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IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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**THE STATE OF UTAH,**

Plaintiff,

vs.

**TAYLOR SMALL,**

Defendant.

**MOTION TO SUPPRESS EVIDENCE**

Case No.: 987654321

Judge: Porter Williams

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Taylor Small (“Defendant”), by and through his counsel of record, respectfully moves this Court to suppress evidence collected by the Salt Lake Police Department, specifically any and all information gathered from Defendant while being interrogated by Officer M. Smith, who did not tell Defendant his Miranda rights before the interrogation began.

**STATEMENT OF FACTS**

**Officer M. Smith** (“Officer”) reported to have received a call from Terry Brown, who alleged she was assaulted at a party on October 31, 2017. Brown had attended a party with Defendant, who was arrested on November 1, 2017, for open container and possession of marijuana. Brown alleged to have been inappropriately touched by Defendant. Defendant was brought back into the station’s interrogation room, was *not* told his Miranda rights, and Officer began asking Defendant about his activities at the party. Defendant stated that it was possible he did “touch” Brown “inappropriately.”

## ARGUMENT

### **I. Defendant has standing to challenge the interrogation done to him illegally by Officer.**

**ISSUES:** (1) Was Defendant illegally interrogated? (2) Were Defendant's Miranda rights violated?

**RULES:** Pursuant to U.S. Const. Amend. V., any person in a criminal proceeding shall not be compelled to testify against himself; and pursuant to U.S. Const. Amend. VI., the accused shall enjoy the right to have the assistance of legal counsel.

Defendant was interrogated without being told his Miranda rights. Defendant disclosed sensitive information to Officer during the interrogation. *State v. Leyva*, 906 P.2d 894 (1995). Thus, Defendant has standing to challenge the illegal interrogation done to him, as his Miranda rights were clearly violated.

### **II. The interrogation of Defendant was performed illegally, and the information obtained through said interrogation should be suppressed.**

**ISSUES:** (1) Is it lawful for Defendant to be charged with an additional crime based on the information obtained from him during an illegal interrogation? (2) Was Officer required to tell Defendant his Miranda rights prior to commencing the interrogation? (3) Were Defendant's constitutional rights violated?

**RULE:** Pursuant to the Exclusionary Rule and *Miranda v. Arizona*, improperly elicited self-incriminatory statements gathered in violation of U.S. Const. Amend. V., and evidence gained in situations violating U.S. Const. Amend. VI., shall be inadmissible in court and shall not be used against defendant.

Defendant was charged with Unlawful Sexual Conduct with a Minor based on the information illegally obtained from him during the interrogation. Officer violated Defendant's Miranda rights, and therefore any and all information obtained should be inadmissible in court and charges should be dropped. *See State v. Troyer*, 910 P.2d 1182, 1995 Utah LEXIS 85, 279 Utah Adv. Rep. 11.

In *State v. Troyer*, the state appealed the order of the Third District Court, Salt Lake County, Utah, which dismissed charges against defendant. The state appealed the trial court's orders that granted defendant's motions to suppress evidence derived from a custodial interrogation, defendant's statements to police officers, DNA evidence, and the testimony of prison inmates. As a result of the trial court's suppression orders, the state was unable to proceed with its case against defendant, and the case was dismissed. On appeal, the court found that the circumstances of defendant's custodial interrogation were a far cry from cases in which a Fifth Amendment violation occurred; defendant's statements were not coercively obtained. The court concluded that the trial court erred in determining that defendant's statements were inadmissible for the purpose of impeaching his credibility had he decided to testify. The state was allowed to present DNA evidence at trial. It would have been unfair for the state to use testimony of prison inmates because the trial court and defendant relied on the state's promise that it would not use that testimony.

*State v. Troyer* shows the leniency with which the Third District Court in Utah determined a violation to defendant's fifth amendment rights—having no real proof or merit. In contrast, the violations to Defendant's fifth and sixth amendment rights are conspicuous; as such, it would be reasonable for the court to interpret the facts of Defendant's case as a clear violation of his rights, to which the court should decide to suppress the evidence obtained.

When an individual is taken into custody and subjected to questioning, the U.S. Const. amend. V privilege protects against self-incrimination. To protect the privilege, procedural safeguards are required. A defendant is required to be warned before questioning that he has the right to remain silent, and that anything he says can be used against him in a court of law. Evidence or information obtained in violation of these rights is inadmissible in court. *See Miranda v. Ariz.*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 1966 U.S. LEXIS 2817, 10 Ohio Misc. 9, 36 Ohio Op. 2d 237, 10 A.L.R.3d 974.

In *Miranda v. Arizona*, Certiorari was granted to review a judgment from the Supreme Court of Arizona for this and three other similar cases, to determine the admissibility of statements obtained from defendant, who was subjected to custodial police interrogation, and the necessity for procedures assuring that defendant was accorded his privilege under the U.S. Const. amend. V not to be compelled to incriminate himself. The United States Supreme Court reversed the judgment of three cases, and affirmed the fourth. A defendant was required to be warned before questioning that he had the right to remain silent, and that anything he said can be used against him in a court of law. A defendant was required to be told that he had the right to the presence of an attorney, and if he cannot afford an attorney one was to be appointed for him prior to any questioning if he so desired. The court should likewise reverse judgements placed against Defendant.

### **CONCLUSION**

Pursuant to the foregoing arguments and evidences presented, Defendant has strong standing to challenge the charges placed against him. The case law presented strongly supports Defendant's cause, and substantially proves beyond reasonable doubt that (1) Defendant's

constitutional right to legal counsel was violated, and (2) Officer did not act within his scope and constitutional duty to honor Defendant's civil rights; Officer should have told Defendant his Miranda rights prior to beginning the interrogation

Considering such violations, it is evident that the information illegally obtained from Defendant must be suppressed, and the charge of Unlawful Sexual Conduct with a Minor must be dropped.

Respectfully submitted,

DATED: this 11th day of April of 2018.

ALTIOREM LEGAL SERVICES

/s/ Saul Goodman

Saul Goodman,

Attorney for Defendant