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D.C. Superior Court
12/22/2022 17:37PM
Clerk of the Court

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division—Felony Branch

UNITED STATES	:	**Case No. 2022 CF2 1977**
v.	:	**Hon. Neal Kravitz**
HARRY TUCKER	:	

MOTION TO SUPPRESS TANGIBLE EVIDENCE AND STATEMENTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPOR THEREOF

Harry Tucker through undersigned counsel, respectfully asks this Court, pursuant to the Fourth and Fifth Amendments to the Constitution of the United States and local evidentiary rules, to suppress any tangible evidence, observations and statements allegedly obtained from Mr. Tucker during the course of his unlawful stop and arrest on April 8, 2022. Mr. Tucker respectfully requests a pretrial hearing on this motion.

In support of this motion, undersigned counsel states:

1. On April 8, 2022, two officers occupying a marker police car go up to Mr. Tucker and repeatedly say "don't move". Mr. Tucker submits to this show of authority.
2. Mr. Tucker is then stopped and seized by two officers, grabbed from behind and pinned against the car.
3. While Mr. Tucker is being grabbed by officers and surrounded on all sides, officers place Mr. Tucker into handcuffs. Officers then go inside of Mr. Tucker's front jacket pocket, conducting an improper search.
4. Mr. Tucker is questioned on scene while in handcuffs. At no point was Mr. Tucker given *Miranda* warnings or any other information about his rights on scene.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. MR. TUCKER WAS SEIZED WITHOUT REASONABLE ARTICULABLE SUSPICION OR PROBABLE CAUSE; ACCORDINGLY, ALL TANGIBLE EVIDENCE MUST BE SUPPRESSED.

An encounter implicates the Fourth Amendment right to be secure against unreasonable searches and seizures whenever an officer, "by means of physical force or show of authority, has in some way restrained the liberty" of a person. *Terry v. Ohio,* 392 U.S. 1, 19 n. 16 (1968). A seizure occurs when, in light of "all of the circumstances surrounding the encounter…the police would have communicated to a reasonable person that the person was not free to decline the officers' request or otherwise terminate the encounter." *Sharp v. United States*, 132 A.3d 161, 166 (D.C. 2016) (quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991)) (holding that the defendant was seized "in the absence of any sign that a reasonable person in these circumstances would believe officer was giving him a genuine choice to decline the request"); *Towles v. United States*, 115 A.3d 1222, 1231 (D.C. 2015).

Warrantless searches and seizures are presumptively unlawful. *See Burton v. United States*, 657 A.2d 741, 745 (D.C. 1994). To conduct a warrantless search, officers must either have probable cause for an arrest, or an exigency must exist. *Judd v. United States*, 190 F.2d 649, 651 (1951). "Probable cause exists where a reasonable police officer considering the total circumstances confronting him and drawing from his experience would be warranted in the belief that an offense has been or is being committed." *Ellison v. United States*, 238 A.3d 944, 950 (D.C. 2020) (quotation marks omitted). The probable cause threshold is significantly higher than the "reasonable articulatable suspicion" standard. *See e.g.*, *McFerguson v. United States*, 770 A.2d 66, 73-74 (D.C. 2001).

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For an investigatory stop to pass muster under *Terry* and its progeny, the police must demonstrate a reasonable "articulable suspicion" that the person they are stopping is involved in criminal activity. *In re T.L.L.*, 729 A.2d 334, 339 (D.C. 1999) (quoting *Matter of A.S.*, 614 A.2d 534, 537 (D.C. 1992)). The police officer's suspicions must be "particularized as to the person stopped." *Id.* at 340. Accordingly, "a description applicable to large numbers of people," without more, cannot "justify the seizure of an individual." *U.S. v. Turner*, 699 A.2d 1125, 1128-29 (D.C. 1997).

Importantly, in the context of investigatory stops, the "demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth amendment jurisprudence." *Id.* To meet the reasonable articulable suspicion standard, an officer's "gut feeling" or "hunch of criminal activity" will not suffice. *Brown v. United States*, 590 A.2d 1008, 1014 (D.C. 1991); *Pleasant-Bey v. United States*, 988 A.2d 496, 498 (D.C. 2010). Nor will conclusory explanations, and nor will a subjective good faith belief in the propriety of a stop. *See Maye v. United States,* 260 A.3d 638, 645 (D.C. 2021); *Prigden v. United States*, 134 A.3d 297, 301 (D.C. 2016).

The government cannot show that the police officers who approached Mr. Tucker had reasonable articulable suspicion or probable cause to detain him. Nor was there reasonable articulable suspicion to warrant an investigative detention of Mr. Tucker. *See Terry,* 392 U.S. at 30; *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Bond v. United States*, 529 U.S. 334 (2000). The government also cannot show that the police officers had reasonable articulable suspicion or probable cause to search Mr. Tucker. *Terry,* 392 U.S. at 30; *Maye,* 260 A.3d at 646, *Torres v. Madrid*, 141 S. Ct. 989 (2021); *See Minnesota v. Dickerson,* 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334(1993). Thus, the evidence recovered from the unlawful seizure and search of Mr.

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Tucker must be suppressed. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

II. MR. TUCKER'S STATEMENTS MUST BE SUPPRESSED AS A VIOLATION OF THE FIFTH AMENDMENT.

Where the police interrogate an individual who is in their custody, they must first warn the individual, "[p]rior to any questioning . . . that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to an attorney, either retained or appointed." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Statements by an accused may be used as evidence against him only when the warnings have been properly given and the accused has executed a knowing and intelligent waiver of his rights. *Id.* at 479. The warnings themselves must be stated in a sufficiently clear and accurate fashion so as to "reasonably convey to a suspect his rights." *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989) (internal quotation and brackets omitted). "If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Miranda,* 384 U.S. at 473–74. "If the individual states that he wants an attorney, the interrogation must cease until an attorney is present." *Id.* at 474. The government bears the burden of demonstrating that its agents gave the warnings and that the respondent executed a valid waiver. *Id.* at 479.

In this case, when Mr. Tucker was seized at the scene, he was in custody. *See JDB v. North Carolina*, 564 U.S. 261, 270-71 (2011); *Broom v. United States*, 118 A.3d 207, 212 (D.C. 2015) (providing factors relevant to the custody analysis); *Morton v. United States*, 125 A.3d 683, 684 (D.C. 2015). Prior to reading Mr. Tucker his rights as required by *Miranda*, the officers on scene made statements to Mr. Tucker that they knew might elicit incriminating responses. *See Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980). Because the officers engaged in a custodial interrogation prior to advising Mr. Tucker of his rights under *Miranda*, any statements that Mr.

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Tucker allegedly made in response were obtained in violation of Mr. Tucker's rights under the Fifth Amendment and must be suppressed. *See Edwards v. Arizona*, 451 U.S. 477, 481-82 (1981).

Additionally, any statements made by Mr. Tucker prior to being *Mirandized* were made involuntarily and were the product of coercive police activity. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). The burden is on the government to prove by a preponderance of the evidence that a defendant's statements were made "freely, voluntarily, and without compulsion or inducement of any sort." *Haynes v. Washington*, 373 U.S. 503, 513 (1963) (citations and quotations omitted). The totality of the circumstances here shows that Mr. Tucker's statements were involuntary and thus the Court must find the statements inadmissible for any and all purposes at trial.

WHEREFORE, for the reasons contained herein and any others that may appear to the Court at a hearing on this motion, Mr. Tucker respectfully requests that the Court grant this Motion and suppress any tangible evidence and statements obtained from him.

Respectfully submitted,

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