have investigated the following matter and have obtained information from peace officers and others. The facts which are true and correct to the best of my knowledge and belief are as follows:

On the date of 04/25/2020, at approximately 9:21:00 PM, peace officers came into contact with EYUAE L GONFA KEBEDE, date of Birth 05/18/1994. The reason for the initial contact with this Person is :

- Accident

Peace officers believed this Person was driving, operating, or controlling a motor vehicle located at 5219 newton ave n, in the (city)(township) of Minneapolis in Hennepin County, Minnesota, based on the following reason:

- Person admitted
- witness

From the investigation, peace officers concluded that at the time the Person was driving, operating, or controlling the motor vehicle, the Person was under the Influence of Alcohol, based upon the following facts:

Officers responded to an accident where a vehicle hit a parked vehicle.

Officers arrived and found a male next to the car, and spoke to a witness that stated that KEBEDE was driving the car. KEBEDE later admitted "trying to move the vehicle." Kebede admitted drinking "5 beers," and his speech is slurred. He was placed under arrest for DWI.

Id. at 2. Sergeant Schroeder served the search warrant on Mr. Kebede.

The State charged Mr. Kebede with Operating a Motor Vehicle Under Influence of Alcohol. Minn. Stat. § 169A.20, subd. 1, 5. Mr. Kebede moved to suppress evidence seized pursuant to the search warrant.

ARGUMENT

The Court should suppress evidence seized pursuant to the warrant Sergeant Schroeder served on Mr. Kebede to take his blood. Suppression is warranted because: 1) Sergeant Schroeder included a statement in the warrant application that Sergeant Schroeder elicited from Mr. Kebede in violation of *Miranda*, and 2) Sergeant Schroeder made deliberate falsehoods and omitted information from the warrant application.

I. SERGEANT SCHROEDER VIOLATED *MIRANDA* AND INCLUDED MR. KEBEDE’S UN-*MIRANDIZED* STATEMENT IN THE WARRANT APPLICATION.

The Fifth Amendment of the United States Constitution provides that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. CONST. amend. V. This protection has been extended to state court criminal proceedings through the Fourteenth Amendment of the United States Constitution. *Malloy v. Hogan*, 378 U.S. 1, 11 (1964). This privilege is also guaranteed by the Minnesota Constitution. MINN. CONST., art. 1, §7. Although this provision is identical to the Fifth Amendment of the U.S. Constitution, Minnesota courts have the authority to offer greater protection than is offered under the Fifth Amendment. *State v. Murphy*, 380 N.W.2d 766, 771 (Minn. 1986).

Statements arising from in-custody interrogation of an accused are inadmissible unless the State can show that the accused was fully apprised of their constitutional rights and has knowingly, intelligently, and voluntarily waived their rights against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 475 (1966) (emphasis added); *State v. Ouk*, 516 N.W.2d 180, 184-85 (Minn. 1994). Before initiating interrogation, police officers are required to advise a suspect of his/her rights and the consequences of speaking to the officers, and then obtain a waiver. *Miranda*, 384 U.S. at 467. Without such safeguards, police interrogations contain inherently compelling pressures which

work to undermine an individual's resistance and compel the person to speak when they would not normally do so. *Id.*

When applying the custodial interrogation standard, courts must first determine whether the defendant was "in custody," and then turn to the nature of the interrogation itself to determine whether the questioning was reasonably likely to elicit an incriminating response. *State v. Tibiatowski*, 590 N.W.2d 305, 309 (Minn. 1999).

a. Mr. Kebede was in custody.

"In determining whether an individual was in custody..., the [test is] whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Stansbury v. California*, 511 U.S. 318, 322 (1994) (quotations omitted). The analysis for determining whether a person was in "custody" depends on an evaluation of the facts and circumstances of the particular case. *State v. Heden*, 719 N.W.2d 689, 695 (Minn. 2006) (citing *State v. Staats*, 658 N.W.2d 207, 211 (2003)).

In *State v. Malik*, the Minnesota Supreme Court held that the defendant was restrained to the degree associated with formal arrest under the following circumstances. 552 N.W.2d 730, 731 (Minn. 1996). A State Trooper stopped the defendant for speeding, removed the defendant from his car, patted the defendant down, and placed the defendant in the Trooper's squad car. *Id.* The court noted that the Trooper knew the defendant's license was revoked, and the Trooper told the defendant he was going to tow the defendant's car. *Id.* The court held a reasonable person would believe they were under arrest, so the Trooper erred by not giving *Miranda* warnings prior to questioning the defendant. *Id.*

Here, Mr. Kebede would reasonably believe he was under arrest for purposes of *Miranda*. Officer Rodin said, "How much you been drinking today? Nothing at all? Will you blow into a

PBT to prove to me that you haven't been drinking? Then I don't have to arrest you." Exh. 1, at 21:37:58. Mr. Kebede refused to blow into a PBT, and then two officers placed Mr. Kebede in handcuffs, searched his person, put him in the back seat of a marked squad car, and closed the door. *Id.* at 21:38:55-21:40:10. Both officers were in full uniform. *Id.* Sergeant Schroeder later said, "Right now, you are under arrest for DWI." *Id.* at 22:07:34. Mr. Kebede would reasonably believe he was under arrest because of the physical restraints and the officers' statements. Officer Rodin said he would arrest Mr. Kebede unless he took a PBT, and when Mr. Kebede refused, the officers handcuffed, searched, and placed Mr. Kebede in a squad car. Sergeant Schroeder explicitly told Mr. Kebede he was under arrest. Any person would reasonably conclude they were under arrest under these circumstances.

In *Malik*, the Minnesota Supreme Court held the defendant was in custody for *Miranda* when police pat frisked the defendant and put him in a marked squad car. 552 N.W.2d at 731. Sergeant Schroeder and Officer Rodin did more than that. The officers handcuffed Mr. Kebede, fully searched him, and put him in a marked squad car with the door closed. If the defendant in *Malik* was in custody for *Miranda* purposes, Mr. Kebede was in custody for *Miranda* purposes because the seizure here was more intense than *Malik*. The Court should rule Mr. Kebede was in custody for *Miranda* purposes, so the police should have issued *Miranda* warnings.

b. Sergeant Schroeder elicited an incriminating statement from Mr. Kebede.

"Interrogation" under *Miranda* refers to "whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (emphasis added); *State v. Hale*, 453 N.W.2d 704, 707 (Minn. 1990). This term not only refers to express questioning, but also to 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. *Id.*

The latter portion of this definition focuses on the perceptions of the suspect rather than the intent of the police since Miranda safeguards were designed to protect suspects in custody against coercive police practices. *Id.*

The Minnesota Supreme Court's test for determining whether a defendant was subject to an interrogation under Miranda is whether: (1) the questioning was initiated by a law enforcement officer; and (2) under the totality of circumstances, it would be reasonably likely to elicit an incriminating response. *Tibiatowski*, 590 N.W.2d at 310-11.

Here, Sergeant Schroeder expressly questioned Mr. Kebede and made statements likely to elicit incriminating responses. Sergeant Schroeder asked express questions such as: "Where are you from bud," "When did you come here," and "Where do you live then." Exh. B, Squad Video, at 22:42:55-22:43:50. Mr. Kebede offered that somebody drove his car. *Id.* at 22:43:35. Sergeant Schroeder counters Mr. Kebede's assertion, contradicts him and responds: "Well, somebody saw you in the driver's seat, that why ..." *Id.* at 22:43:40. This last statement was "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." Sergeant Schroeder's statement did in fact elicit an incriminating response when Mr. Kebede said, "Cause I'm trying to get the fucking car out the way, because I'm caught up in this bullshit." Notably, Sergeant Schroeder included Mr. Kebede's statement in the warrant application when he wrote: "KEBEDE later admitted 'trying to move the vehicle.'" Exh. C, at 2. The facts here establish that Mr. Kebede was in custody, he was not *Mirandized*, and Sergeant Schroeder interrogated Mr. Kebede.

The Court should rule Mr. Kebede's statements were obtained in violation of *Miranda*. The Court should suppress Mr. Kebede's statements and strike Mr. Kebede's un-*Mirandized* statements from the warrant application.

II. SERGEANT SCHROEDER WROTE DELIBERATE FALSEHOODS AND OMITTED OTHER STATEMENTS FORM THE WARRANT APPLICATION THAT WOULD HAVE A MATERIAL EFFECT ON FINDING PROBABLE CAUSE.

Both the United States Constitution and the Minnesota Constitution require a showing of probable cause prior to the issuance of a valid warrant. U.S. CONST. amend. IV; MINN. CONST. art. I, § 10. Probable cause has been defined as objective facts that would lead “a person of ordinary care and prudence [to] entertain an honest and strong suspicion that a crime has been committed.” *State v. Ward*, 580 N.W.2d 67, 70 (Minn. 1998) (quoting *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982)).

Probable cause for a warrant exists only “if, on the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015) (citations omitted). A judge issuing a search warrant “is limited to the information presented in the affidavit, rather than the information actually possessed by the police.” *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998).

A reviewing court should afford deference to a judge’s determination of probable cause in a search warrant. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). However, that deference is not absolute. *See Souto*, 578 N.W.2d at 751. When examining the basis for probable cause in the initial issuing of the warrant, the court looks to the information presented in the affidavit. *Id.* at 747. On the other hand, if the defendant makes a substantial preliminary showing that the affiant deliberately, or with reckless disregard for the truth, made a false or misleading statement that was necessary to the finding of probable cause, the court may look beyond the face of the affidavit. *Franks v. Delaware*, 438 U.S. 154, 155–56 (1985); *see also State v. Doyle*, 336 N.W.2d 247, 250 (Minn. 1983) (citing *Franks*, 438 U.S. at 155–56)). The same rule applies when a defendant shows

there were material omissions from the affidavit. *See State v. Smith*, 448 N.W.2d 550, 555 (Minn. Ct. App. 1989).

The preliminary showing required under *Franks* is made through an offer of proof. *Franks*, 438 U.S. at 171. The offer of proof must allege deliberate falsehoods, deliberate omissions, or a reckless disregard for the truth. *Id.* Negligence or mistake alone does not satisfy this test. *Id.* If the defendant proves that false or misleading statements were recklessly or intentionally made, the court must determine whether the statements were material or necessary to the finding of probable cause. *State v. Anderson*, 784 N.W.2d 320, 327 (Minn. 2010). Materiality is determined by revising the affidavit to include or exclude the disputed information. *Id.*

If the affidavit is insufficient to establish probable cause when the false statements are excised, the defendant is entitled to an evidentiary hearing on the motion to suppress. *Id.* (citing *State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989)). At the evidentiary hearing, the defendant must establish the allegations by a “preponderance of the evidence.” *State v. McGrath*, 706 N.W.2d 532, 540 (Minn. Ct. App. 2005) (citing *Franks*, 438 U.S. at 156). If the defendant succeeds, the warrant is “held void and the fruits of the search excluded from evidence.” *Smith*, 448 N.W.2d at 555 (citing *Franks*, 439 U.S. at 155–56).

a. Sergeant Schroeder deliberately presented falsehoods and omitted information from the warrant application.

Sergeant Schroeder deliberately lied when he stated in the warrant application that “Person Admitted.” Exh. C, at 2. Mr. Kebede did not admit to driving the car. Mr. Kebede vehemently and consistently denied driving the car no less than eight times. Exh. A, at 21:34:00, 21:34:13, 21:35:42, 21:38:12, 21:49:33, 21:50:20, 21:50:25, 22:07:20. At no point did Mr. Kebede admit to driving the car.

Mr. Kebede's denials are also omissions by Sergeant Schroeder. Nowhere in the warrant application did Sergeant Schroder write that Mr. Kebede denied driving the car. Exh. C, at 2. Mr. Kebede consistently denied driving the car. Exh. A, at 21:34:00, 21:34:13, 21:35:42, 21:38:12, 21:49:33, 21:50:20, 21:50:25, 22:07:20. The denials are deliberate omissions by Sergeant Schroeder.

Sergeant Schroeder deliberately lied when he wrote in the warrant application that: "a witness stated that KEBEDE was driving the car." The witness said she saw Mr. Kebede sitting in the driver's seat while others pushed the car sometime after the accident. Exh. A, at 21:33:20. Sitting in the driver's seat after a car has been rendered immobile during an accident is not driving the car, especially when there are multiple other people with the vehicle. Sergeant Schroder himself said, "Well, somebody saw you in the driver's seat, that why ..." Exh. C, at 22:43:40. Sergeant Schroeder knew the witness did not say they saw Mr. Kebede driving, yet Sergeant Schroeder went ahead and wrote this falsehood in the warrant application.

b. Sergeant Schroeder's misrepresentations and omissions were material to finding probable cause.

The next question is whether the misrepresentations and omissions were material to the affidavit. *Anderson*, 784 N.W.2d at 327. To make such a determination under *Franks*, the court should delete the false statements from the affidavit and insert the omitted facts. *Id.* If probable cause no longer exists, then the statements and omissions are material. *Id.*

Consider Sergeant Schroeder's warrant application would have accurately reflected, *if* the falsehoods are deleted, the illegal *Miranda* statement is stricken, and the omissions included:

From the investigation, peace officer concluded that at the time the Person was driving, operating, or controlling the motor vehicle, the Person was under the influence of Alcohol based on the following facts:

Officers responded to an accident where a vehicle hit a parked vehicle.

Officers arrived and found a male next to the car. Kebede denied driving the car. Kebede admitted drinking “5 beers,” and his speech is slurred. He was placed under arrest for DWI.

The warrant application is insufficient to establish probable cause without the false statements, the illegal *Miranda* statement, and the omitted statements. The Court may only consider the information in the warrant application. The four corners of the corrected warrant application allege only that Mr. Kebede was near the car and he had been drinking. The four corners of the corrected warrant do not allege that Mr. Kebede was the owner of the car nor that Mr. Kebede drove the car. This is not a sufficient basis to reasonably believe Mr. Kebede drove the car to justify a warrant. The Court should rule warrant is unsupported by probable cause and suppress all evidence seized pursuant to the warrant.

CONCLUSION

Mr. Kebede respectfully requests the Court suppress all evidence seized pursuant to the blood draw warrant. Suppression is warranted because the police elicited an illegal un-*Mirandized* statement from Mr. Kebede which the police included in the warrant application. The police also deliberately included falsehoods and omitted material information from the warrant application. Without the illegal *Miranda* statement, the falsehoods, and the omitted information, the warrant is unsupported by probable cause and evidence seized pursuant to the warrant must be suppressed.

Respectfully Submitted,

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Dated April 7, 2022.

Michael Hormillosa, Law Clerk



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