STATE OF IDAHO)
County of KOOTENAI)ss

FILED_____

AT_____ O'clock _____M
CLERK, DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, *Plaintiff,* vs. **JOVEL MONDRACKUS ANTHONY WILLIAMS,** *Defendant.*	Case No. **CRF 2012 985** **MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**

Defendant JOVEL MONDRACKUS ANTHONY WILLIAMS's Motion to Suppress is **DENIED**.
Arthur Verharen and Donna Gardner, Dep. Prosecuting Attorney, lawyers for the Plaintiff.
Mayli Walsh Coeur d'Alene, lawyer for Defendant Williams.

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I. FACTUAL BACKGROUND.

On January 17, 2012, at approximately 1:00 a.m., City of Coeur d'Alene Police Department Officer Tufford (Tufford) responded to a report of a fight between two males at the Garden Motel on Northwest Boulevard in Coeur d'Alene. When Tufford arrived on the scene, he observed a male matching the description of one of the individuals involved in the altercation exiting the main motel building. Tufford states in his police report that Tufford identified himself as police and "asked the male to come speak to me." Police Report, p. 2. Tufford identified this individual as Rick Williams. (Tufford's police report

also refers to this individual as “Rich” Williams at times) Shortly after making contact with Rick Williams, Tufford heard a male voice shouting. *Id.* The shout came from the main motel building, the building from which Rick Williams had exited immediately before his contact with Tufford. Tufford reports he looked in the direction of the shout and observed a male matching the description of the other individual reported to have been fighting. *Id.* Tufford’s report notes:

> this male had an aggressive demeanor and was running towards Rick in a full sprint. I noticed the male was holding a knife in his right hand. The male was holding the knife in an aggressive manner with a bent elbow and his right hand slightly in front of his body.

Id. As the male with the knife neared, Tufford drew his weapon, identified himself as a police officer, and told the man to stop. *Id.,* p. 3. That male with the knife stopped, and after attempting to conceal the knife behind his back, he dropped the knife when Tufford ordered him to do so. *Id.*

City of Coeur d’Alene Police Department Officer Carroll (Carroll) then arrived on the scene, and after both officers ordered the male onto the ground, Carroll “detained the male in handcuffs for officer safety reasons.” *Id.* In his own report, Carroll states he arrived to see Tufford holding the male, “who I recognized as Jovel Williams from previous contacts”, at gunpoint. *Id.,* p. 4. Apparently, Rick Williams and Jovel Williams are not related. Carroll states initially defendant Jovel Williams would not get on the ground when ordered to do so, but was instead walking slowly backwards toward the motel door. *Id.* After Carroll identified himself and ordered Jovel Williams to get on the ground, Jovel Williams did so and was handcuffed without incident. *Id.* Because of the cold weather, Carroll took Jovel Williams into the front entrance of the motel “to speak with him.” *Id.,* p. 5. Carroll noted signs of intoxication with Jovel Williams and “asked Jovel to tell me what happened tonight.” *Id.* Jovel Williams proceeded to answer Carroll’s inquiries about what had

transpired, informing Carroll that Rick Williams had come to Jovel Williams' room, asked Jovel Williams for help in finding Rick Williams a job, Jovel Williams told Rick Williams to try getting a job at Burker King and some other places, then Jovel Williams told Rick Williams he (Jovel Williams) had to work in the morning, and Rick Williams refused to leave and beat Jovel Williams up. *Id.* Jovel Williams did not respond to Carroll's questions as to why Rick Williams would beat him up. *Id.* Jovel Williams volunteered that he had "a little fucking blade", and when Carroll asked Jovel Williams why he had a blade, Jovel Williams stated, "To defend myself." *Id.* Carroll asked Jovel Williams where he got the blade, and Jovel Williams responded from "Dillan", and Carroll asked Jovel Williams where he got the knife, and Jovel Williams said, "In my car." *Id.* Later, Jovel Williams changed that to "under my car." *Id.* Jovel Williams informed Carroll that he wanted to press charges against Rick Williams for striking him in the mouth twice. *Id.* Carroll noted while he was trying to identify Jovel Williams, Jovel Williams "…started begging us not to take him to jail." *Id.* Carroll asked Jovel Williams why we would take him to jail, and Jovel Williams responded "because I'm scared". *Id.* Later in the conversation Jovel Williams again "…went off about how he was 'under arrest'", and Carroll informed Jovel Williams that he was not under arrest, but merely handcuffed because he had come running out of the motel with a knife. *Id.* Carroll then spoke to Tufford and learned from Tufford that Rick Williams claimed the two were hanging out in Jovel Williams' room when Jovel Williams pulled the knife on him, and that Rick Williams had injuries on his face where he claimed Jovel Williams had hit him. *Id.* Carrol then went back to Jovel Williams and asked him if he hit Rick Williams, and Jovel Williams responded, "No sir." *Id.* Then Carroll asked Jovel Williams how Rick Williams got his injuries, and "Jovel took a long pause and then said, 'Let me tell you, let me tell you. I opened the door and next thing you know I'm getting

jumped. I socked him and ran as far as I could.'" *Id.* Jovel Williams then said he hit Rick Williams in the mouth. *Id.* Carroll also confirmed with the hotel manager Rick Williams' claim that she had sent Rick Williams to speak to Jovel Williams about employment approximately two weeks earlier. *Id.,* p. 7. The hotel manager informed Carroll that Jovel Williams had contacted her and asked her to call the police because Rick Williams had stolen his phone earlier that night. *Id.*, p. 7. The manager then said the two were yelling at each other and then Jovel Williams pulled something out of his pocket. Jovel Williams repeated that claim to Carroll about Jovel Williams' phone being solen by Rick Williams. *Id.* The only phone located on Rick Williams was not the one described by Jovel Williams. *Id.,* pp. 7-8.

Carroll and Tufford then spoke with one another and decided to arrest Jovel Williams for aggravated assault based on Jovel Williams' behavior shortly after Tufford's arrival at the motel. *Id.,* p. 8. There is no mention in Carroll's or Tufford's reports of Jovel Williams having been given *Miranda* warnings after being placed under arrest. Carroll's report shows no incriminating statements were made by Jovel Williams after he was placed under arrest.

Throughout the report, Jovel Williams' inconsistent answers were noted. Carroll observed:

> While I spoke with Jovel it was very hard to get any information out of him because he was so intoxicated and because he was ramble on about things that had nothing to do with what we were talking about. I also noted that several time Jovel changed his story and several parts of his story did not make sense, like the knife being under his car.

Id.

According to Carroll's report, at no time was Jovel Williams asked about what he did with the knife, only where he got the knife. At no time did Jovel Williams volunteer what he had done with the knife.

On January 17, 2012, a criminal complaint was filed charging Jovel Williams with the felony charge of aggravated assault. Jovel Williams was bound over for trial by Judge Scott Wayman on January 31, 2012.

On February 3, 2012, Williams timely filed the instant motion to suppress and Memorandum in Support of Motion to Suppress, and provided the Court with copies of case law cited. Not as timely, seven weeks later, on March 23, 2012, the State filed its State's Memorandum in Response to Motion to Suppress. The briefing submitted by both parties is appreciated by the Court and helped the Court to prepare for the hearing. Hearing on the motion to suppress was held on March 29, 2012. Officer Carroll testified at the March 29, 2012, hearing. His testimony was consistent with what was set forth in his police report. Most importantly, Officer Carroll did not at any time ask Jovel Williams about what had earlier happened with the knife.

II. STANDARD OF REVIEW.

The standard of review of a suppression motion is bifurcated; the Court of Appeals accepts a trial court's findings of fact supported by substantial evidence and freely reviews the court's application of constitutional principles applied to the facts found. *State v. Atkinson,* 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz,* 144 Idaho 906, ___, 174 P.3d 876, 878 (Ct. App. 2007). *State v. Whiteley,* 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993). At a suppression hearing, the trial court has the power to assess the credibility of witnesses, resolve factual conflicts, and draw factual

inferences. *State v, Valdez-Molina,* 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers,* 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct.App. 1999).

In determining whether *Miranda* warnings apply, reviewing courts will not reverse a trial court where substantial competent evidence supports the court's factual findings. *State v. Kirkwood,* 111 Idaho 623, 625, 726 P.2d 735, 737 (1986). The application of legal principles to factual findings is given free review. *State v. Hiassen,* 110 Idaho 608, 611, 716 P.2d 1380, 1383 (Ct.App. 1986).

III. ANALYSIS.

Jovel Williams argues he was in custody during Carroll's interrogation, without the benefit of Miranda, and, therefore, his statements were not voluntary. Memorandum in Support of Motion to Suppress, p. 3. Williams argues he was:

> …ordered to the ground by law enforcement at gun point, handcuffed, pat searched, led to a motel lobby and then questioned by law enforcement. The officers created a police dominated atmosphere from which a reasonable person would believe that he was not free to leave.

Id. Jovel Williams also argues he was interrogated after law enforcement had detained him in a manner akin to formal arrest because Carroll questioned him with the "express purpose of eliciting incriminating statements regarding his involvement in an aggravated assault." *Id.,* pp. 3-4. The State responds that Williams was not in custody, but was being lawfully detained pursuant to *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d. 889 (1968). State's Memorandum in response to Motion to Suppress, p. 1. The State differentiates between a suspect being "seized", which they argue Williams was pending investigation of possible earlier unlawful conduct, and being "in custody" for purposes of *Miranda. Id.* p. 4. The State characterizes Williams' encounter with police as "investigative" as to the earlier events to which law enforcement was responding at the

hotel, and argues, "[n]o questions were asked of defendant as to why he was pursuing the alleged victim with a knife." *Id.,* p. 2.

In *Miranda,* the United States Supreme Court held that police must inform individuals of their right to remain silent and their right to counsel before undertaking custodial interrogation in order to protect the Fifth-Amendment privilege against self-incrimination. *Miranda v. Arizona,* 384 U.S. 436, 467, 86 S.Ct. 1602, 1624 (1966). The *Miranda* rule applies in situations and at the time an individual is "in custody" or where their "freedom of action is curtailed to a degree associated with formal arrest." *Berkemer v. McCarthy,* 468 U.S. 420, 440, 104 S.Ct. 3138, 3150 (1984) (quoting *California v. Behler,* 463 U.S. 1121, 1125, 103 S.Ct 3517, 3520 (1983)). Under *Berkemer,* the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. *Id.* The totality of the circumstances must be objectively evaluated to determine whether there was pressure sufficient to make a reasonable person in the defendant's position believe they were in custody for the purposes of *Miranda*. *See State v. Medrano,* 123 Idaho 114, 117-8, 844 P.2d 1364, 1367-68 (Ct.App. 1992). Even where the State is not obligated to give *Miranda* warnings, an individual may nevertheless hold the privilege against self-incrimination. *Minnesota v. Murphy,* 465 U.S. 420, 430-34, 104 S.Ct. 1136, 1143-46 (1984) (recognizing that the privilege could have been invoked in interview with the probation officer, but holding that *Miranda* was inapplicable because the interview was not a custodial interrogation); *United States v. Cortes,* 922 F.2d 123, 125-27 (2nd Cir. 1990) (recognizing that the defendant had a Fifth Amendment right to remain silent in a presentence interview, but holding that *Miranda*-type warning prior to the interview were not required).

The Fifth Amendment right against self-incrimination must generally be invoked by the person claiming it or is deemed lost. *Murphy,* 465 U.S. 420, 427-28, 104 S.Ct. 1136, 1142; *Garner v. U.S.,* 424 U.S. 648, 654, 96 S.Ct. 1178, 1182 (1976). However, the privilege applies, even if it is not invoked, where the State compels an individual not to invoke by a threat to impose some penalty if the privilege is invoked. *Murphy,* 465 U.S. 420, 434, 104 S.Ct. 1136, 1146. The United States Supreme Court has limited the *Murphy* exception to cases in which the statement obtained was used in a subsequent criminal proceeding. 465 U.S. 420, 436 n. 7, 104 S.Ct. 1136, 1146 n. 7; see also *United States v. Phelps,* 955 F.2d 1258, 1263 (9th Cir. 1992) ("a person may not claim the self-incrimination privilege merely because his answer to a question might result in revocation of his probationary status. His answer, however, cannot be used against him in a criminal prosecution.")

In the present case, the statements by Jovel Williams do not form the basis of the instant criminal charge of aggravated assault. Jovel Williams' statements to Carroll were very random and inconsistent. Jovel Williams' statements were at times not in response to any question before him at the time, but rather simply statements. Jovel Williams' responses to some questions were not responsive to the question. Most importantly, Jovel Williams was never asked what he did with the knife, only where he got it. The only peripherally "incriminating" statement about a different offense was when Jovel Williams changed his story and admitted he hit Rick Williams. However, Jovel Williams is charged with aggravated assault, not simple battery. The Information reads:

> That the defendant, JOVEL MUNDRACKUS ANTHONY WILLAMS, on or about the 17th day of January, 2012, in the County of Kootenai, State of Idaho, did unlawfully and with apparent ability, attempt to commit a violent injury and/or intentionally, unlawfully and with apparent ability threaten by word and/or act to do violence upon the person of Rick Williams, with a

> deadly weapon, to-wit: a knife, or by means and/or force likely to product [sic] great bodily harm…

Information, pp. 1-2. Therefore, no "classic penalty situation" resulted from Jovel Williams' statements because the charge arose from Jovel Williams' actions directly observed by Tufford:

> this male had an aggressive demeanor and was running towards Rick in a full sprint. I noticed the male was holding a knife in his right hand. The male was holding the knife in an aggressive manner with a bent elbow and his right hand slightly in front of his body.

Tufford's Report, p. 3.

The question remains whether Williams was subjected to custodial interrogation such that Carroll was obligated to provide *Miranda* warnings. Custody, for *Miranda* purposes, is formal arrest or restraint on an individual's freedom which is normally associated with arrest. *State v. Hurst,* 151 Idaho 430, ___, 258 P.3d 950, 956 (Ct.App. 2011), citing *Stansbury v. California,* 511 U.S 318, 322, 114 S.Ct. 1526, 1528-29 (1994). "It requires more than a circumstance where a suspect was not free to leave." *Id.,* citing *Maryland v. Shatzer,* ___ U.S. ___, 130 S.Ct. 1213, 1223-24 (2010). In *Shatzer,* the United States Supreme Court was called upon to determine whether a break in custody of fourteen days ends the *Edwards v. Arizona,* 451 U.S 477, 101 S.Ct. 1880 (1981), presumption of involuntariness of statements made during custodial interrogation initiated by law enforcement after a previous custodial interrogation ceased upon the defendant's request for counsel. Justice Scalia wrote in *Shatzer:*

> The protections of *Miranda*, which we have deemed sufficient to ensure that the police respect the suspect's desire to have an attorney present the first time police interrogate him, adequately ensure that the result when a suspect who initially requested counsel is re-interrogated after a break in custody that is of sufficient duration to dissipate its coercive effects.

___ U.S.___, 130 S.Ct. 1213, 1222. The Court held police may reinitiate questioning of a suspect, who requested counsel pursuant to *Miranda,* if more than a fourteen-day break has occurred. ___ U.S. ___, 130 S.Ct. 1213, 1227. *Shatzer* is relevant here because the defendant in that case was incarcerated and his being "out of custody" was his presence in the general population of prison where he was incarcerated on an unrelated matter. ___ U.S.___, 130 S.Ct. 1213, 1224-26. Justice Scalia writes with regard to custody:

> Our cases make clear, however, that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody. We have declined to accord it "talismanic power," because *Miranda* is to be enforced "only in those types of situations in which the concerns that powered the decision are implicated." *Berkemer v. McCarty,* 468 U.S. 420, 437, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984). Thus, the temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop, see *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), does not constitute *Miranda* custody. *McCarty, supra,* at 439–440, 104 S.Ct. 3138. See also *Perkins, supra,* at 296, 110 S.Ct. 2394.

___ U.S.___, 130 S.Ct. 1213, 1224.

In the instant matter, Jovel Wiliams was handcuffed for officer safety; he had just run toward the alleged victim and an officer while brandishing a knife. But, the relatively nonthreatening nature of his detention was made clear by Carroll's informing him that he was not under arrest. In Idaho, the use of handcuffs is a valid means to execute an investigatory detention where a reasonable belief of danger to officer safety exists. *State v. DuVault,* 131 Idaho 550, 554, 961 P.2d. 641, 645 (1998). Indeed, in *State v. Frank,* 133 Idaho 364, 986 P.2d 1030 (Ct.App. 1999), cited by Jovel Williams, the Idaho Court of Appeals found the police handcuffing Frank and placing him into the back of a patrol car did not exceed the bounds of a reasonable *Terry* stop given the time of night, the officer's being alone in investigating a report of three men, and Frank's level of uncooperativeness. 133 Idaho 364, 368, 986 P.2d 1030, 1034. It is evident that merely being handcuffed and

even having his freedom of movement restrained is not necessarily sufficient to render Jovel Williams in custody for purposes of *Miranda.* The factors set forth in *State v. Albaugh,* 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct.App. 1999) and *State v. Medrano,* 123 Idaho 114, 117-18, 844 P.2d 1364, 1367-68 (Ct.App. 1992), that is, the time and place of the interrogation, the conduct of the officer(s), the nature and manner of the questioning, and the presence of others, all weigh against Jovel Williams being in custody. The purported interrogation took place in the middle of the night in a motel lobby; Carroll reports having been patient and calm with a somewhat incoherent and allegedly intoxicated Jovel Williams; Carroll informed Jovel Williams he was not under arrest and asked only about what happened earlier in the night; and Tufford, Rick Williams and the night manager of the motel were also present. The burden of showing he was in custody sufficient to exclude evidence rests upon Jovel Williams. *Hurst,* 151 Idaho 430, ___, 258 P.3d 950, 956. Jovel Williams has not met this burden.

Officer Carroll is allowed to ask questions to obtain information confirming or dispelling the officer's suspicions. *California v. Berkamer,* 463 U.S. 1121, 1125 (1983). At the point in time in which Carroll was asking Jovel Williams questions, it was entirely possible that Rick Williams started out as the aggressor.

Further, the public safety exception to the *Miranda* rule excuses strict compliance with *Miranda* in exigent circumstances. *State v. Yager,* 139 Idaho 680, 685, 85 P.3d 656, 661 (2004). The Idaho Supreme Court declined to place officers in the position of needing to balance the need to warn or render evidence admissible against the necessity of neutralizing volatile situations confronting them. *Id.,* quoting *New York v. Quarles,* 467 U.S. 649, 657, 104 S.Ct. 2626, 2632 (1984). *Qaurles* involves a narrow exception, and one that requires officers to face the need to quickly neutralize volatile situations. This

Court would be hard-pressed to determine there existed no need to quickly neutralize a volatile situation and get additional answers from Jovel Williams, when Jovel Williams was first seen running aggressively at Rick Williams (and toward Tufford) while brandishing a knife.

And, indeed, here Jovel Williams was not asked questions about why he came out running at Rick Williams and Tufford with a knife, but rather, he was asked questions about an alleged fight which resulted in law enforcement being called to the motel. That is, the crime with which Jovel Williams is charged is not what Carroll asked Jovel Williams about. Thus, the requirement of "interrogation" for *Miranda* to be applicable is not met here. Interrogation is defined as express questioning or its functional equivalent. *Rhode Island v. Innis,* 446 U.S. 291, 300-01, 100 S.Ct. 1682, 1689-90 (1980). Interrogation requires an officer to use words or actions known to be reasonably likely to elicit incriminating response. *Id.* The police report submitted by Carroll indicates that an inordinate amount of time was spent investigating the fight for which police were called to the motel. There is the strong indication that Carroll viewed Jovel Williams as a potential victim, as Carroll investigated the claim by Jovel Williams that his phone had been stolen by Rick Williams. It simply cannot be said that Carroll's actions, viewed objectively, amount to express questioning of Jovel Williams sufficient to elicit incriminating responses. *See State v. Salato,* 137 Idaho 260, 267, 47 P.3d 763, 770 (Ct.App. 2001).

Officer Carroll was dispatched to help an investigation regarding two males who were fighting. Carroll's questions were of the type allowed by *Terry* where an officer finds himself in the middle of trying to find out why an officer was called, what the parties were doing before the officer arrived. Under this kind of *Terry* questioning, Jovel Williams was not in "custody" for purposes of *Miranda.* As pointed out by the State, while a person may

at that point be briefly detained and not actually free to leave, he is still not in "custody" under *Miranda*. State's Memorandum in Response to Motion to Suppress, p. 2, citing *United States v. Butler,* 249 F.23d 1094, 1098 (9th Cir. 2001); *United States v. Galindo-Gallegos,* 244 F.3d 728, 731 (9th Cir. 2001); *United States v. Parr,* 843 F.2d 1228, 1230-31 (9th Cir. 1988); and *United States v. Batista,* 684 F.2d 1286, 1291 (9th Cir. 1982).

IV. CONCLUSION AND ORDER.

For the above reasons, Jovel Williams' motion to suppress must be denied.

IT IS HEREBY ORDERED THAT JOVEL MONDRACKUS ANTHONY WILLIAMS' Motion to Suppress is DENIED.

DATED this 5th day of April, 2012

_____
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of April, 2012 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Mayli Walsh
Prosecuting Attorney -

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy