**STATE OF ILLINOIS**

**IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT**

**COUNTY OF DUPAGE**

PEOPLE OF THE STATE OF ILLINOIS )

PLAINTIFF, )

)

) CRIMINAL

VS. ) No. 01 CF 415

)

)

JOYEL JOSEPH )

DEFENDANT. )

**MOTION TO SUPPRESS STATEMENTS**

NOW COMES the Defendant, JOYEL JOSEPH, by Defendant's attorney, Robert A. Miller Public Defender, and moves this Court to suppress as evidence herein any and all confessions, statements, admissions, whether inculpatory or exculpatory, and whether written or oral, made by the Defendant prior, at the time of, or subsequent to Defendant's arrest in the above-entitled cause. In support of this motion, Defendant states as follows:

1. FOR PURPOSES OF THIS HEARING, THE DEFENDANT DOES NOT CONTEST PROBABLE CAUSE TO ARREST.

2. The Defendant is charged with the offense of Murder, which allegedly occurred on February 6, 2001.

3. The Defendant was arrested at 2611 S. 7th St., Philadelphia Pennsylvania, on July 29, 2004 by the Federal Bureau of Investigations.

4. Subsequent to his arrest, the Defendant was transported to the Philadelphia Police Homicide Division for processing.

5. The Defendant signed the "ADVICE OF RIGHTS" on 7-29-04 at 9:20 a.m.

6. Prior to being advised of his rights, and signing the "ADVICE OF RIGHTS," the Defendant was questioned about the incident by either SA Edward Frimel, and/or Det. John Benham, and/or Sgt. Gerald Grdinich

7. Prior to being advised of his rights, and signing the "ADVICE OF RIGHTS," the Defendant was asked "if he understood why he was arrested."

8. In response to police interrogation, and prior to being advised of his rights, and signing the "ADVICE OF RIGHTS," the Defendant allegedly responded "Yes, it's because I killed Malayil"

9. Statements obtained from a person as a result of a custodial interrogation are admissible at trial *only* if, prior to the interrogation, the person is warned of his right to remain silent, that any statement he makes may be used against him, that he has the right  to have an attorney present and that if he cannot afford an attorney, one will be appointed for him. See [Miranda v. Arizona, 384 U.S. 436, 469, 471, 476, 86 S.Ct. 1602, 1625, 1626, 1629, 16 L.Ed.2d 694, 720, 722, 725 (1966)](http://web2.westlaw.com/find/default.wl?DB=708&SerialNum=1966131580&FindType=Y&ReferencePositionType=S&ReferencePosition=1625&AP).

10. When police ask questions of a suspect in custody without administering the required warnings, *Miranda* dictates that the answers received be presumed compelled and that they be excluded from evidence at trial in the State's case in chief. Oregon v. Elstad, 470 U.S. 298, 306, 105 S.Ct. 1285, 1291, 84 L.Ed.2d 222, 230 (1985)

11. The Court in Oregon v. Elstad also stated "If errors are made by law enforcement officers in administering the prophylactic *Miranda* procedures, they should not breed the same irremediable consequences as police infringement of the Fifth Amendment itself. It is an unwarranted extension of *Miranda* to hold that a simple failure to administer the warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, so taints the investigatory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period. Though *Miranda* requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made." Oregon, 470 U.S. at 309, 105 S.Ct. at 1293, 84 L.Ed.2d at 232.

12 By any objective measure, it is likely that warnings withheld until after interrogation and confession will be ineffective in preparing a suspect for successive interrogation, close in time and similar in content. The manifest purpose of question-first is to get a confession the suspect would not make if he understood his rights at the outset. When the warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and "deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." Moran v. Burbine, 475 U.S. 412, 424, 106 S.Ct. 1135, 89 L.Ed.2d 410.

13. And it would be unrealistic to treat two spates of integrated and proximately conducted questioning as independent interrogations subject to independent evaluation simply because [Miranda](http://web2.westlaw.com/find/default.wl?SerialNum=1966131580&FindType=Y&AP=&mt=Westlaw&fn=_top&sv=Split&vr=2.0&rs=WLW5.02) warnings formally punctuate them in the middle.Missouri v. Seibert**,** 540 U.S. 980, 124 S.Ct. 510 (Mem), 157 L.Ed.2d 369, 72 USLW 3307, U.S.Mo., Nov 03, 2003

14. Subsequent to the Defendant being advised of his rights, and signing the "ADVICE OF RIGHTS," the Defedant provided addition exculpatory statements to SA Edward Frimel, Det. John Benham, and Sgt. Gerald Grdinich.

15. The Defendant's 9:10 a.m. statement taken in violation of Miranda, which were then were followed by additional questioning at approximately 9:20 a.m., should be viewed as a single line of continuous questioning.

16. The Supreme Court held that [Miranda](http://web2.westlaw.com/find/default.wl?SerialNum=1966131580&FindType=Y&AP=&mt=Westlaw&fn=_top&sv=Split&vr=2.0&rs=WLW5.02) warnings given mid-interrogation, after defendant gave unwarned confession, were ineffective, and thus confession repeated after warnings were given was inadmissible at trial. Missouri v. Seibert, 124 S.Ct. 2601, 159 L.Ed.2d 643, 72 USLW 4634 (2004)

17[C:\RAM\JudgeBobMiller.com\Temporary\SR;4256](file:///C:\RAM\JudgeBobMiller.com\Temporary\SR;4256). Where a defendant's prior confession was secured through threats or coercion, the Court must consider not only the petitioner's personal circumstances but also whether there has been a sufficient "break in the stream of events" which served to insulate the later statement from the tainted first confession. When making that determination the Court must first look at the length of time between confessions, any change in the place of interrogation, and any change in the identity of the interrogators. No single factor is determinative; rather, all three must be considered in the aggregate. Watson v. DeTella, 122 F.3d 450, 453 (7th Cir.1997).

18. The relevant inquiry is whether, in fact, the second statement was also voluntarily made. As in any such inquiry, the finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. Oregon v. Elstad, 470 U.S. 298, 306, 105 S.Ct. 1285, 1291, 84 L.Ed.2d 222, 230 (1985)

19. The remaining statements of the defendant, these too are inadmissible since the defendant's original confession was unlawfully obtained and the connection between the original and subsequent statements was not so attenuated as to dissipate the taint. People v. Jordan, 90 Ill.App.3d 489, 495, 45 Ill.Dec. 862, 866, 413 N.E.2d 195, 199 (1980)

20. The Defendant had limited knowledge of the English language as evidenced by the Defendant's assertion to police that he "could read only small word," in response to police inquiry regarding the Defendant's comprehension level.

21. On 7/29/04 at 1959 hours EST the Defendant was again read his Miranda Rights, but on this occasion the Miranda Rights were read to the Defendant in his native Malayalam language via a police interpreter, Officer Sethuraman.

22. In response to the 7/29/04 1959 hours EST Miranda Warning recitation, the Defendant "immediately stated that he wanted an attorney and did not wish to speak with officers from Downers Grove."

23. Immediately following the Defendant's invocation of counsel, Investigator Harrison exited the interview room. While Investigator Harrison was out of the room, the Defendant allegedly told the interpreter, Officer Sethuraman, that the Defendant had killed someone because the victim had spoken ill of the Defendant's sisters.

24. As a result of being illegally questioned, coupled with the Defendant's uniformed decision to speak with the police prior to this contact with Officer Sethuraman, the Defendant reiterated his culpability.

WHEREFORE, the Defendant asks that this Court suppress as evidence herein any and all confessions, statements, admissions, or tests, inculpatory or exculpatory, made by him at about the time of and subsequent to his formal arrest.

JOYEL JOSEPH, Defendant

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Robert A. Miller, Her Attorney

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