

**IN THE COUNTY COURT OF JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

PETER M. EYRE

APPELLANT

VS.

CAUSE NO. 10,276

**STATE OF MISSISSIPPI
JONES COUNTY**

APPELLEE

MOTION TO SUPPRESS EVIDENCE

Come now the defendant, Peter Eyre, Michael Cory and F. Thomas Schornhorst,, and moves this court to suppress as evidence in this cause: (1) any and all evidence obtained from or concerning the above-named defendants as a consequence his unlawful detention and arrest, and the search of his vehicle on May 14, 2009, by law enforcement agents of Jones County, Mississippi, and the State of Mississippi; and (2) any statement(s) attributed to the defendant by any law enforcement officer and made as a result of interrogation after his being held in custody without his having been given warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966). . Specifically the evidence to be suppressed includes the following:

1. All physical evidence seized from the person of the defendant and from the motor home vehicle which he was driving and traveling at the time of his unlawful detention and arrest.
2. Any and all testimony of any of the county or state police officers concerning the conduct, actions and statements made by the defendant and passengers in the vehicle as a consequence of their unlawful detentions and arrests.

3. Any statement attributed to the defendant obtained as a consequence of the law enforcement officers' failure to comply with the requirements of *Miranda, supra*.

This motion is premised upon violations by the said county and state police officers of the defendant's rights against unreasonable searches and seizures as guaranteed him by the Fourth Amendment to the Constitution of the United States and Article 1, Section 23 of the Constitution of Mississippi; and of his right to be free from involuntary custodial interrogation as guaranteed him by the Fifth and Fourteenth Amendments to the Constitution of the United States as interpreted in *Miranda, supra*.

Since the detention, search and ultimate arrests of the defendants were not supported by a judicial warrant, the defendants are entitled to an evidentiary hearing on this motion. The burden of proof is upon the state to show by a preponderance of evidence that the police actions that led to the charges against the defendants fell within a recognized exception to the Warrant Clause of the Fourth Amendment to the United States Constitution and Article I, Section 23 of the Mississippi Constitution. *Davis v. State*, 660 So.2d 1220 (Miss. 1995); *McFarlin v. lawful conduct during the course of his illegal arrest cannot be sustained. Brendle v. City of Houston*, 759 So.2d 1274, 1284 (Miss. Ct. App. 2000); neither can evidence obtained as a result of the illegal arrest and subsequent illegal searches be admitted in a prosecution premised upon police misconduct that violates a person's right to be free from unreasonable searches and seizures. *Davis v. Mississippi*, 394 U.S. 721, 724 (1969).

Similarly, a heavy burden rests upon the state to prove that any incriminating statement made by the defendant as a result of custodial interrogation was obtained in compliance with the mandates of *Miranda v. Arizona, supra*.

Specifically:

1. The defendant was registered owner and driver of a motor home vehicle lawfully engaged in interstate travel through Jones County, Mississippi, on Interstate Highway 59 on May 14, 2009.
2. The police activity described in the succeeding paragraphs was not authorized by a warrant.
3. The vehicle was stopped forcibly by a Jones County, MS, deputy sheriff who had neither probable cause nor reasonable suspicion to believe that any of the occupants of the vehicle were engaged in any form of unlawful activity. See, e.g., *Brendlin v. California*, 551 U.S. 249 n.2, 127 S.Ct. 2400, 2405 n.2 (2007); *Couldery v. State*, 890 So.2d 959 (Miss. Ct. App. 2004).
4. Even if the initial seizure of the vehicle and its occupants were to have been based upon reasonable suspicion of a traffic violation, the subsequent detention of the vehicle and its occupants beyond the time reasonably necessary to determine that the vehicle was properly licensed, registered and being lawfully operated on an interstate highway, was unreasonable under the applicable provisions of the United States and Mississippi Constitutions. See, e.g., *United States v. Pena-Montes*, ___ F.3d ___ (10th Cir. 2009), 2009 WL 4547058

(decided Dec. 7, 2009); *United States v. Henderson*, 463 F.3d 27, 45-47 (1st Cir. 2006); see *Gonzales v. State*, 963 So.2d 1138, 1141-44 (Miss. 2007); *Wade v. State*, ___ So.3d ___, 2009 WL 3086389 (Miss. Ct. App. Sept. 29, 2009).

5. During the period of unlawful detention passenger Adam Mueller was unlawfully arrested and charged with disorderly conduct by a Jones County Deputy Sheriff for no reason other than his lawfully attempting to record the incident with a hand-held video camera. *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (“The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.”). The direct result of this unlawful conduct by the deputy sheriff was an unreasonable prolongation of the detention of the defendant Peter Eyre.
6. During the period of unlawful detention defendant Jason Talley was unlawfully arrested by the Jones County Deputy Sheriff for exercising his constitutional right to refuse to produce personal identification in the absence of any reasonable suspicion that he had been or was engaged in any criminal activity. See, e.g., *Hiibel v. District Court*, 542 U.S. 177 (2004); *Brown v. Texas*, 443 U.S. 47 (1979); *United States v. Henderson*, *supra*. See also *City of Huston v. Hill*, 482 U.S. 451, 462-63 (1987) (“The freedom of individuals to oppose or challenge police action without thereby risking arrest is one of the principal

characteristics by which we distinguish a free nation from a police state.”). The direction result of this unlawful action by a deputy sheriff was an unreasonable prolongation of the detention of defendant Peter Eyre.

7. During the period of unlawful detention, and without a warrant, probable cause or voluntary consent, the county and state police agents conducted an unlawful search of the interior of the defendant’s vehicle.
8. As a consequence of the unlawful search of the defendant’s vehicle, the driver and defendant Peter Eyre was arrested for unlawful possession of beer in a dry county based upon the discovery of a single bottle of alleged beer that had been located in the motor home refrigerator.
9. As a consequence of the unlawful detention and arrests of Peter Eyre and his two passengers, the vehicle was unlawfully seized and taken to an impound lot where it was further subjected to a highly intrusive and damaging search without probable cause and without proper compliance with any lawfully promulgated procedures for inventory searches of impounded vehicles.
10. Prior to the first search of the vehicle as described in the preceding paragraph defendant Peter Eyre, after being illegally detained for a period of over 20 minutes, was put in handcuffs by a deputy sheriff prior to the illegal search of his vehicle. At not time prior to this event or thereafter was the defendant given the warnings required by *Miranda, supra*.

WHEREFORE, for the reasons stated in this Motion to Suppress Evidence the Court should hold an evidentiary hearing after which the motion should be GRANTED and all evidence, including police testimony, resulting from violations of federal and state constitutional rights against unreasonable searches and seizures and unconstitutional interrogation must be disallowed in these proceedings.

WITNESS MY SIGNATURE on this the ___ day of _____, 2___.

RESPECTFULLY SUBMITTED,

BY: _____
F. THOMAS SCHORNHORST

MICHAEL V. CORY, JR.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Suppress Evidence was by me personally served upon the Jones County Prosecutor this ___ day of _____, 2___.

F. THOMAS SCHORNHORST.