

2005

Utah v. Tiedemann : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH SUPREME COURT

STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. : Case No. 20050676-SC
 :
 EDGAR TIEDEMANN, :
 :
 Defendant/Appellant. :

BRIEF OF APPELLEE

AN INTERLOCUTORY APPEAL FROM PRETRIAL ORDERS
ENTERED IN A MURDER PROSECUTION, IN THE THIRD
JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, UTAH, THE
HONORABLE JUDITH S. ATIERTON, PRESIDING

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IN THE UTAH SUPREME COURT

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BRIEF OF APPELLEE

JURISDICTIONAL STATEMENT AND NATURE OF PROCEEDINGS

Defendant is charged with three counts of murder, a first degree felony. This Court granted defendant's petition for interlocutory appeal from pretrial orders denying his motions to suppress his confession and to dismiss for destruction of evidence. This Court has appellate jurisdiction under Utah Code Ann. § 78-2-2(3)(h) (West 2004).

**STATEMENT OF ISSUES
AND STANDARDS OF REVIEW**

Issue No. 1: Did the trial court properly deny defendant's motion to suppress his confession where police used no coercive tactics, defendant appeared to be sober and lucid, and defendant did not unequivocally invoke his right to silence?

Standard of Review: A bifurcated standard of review applies to a trial court's determination of the voluntariness of a confession. *State v. Rettenberger*, 1999 UT 80, ¶ 10, 984 P.2d 1009. "The ultimate determination of voluntariness is a legal question," which is

reviewed “for correctness.” *Id.* But a district court’s factual findings are set aside “only if they are clearly erroneous.” *Id.*

Issue No. 2: Were defendant’s due process rights violated by the destruction of physical evidence, where defendant has not shown that the police acted in bad faith in destroying the evidence and where other ample evidence in the form of eyewitnesses and written reports remains?

Standard of Review: “[W]hether specific police conduct rises to the level of bad faith is a question of law, reviewed under a correctness standard.” *State v. Holden*, 964 P.2d 318, 324 (Utah App. 1998).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provisions are reproduced in **Addendum A**: U.S. Const. amends. V, VI, & XIV, § 1; Utah Const. art. I, § 7.

STATEMENT OF THE CASE

In November 1991, defendant was charged with two counts of aggravated murder, a capital offense, and one count each of attempted aggravated murder, aggravated kidnapping, and aggravated sexual assault, first degree felonies. R477. The charges were dismissed seven months later, on June 11, 1992, after alienists concluded that defendant was incompetent to stand trial and would remain so “in the foreseeable future.” R636:13; R531-33. Defendant was civilly committed to the Utah State Hospital. R636:18. A doctor at the State Hospital later opined that defendant would never become competent or be able to assist in his defense. R636:15.

In April 1994, the evidence custodian notified the investigating officer that physical evidence taken from defendant's person and from the crime scene would be destroyed, unless an objection were lodged within 30 days. *See* Supplemental Record (**Addendum B**). No objection was made and two revolvers were destroyed eight months later on December 16, 1994. *Id.* However, according to the West Valley Police Property Tracking Tags, several other items had already been destroyed on February 22, 1994, including a Code R kit, a victim's wallet, heroin, an audio tape, a blood specimen, a make-up kit, drug paraphernalia, various articles of the victims' clothing, bedding, a bone fragment found on one victim's bed, a bottle with green liquid, a one gallon can of Toluene, .38 and .22 caliber bullets, bullet fragments, shell casings, hair and saliva samples, and gunshot residue from defendant and the surviving victim.¹ *Id.*

In January 1998, the Salt Lake District Attorney's Office sent a letter to the State Hospital, explaining that it did not intend to pursue the originally-filed criminal charges against defendant and that it would support the Hospital's decision to place defendant on "less restrictive housing and treatment." R558. In October 2002, the district attorney's office received word that defendant was about to be released from civil commitment because he was "no longer psychotic." R562-63.

¹Not all evidence was destroyed. The following evidence was preserved and given to the defense: autopsy photos and reports of all three victims; toxicology reports on the victims; a rape report by St. Mark's Hospital; photos taken of weapons and ammunition; firearm analysis reports; transcripts of interviews taken from one of the shooting victims and the sexual assault victim; witness statements; a videotape of the interview of the sexual assault victim; and a videotape and photos of the crime scene. R60-61.

The State recharged defendant on November 13, 2002, with three counts of murder, first degree felonies.² R1-5; *see* Utah Code Ann. § 76-5-203 (West 2004). The State did not refile the other felony counts. *Id.* Defendant was bound over as charged after a preliminary hearing. R99; R630:5 *et. seq.*; R632:2. After holding a hearing, the trial court found defendant competent to stand trial. R638:43.

Defendant moved to suppress the confession he gave police the day after the murders. R246-67. He also moved to dismiss the charges based on the State's destruction of physical evidence. R388-403. The trial court denied both motions. R585-95; R599-606. This Court granted defendant's timely petition for interlocutory appeal from both rulings.

STATEMENT OF FACTS³

On November 1, 1991, defendant shot three people: Susie Sessions; her 14-year-old son, Scotty Bunnel; and Chuck Timberman. R630:15-10.25-30. Defendant then raped Susie's sister at gunpoint. R630:25-27. Susie and Chuck died that night. R630:19, 25, 30-31. Scotty survived, but lived the next ten years as a paraplegic. He died in 2001 from complications of the paraplegia caused by the gunshot wounds. State's Preliminary Hearing Exhibit #11, in manila envelope marked "Exhibits."

²The victim of defendant's attempted murder had since died.

³Because defendant has not yet been convicted, he is still entitled to the presumption of innocence. Nevertheless, the following facts, taken from the preliminary hearing, are recited in the light most favorable to the trial court's rulings. *See State v. Anderson*, 910 P.2d 1229, 1230 (Utah 1996).

“[P]lay dead, please, please”

Susie Sessions and her sister Debrah Southerland had known defendant for about thirteen years. R630:39. On Friday, November 1, 1991, Susie and her son Scotty were moving out of their apartment; Debrah and her boyfriend, Chuck, were moving to Phoenix. R630:7-8. Debrah was pregnant with Chuck’s child. R630:8. The four planned to spend that night in a motel, but defendant invited them to “come stay at his trailer.” R630:9. They accepted and drove over in two cars, packed with all their belongings. R630:9-10.

Susie and Debrah made dinner. R630:12. After dinner, they all watched television together. R630:13. At about 10:30 p.m., defendant retired to his bedroom. *Id.* Because of a strong “glue smell,” Debrah suspected that defendant was sniffing an inhalant. *Id.*

Susie, Scotty, Debrah, and Chuck went to bed around 12:30 a.m. R630:14-15. Susie and Scotty slept in the living room, with Susie on the couch and Scotty lying nearby on the floor on some cushions. *Id.* Debrah and Chuck slept on a mattress in a second bedroom. *Id.*

Debrah and Chuck had “just fallen asleep when [they] heard . . . a pop, a real loud pop” coming from the front room. R630:15-16. Chuck “jumped up,” exclaiming, “What the f*** was that.” R630:17. The door to the bedroom slid open and Debrah saw defendant “standing in the doorway with a gun. You could see the light from the hallway through his glasses. And I seen . . . him shoot the gun, the fire come out of the gun with the smoke.” *Id.*

Chuck fell back on the bed next to Debrah. R630:18. Chuck told Debrah to “play dead.” R630:18. Debrah heard two more shots from the front room. She started to get up, but Chuck put his arm on her and pleaded, “play dead, please, please.” *Id.*

Defendant reappeared in the bedroom doorway. He fired two more shots. *Id.* Chuck's body jerked. Chuck told Debrah that he could not move. *Id.* Debrah heard two more shots from the living room. *Id.*

“[P]lease don't shoot me, I'm already paralyzed.”

Debrah “played dead” for the next two hours while defendant “went from one room to the other back and forth.” R630:18. A “good 10 times,” defendant came to Debrah's bedroom and “slid[] the door open, turn[ed] on the light and look[ed], turn[ed] the light off and shut the door” before “going back” to the front room. R630:19.

In the meantime, Chuck died. R630:19. He “had like the death rattle.” R630:20. “He was trying to breathe and couldn't breathe and all of the sudden he was quiet.” *Id.*

It was quiet for a long time before Debrah heard her nephew Scotty say, “Please don't shoot me, please don't shoot me, I'm already paralyzed.” R630:19. Debrah heard defendant reply, “I'll try not to.” *Id.*

“There was blood everywhere.”

The sun was coming up when defendant returned to the bedroom and told Debrah “to get up.” *Id.* When Debrah just lay there, defendant said, “I know you're not dead, get up.” *Id.* Debrah pulled the covers from her head to see defendant pointing a handgun at her. *Id.* After convincing defendant to lower the gun, Debrah, naked, stood up and put on her robe. R630:21. Afraid to turn her back to defendant, Debrah walked backwards down the hall to the living room. *Id.* Defendant followed with the gun “by his side.” *Id.*

In the living room, defendant ordered Debrah to sit down. She started to sit on a chair, but the cushions were gone, causing her to get back up. *Id.* Startled, defendant again pointed the gun at Debrah. *Id.* Debrah put one hand on the gun while she begged defendant to lower it because he was “scaring” her. *Id.* Defendant reached into his pocket to pull out another gun. R630:21-22. Debrah reached for the second gun with her other hand, but then defendant promised not to shoot and he put both guns down. *Id.*

Defendant handed Debrah a cigarette. R630:22. Susie’s body, covered by a blanket, was lying on the couch. R630:25. Scotty, still conscious, was lying on the cushions on the floor. R630:22, 30. He had three bullet holes, one in his right cheek. R630:30. “His eye was messed up, where the bullet went in.” *Id.* He also had a bullet wound in his right forearm. R630:30-31. “There was blood everywhere” around Scotty. R630:31. His blankets, pillow, and the cushions were “all covered in blood.” R630:31, 22. Scotty’s “legs were bended a little bit and he was like not completely on his shoulder, like halfway on his shoulder.” R630:22.

Scotty asked Debrah for some water. R630:22. With defendant’s permission, Debrah got him some. R630:22-23. Scotty asked Debrah to move him because his shoulder hurt. But Debrah “just fixed the cushion, didn’t move him because he was paralyzed” and she was “scared he was going to get worse.” R630:23. Debrah straightened out Scotty’s legs, but Scotty said “he couldn’t feel [them].” *Id.*

“Why did you shoot my mom?”

Debrah sat with defendant and Scotty in the living room for a couple of hours. R630:24. Defendant was sniffing something that smelled like glue out of a glass jug. *Id.* At one point, defendant pulled the blanket off Susie’s face and asked, “Isn’t she pretty now?” R630:25. Debrah saw that Susie had been shot in the face. “Her eye was gone.” *Id.*

Scotty asked defendant, “Why did you shoot my mom?” R630:37. Defendant said that “she didn’t love him, that if she would have just kissed him the night before it would be all right.” R630:37. Defendant said “he killed Chuck because Chuck was going to beat him up for killing Susie.” *Id.* When Scotty asked why he shot him, defendant replied, “cause you’d tell on me. And Scotty says no, I wouldn’t tell on you. I’m scared of you.” R630:37. Defendant replied, “you are now.” R630:37.

Debrah asked defendant “why he didn’t shoot [her].” He replied, “you didn’t, you haven’t done nothing to me. And I can be a better father to that baby than Chuck can.” *Id.*

“[N]ot in front of Scotty”

Eventually, defendant ordered Debrah to “drop [her] robe.” R630:25. Debrah said she would, “but not in front of Scotty.” *Id.* Defendant said “he was going to f*** [her] dead or alive” and ordered her down the hallway. R630:26. Defendant, guns in hand, told Debrah to stop in the middle of the hallway and to drop her robe. *Id.* He “took down his pants, told [Debrah] to lay down and then he got on [her].” *Id.* Defendant held “the gun to [her] temple” while he raped her. R630:26-27. After “climax[ing],” he got off. Debrah “looked

over towards the bedroom” and saw “Chuck laying on the mattress.” R630:27. He was “already turning gray.” Defendant said this was “his best love making he ever had.” *Id.*

“[I]f you say anything I’m going to do both barrels into you . . .”

Defendant let Debrah dress in the bedroom. R630:28-29. They then returned to the front room where defendant “started . . . nodding out.” Defendant wanted Debrah “to go with him in his bedroom and get between the wall and the mattress so he could go to sleep.” Debrah refused because “it was like me putting myself in a coffin. I just couldn’t do it.” *Id.*

Debrah instead offered to get defendant cocaine. *Id.* Debrah told defendant that she only had to make a phone call. *Id.* When defendant said he did not have a phone, Debrah pointed out “that 7-11 was just down the street.” *Id.* Defendant agreed to go and had Debrah drive his car. R630:29, 32. Defendant took his two guns with him. R630:32.

Upon reaching the 7-11, the two approached the pay phone where Debrah dialed a random number and pretended to talk to her drug dealer. As they returned to the car, Debrah asked if she could buy a drink. R630:30-32. After looking inside the store, defendant said, “Yeah, if you say anything I’m going to do both barrels into you and [the lady cashier].” R630:32-33. Because defendant had already killed two people, Debrah decided not to go inside. Debrah and defendant instead bought sodas at a drive-thru fast food restaurant. *Id.*

“And that’s when I started crying . . .”

Debrah then drove to a gas station in Midvale that had a pay phone that she could drive up to. R630:33. She hoped that if she could pull up close enough, defendant would stay in the car while she got out to make another phone call. *Id.* Debrah’s plan worked and

she called Susie's friend Pat and arranged to immediately go to her house. *Id.*

Debrah then told defendant that he could not go with her because "they won't sell me anything." R630:33-34. At first, defendant told Debrah to "forget it." R630:34. Debrah replied, "Fine, it's right there if you want it." *Id.* Defendant asked how long it would take her. *Id.* Debrah said, "Five minutes. You can watch me. It's right there around the corner." *Id.* Defendant relented and got out of the car with his two handguns. *Id.*

Debrah drove a few blocks to Pat's house where she told Pat to "dial 911" because "Chuck's dead, Susie's dead and Scotty's paralyzed and he's bleeding to death." *Id.* Responding officers asked Debrah to go with them to identify defendant. R630:34-35. Debrah resisted because defendant "swore it'd be both barrels in me," but finally agreed. *Id.*

Debrah saw defendant from an unmarked police car walking down the street. R630:35-36. Debrah "hollered to the cops, there he is" and lay down in the seat. "And that's when I started crying." Debrah "heard the cops say he's drawing, he's drawing. And [she] heard on the speaker, the cop says, drop it or we'll drop you." *Id.* When Debrah finally looked, defendant was down on the ground and police had taken two guns from him. *Id.*

After waiving his *Miranda* rights, defendant confessed to the shootings that afternoon. *See* Transcript of Interview with Defendant (**Addendum C**) [hereafter "T" followed by page number]. He also admitted to having intercourse with Debrah, but claimed that it was consensual and that she had said "it was real enjoyable." T:22.

Additional relevant facts are contained in the argument section.

SUMMARY OF ARGUMENT

Point I: “[C]oercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’” under the Fifth and Fourteenth Amendments. *Colorado v. Connelly*, 479 U.S. 157, 163 (1986). The trial court here found no evidence of any coercive police tactics in obtaining defendant’s confession, which was made only four minutes after *Miranda* warnings. Defendant has not shown that finding to be clearly erroneous. Absent any evidence of police coercion, defendant’s alleged mental condition and intoxication did not render his confession constitutionally involuntary. Defendant’s waiver of his *Miranda* rights was likewise knowing and voluntary, where police used no coercive tactics to obtain the waiver and where defendant appear lucid and responsive. Finally, defendant did not unequivocally invoke his right to silence when he said two minutes after waiving *Miranda*, “I don’t want to talk about.” In context, it is clear that defendant was referring to Susie’s injuries and that he was not attempting to terminate the interview.

Point II: Defendant argues that the police destruction of physical evidence violated his federal and state due process rights. Because defendant claims that the destroyed evidence was only potentially useful, he can prevail on his federal claim only if he shows that the police acted in bad faith. Defendant has not made the requisite showing of bad faith. This Court should decline to consider defendant’s proposed state constitutional analysis because he did not present that claim to the trial court. Should this Court nevertheless consider defendant’s state constitutional claim, it should adopt the well-reasoned federal standard. In any case, defendant cannot and has not shown a violation of state due process.

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS HIS CONFESSION, WHERE POLICE USED NO COERCIVE TACTICS, DEFENDANT APPEARED SOBER AND LUCID, AND DEFENDANT DID NOT UNEQUIVOCALLY INVOKE HIS RIGHT TO SILENCE

Defendant argues that his confession should be suppressed for three reasons: (1) his confession was involuntary under the federal constitution (Br. Aplt. 15-27); (2) his waiver of *Miranda* rights was not knowing or voluntary (*id.*); and (3) he unequivocally invoked his right to silence before confessing (*id.* at 27-34).⁴ As explained below, the trial court properly found that defendant's confession was not involuntary under the federal constitution because the police employed no coercive tactics. The record refutes defendant's claims that his waiver of *Miranda* rights was not knowing or voluntary or that he unequivocally invoked his right to silence.

A. The confession.

Detective Edwards and Sergeant Spann of the West Valley Police Department interviewed defendant at the police station the afternoon of November 2, 1991, the same day defendant was arrested. R630:35; **Add. C.** They videotaped the interview.⁵ The videotape

⁴Defendant treats the first two issues together. This brief, however, will treat them separately because while the same constitutional standard applies to the voluntariness of both a confession and a waiver, *see Colorado v. Connelly*, 479 U.S. 157, 169-70 (1986), the factual inquiry is distinct. It is possible to have a voluntary confession, but an involuntary waiver and vice versa.

⁵The videotape is with the transcript in an envelope marked R611. For the convenience of the Court, citations to the videotape will be to "VT" followed by the

begins at 1:58 p.m. VT:1:58. It shows defendant seated behind a table, with his hands cuffed in front of him. *Id.* Detective Edwards is seated on the opposite side of the table with his side to the camera, while Sergeant Spann is seated to defendant's left, off camera. *Id.*

At the beginning of the videotape, defendant is looking down at his hands, but he looks up when one of the officers asks him to sign a consent form to search his trailer. VT:1:58; T:3. Defendant immediately responds by moving forward, taking a pen, and signing the document. VT:1:58. While defendant is so engaged, the other officer asks if he is signing the waiver voluntarily. Defendant answers, "Ya." *Id.* As defendant continues to sign, the first officer states that defendant has acknowledged his rights and said that he is not intoxicated with alcohol. *Id.* Defendant interrupts and states that he is intoxicated with Toluene, which he has been using since 1962. *Id.* One of the officers asks if defendant is incapable of understanding and answering questions. Defendant replies, "Sometimes. I don't know." The officer then asks, "Do you understand the difference between right and wrong right now?" Defendant answers, "I do now. I didn't then." *Id.* Throughout this initial exchange, defendant is engaged and makes eye contact with the two officers. *Id.*

The officers then moved the table, shifted defendant's chair, and appeared to leave the room. Defendant remained seated and again looked down at his hands. *Id.* According to the time stamp on the videotape, the camera was turned off at 2:01 p.m. These first three minutes are not transcribed.

The camera was turned back on at 2:13 p.m. This is where the transcript of the applicable timestamp on the tape, thus: VT:1:158.

interview begins. *See* T:1. When the camera came back on, defendant was in the same position as before, seated behind the table, with his head lowered, looking down. The officers returned and resumed their former positions. VT:2:13.

One of the officers asked defendant to look up a little bit. Defendant did not move or respond. *Id.* After announcing the date and time, Detective Edwards stated, "I have to read you your rights per *[M]iranda*. Do you understand that?" T:1. Defendant replied, "Ya." *Id.* Detective Edwards then reviewed each individual right, asked defendant if he understood, and paused while defendant responded affirmatively⁶:

RE: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have a lawyer present before any questioning. Do you understand that?

D: . . . inaudible . . .⁷

RE: Do you understand that you can stop this questioning at anytime?

D: Ya.

RE: If you cannot afford an attorney, we will provide one for you. Do you understand that?

D: Ya.

RE: Do you still wish to speak to us at this time?

D: Ya.

T:1. Detective Edwards next asked defendant if he was intoxicated. Defendant responded, "On [T]oluene." *Id.* Defendant explained that Toluene is a paint thinner. *Id.* Detective Edwards then asked:

RE: Okay, do you know why we're going to talk to you?

D: Ya.

⁶"RE" is Detective Edwards; "ES" is Sergeant Spann; and "D" is defendant.

⁷Although the transcript says "inaudible" here, defendant can be heard to say "Ya," at this point on the videotape. VT:2:14.

RE: What are we going to talk to you about?
D: The murders out there.
RE: What murders?
D: The murders out there at West Valley.
RE: Who are they?
D: Suzie, Chuck and Scotty.
RE: Whose Suzie?
D: She's the woman I love.
RE: That you love?

T:1-2. Defendant started crying at this point. Detective Edwards asked what happened to Suzie and defendant replied:

D: I don't want to talk about it.
RE: You don't want to talk about it?
D: No.

T:2. Sergeant Spann then asked:

ES: Edgar?
D: What.
ES: Why don't you want to talk about it?
D: I love that woman so much.

T:2. At this point, less than two minutes had elapsed since defendant waived his *Miranda* rights. VT:2:15. Throughout this interchange, defendant cried and looked down.

After a short pause, Sergeant Spann asked, "What is it that you don't want to talk about?" VT:2:15. After another short pause, during which defendant continued to softly cry, Sergeant Spann said, "You said murders in West Valley, where in West Valley." *Id.* Defendant responded with his address. T:2. Detective Edwards then asked who lived with defendant. *Id.* Defendant replied that Suzie and Scotty had just moved in the night before. *Id.* This exchange immediately followed:

RE: Okay, what don't you want to talk about? Edgar? What don't you want to talk about, Ed?⁸

ES: Edgar, we're not going to force you [to] talk about anything. We're asking you questions. As Detective Edwards stated, you can answer[] [his] questions, not answer that question, answer this question, not answer that question. You don't have to answer any of our questions at all. You can stop at anytime.

D: Okay.

ES: He made that clear to you, right?

D: Ya.

ES: Okay. You stated you wanted to talk to us, what part do you and what part don't you want to talk to us about?

T:3. At this point, only three minutes had passed since defendant waived his *Miranda* rights and said he wanted to talk to police. VT:2:16. When defendant did not immediately respond, Detective Edwards asked, "Edgar do you remember me reading you[r] rights earlier and you signing a waiver for us to search your home?" When defendant acknowledged this, Detective Edwards explained that they found the victims there. He then asked, "Who shot them?" Defendant replied, "Me." T:3; VT:2:17. Defendant's confession came only four minutes after the interview began. *Id.*

Defendant then explained that he shot Suzie because he loved her and that he shot Chuck "[j]ust to cover up the murder." T:3-4; VT:2:17. Defendant told police that he shot Suzie first and that he used a .22 and a .38 in the shootings. T:5-6. He explained where he kept his guns. T:6. Defendant's account of the shootings was consistent with Debrah's preliminary hearing testimony. For example, he said he shot Susie and Scotty first, and then Chuck. T:6, 10-11. He also talked about going back and forth between rooms and turning

⁸On the videotape, defendant appears to be crying here. VT:2:16.

Debrah's bedroom light on and off. T:11 He acknowledged having sex with Debrah after the shootings, but claimed it was consensual. T:22. He confirmed that Debrah had promised to get him cocaine. T:20.

Although defendant could not remember the day of the week or whether the victims had moved in during the day or night, T:4, defendant was able to give several complex and detailed answers to the questions put to him. For example, he gave police his license plate number and the make of his car, T:4, Susie's former address, T:9, the month and year he had suffered a stroke, T:8-9, details about his physical condition, T:8-9, the month and year he began receiving SSI, T:8, and a list of grievances he had against Susie. T:7,9-10,16-17.

All of defendant's answers were responsive to the questions put to him and many of them volunteered details. *See, e.g.*, T:8, 14, 16, 17, 23, 27. However, while almost all of defendant's answers were rational, two arguably were not:

RE: Okay. Is there any mental problems?

D: Ya. All kinds.

RE: What kind of mental problems?

D: See, I think I'm Adolf Hitler. Adolf Hitler died in May of 1945 and I was born in 19, October 1946. I think I'm Adolf Hitler.

T:9. Defendant started to cry again during the last sentence. VT:2:24. Later in the interview, defendant said he did not know why he shot the victims and that the devil told him to do it:

RE: When you was in the back bedroom, Edgar, with the gun, why did you have to go out and shoot them?

D: I don't have any idea.

RE: Did you hear any voices?

D: I think so. I don't know.

RE: Who was telling you to go shoot them?

D: The devil.

T:13-14.

Although defendant's head was lowered and he looked down through almost the entire interview, he was alert and responsive. Several times during the interview, defendant raised his hands to adjust his glasses or scratch his head. *E.g.*, VT:2:19; 2:22-25; 2:28; 2:32; 2:34; 2:38; 2:39-41. He often shook his head while answering questions. *E.g.*, VT:2:26; 2:28-29; 2:31-32; 2:35; 2:37. At one point, he showed the officers how he shot the victims by placing his hands together and pointing. VT:2:51. At the officers' request he stood to repeat the demonstration. VT:2:51-52. He had no difficulty standing and while he limped slightly when he sat back down, he explained that this was from an earlier stroke. VT:2:52. Defendant's speech was neither slurred nor abnormally slow. *See generally* VT.

The interview lasted less than an hour, from 2:13 p.m. to 2:59 p.m. *See* VT.

B. A confession is involuntary under the Fifth and Fourteenth Amendments only if it is the product of coercive police activity.

Defendant argues that his confession was involuntary under the federal constitution because he was incapable of answering questions at the time. He claims that the officers knew of his "long-term substance abuse and intoxication," but "made no effort to resolve those matters or his inability to understand and answer questions for a clear, unequivocal, voluntary waiver and confession." Br. Aplt. 27. "That," according to defendant, "constitutes coercion." *Id.* Defendant's argument contradicts controlling law.

"The Due Process Clause of the Fourteenth Amendment provides that no State shall

‘deprive any person of life, liberty, or property, without due process of law.’” *Colorado v. Connelly*, 479 U.S. 157, 163 (1986). Under the Due Process Clause, “‘certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned.’” *Id.* (quoting *Miller v. Fenton*, 474 U.S. 104, 109 (1985)). The Fifth Amendment similarly “‘protects individuals from being *compelled* to give evidence against themselves.’” *State v. Rettenberger*, 1999 UT 80, ¶ 11, 984 P.2d 1009 (citations omitted).

Thus, “whether admission of a confession into evidence violates the Fifth or Fourteenth Amendment does not turn solely on the ‘voluntariness’ of the confession.” *Id.* Rather, “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary.’” *Connelly*, 479 U.S. at 167. *Accord Rettenberger*, 1999 UT 80, ¶ 11; *see also State v. Piansiaksone*, 954 P.2d 861, 865 (Utah 1998) (“To violate the Fifth Amendment, an accused’s admission must, by definition, be coerced”). A confession, then, cannot be involuntary under the federal constitution unless there is evidence that coercive police conduct caused the confession. *Connelly*, 479 U.S. at 164.

This is not to say, however, that a suspect’s mental condition or state of mind is never relevant to the voluntariness inquiry. To the contrary, “as interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the ‘voluntariness’ calculus.” *Connelly*, 479 U.S. at 164. *See also Rettenberger*, 1999 UT 80, ¶ 15. But “while mental condition is surely relevant to an individual’s susceptibility to police coercion, mere examination of the

confessant's state of mind can never conclude the due process inquiry." *Connelly*, 479 U.S. at 165. Again, "for a confession to be involuntary, 'the police must somehow overreach by exploiting a weakness or condition *known* to exist.'" *Nickel v. Hannigan*, 97 F.3d 403, 410 (10th Cir. 1996) (quoting *United States v. Robertson*, 19 F.3d 1318, 1321 (10th Cir. 1994)) (emphasis added). *Accord Connelly*, 479 U.S. at 164-65; *Rettenberger*, 1999 UT 80, ¶ 18; *State v. Galli*, 967 P.2d 930, 936 (Utah 1998).

Whether a confession is the product of police coercion is determined by looking at the "totality of the circumstances." *Rettenberger*, 1999 UT 80, ¶ 19; *see also Nickel*, 97 F.3d at 410. Relevant factors include "duration of the interrogation, the persistence of the officers, police trickery, absence of family and counsel, and threats and promises made to the defendant by the officers." *Rettenberger*, 1999 UT 80, ¶ 14. In determining whether police exploited a known weakness or condition, courts must also consider such factors "as the defendant's mental health, mental deficiency, emotional instability, education, age, and familiarity with the judicial system." *Id.* at ¶ 15. But again, absent evidence of police coercion, a suspect's mental condition or subjective mental state standing alone cannot make his statements to police involuntary. *See Connelly*, 479 U.S. at 164-65.

C. Under the totality of the circumstances, the trial court properly found no evidence of coercive police conduct.

The trial court applied the foregoing authorities and factors to determine that defendant's confession was not coerced and therefore not involuntary under the Fifth and Fourteenth Amendments. *See* R587-89, 591-93. After viewing the videotape of defendant's

confession, the trial court found no evidence that the officers used any mentally coercive techniques. R591-92. In making this finding, the trial court first considered the objective factors listed and applied in *Rettenberger*. See *Rettenberger*, 1999 UT 80, ¶¶ 14, 20-36.

The trial court found that the officers “did not make use of false statements or half-truths.” R591; compare *Rettenberger*, 1999 UT 80, ¶¶ 20-23 (finding some 36 police misrepresentations sufficiently egregious to be coercive). The trial court next found that the officers “did not use the false friend technique by implying they were acting in the best interests of the defendant.” R591; compare *id.* at ¶¶ 24-28 (“extensive” use of “false friend” technique, combined with other coercive tactics, exploited suspect’s known mental weaknesses). The trial court then found that the officers “did not use any threats or promises to entice the defendant into a confession.” R591; compare *id.* at ¶¶ 29-32 (finding threats of the death penalty and promises of leniency if defendant confessed coercive). Finally, the trial court noted that the entire interview was completed within one hour and that “defendant was not denied any special requests.” R591; compare *id.* at ¶¶ 35-36 (18-year-old defendant was interrogated several hours over two-day period, denied request to call his mother or use bathroom, and given 22 hours in solitary confinement). The trial court thus concluded that “the detective[s]’ interrogation was absent of suggestive and coercive techniques” and that there was “no evidence of any ethical misconduct by the police.” R591-92.

The trial court then turned to the subjective factors listed in *Rettenberger* that might have made the defendant more susceptible to manipulation. R592-93. The trial court noted

that defendant had “severe impairment of intellectual functions and an 82 I.Q,” which likely stemmed from defendant’s prolonged use of Toluene, a prior stroke, or a childhood head injury. R592. The trial court also considered defendant’s “belief” that he was Adolph Hitler, but determined that the statement in context indicated that defendant knew that Hitler was dead and that he was not actually Adolph Hitler.⁹ *Id.* The trial court also concluded that defendant’s reference to the devil telling him to shoot the victims possibly stemmed from his religious beliefs. *Id.* Finally, the trial court noted that while defendant did not answer all questions intelligently, he did provide “clear and detailed answers to many of the questions.” R592-93. The court thus concluded that “[c]onsidering the totality of the circumstances surrounding defendant’s interrogation, including his treatment by the detectives and his mental state,” defendant’s confession violated neither the Fifth or Fourteenth Amendments. R594. In short, the trial court found no evidence that the police used any coercive tactics that could have been construed to have exploited any known mental condition.

The videotape of defendant’s interview supports the trial court’s findings and conclusions. As the trial court found, the officers made no false statements, threats, or promises to entice the defendant to confess. R591-92. Indeed, they had no time in which to employ any coercive tactics because defendant confessed to the shootings within four

⁹In context, defendant’s comment about Hitler suggests that, at most, he believed he was a reincarnation of Hitler. *See also* R549-50. Given that 27% of Americans believe in reincarnation, defendant’s belief is not necessarily irrational or a sign of incompetence. *See* The Religious and Other Beliefs of Americans 2003, *The Harris Poll #11*, Feb. 26, 2003 at http://www.harrisinteractive.com/harris_poll/index.asp?PID=359. Last visited on March 23, 2006.

minutes of being given his *Miranda* warnings. VT:2:13-17. But even after defendant confessed, the officers used no coercive tactics. They never shouted or raised their voices at defendant; nor did they make any threatening gestures. *See generally* VT. Rather, their tone was conversational and non-threatening. *Id.* They asked non-suggestive questions and treated defendant with respect. And the interview was over in less than an hour.

D. The police did not exploit defendant's alleged mental condition or intoxication.

Defendant does not quarrel with the foregoing findings of the trial court. He does not claim that the officers made threats or promises, used the false friend technique, or denied defendant any special requests. Br. Aplt. 20-21. Nor does he argue that it was improper for the trial court to consider the foregoing objective and subjective factors. *Id.* at 20-22. Rather, he argues only that the trial court erroneously “failed to consider several [other] relevant circumstances.” *Id.* at 21. Specifically, he argues that the officers engaged in coercive tactics by “disrespecting his requests to not talk about the shootings; moving forward with the interrogation while [defendant] cried; persisting with repeated questions at times; accelerating the pace or trading off with questions.” *Id.* at 20. Defendant also contends that the “officers were advised of and observed [defendant's] intoxicated and mental condition at the beginning of and during the interrogation,” and that they used this knowledge to exploit defendant's impaired condition with the foregoing tactics.

1. The tactics defendant alleges were not coercive.

Contrary to defendant's claims, the trial court overlooked no coercive tactics. First, the officers did not “disrespect” his “requests to not talk about the shootings.” This argument

apparently alludes to his saying that he did not “want to talk about it” when the officers asked who Susie was. Br. Aplt. 22; T:1-2. This claim, however, presupposes that defendant’s statement meant that he did not want to talk about the shootings at all and that the officers intentionally disregarded defendant’s wishes. The record does not support that assumption.

As the trial court understood this statement in context, defendant was not asking to terminate the interview. R590. Rather, he was simply stating that he did not want to talk about Susie, the woman he claimed to love. The videotape and transcript support this reading. The statement came after the officers asked defendant who Susie was. T:2. Defendant began crying as he answered, “She’s the woman I love.” VT:2:15. When the officer repeated, “That you love,” defendant said, “I don’t want to talk about it.” T:2. When the officers asked why defendant did not “want to talk about it,” defendant responded, “I love that woman so much.” *Id.* The officers shifted their questioning from specifics about Susie to general questions about where the murders occurred. *Id.* Defendant readily answered those questions. *Id.* The officers then asked defendant exactly what defendant did not want to talk about. *Id.* They reminded defendant that he did not have to answer any of their questions and that he could stop at any time.¹⁰ T:3. That repeated warning dispels any claim

¹⁰Before that reminder, the officers told defendant that he could choose which questions he wanted to answer. T:3. Defendant faults the officers for giving him false advice on this point. In fact, their statement was not false. *See United States v. May*, 52 F.3d 885, 890 (10th Cir. 1995) (recognizing that “partial silence” resulting from invocation of *Miranda* regarding some questions still shielded defendant from prosecutor comment on his silence). In any event, the officers immediately followed up that statement with a reaffirmation that defendant could refuse to answer all their questions and could stop the interview at any time. T:3..

that the officers disregarded any desire by defendant not to talk.

Defendant other claims of coercion—questioning a crying defendant, repeating questions, accelerating the pace, and trading off—are frivolous. Defendant cites no authority, and the State is aware of none, that any of these alleged tactics are coercive either individually or collectively.¹¹

Defendant finally suggests that the interview was coerced because it was held at the police station and defendant did not have the support of family, friends, or a lawyer. Br. Aplt. 21. While holding an interview at the police station may be a factor contributing to a finding of coercion, it is hardly dispositive. Most interrogations are conducted in the controlled environment of a police station. *See State v. Troyer*, 910 P.2d 1182, 1188 (Utah 1995) (holding interview at police station instead of crime scene supported finding of no coercion). Moreover, the mere absence of friends, or a lawyer is not coercive, particularly where, as here, the defendant expressly waived his right to have counsel with him and did not ask for the support of family and friends. Indeed, most voluntary confessions are made without family, friends, or lawyers present. *E.g., Galli*, 967 P.2d at 933-97; *State v. Bybee*, 2000 UT 43, ¶¶ 17-30, 1 P.3d 1087; *State v. Dutchie*, 96 P.2d 422, 424-29 (Utah 1998).

In sum, defendant has not shown that the trial court clearly erred when it found that the police engaged in coercive tactics.

¹¹The State does not concede that the officers in fact used any of these alleged tactics. Indeed, a review of the videotape shows no appreciable “acceleration of the pace,” no strategic “trading off,” no undue repetition, and no real pressing of an emotionally distraught defendant.

2. The police did not exploit any known mental condition.

Defendant faults the trial court for not sufficiently taking into account his mental condition. Defendant contends that “the circumstances support ‘the strongest probability that [he was] incompetent at the time he allegedly confessed.’” Br. Aplt. 24 (quoting *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960)). Defendant argues that this made him incapable of voluntarily confessing. *Id.* at 24-26. As a preliminary matter, the trial court considered this argument and rejected it based on the videotape. R593-94 The law and the facts support that ruling.

As it did below, defendant’s claim relies heavily on *Blackburn*, which suppressed a confession made by an insane defendant. Br. Aplt. 24-26. But as the trial court recognized, *Blackburn* is readily distinguishable. R593-94. Blackburn challenged the admission of his confession to an armed robbery on the ground that he was insane when he confessed, thereby rendering it involuntary. *Blackburn*, 361 U.S. at 201-04. Blackburn had a long history of mental illness and treatment. Before the robbery, “he was classified by the Veterans Administration as 100 percent ‘incompetent.’” *Id.* at 200-01. Experts testified at the suppression hearing that Blackburn was likely insane and incompetent when he confessed. *Id.* at 202-03. The sheriff reported that Blackburn exhibited “symptoms of insanity” after his arrest. *Id.* at 201. Blackburn informed police that he had been a patient in a mental institution, but stated that he had been released. *Id.* at 204. The police interrogated Blackburn for eight or nine hours “in closely confined quarters—a room about four by six or six by eight feet—in which as many as many as three officers had at times been present

with Blackburn.” *Id.* at 204.

The trial court here noted that none of the foregoing factors was present in this case. R593. The interview lasted less than an hour and defendant had not been found to be “incompetent” or “insane” before the crime or confession. R593-94. Nor is there any evidence that defendant had ever received any mental health treatment before the murders. No expert testified here that defendant was incompetent when he confessed. Defendant does not dispute any of this, but points to the finding that he was incompetent to stand trial a few months later. Br. Aplt. 24-25. Defendant surmises that this subsequent finding means that he must have been incompetent to confess. *Id.*

That defendant was later declared incompetent to stand trial does not mean he was incompetent to confess when he did so. But whether or not defendant was technically competent to confess is irrelevant absent any evidence of police coercion. *See Connelly*, 479 U.S. at 164-65. Even *Blackburn* implicitly recognized this. There the confession was suppressed not just because Blackburn appeared to be incompetent, but also because the police knew of his mental condition and had used coercive tactics. *See Blackburn*, 361 U.S. at 207-08. As the Supreme Court in *Connelly* explained, *Blackburn* involved “the integral element of police overreaching,” which “exploited” the defendant’s known mental “weakness with coercive tactics: ‘the eight- to nine-hour sustained interrogation in a tiny room which was upon occasion literally filled with police officers; the absence of Blackburn’s friends, relatives, or legal counsel; [and] the composition of the confession by the Deputy Sheriff rather than by Blackburn.’” *Connelly*, 479 U.S. at 164-65 (quoting

Blackburn, 361 U.S. at 207-08). Thus, unlike the trial court here, the *Blackburn* court found the necessary predicate to involuntariness: “coercive police activity.” *Id.* at 167.

Moreover, while the officers in *Blackburn* were aware of the defendant’s history of mental illness and treatment, the officers here had no indication of a possible mental illness until after defendant had confessed. Contrary to defendant’s claim, the officers were neither advised of nor observed any impairment in defendant’s mental condition at the beginning of the interview. During the first few minutes, defendant was alert, made eye contact, signed a waiver, and corrected the officers when they stated he was not intoxicated with alcohol. VT:1:58-2:00. Although he volunteered that he was intoxicated with Toluene, he said nothing about any mental illness at that point. *Id.* Indeed, it is not until page nine of the transcript, or 10 minutes into the interview, that defendant, in response to a question, claimed to have “[a]ll kinds” of mental problems. T:9; VT:2:23-24. But by then, defendant had already confessed to the shootings in detail. *See* T:3-8. Nothing before that point would have alerted the officers that defendant might have had a mental illness or that he could not understand his rights or the questions put to him. Nor would the officers have thought defendant was incapable of answering questions after he said he had “all kinds” of mental problems. Unlike *Blackburn*, defendant had no history of treatment for mental illness and, as stated, his answers throughout the interview were responsive and, for the most part, rational. The officers, therefore, did not exploit defendant’s claimed incompetence to obtain the confession.

3. The police did not exploit defendant's alleged intoxication.

Defendant also claims that the trial court did not sufficiently consider his intoxication on Toluene. Br. Aplt. 21-23. He points out that he told officers at the beginning that he was intoxicated on Toluene and that when they asked him if he was incapable of answering questions, he said, "Sometimes. I don't know." Br. Aplt. 21-22. Defendant also argues that the officers "would have observed that [defendant's] demeanor was subnormal. He was slumped down with his head lowered; at times during the interrogation he cried, and/or he appeared confused and exhausted and was unable to answer questions." Br. Aplt. 2. Defendant alleges that the officers "brushed aside [defendant]'s obvious impairments and inebriated condition to proceed with questioning for a confession." Br. Aplt. 23.

Clearly, intoxication can be a relevant factor for assessing the voluntariness of a confession. *See, e.g., Scalissi v. State*, 759 N.E.2d 618, 621 (Ind. 2001) (intoxication factor in considering voluntariness); *State v. Bell*, 121 P.3d 972, 976-77 (Kan. 2005) (same); *Commonwealth v. Smith*, 686 N.E.2d 983, 988 (Mass. 1997) (same). But like all factors in a totality of the circumstances analysis, intoxication—like mental condition—by itself does not render a confession constitutionally involuntary. *See United States v. Curtis*, 344 F.3d 1057, 1066 (10th Cir. 2003) (not *per se* involuntary); *Luckhart v. State*, 736 N.E.2d 227, 231 (Ind. 2000) (same); *Nichols v. Commonwealth*, 142 S.W.3d 683, 692 (Ky. 2004) (same); *Siler v. State*, 115 P.3d 14, 28 (Wyo. 2005) (same). Rather, as *Connelly* holds, "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.'" *Connelly*, 479 U.S. at 167. Thus, even if a suspect is intoxicated, his confession is not

rendered constitutionally involuntary unless police exploited that weakness with coercive tactics. *See United States v. Montgomery*, 14 F.3d 1189, 1195 (7th Cir. 1994) (even if defendant incapacitated drug addict, his statement not involuntary absent official coercion); *United States v. Muniz*, 1 F.3d 1018, 1022 (10th Cir. 1993) (“The test is whether the person’s will was overcome, or whether the statement was freely made.”); *Graves v. United States*, 878 F. Supp. 409, 414 (N.D.N.Y. 1995) (“limited capacity due to voluntary consumption of alcohol” does not render statement involuntary absent official coercion); *Scalissi*, 759 N.E.2d at 621-622 (while intoxication may be factor in determining voluntariness, there must be evidence of coercive police activity); *State v. Chapman*, 605 A.2d 1055, 1062 (N.H. 1992) (no involuntariness where police “did not take advantage of an intoxicated defendant”); *Perry v. State*, 158 S.W.3d 438, 446 (Tex. Crim. App. 2004) (suspect’s intoxication did not raise constitutional voluntariness issues because no police coercion or over-reaching).

As stated, the trial court here found no evidence of police coercion. Thus, even assuming defendant was intoxicated at the time of his confession, that confession was constitutionally voluntary. Moreover, courts uniformly agree that intoxication can render a confession involuntary only where the suspect is so intoxicated that he does not comprehend what he is saying or is unable to carry on a conversation. *See, e.g., Cox*, 711 So.2d at 1325 (question is whether defendant is aware, able to comprehend what he is doing, and communicate in rational way); *Luckhart*, 736 N.E.2d at 229-31 (involuntary if intoxication renders defendant unconscious of his acts or produces state of mania); *Nichols*, 142 S.W.3d at 691-92 (involuntary if defendant hallucinating or confabulating to compensate

for lost memory); *Kirksey v. State*, 923 P.2d 1102, 1109-10 (Nev. 1996) (question is whether defendant understands meaning of his comments); *Jones v. State*, 944 S.W.2d 642, 651 (Tex. Crim. App. 1996) (question is whether intoxication rendered defendant incapable of making independent, informed decision to confess); *Siler*, 115 P.3d at 26 (Wyo. 2005) (intoxication must render defendant incapable of understanding his statements).

It is clear on this record that defendant was not so intoxicated. Although defendant told the officers at the beginning of the interview that he was “intoxicated” on Toluene, VT:1:58, his demeanor did not support that statement. During the first three minutes of the videotape, defendant was alert and responsive to the officer’s questions and statements. *Id.* He read and signed the waiver and he corrected Detective Edwards when the latter stated that defendant was not intoxicated by alcohol. *Id.* Defendant seizes on his early statement that he was “sometimes” incapable of answering questions. Defendant’s subsequent responses, however, belie that claim. Moreover, even though defendant kept his head lowered throughout the interview, he did not, as he now claims, appear “confused and exhausted and . . . unable to answer questions.” Br. Aplt. 22. Rather, as the trial court recognized, defendant was able to give detailed, complex answers that were responsive to the questions put to him. R592-93. *See, e.g.*, T:5, 11 (describing caliber of pistols used); T:5-6 (describing where he shot Chuck); T:7 (describing his car and license plate number); T:8-9 (giving detailed medical history, including when he began receiving SSI); T:15-16 (describing Scotty’s reaction to his mother’s shooting); T:16-17 (listing several grievances he had against Susie); T:29-30 (physically demonstrating how he shot the victims). Finally, his speech was

neither slurred nor abnormally slow.

In sum, the officers did not “brush aside” any “obvious impairments” in questioning defendant. Nor can it be said that defendant was so intoxicated that he did not understand his statements to police. Defendant’s confession, therefore, was constitutionally voluntary.

E. Defendant’s waiver of his *Miranda* rights was knowing and voluntary.

Defendant argues that his waiver of *Miranda* was neither knowing or voluntary. Whether a suspect has validly waived his *Miranda* rights depends on the totality of the circumstances. *State v. Leyva*, 951 P.2d 738, 744 (Utah 1997); *State v. Strain*, 779 P.2d 221, 224 (Utah 1989).

“*Miranda* warnings are intended to guard against the ‘inherently coercive nature of a custodial police interrogation by fully informing the suspect of the state’s intention to use any self-incriminating statements to secure his [or her] conviction.’” *State v. Archuleta*, 850 P.2d 1232, 1238-39 (Utah 1993) (quoting *Strain*, 779 P.2d at 224). Thus, the waiver “must have been the product of a ‘free and deliberate choice rather than intimidation, coercion or deception’ and executed with ‘full awareness both of the nature of the right being abandoned and [of] the consequences of the decision to abandon it.’” *Strain*, 779 P.2d at 224 (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)). Accord *Archuleta*, 850 P.2d at 1238-39.

Like the voluntariness inquiry for confessions, the “voluntariness of a waiver of [the Fifth Amendment right to silence] has always depended on the absence of police overreaching, not on ‘free choice’ in any broader sense of the word.” *Connelly*, 479 U.S. at 170. This is because the “sole concern of the Fifth Amendment, on which *Miranda* was

based, is governmental coercion.” *Id.* Moreover, “the State need prove waiver only by a preponderance of the evidence.” *Id.*

In arguing that his *Miranda* waiver was unknowing and involuntary, defendant relies on many of the same facts cited in his claim of coercion. But just as there is no evidence that police coerced defendant’s confession, there is no evidence that they coerced his *Miranda* waiver. His rights were read to him on camera and he unequivocally waived each one individually. T:1. The record also shows that defendant, a 45-year-old man, understood his rights and the consequences of abandoning those rights. While defendant initially said he might be incapable of answering questions because of his Toluene use, his interactions and subsequent responses to police show that he fully understood their questions and that he was capable of answering them. When asked if he knew why police wanted to talk to him, he immediately responded, “The murders out there . . . at West Valley.” T:1-2. When defendant said he did not “want to talk about it,” the officers again told defendant that he did not “have to answer any of our questions at all. You can stop at any time.” T:3. Defendant agreed that the officers had made that “clear” to him. T:3. Yet he never said that he would not talk to officers at all or that he wished to terminate the interview. More important, defendant’s responses throughout the interview amply demonstrate that he was sufficiently sober and lucid to understand his rights and to waive them.¹² The trial court, therefore, properly found

¹²Defendant makes much of his subsequent incompetence to stand trial as proof that he did not fully understand his *Miranda* rights. As explained above, however, the fact that defendant was later found to be incompetent for purposes of standing trial does not necessarily mean that he did not or could not understand his *Miranda* rights at the time he waived them. Indeed, two of his evaluators expressly gave him forensic

that defendant had knowingly and voluntarily waived his rights.

F. Defendant did not unequivocally invoke his right to remain silent.

Defendant contends that even if his waiver was voluntary, he subsequently unequivocally invoked his right to remain silent when, after the officers asked him what happened to Susie, he said, “I don’t want to talk about it.” Br. Appt.27-34. *See* T:2. Defendant argues that police were required to terminate the interview at this point.

Once a custodial suspect “effectively waives his right to counsel after receiving the *Miranda* warnings, law enforcement officers are free to question him.” *Davis v. United States*, 512 U.S. 452, 458 (1994). “But if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation.” *Id.* If, however, the suspect is “not reasonably clear in his reference to an attorney, officers are not required to stop questioning or focus on clarifying the suspect’s statement.” *Leyva*, 951 P.2d at 742 (citing *Davis*). Rather, “‘the suspect must unambiguously request counsel,’” and if his ‘statement fails to meet the requisite level of clarity,’ then the officers are not required to stop questioning the suspect.” *Id.* (quoting *Davis*, 512 U.S. at 459). In other words, “after a knowing and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect *clearly* requests an attorney.” *Davis*, 512 U.S. at 461 (emphasis added). This

warnings, which are very similar to *Miranda* rights, and noted that he understood those rights. R533, 548. One of the evaluators also noted that defendant “was able to described what happened in fairly good detail, generally consistent with the police records pertaining to the case.” R549.

Court has extended the *Davis* rule to reinvocations of the right to remain silent. *State v. Galli*, 967 P.2d 930, 935 n.4 (Utah 1998).

The question, then, is whether defendant unequivocally invoked his right to remain silent when defendant said, “I don’t want to talk about it.” T:2. When that statement is read in context, it is clear that he did not.

Defendant’s statement came after he told officers that Susie, a shooting victim, was the woman he loved. T1-2. Defendant paused as he started to cry. VT:2:15. Detective Edwards then asked what happened to Susie, to which defendant replied, “I don’t want to talk about it.” T:2; VT:2:14-15. Detective Edwards repeated, “You don’t want to talk about it?” And defendant responded “No.” T:2. After another short pause while defendant cried, Sergeant Spann asked defendant, “Why don’t you want to talk about it?” Defendant tearfully replied, “I love that woman so much.” *Id.* As stated, this statement came within two minutes of defendant’s waiving his *Miranda* rights and telling police that he wanted to talk to them.

In context, defendant’s statement was not an unequivocal invocation of the right to remain silent and to not answer any more questions. Rather, the context makes clear that defendant only had an emotional aversion to talking about what happened to the “woman [he] love[d].” When asked why he did not want to talk about it, defendant did not say he wanted to stop answering all questions. Instead, he made it clear that he did not want to talk about what happened to Susie because it was emotionally painful for him. Nothing in the foregoing suggests that defendant was refusing to answer any questions or that he did not want to talk further. The ensuing interchange confirms that reading.

The officers asked defendant, “What is it that you don’t want to talk about? You said murders in West Valley, where in West Valley?” *Id.* Defendant responded with his address. *Id.* After asking who lived with defendant, the officers repeated, “Okay, what don’t you want to talk about? Edgar? What don’t you want to talk about, Ed?” As defendant continued to cry, Sergeant Spann reminded defendant of his right to remain silent:

Edgar, we’re not going to force you [to] talk about anything. We’re asking you questions. As Detective Edwards stated, you can answer[] this question[], not answer that question, answer this question, not answer that question. *You don’t have to answer any of our questions at all. You can stop any anytime.*

T:3 (emphasis added); VT:2:15-16. Defendant replied, “Okay,” and Sergeant Spann added, “He made that clear to you, right?” Defendant said, “Ya.” The officers then reminded defendant that he had just told them that he wanted to talk them. They then asked again, “what part do you and what part don’t you want to talk to us about?” Defendant then readily answered all other questions put to him.¹³ T:3; VT:2:16-17.

If, as defendant now claims, he intended to invoke his right to silence, the officers gave him ample opportunity to unequivocally assert that. As soon as he stated that he did not “want to talk about it,” the officers tried to ascertain what defendant did not want to talk about; part of the crime or all of the crime. They also expressly readvised him that he did not

¹³Defendant suggests that it is impermissible under *Smith v. Illinois*, 469 U.S. 91, 97-98 (1984) to consider any subsequent statements in determining whether an invocation is ambiguous. Br. Aplt. 34. It is true that subsequent responses to continued police questioning cannot be used to render ambiguous an otherwise unambiguous invocation of the right to silence. *Smith*, 469 U.S. at 97-98. Here, however, defendant’s alleged invocation was at best ambiguous. His immediate subsequent responses only confirm that ambiguity.

have to answer any questions and that he could stop the interview at any time. Defendant, however, expressed no wish to stop or to not answer any more questions. The contrary, he showed a willingness to talk about the crime, just not about the specifics of Susie's injuries.

Even giving defendant's statement the most liberal reading, it was no more than an equivocal invocation of the right to remain silent. *See, e.g., Owen v. State*, 862 So.2d 687, 696-97 (Fla. 2003) (noting that response "I don't want to talk about it," has been deemed "on numerous occasions" to be equivocal). *Cf. Galli*, 967 P.2d at 935 (interpreting statement "I can't even talk right now" as not even equivocal invocation of right to silence). The officers, therefore, had no obligation to stop questioning or even to clarify defendant's intent. The officers nevertheless clarified defendant's intent by reminding him that he could stop the interview at anytime. By not unequivocally invoking his right to remain silent at that point, defendant demonstrated that he wished to continue speaking to the officers.

The trial court therefore did not clearly err in finding that defendant did not unequivocally invoke his right to silence.

POINT II

**THE DESTRUCTION OF EVIDENCE DID NOT VIOLATE
DEFENDANT'S FEDERAL DUE PROCESS RIGHTS WHERE
POLICE DID NOT ACT IN BAD FAITH; THIS COURT SHOULD NOT
REACH DEFENDANT'S UNPRESERVED STATE CONSTITUTIONAL
CLAIM, BUT IF IT DOES, THIS COURT SHOULD ADOPT THE
FEDERAL STANDARD**

Defendant argues that the trial court should have dismissed this case because the destruction of physical evidence has impaired his right to a fair trial, thereby violating his due

process rights under both the federal and state constitutions. Br. Aplt. 35-50. Defendant's federal due process claim fails because he has not shown that the police acted in bad faith in destroying the evidence. This Court should not reach his state due process claim because he did not preserve it below. Should this Court nevertheless reach that issue, it should decline to adopt a different standard under the state constitution.

A. To prevail on a federal due process claim, defendant must show that the evidence was constitutionally material or that it was lost due to bad faith by State actors.

The State's duty to preserve evidence falls into "what might loosely be called the area of constitutionally guaranteed access to evidence." *California v. Trombetta*, 467 U.S. 479, 485 (1984) (internal quotation marks and citation omitted). The duty to preserve evidence is closely related to the duty to disclose evidence that is exculpatory. The latter is violated whenever "the State suppresses or fails to disclose *material exculpatory evidence*," irrespective of "the good or bad faith of the prosecution" *Illinois v. Fisher*, 540 U.S. 544, 547 (2004) (per curiam) (citing *Brady v. Maryland*, 373 U.S. 83 (1963) & *United States v. Agurs*, 427 U.S. 97 (1976)). The "mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." *Agurs*, 427 U.S. at 109-10. Rather, omitted evidence is constitutionally material only if it "creates a reasonable doubt that did not otherwise exist." *Id.* at 112.

The State's duty to preserve evidence is likewise limited to that which is constitutionally material: "Whatever duty the Constitution imposes on the States to preserve

evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." *Trombetta*, 467 U.S. at 488-89. "To meet this standard of constitutional materiality, . . . evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Id.* at 489.

The Due Process Clause, however, imposes a different test when dealing "with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.'" *Fisher*, 540 U.S. at 547 (quoting *Arizona v. Youngblood*, 488 U.S. 51, 57 (1988)). "[T]he failure to preserve this 'potentially useful evidence' does not violate due process 'unless a criminal defendant can show bad faith on the part of the police.'" *Id.* at 547-48 (quoting *Youngblood*, 488 U.S. at 58). Bad faith requires that a defendant show more than mere negligence. *See Youngblood*, 488 U.S. at 58. The defendant must show that "the police . . . by their conduct indicate that the evidence could form a basis for exonerating the defendant." *Id.* In other words, the bad faith conduct must be such that it supports an inference that police destroyed the evidence because they knew of its exculpatory value. *See State v. Holden*, 964 P.2d 318, 324 (Utah App. 1998).

A defendant, then, can establish a due process violation for destruction of evidence in two ways: (1) he can show that the destroyed evidence "possess[ed] an exculpatory value that was apparent before the evidence was destroyed" and no other comparable evidence is available, *Trombetta*, 467 U.S. at 489; or (2) if the evidence is only potentially useful, he can

show that the police acted in bad faith in destroying the evidence, such that “their conduct indicate[d] that the evidence could form a basis for exonerating the defendant,” *Youngblood*, 488 U.S. at 58. The burden is on the defendant to establish the due process violation. *See id.* at 57-58. *See also Holden*, 964 P.2d at 324.

B. Defendant has not shown that the destroyed evidence was either constitutionally material or destroyed in bad faith.

The evidence destroyed here included the two revolvers used in the murders, a Code R kit, a victim’s wallet, heroin, an audio tape, a blood specimen, a make-up kit, drug paraphernalia, various articles of the victims’ clothing, bedding, a bone fragment found on one victim’s bed, a bottle with green liquid, a gallon can of Toluene, .38 and .22 caliber bullets, bullet fragments, shell casings, hair and saliva samples, and gunshot residue from defendant and Debrah. *See Add. B.*

Defendant does not claim, nor did he below, that this evidence possessed an exculpatory value apparent before it was destroyed. *Trombetta*, 467 U.S. at 489. *See* R391-92. He instead argues that the evidence was “potentially useful” to him and that the police acted with bad faith in destroying it. Br. Aplt. 35-42. However, he has shown neither.

1. The destroyed evidence was not “potentially useful.”

Defendant speculates that the destroyed evidence was “potentially useful” to him in three ways: (1) “if the ballistics evidence, blood and tissue samples, gunshot residue and fingerprint evidence were such that it would support that [Debrah] was involved in the shootings, that evidence would serve to impeach [Debrah’s] credibility and her claims

regarding [defendant's] actions; (2) the Code R kit might have shown that Debrah did not suffer "trauma, tenderness, redness, or bruising to the genitalia for forced penetration," thereby impeaching her credibility; (3) evidence "tying drugs and paraphernalia" to Debrah and others in the trailer could have created doubt about Debrah's ability to accurately observe events or might have shown that victims "made threats to [defendant] in their drug-induced state," thereby provoking the attack Br. Aplt. 40-41.

Defendant's speculation notwithstanding, he has not demonstrated that the destroyed evidence was "potentially useful." First, defendant's argument ignores all the evidence that has been turned over to him: autopsy photos and reports; toxicology reports; a rape report by St. Mark's Hospital; photos of weapons and ammunition; firearm analysis reports; transcripts of interviews with Debrah and Scotty; other witness statements; a videotaped interview of Debrah; and a videotape and photos of the crime scene. *See* R60-61. Second, it ignores Debrah's eyewitness testimony and defendant's own confession. Taken together, this dispels any claim that the destroyed evidence was potentially useful or that there is no comparable available evidence.

For example, defendant may use Debrah's interviews, the videotape and photos of the crime scene, and the firearm analysis reports, to impeach any inconsistencies or inaccuracies that might arise in her testimony. Next, while the Code R kit may be gone, a written rape report by the hospital remains. Defendant has not alleged, much less shown, that this report is inadequate to show a lack genital injuries. More important, evidence of the sexual assault is irrelevant given that defendant is no longer charged with sexual assault. With respect to

tying the drugs and paraphernalia to the victims, defendant disregards the toxicology reports of Susie and Chuck, which showed no illegal drugs in their blood at the time of death.¹⁴ This supports Debrah's claim that they did not use drugs that night. R630:40-41.

But even setting aside the remaining evidence, defendant cannot show that any of the destroyed evidence was even potentially useful if this Court concludes that his confession was voluntary. Rather, defendant's valid confession, particularly in view of Debrah's consistent preliminary hearing testimony, stands as a concession that the destroyed evidence was all inculpatory and, therefore, potentially useful only to the State.

2. The police did not destroy the evidence in bad faith.

Even assuming, *arguendo*, that the evidence was potentially useful, defendant has not carried his burden of proving that police destroyed it in bad faith. As the trial court observed, defendant did not even attempt to carry this burden below. R602. Instead, he tried to cast his burden on the State by asserting that the State's conduct was "[a]t the very least, . . . gross negligence" (R392-93), and that "bad faith should be presumed in this case unless and until the government is able to offer an explanation for the destruction of this evidence." R393-94, 602. The trial court properly rejected this misstatement of the law and found that defendant had "failed to meet [his] burden." R602-03.

For the first time on appeal, defendant argues that the destruction of evidence was in bad faith because it was done "wilfully." Br. Aplt. 39. Because defendant did not present

¹⁴ See Toxicology Reports attached to Autopsy Reports in Envelope marked Exhibits.

this argument below, this Court should disregard it. *See State v. Gulbransen*, 2005 UT 7, ¶¶ 47-48, 106 P.3d 734 (declining to consider defendant’s claim of bad faith raised for the first time on appeal).

The argument is meritless in any event. That evidence is intentionally destroyed pursuant to routine procedures, does not establish bad faith within the meaning of *Youngblood*. *See Fisher*, 540 U.S. at 546-47 (no bad faith where police, “acting in accord with established procedures,” destroyed evidence during defendant’s ten-year flight from justice). As explained above, in demonstrating bad faith, defendant has the burden of proving that “the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant.” *Youngblood*, 488 U.S. at 58.

Defendant cannot meet his burden. The evidence was destroyed approximately two years after the charges had been dismissed due to defendant’s incompetence to stand trial, and approximately a year after the court was informed that defendant likely would never be competent to stand trial. Add. B;R636:15-17. Indeed, the record suggests that everyone—the prosecution, the defense, and the trial court—reasonably believed that defendant would never stand trial, but that the community would be adequately protected based on his civil commitment. Thus, it was both natural and reasonable for the police to assume that the evidence would never be needed. This reasonable assumption was only confirmed when five years later, in 1998, the district attorney’s office wrote a letter to the State Hospital declaring that it still did not intend to pursue the original charges. R558.

In short, the record makes clear that the police destroyed the evidence according to

established procedures and only after the case had been dismissed and it appeared that charges would never be refiled. Moreover, police had no reason to think that any of the destroyed evidence would be exculpatory in light of defendant's confession and Debrah's statement. Accordingly, defendant has not shown police conduct indicating that "the evidence could form a basis for exonerating the defendant." *Youngblood*, 488 U.S. at 88.

C. Defendant's state constitutional claim is unpreserved.

Defendant argues that even if he has not shown bad faith, this Court should reverse the trial court's ruling based on a state constitutional analysis under article I, § 7, of the Utah Constitution. Br. Aplt. 42-50. Defendant urges this Court to reject *Youngblood's* due process analysis and to adopt "a balancing approach" used by a minority of states in interpreting their state constitutions. Br. Aplt. 46-50.

This Court should decline defendant's invitation because he did not make this argument below. *See State v. Bobo*, 803 P.2d 1268, 1273 (Utah App. 1990) (declining to conduct separate state constitutional analysis where trial court not afforded meaningful opportunity to address issue). While defendant asked the trial court to engage in a state constitutional analysis, the trial court declined because defendant had "offered no analysis concerning the unique context in which Utah's Constitution developed, nor shown why this State's Constitution should be interpreted differently than the Fifth and Fourteenth Amendments of the United States Constitution." R604. The trial court also noted that although defendant had cited "to numerous cases in other state jurisdictions that have 'rejected *Younblood*,'" he had "not articulated the rulings of other states correctly," nor had

he “suggested a viable alternative standard.” R605. Indeed, at oral argument on the motion to dismiss, defendant cast the burden on the trial court to determine what standard should apply under the state constitution:

And I didn’t really address this, you know because it’s—it’s not really a secondary issue, but, I mean, the obvious question is, Well, what standard do we follow? And [the] answer is, “Well, these different states have articulated a bunch of different standards. If the Court sees fit, you know, that is something we can address secondarily as to which standard. But it would be something along the lines of what is listed in the motion.

R638:27-28. Defendant’s written motion, however, proposed no specific test. *See* R394-02.

Because defendant did not preserve the state constitutional analysis that he now urges on appeal, this Court should not address it. *See Brigham City v. Stuart*, 2005 UT 13, ¶ 14, 122 P.3d 506 (“we are resolute in our refusal to take up constitutional issues which have not been properly preserved, framed and briefed”), *cert. granted* 126 S.Ct. 979 (Jan. 6, 2006).¹⁵

D. Even if defendant had preserved his state constitutional claim, defendant has not shown that this Court should adopt a separate state analysis.

Even if defendant had adequately preserved his state constitutional claim, he has not shown that this Court should adopt a separate state constitutional analysis in this case or that

¹⁵This Court should also decline to address defendant’s state constitutional claim because he has not adequately developed it using “historical and textual evidence, sister state law, and policy arguments in the form of economic and sociological materials to assist [the Court] in arriving at a proper interpretation of the provision in question.” *Society of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 921 n.6 (Utah 1993). While defendant does cite to sister state law, he fails to analyze his claim within “the unique context in which Utah’s constitution developed.” *Bobo*, 803 P.3d at 1272 n.5. Indeed, he does not even mention that the language of the federal and state due process clauses are identical or explain why, given that circumstance, the clauses should be interpreted differently.

it should reject *Youngblood*'s well-reasoned analysis. In urging this Court to adopt a different state constitutional analysis, defendant cites to several cases in which other jurisdictions have rejected *Youngblood* under their state constitutions. Defendant views those decisions as fairer and less draconian than *Youngblood*'s bad faith test. Br. Aplt. 45-50. Defendant's argument, however, ignores the sound policy considerations underlying *Youngblood* and the many jurisdictions that have embraced the bad faith requirement under their state constitutions.

Ten states follow *Youngblood*. It is fitting that the Arizona Supreme Court was one of the first to expressly adopt *Youngblood*'s bad faith requirement under its own constitution. It did so on remand from the United States Supreme Court. *See State v. Youngblood*, 844 P.2d 1152, 1156-58 (Ariz. 1993). In so doing, the court explained why the rule announced in *Youngblood* was fundamentally fair.

The court first explained why *Brady* violations and unpreserved evidence are treated differently. Under *Brady*, “the suppression by the prosecution of [material] evidence favorable to an accused upon request violates [federal] due process . . . irrespective of the good faith or bad faith of the prosecution.” *Youngblood*, 844 P.2d at 1156 (alterations in original). This “makes sense” because constitutionally material “[e]xculpatory evidence matters whether the police exercise good faith or bad faith in failing to produce it.” *Id.* In such cases, the “defendant is prejudiced by definition because the unproduced evidence is plainly exculpatory.” *Id.* The remedy for a *Brady* violation, however, is not a dismissal, but a new trial at which the evidence is available. *Id.*

“In stark contrast to *Brady*,” unpreserved evidence “is neither plainly exculpatory nor inculpatory.” *Id.* “Under these circumstances, one can only say that the evidence *might* have been exculpatory, or the evidence *might* have been inculpatory.” *Id.* Thus, unlike *Brady* material “there is no showing of prejudice in fact.”¹⁶ *Id.*

In *Youngblood*, the United States Supreme Court held “that for this class of evidence, the good or bad faith of the state is relevant because of an inference that can be drawn from the bad faith of the police.” *Id.* “A conscious, intentional or malicious failure to preserve evidence which could be tested suggests ‘that the evidence could form a basis for exonerating the defendant.’” *Id.* (quoting *Youngblood*, 488 U.S. at 58). But in the *Brady* context, good or bad faith does not matter “because by definition *Brady* materials are plainly exculpatory and no inference is required.” *Id.*

As the Arizona Supreme Court noted, the *Youngblood* rule promotes fundamental fairness. “When the state exhibits bad faith in the handling of critical evidence, it is fundamentally unfair to allow the trial to proceed.” *Id.* at 1157. In that case, the “remedy is to tell the state it will not be allowed to prosecute the case.” *Id.* In addition, “[b]ad faith strengthens the inference that the evidence might be exculpatory to an unacceptable level.” *Id.* But “where there is no bad faith, it is fundamentally unfair to bar the state from [the] courts.” *Id.* Absent a showing of bad faith, the “inference that the evidence may be

¹⁶This circumstance is, of course, distinguishable from that mentioned in *Trombetta*, where a defendant may be able to show that destroyed evidence was constitutionally material. The defendant need not show bad faith in that context. *Trombetta*, 467 U.S. at 489.

exculpatory is not strong enough to dismiss the case.” *Id.* Indeed, given that “a *Brady* violation results only in a new trial, it would be bizarre to suggest that, because of a non-malignant fortuity, fundamental fairness would require the dismissal of the charges.” *Id.* In other words, the mere “*possibility* of prejudice is not”—nor should it be—“sufficient to justify the ultimate sanction—an order of dismissal.”¹⁷ *Id.*

Seven states do not follow *Youngblood*. Defendant urges this Court to follow those states that have rejected *Youngblood*’s “litmus test of one factor” in favor of a balancing test that considers several factors, including the good or bad faith of the police. Br. Aplt. 46-47. As a preliminary matter, *Youngblood* does not have a litmus test of one factor. As explained, the threshold question under federal due process is whether the lost or destroyed evidence is constitutionally material or only “potentially useful.” *See Fisher*, 540 U.S. 545, 548. If

¹⁷The nine other jurisdictions adopting the bad faith requirement under their state constitutions are: *People v. Cooper*, 809 P.2d 865, 886 (Cal. 1991) (rejecting express request to not follow *Trombetta*, and implicit request to not follow *Youngblood* on state law grounds, and holding that “[t]he reasons that caused [the court] to adopt *Trombetta* in [a previous holding] apply also to *Youngblood*”); *People v. Pecoraro*, 677 N.E.2d 875, 887 (Ill. 1997) (adhering to “well-reasoned principles set forth in *Trombetta* and *Youngblood* for purposes of . . . state due process clause”); *State v. Dulaney*, 493 N.W.2d 787, 792 (Iowa 1992) (recognizing state’s previous adoption of *Youngblood* under Iowa constitutional law); *State v. Finley*, 42 P.3d 723, 728 (Kan. 2002) (considering and rejecting argument to grant accused any more due process rights under state constitution); *Collins v. Commw.*, 951 S.W.2d 569, 572-73 (Ky. 1997) (expressly adopting *Youngblood* in its state constitutional analysis); *State v. Anderson*, 724 A.2d 1231, 1234 (Me. 1999) (state due process clause provides no more rights than those found in federal due process clause); *Patterson v. State*, 741 A.2d 1119, 1128-29 (Md. 1999) (reiterating that Maryland follows United States Supreme Court in interpreting state due process clause); *State v. Drdak*, 411 S.E.2d 604, 608 (N.C. 1992) (citing *Youngblood* and adopting its test under state constitution); *State v. Greenwold*, 525 N.W.2d 294, 298 (Wis. App. 1994) (holding that Wisconsin and federal due process protections are identical), *rev. den’d*, 531 N.W.2d 329 (Wis. 1995).

the defendant can show that the evidence is constitutionally material—exculpatory and unique—he is entitled to either suppression or dismissal depending on the importance of the evidence. This, as in *Brady* material, is the result irrespective of the intent of the police. See *Trombetta*, 467 U.S. at 488-89. *Youngblood*’s bad faith requirement arises only when the evidence *might* be exculpatory, i.e., potentially useful. As explained, that requirement makes perfect sense in this context because, absent an inference arising from police bad faith, any prejudice to defendant is, at best, speculative.

Defendant urges this Court to adopt Delaware’s balancing test from *Hammond v. State*, 569 A.2d 81 (Del. 1989). See Br. Aplt. 47. *Hammond* presents a complicated formula. It first requires the court to determine whether the evidence would have been subject to disclosure under state discovery rules or *Brady*. *Hammond*, 569 A.2d at 88. If so, the court must then evaluate the State’s duty to preserve discoverable evidence. *Id.* If the court finds such a duty, it must then balance three factors: (1) “the degree of negligence or bad faith involved,” *id.* at 88-89; (2) “the importance of the missing evidence and the reliability of the secondary or substitute evidence that remains available,” *id.* at 89; and (3) “an examination of the sufficiency of the evidence, which the State presented at trial,” *id.* at 90.

While a balancing test like *Hammond*’s may have superficial appeal, it offers no improvement over *Trombetta* and *Youngblood*. Indeed, its practical application is problematic, particularly in the pre-trial stages. First, two of the three *Hammond* factors are those considered in both *Trombetta* and *Youngblood*—materiality, the availability of alternative evidence, and the bad faith of the police. *Hammond* adds to the mix a comparison

of the unpreserved evidence to the evidence ultimately presented at trial. But as a practical matter, this third factor is merely another assessment of the materiality of the missing evidence or prejudice suffered by defendant. Second, *Hammond* offers no guidance on how much weight should be given to each factor or how they should be balanced. Finally, it is impossible under *Hammond* to assess the sufficiency of the evidence until *after* trial, and all the evidence has been presented.

Given the foregoing, defendant has not shown that the *Trombetta/Youngblood* standards do not adequately protect his state due process rights or that the *Hammond* balancing test is superior.

E. Defendant has shown no state constitutional violation in any case.

But even assuming that there might be a case in which a separate state constitutional analysis would be appropriate, this is not such a case. As explained above, the destroyed evidenced in this case is not even potentially exculpatory or useful to the defendant. To the extent that it might have some value to defendant, there appears to be comparable available evidence. Finally, a dismissal of the case at this stage is premature, even under defendant's authorities, where all the available evidence has not yet been developed nor presented to the trier of fact. Until that time, it is impossible to fully assess the materiality of the destroyed evidence or its prejudicial affect on defendant's ability to present a defense.

CONCLUSION

The Court should affirm the trial court's rulings.

RESPECTFULLY SUBMITTED this 23rd day of March, 2006.

MARK L. SHURTLEFF
ATTORNEY GENERAL

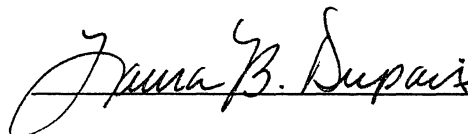


LAURA B. DUPAIX
ASSISTANT ATTORNEY GENERAL

MAILING CERTIFICATE

I hereby certify that on this 23rd day of March, 2006, I mailed, postage prepaid, two accurate copies of the foregoing Appellee's Brief to:

Linda M. Jones
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt lake City, Utah 84111



Addenda

Addendum A

ADDENDUM A

Constitutional Provisions

U.S. CONSTITUTION

AMENDMENT V

[Criminal actions — Provisions concerning — Due process of law and just compensation clauses.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

[Rights of accused.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

AMENDMENTS

Amend. XIV, § 3

AMENDMENT XIV

Section

1. [Citizenship — Due process of law — Equal protection.]
- 2 [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office]

Section

4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH CONSTITUTION

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Addendum B

ADDENDUM B

Police Property Tracking Tags

PROPERTY DISPOSITION INQUIRY

TO: OFFICER T. Johnson Edwards
 FROM: EVIDENCE
 RE: CASE NUMBER 91-20773 Homicide 11/2/91
 DATE: 4/22/94

Please review the attached Evidence Property Report and notify us of the property disposition of these items within 30 days.

NOTE: If we have not received a reply from you by: 5/22/94 this property will be disposed of at the discretion of Evidence Personnel.

Suspect: <u>Tiedemann, Edgar</u>	DOB: <u>10/29/46</u>
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____
Suspect: _____	DOB: _____

Court Disposition: _____

WE ONLY HAVE ACCESS TO CIRCUIT COURT DISPOSITIONS, CHECKING DISTRICT COURT AND JUVENILE COURT DISPOSITIONS ARE YOUR RESPONSIBILITY!

CONTINUE TO HOLD _____ REASON _____
 DESTROY/DISPOSE ☒ AUCTION _____ TRANSFER/CONVERT _____
 RELEASE TO OWNER _____ NAME: _____
 ADDRESS: _____

You must give the name and address when releasing to owner.

OFFICER SIGNATURE [Signature] DATE 4/27/94

57

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20723

DATE 11/2/91

SERIAL NO. _____

ARTICLE VICTIM'S WALLET

TYPE OF CRIME Homicide

CONDITION _____

SUSPECT ☐ ARRESTED ☒

Edgar Tideman

VICTIM Timmizmann Charles

OFFICER'S NAME & I.D. # 8019

Edward

CHECK

☐ EVIDENCE

☐ FOUND

☒ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

31

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-5-91

SERIAL NO. 665576

ARTICLE Jennings J 22

Semi Automatic

CONDITION Revolver

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☐

VICTIM _____

OFFICER'S NAME & I.D. #

Edward's 8018

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED
12/10/94
8352

PROPERTY TYPE

31

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773DATE 11-5-91SERIAL NO. ST15353ARTICLE Standard 37 cc
revolverTYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☐

CONDITION _____

VICTIM _____

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

OFFICER'S NAME & I.D. #

Edwards 8018

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐**DESTROYED**
12/16/91
835

PROPERTY TYPE

45

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773DATE 11-2-91

SERIAL NO. _____

ARTICLE CODE RTYPE OF CRIME SEXUAL ASSAULTSUSPECT ☐ ARRESTED ☐

CONDITION _____

VICTIM SOUTHERLAND, DEBBAN

OFFICER'S NAME & I.D. #

COWLEY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY**DESTROYED**
2/22/92
8301

PROPERTY TYPE

22/50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE _____

CONDITION _____

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

VICTIM _____

OFFICER'S NAME & I.D. # 8019

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED
2/22/93
8301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE audio tape

CONDITION _____

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

VICTIM Susan Brunel

OFFICER'S NAME & I.D. # Cowley

8034

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED
2/22/93
8301

PROPERTY TYPE

4/10/00
F.R.L.

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 1/2/91

SERIAL NO. _____

ARTICLE Blood Specimen

TYPE OF CRIME Homicide / Rape

CONDITION _____

SUSPECT ☒ ARRESTED ☐

Edgar Tiedeman

VICTIMS Susan B. Baker,

Charles T. Baker

OFFICER'S NAME & I.D. # _____

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

30/50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 1/2/91

SERIAL NO. _____

ARTICLE _____

TYPE OF CRIME Homicide

CONDITION MAF - of KIT /

Drug P.A.D. PK

SUSPECT ☐ ARRESTED ☒

Edgar Tiedeman

VICTIM Susan Baker

OFFICER'S NAME & I.D. # 8045

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

SD

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO.

ARTICLE Pair of BIK
Shoes + Socks

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION

Edgar Tiedemann

DESTROYED
2/22/93 6301

VICTIM Susan Bunnell

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

OFFICER'S NAME & I.D. # Cowley

8034

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

SD

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO.

ARTICLE BIK Coat

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION

Edgar Tiedeman

DESTROYED
2/22/93 6301

VICTIM Susan Bunnell

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

OFFICER'S NAME & I.D. # Cowley

8034

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

04/50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE BIK pants

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

DESTROYED
2/22/93

VICTIM Susan Bunnell

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

OFFICER'S NAME & I.D. # Cowley

8034

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE white underwear
mens

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

DESTROYED
2/22/93

VICTIM Susan Bunnell

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

OFFICER'S NAME & I.D. # Cowley

8034

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Bedding from male

VICTIM - Bed

CONDITION _____

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tideman

VICTIM Timmerman, Charles

OFFICER'S NAME & I.D. # 8019

Edwards

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐CHECK ☒☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROYDESTROYED
2/22/93 6301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Blanket on

chicken session bag

CONDITION _____

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☐

Edgar Tideman

VICTIM Charles Timmerman

Susan Session

OFFICER'S NAME & I.D. # 8019

Edwards

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐CHECK ☒☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROYDESTROYED
2/22/93 6301

PROPERTY TYPE

506SR

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE _____

DESTROYED

CONDITION _____

2 GSR'S FROM

DEPTA Southland

Edgar Tiedman

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

TYPE OF CRIME

Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedman

VICTIM

Susan Sessions

OFFICER'S NAME & I.D. #

8015
Charles

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

316SR

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE _____

CONDITION 2 GSR

Kit to be analyzed

DESTROYED

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

TYPE OF CRIME

Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedman

VICTIM

Susan Sessions

OFFICER'S NAME & I.D. #

8017
Charles

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO.

ARTICLE Blue shirt
Long sleeve

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION

Edgar Tiedemann

VICTIM

Susan Bunnell

OFFICER'S NAME & I.D. #

Cowley
8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐DESTROYED
2/22/92
4301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO.

ARTICLE Pillbox case
for Scotty Leals

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION

Edgar Tiedemann

VICTIM

Edgar Tiedemann

OFFICER'S NAME & I.D. #

8069

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☒DESTROYED
2/22/92
8069

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Piece of bone

from Scott Rendell's bed

CONDITION _____

TYPE OF CRIME HOMICIDE

SUSPECT ☐ ARRESTED ☒

EDGAR TIEDERMAN

DESTROYED

2/22/93

1301

VICTIM CHARLES TIMBERMAN

SUSAN SESSION

OFFICER'S NAME & I.D. # 8019

EDWARDS

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE White bath robe

worn by Debbie Sutherland

CONDITION _____

found in living room

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedemann

VICTIM _____

DESTROYED

4/2/93

5301

OFFICER'S NAME & I.D. # _____

Rushford 8064

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☒ RTE

PROPERTY TYPE

(50)

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-3-91

SERIAL NO. _____

ARTICLE Robe / T-Shirt

CONDITION _____

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

VICTIM S. V. R.

OFFICER'S NAME & I.D. # 8019

CHECK

☐ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED
2/22/93
6301

PROPERTY TYPE

(50)

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Short sleeve

Charles Timberman's

CONDITION Good

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

VICTIM Charles Timberman

OFFICER'S NAME & I.D. # 8019

CHECK

☐ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED
2/22/93
6301

PROPERTY TYPE

(50)

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO.

ARTICLE Bearskin from
Bannockburn

CONDITION

TYPE OF CRIME HOMICIDE

SUSPECT ☒ ARRESTED ☒

EDGAR T. EDEMAN

DESTROYED
1/22/93 4301

VICTIM CHARLES TIMBERMAN

SUSAN SESSION

OFFICER'S NAME & I.D. # 8019

EDWARDS

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

04/50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-3-91

SERIAL NO.

ARTICLE

CONDITION Best, some
scuffs

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar T. Edman

DESTROYED
2/22/93 4301

VICTIM Susan Session

OFFICER'S NAME & I.D. #

Edman

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☒

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE White underwear
Womens

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley
8034

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED
2/22/93
4301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE Bottle of Sheen
liquid

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # 8034
Cowley

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

DESTROYED
2/22/93
4301

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE 1 GAL CAN OF

TOLUENE

TYPE OF CRIME *Arson*

SUSPECT ☐ ARRESTED ☒

Edgar Tideman

CONDITION

DESTROYED
2/22/93 4301

VICTIM *John Sessin*

Charles Timbue

OFFICER'S NAME & I.D. # 8019

Edgar

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE *Box of bullets*

38 CAL 44 count

TYPE OF CRIME *Homicide*

SUSPECT ☐ ARRESTED ☒

Edgar Tideman

CONDITION

DESTROYED
2/22/93 4301

VICTIM *John Sessin*

OFFICER'S NAME & I.D. # 8019

Edgar

CHECK

☒ EVIDENCE

☐ FOUND

☐ SAFEKEEPING

☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Blue Case / w /

11 Bats 27 long file

CONDITION ~~agency~~ 38

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedeman

VICTIM _____

OFFICER'S NAME & I.D. # 8019

CHECK

☐ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE Hair & Silva

Samples & Convent

CONDITION Form

TYPE OF CRIME Homicide

SUSPECT ☐ ARRESTED ☒

Edgar Tiedemann

VICTIM Susan Bunnell

OFFICER'S NAME & I.D. # Cowley

8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Bullet fromPistol

CONDITION _____

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar Tiedeman

VICTIM _____

OFFICER'S NAME & I.D. # 8019Edgar

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

DESTROYED

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/3/91

SERIAL NO. _____

ARTICLE _____

CONDITION Bullet, WoodFragment Chz G.S.R.Head, Head, Head, etc.Head, etc.TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar TiedemanVICTIM Edgar TiedemanOFFICER'S NAME & I.D. # 857Edgar

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

DESTROYED

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO.

ARTICLE one 38 Cal Bullet TYPE OF CRIME Homicide

CONDITION ~~Fragment~~ SUSPECT ☐ ARRESTED ☒CONDITION ~~Fragment~~ EDGAR Tiedemann

DESTROYED

2/22/93 4301

VICTIM SUSAN SCSSIOAS

CHARLES Tiedemann

OFFICER'S NAME & I.D. # 8019

EDWARDS

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO.

ARTICLE Bullet TYPE OF CRIME Homicide

CONDITION ~~Fragment~~ SUSPECT ☐ ARRESTED ☒CONDITION ~~Fragment~~ Tiedemann, EDGAR

DESTROYED

2/22/93 5301

VICTIM

OFFICER'S NAME & I.D. #

8019 EDWARDS

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11-2-91

SERIAL NO.

ARTICLE BULLET FRAGMENTS TYPE OF CRIME Homicide

CONDITION

SUSPECT ☒ ARRESTED ☐Tiedeman, EdgarVICTIM SESSIONS, SusanTiedeman, CharlesOFFICER'S NAME & I.D. # 8019EDWARDS

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91-20773

DATE 11/2/91

SERIAL NO.

ARTICLE .22 BULLET

CONDITION

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar Tiedemann

VICTIM

OFFICER'S NAME & I.D. # 8019EDWARDS

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN

ADDRESS

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-3-91

SERIAL NO. _____

ARTICLE Finger Print cardTYPE OF CRIME HomicideG.S.R. Bullet ExamSUSPECT ☐ ARRESTED ☒CONDITION Missing, Blood,Edgar TiedemanHair, Hair, HairVICTIM Charles TiedemanHand, Hair Foundin Party, Gold RockingOFFICER'S NAME & I.D. # 8019

CHECK

DESTROYED☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE _____

SERIAL NO. _____

ARTICLE 6.10000TYPE OF CRIME Homicideempty 38 casingSUSPECT ☐ ARRESTED ☒

CONDITION _____

Edgar TiedemanVICTIM Charles TiedemanOFFICER'S NAME & I.D. # 8019

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE ONE .22 CAL. SHELL TYPE OF CRIME HomicideCaseing

CONDITION _____

SUSPECT ☐ ARRESTED ☒Edgar TiedemanVICTIM SUSAN SESSIONSCHARLES TIMBERMANOFFICER'S NAME & I.D. # 8019EDWARDS

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11-2-91

SERIAL NO. _____

ARTICLE WatchTYPE OF CRIME Homicide

CONDITION _____

SUSPECT ☐ ARRESTED ☒Edgar TiedemannVICTIM Susan BunnellOFFICER'S NAME & I.D. # Cowley8034

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROY

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

PROPERTY TYPE

50

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE Watch fromDebbie Cole Southwick

CONDITION _____

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar Tideman

VICTIM _____

OFFICER'S NAME & I.D. # 8049

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROYDESTROYED
2/22/93 4301

PROPERTY TYPE

18

WEST VALLEY POLICE PROPERTY TRACKING TAG

CASE NO. 91- 20773

DATE 11/2/91

SERIAL NO. _____

ARTICLE _____

CONDITION _____

TYPE OF CRIME HomicideSUSPECT ☐ ARRESTED ☒Edgar TidemanVICTIM SUSAN SESSIAS& CHARLES TIMBERMANOFFICER'S NAME & I.D. # 8018

CITIZEN _____

ADDRESS _____

OWNER ☐ FINDER ☐

CHECK

☒ EVIDENCE☐ FOUND☐ SAFEKEEPING☐ DESTROYDESTROYED
2/22/93 4301

1- TAP- w/ EDGAR Tideman

2- TAP- w/ DEBBIE SOUTHWICK

3- TAP- w/ SCOTT BARNETT

Addendum C

ADDENDUM C

Transcript of Defendant's Confession

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 1

RE:at 1991, the time is 2:15 PM. I'm Detective Ron Edwards, West Valley Police Department. Sgt. Ed Spann with the West Valley Police Department. I have to read you your rights per miranda. Do you understand that?

ET: Ya.

RE: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have a lawyer present before any questioning. Do you understand that?

ET: ...inaudible...

RE: Do you understand that you can stop this questioning at anytime?

ET: Ya.

RE: If you cannot afford an attorney, we will provide one for you. Do you understand that?

ET: Ya.

RE: Do you still wish to speak to us at this time?

ET: Ya.

RE: Are you intoxicated?

ET: On toluene.

RE: What's toluene?

ET: Toluene. It's, it's a paint thinner.

RE: It's a paint thinner?

ET: Ya.

RE: Okay, do you know why we're going to talk to you?

ET: Ya.

RE: What are we going to talk to you about?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
92-20773
PAGE 2

ET: The murders out there.

RE: What murders?

ET: The murders out there at West Valley.

RE: Who are they?

ET: Suzie, Chuck and Scotty.

RE: Whose Suzie?

ET: She's the woman I love.

RE: That you love?

ET: Ya.

RE: What happened to her?

ET: I don't want to talk about it.

RE: You don't want to talk about it?

ET: No.

ES: Edgar?

ET: What.

ES: Why don't you want to talk about it?

ET: I love that woman so much.

ES: What is it that you don't want to talk about? You said
murders in West Valley, where in West Valley?

ET:inaudible....Hummingbird Street.

ES: I'm sorry, where?

ET: 1308 Hummingbird Street.

ES: 1308 Hummingbird, who lives there?

ET: Me.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 3

RE: Who lives with you?

ET: Suzie and Scotty and they just moved in last night, I don't know.

RE: Okay, what don't you want to talk about? Edgar? What don't you want to talk about, Ed?

ES: Edgar, we're not going to force you talk about anything. We're asking you questions. As Detective Edwards stated, you can answers this questions, not answer that question, answer this question, not answer that question. You don't have to answer any of our questions at all. You can stop at anytime.

ET: Okay.

ES: He made that clear to you, right?

ET: Ya.

ES: Okay. You stated you wanted to talk to us, what part do you and what part don't you want to talk to us about?

RE: Edgar do you remember me reading you're rights earlier and you signing a waiver for us to search your home?

ET: Ya.

RE: Okay, we were called to your home on a gunshot. We got in there and seen some people. Who shot them?

ET: Me.

RE: You did?

ET: Ya.

RE: Why did you shoot them?

ET: I shot Suzie cause I love her and I shot the other two.

RE: Why did you shoot Chuck for?

ET: Just to cover up the murder.

RE: Okay, how did Debra get, come into the picture?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 4

ET: I was going to shoot her too but she was pregnant.

RE: Okay, why? Why did you shoot them?

ET: I shot Suzie cause I love her, I love her so much.

RE: Was she going to leave you?

ET: No. She wouldn't.

RE: If you loved her that much, there's a reason why you shot her.
Could you please explain why you shot her?

ET: I don't know.

RE: Okay. What time did you shoot them?

ET: I don't know.

RE: Was it daylight?

ET: I don't know.

RE: How long have you been sniffing that solvent?

ET: Since 1962.

RE: Tonight how long? Or today?

ET: All day.

RE: Do you know what today's date is?

ET: You told me but I don't remember.

RE: Do you know what day of the week it is?

ET: No.

RE: What was yesterday?

ET: I don't have any idea.

ES: Do you work Edgar?

ET: No, I'm on SSI.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 5

RE: What's SSI?

ET: Social Security Supplemental Income.

RE: Okay. What kind of gun did you use?

ET: A .22 and a .38.

RE: What did you shoot Suzie with?

ET: .22.

RE: What did you shoot Martin with?

ET: Who's that?

RE: Isn't that her son?

ET: No, that's Scotty.

RE: Is that Scotty?

ET: Ya.

RE: That was sleeping on the floor?

ET: Ya.

RE: Okay, what did you shoot him with?

ET: I don't know.

RE: What did you shoot Chuck with?

ET: .38.

RE: How many times did you shoot Chuck?

ET: Twice.

RE: Where at?

ET: The throat.

RE: And where else?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 6

ET: I didn't see where the other place was.

RE: Was he trying to get out of the bed?

ET: Ya.

ES: Who did you shoot first?

ET: Suzie.

RE: Then what happened? Did Scott wake up?

ET: Ya.

RE: So they were all asleep?

ET: Ya. No they was both awake.

RE: They were both awake talking to you?

ET: Ya.

RE: Where were the guns at when you decided to shoot them?

ET: My hands.

RE: Where were the guns at before you picked up the guns? Where did you go get the guns from?

ET: I picked, got them out of my room.

RE: Is yours the bedroom way in the back?

ET: Ya.

RE: Okay. You took them out of that bedroom?

ET: Ya.

RE: Was Chuck asleep?

ET: I think so.

RE: Okay. When you got the guns, where were, were they already loaded or did you have to load them?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 7

ET: They were already loaded.

RE: Do you always carry loaded guns in your home?

ET: Ya.

RE: What kind of car do you own?

ET: 1991 S-10.

RE: Okay, do you know what that license plate number is?

ET: 5, ah 2221CN, I think.

RE: Okay. How long have you owned that S-10?

ET: Ah, since November of 1990.

RE: Whose is the brown vehicle in the driveway?

ET: That's Suzie's, I bought it for her.

RE: Okay, whose...

ET: And she didn't even appreciate it.

RE: She didn't?

ES: How long have you and Suzie been together?

ET: Thousands of years.

RE: Does Suzie work?

ET: She's a prostitute.

ES: What's Suzie's last name?

ET: Sessions.

RE: Is she a....

ET: She shoots heroin. That's why she has to stupid work.

ES: Do you do drugs also, Edgar?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 8

ET: No, I don't do, I used to do it. I done it with her for about two or three, I mean two or three days and it didn't even effect me or anything. I know I didn't, couldn't even get off, just got back to toluene.

RE: So why did you have to shoot Suzie?

ET; I don't know, I don't know.

ES: Does Suzie usually sleep in the bedroom with you or does she sleep on the couch?

ET: No, no, she just moved in. She's...

RE: How long have you known Suzie?

ET: About 10 years.

RE: And how long has she moved in with you?

ET: She moved in about, she lived out there in Rose Park for about two or three months after my mom died and she got an apartment of her own and then.

RE: How old are you Edgar?

ET: 45.

RE: How long have you been on Social Security?

ET: Since November of 88.

RE: Where did you work at before you went on Social Security?

ET: I don't remember.

RE; Do you have any physical impairments? Any physical injuries?

ET: I had a stroke. I couldn't get out of my room for three days. I couldn't talk for seven. I was in the hospital for two and a half months.

RE: You said you had a stroke?

ET: Ya.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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PAGE 9

RE: How long ago?

ET: ...inaudible...it was 1980, I mean 1988, November of 1988.
The papers are in the trailer.

RE: Okay. Is there any mental problems?

ET: Ya. All kinds.

RE: What kind of mental problems?

ET: See, I think I'm Adolf Hitler. Adolf Hitler died in May of 1945 and I was born in 19, October 1946. I think I'm Adolf Hitler.

ES: Edgar, was Suzie your girlfriend?

ET: Ya. I loved her more than anything else in this world.

ES: Did Suzie love you?

ET: I don't, I don't know, I, I don't think so. I don't think she did.

ES: Well you've know her off and on for ten years and...

ET: Ya.

ES: Is she living in your mom's house in Rose Park?

ET: Ya.

ES: Did you live at your mom's house in Rose Park?

ET: Ya.

ES: When did you move to West Valley?

ET: In May of 1989 or 1990 or 1991 or whatever.

ES: When did she move out here in West Valley, just today, last night or night before or whatever, I don't know.

RE: Where were her and her son staying before then?

ET: Ah, 1446 West 400 North, Apartment C.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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RE: Why did they move out to you?

ET: Cause they got kicked out of their apartments.

RE: Why?

ET: They, I don't know why, they just did, I don't know.

RE: Who's Chuck?

ET: She's Debbie's boyfriend. That's....

RE: When did he get in town?

ET: I think he came in a couple of three days ago.

RE: Where's Debbie living?

ET: With Suzie.

RE; So she was staying in that house too?

ET: Ya.

RE: Trailer?

ET; Ya.

RE; So Chuck got here and he was staying in that back bedroom too?

ET: I guess, I don't know.

RE: When you shot him, is that the bedroom he was....

ET: Ya.

RE: And you did shoot him?

ET: Ya.

ES: Why did you shoot him?

ET: I don't know. I don't know. Just....

RE: I want you to think about this, Edgar. You shot Suzie first with the .22.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 11

ET: Ya.

RE: Then you shot Scotty.

ET: Ya.

RE: You went in the bedroom to shoot Chuck?

ET: Ya.

RE: Tell me, describe what happened as you ah, did you turn on the light?

ET: No.

RE; Could you see him pretty good?

ET: I couldn't, I couldn't, I, I was, I just, I couldn't even see. I couldn't see him, I just, actually I couldn't even see any of them.

RE: You said that you shot him in the throat.

ET: I'm just a lucky shot.

RE; Well you said you shot him in the throat, and how would you know you shot him in the throat if you couldn't see him.

ET: Ah, afterwards I turned on the light.

RE: Did you ever turn the light back off?

ET: Ya, I turned it off about six or seven times, maybe more than that.

RE: How many times did you shoot Chuck?

ET: Twice.

RE: Why did you shoot him the second time?

ET: I just popped off two rounds.

RE: Did you have a .38 or a .357?

ET: .38.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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ES: How many times did you shoot Scotty?

ET: I don't know, about four I guess I don't know, at least he claims.

RE: Who claims?

ET: Scotty.

RE: When did you talk to Scotty?

ET: He was still alive.

RE; He was still alive?

ET; Ya.

RE: Why didn't you shoot him again?

ET: I just couldn't handle it.

RE: After you shot everybody, was the lights on in the trailer?

ET: No, they was all off. One, the one light, the one back bedroom light was on.

RE: That was your bedroom?

ET: Ya, no the one this one.

RE: The one Chuck was in?

ET: No, the one in the hall.

RE; Oh, the hall light?

ET: Ya.

ES: Okay, Edgar what we'd like to do is kind of start back in the evening and tell us what happened. What time did they move into your house.

ET: I don't remember?

ES: Yesterday?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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PAGE 13

ET; I think so.

ES: Do you know what day of the week it was?

ET: I don't have any idea.

RE: Was it night time when they moved in or day light?

ET; I don't even know.

RE: Was everybody doing heroin in the house or was they just sniffing with you?

ET: No, Suzie and them and Debbie were using heroin and ah Scotty was straight and, and ah, Chuck was drunk. I don't know if he was intoxicated or what.

RE: But he'd been drinking?

ET: Ya.

RE: Everybody went to bed. What did you do?

ET: I just laid there and thought.

RE; Where at?

ET: My bedroom.

RE; All by yourself?

ET; Ya.

RE; What did you think about?

ET: I don't know what. I love everyone.

RE: When you was in the back bedroom, Edgar, with the gun, why did you have to go out and shoot them?

ET: I don't have any idea.

RE: Did you hear any voices?

ET: I think so. I don't know.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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RE: Who was telling you to go shoot them?

ET: The devil.

RE; Are you a christian man?

ET: Ya.

RE: Do you go to church?

ET: Ya, I got to...inaudible...don't go to church, but I became an L.D.S. person. I smoke and drink.

RE: You was sitting in your back bedroom, where was Debbie at?

ET: She was in the second bedroom.

RE: With Chuck?

ET: Ya.

RE: You walked down the hall?

ET; Ah-huh.

RE; Was the TV on?

ET: No.

RE: Radio on?

ET: No.

RE: What happened? Was the lights on?

ET: No. I had the one light on in the hallway.

RE; Okay, you walked in....

ET: ...inaudible...was dim.

RE: Okay, you walked down....

ET: Ya.

RE: ...your's standing over Suzie, what happened?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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ET: I don't know what happened. I can't figure it out. I just....

RE: Was the sheet over her head? Or blanket over her head?

ET: No.

RE; Did you see her face?

ET: Just barely.

RE; Was her eyes open?

ET: Ya, I don't know, I couldn't tell if her eyes were open or not, I think she was talking about something, I don't know.

ES: Who was she talking to?

ET: Me.

RE: Was she pleading for her life?

ET: No.

RE: Did she see the gun?

ET: No.

RE: She didn't see the gun at all?

ET: No.

RE: What did you say to her before you shot her?

ET: I don't know.

RE; What did you say after you shot her?

ET: Nothing.

RE: Did she move?

ET: No.

RE: After you shot her, what did Scotty do?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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PAGE 16

ET: He got up and flipped, flipped over the covers and then I shot him.

RE: Where did you shoot him at?

ET: I don't know, in the stomach or, I mean in the arms and stuff like that. I don't know, I couldn't see very good ...inaudible... I just pumped about, I think I pumped two .22 shells into him and two .38 shells into him.

RE: What side of the mattress was you standing when you shot him? The kitchen side or the bedroom side of the mattress?

ET: Bedroom side.

RE; So how far away from you, how far away was Suzie when you shot her?

ET: Ah, there's a coffee table on the end so, I guess from the coffee table to there.

RE: Did you aim?

ET: No, I only pulled the trigger.

RE; Just one time?

ET: Ya.

RE: And it was a lucky shot?

ET: Ya.

RE: I don't believe you.

ET: I don't know, I was just...

ES: Were you angry with Suzie?

ET: Ya.

ES: What were you angry at her for?

ET: Cause she ripped me off of six or seven thousand dollars.

RE: How did she rip you off?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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ET: Well, I bought her that car for eight hundred. She was going to get her husband sent to prison and she bought coke, I mean heroin with a thousand dollars and then I got her out of jail one time and she wasn't even in jail and that was three hundred dollars, she got this ticket, Lee what's his name, Lee Ward and Debbie Lee and they split it up and shot it up in heroin and then ah, I got her, I got her an abortion and I found out she'd been fixed, I knew she'd been fixed but I mean, she didn't appreciate anything.

RE: If you knew all this, why did you let her move in with you?

ET: I don't know.

RE: If you knew that she ripped you off of that money, did you ever ask her to pay you back?

ET: No.

ES: What were you hoping to gain by it?

ET: I wanted to marry her. She kept promising me she was going to marry me, marry me, marry me.

RE: Was you having a sexual relationship with her?

ET: Ya.

RE: How many, you said that she was a prostitute?

ET: Ya.

RE: How often did she go out on the streets?

ET: I don't know.

RE: Who was her pimp?

ET: I think it was Lee Ward.

RE: Lee Ward?

ET: Ya.

RE: Who's that?

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
91-20773
PAGE 18

ET: A Niger.

RE: Where does he live?

ET: I don't know his exact address, somewhere in 13th South, between 13th South and 7th West or something like that.

RE: Have you ever met him?

ET: Ya.

RE: Did he know that she was living with you?

ET: I think so.

RE: What's your phone number in your house?

ET: It was, ah, 263-8853, but I had it disconnected.

RE: Why?

ET: Cause I didn't trust them people.

ES: What people?

ET: Chuck and them other peoples and stuff.

ES: When did you have it disconnected?

ET: Huh?

ES: When did you have it disconnected?

ET: The day they move in.

RE: Yesterday?

ET: Ya.

RE: How far away were you from Scott when you shot Scott?

ET: I was standing in the same place where I shot Suzie.

RE: Then you walked down the hall?

ET: Ya.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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RE: Tell me?

ET: I walked down the hall and I shot four rounds.

RE: Was you shooting your right hand or left hand?

ET: I had them in both hands. I had my .22 in my left hand and my .38 in my left, my right hand.

RE: Are you right handed or left handed?

ET: Right handed.

ES: You had your .22 in the left hand and your .38 in the right?

ET: Ya.

RE: After you shot him.....

ET: I felt terrible.

RE: ...what did you do then?

ET: I felt terrible.

RE: I understand that, but what did you do then? After you shot Chuck what did you do?

ET: I'm not sure. I laid down, I don't know what happened then. It was all a blur.

RE: What did you say to Debbie?

ET: I talked to her for about two or three hours.

RE: Where at?

ET: I don't know. I talked to her for several, I don't know.

ES: You say Scotty was still alive?

ET: Ya.

ES: What was Scotty doing?

ET: Laying there moaning.

TAPED INTERVIEW
EDGAR TIEDEMANN
NOVEMBER 2, 1991
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ES: How long?

ET: All day.

RE: Did Suzie have AIDS?

ET: I don't think so, I don't know, I don't know. I mean I could, I think I got it, I don't know if I got it or what, I don't, that's not important.

RE: What's that?

ET: That's not important.

RE: Okay. Where did you go after you left your house?

ET: Went to get some heroin.

RE: For who?

ET: Debbie.

RE: Why her?

ET: I don't know, I wanted to get some cocaine.

ES: For who?

ET: I don't know, from Tony or something like that, I don't know their names ..inaudible...

ES: Was that for you or for him? For you or for Debbie?

ET: I wanted the heroin for Debbie and the cocaine for me.

RE: How much money did you have on you?

ET: I didn't have any money.

ES: Who had money then?

ET: Debbie.

RE: Did Debbie know you was going to kill these people?

ET: No.

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RE: How long did you ride around with Debbie?

ET: Well, I'd say about an hour or two, I don't know how long.

ES: ...inaudible...drugs?

ET: No. I found a piece in Suzie's coat pocket, here, a piece of heroin.

RE: Is that Suzie's jacket?

ET: Ya.

ES: Whose idea was it to go get drugs?

ET: Debbie's?

RE: Why didn't you shoot Debbie there?

ET: I couldn't fucking handle it, I came to my senses. I don't know why....

ES: If you came to your senses, how come you didn't call somebody to help Scotty?

ET: I don't know. I don't know if I came to my senses or not.

ES: How old is Scotty?

ET: I think he's 15.

ES: How old's Suzie?

ET: I think she's 33.

RE: How old's Debbie?

ET: I think she's 37. I think Chuck's 44.

ES: Anything happy between you and Debbie?

ET: Ya.

ES: What happened?

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ET: Um, Debbie and Suzie would take turn sitting on my face and fucking me.

ES: When?

ET: Oh, a couple of times or I don't know.

RE: Last night?

ET: Ah, I don't know.

RE: Did you have ah, have sex with Debbie today?

ET: Ya.

RE: Where at?

ET: The front room, I mean on the hall.

RE: After you shot them?

ET: Ya.

RE: After you shot Suzie, Scott and Chuck, you took Debbie in the hallway and did she submit to you or did you rape her?

ET: She submitted to me.

RE: What, how did it happen? What did you say to her?

ET: Well I had her wash her pussy out real good and I ate her out and then I fucked her.

ES: Did she say anything to you?

RE: Did she want it?

ET: Ya, I think so.

RE: What did she say?

ET: She said it was real enjoyable.

RE: When did she tell you that?

ET: Just after we did it.

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ES: Did you have your guns with you still?

ET: I laid them down on the floor.

ES: Did you have your guns with you when you made her clean herself?

ET: Ya.

ES: Where was sure when you told her to get up and clean herself?

ET: What's this?

ES: How did this come about? You Scott, you shot Chuck, how did you come to talk with Debbie? What did she do?

ET: What do you mean, what did she do.

ES: After you shot Chuck, what did she do? She was in bed with him, is that correct?

ET: Ya.

ES: So what does she do?

ET: Not much, she came up and we talked for a while.

RE: What did you talk about?

ET: How much I loved Suzie.

RE: Did she know that you just shot Suzie and Scott?

ET: Ya.

RE: Was she crying?

ET: No. She had a horrified look on her face. I think it's just from the heroin.

RE: After you brought her out of the bedroom, you talked for a while in the hallway?

ET: No, she sat down on the couch and we talked for about two or three hours.

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ES: On the couch next to Suzie?

ET: No on the other couch.

ES: What was Scott doing all this time?

ET: Moaning.

ES: So you talked for two or three hours and you had her get up and go to the bathroom?

ET: Ya.

ES: Did you go into the bathroom with her?

ET: No, I just stood out in the hall. I left the door open.

ES: Then what happened? Is that when you performed oral sex on her?

ET: Ya.

RE: What was she wearing?

ET: Ah, a yell, I mean a white terry cloth towel, or a terry cloth robe or whatever it is.

RE: Any panties?

ET: No.

RE: Bra?

ET: No.

ES: Was she wearing any clothes when she was in bed with Chuck?

ET: No.

RE: Why didn't you go back in your bedroom? Edgar? Why didn't you take Debbie back into her bedroom? Back into your bedroom?

ET: I don't know, I just, I didn't think Suzie was dead.

RE: Okay. Suzie was sleeping on the couch.

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ET: Ya.

RE: Scott's sleeping on the floor. How come Suzie's not sleeping in your bedroom with you?

ET: She wouldn't do it.

RE: She'd make love to you but she wouldn't sleep with you?

ET: No.

ES: Did you have intercourse with her that night?

ET: No.

ES: When was the last time you had intercourse with Suzie?

ET: Two or three days ago. Me and, me and Debbie and Suzie did, I ate Suzie's pussy and Debbie was sitting on my dick.

RE: Do you always have a threesome?

ET: Ya. Well most, a lot of times just Suzie. I like just Suzie the best.

RE: Why?

ET: Cause I love her.

ES: Do you tell her that?

ET: Every fucking day and night.

ES: What does she say?

ET: She didn't seem to say nothing?

ES: Did she laugh at you?

ET: I don't know what she did. She just....

ES: Did she laugh at you?

ET: No, I don't think she, I don't know if she did or what. She just....

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RE: What did she say tonight or today that made you angry enough to shoot her?

ET: I don't know.

RE: What did she do to make you angered, that angered you?

ET: I don't know, I have no idea, just.....

ES: What made you have sexual relations with her sister after you shot her?

ET: I don't know what that was. I guess I was just horny, I don't know.

RE: Shooting those people get you excited?

ET: No.

RE: Did you have an erection after you shot them?

ET: No.

ES: When did you get the erection?

ET: When I was eating Suzie out, I mean Debbie out.

ES: Did you ever have a sexual relationship prior to police officer finding you?

ET: Huh?

ES: Did you have sex with her anymore prior to the police catching you? After you left your trailer?

ET: No.

ES: Where did you go?

ET: We went to score some dope.

RE: Who was driving?

ET: Debbie.

ES: What vehicle?

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ET: Chuck's truck, I mean Chuck's car.

RE: What kind of car is it?

ET: I don't know, it's an Oldsmobile I think or something like that.

RE: Is them the clothes you was wearing last night?

ET: Ya.

RE: And the same clothes you had on after you had sex with Debbie?

ET: Ya.

ES: What were you wearing when you shot Suzie?

ET: These clothes here.

ES: So you were fully dressed?

ET: Ya, except for this jacket here. This jacket here we, I mean, we picked it off, I mean it was on, all I had to do was, a jacket, two jackets, I picked this one here.

RE: Why did you pick that one?

ET: She got the other one, Debbie got the other one.

RE: Why didn't you grab your jacket? Why did you grab Debbie's? I mean Suzie's.

ET: ...inaudible...

RE: Okay.

ES: Did you get any dope? You said no right?

ET: Ya.

ES: Where all did you go?

ET: I don't know. ...inaudible...

ES: How many places did you go?

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ET: We just kept driving around and looking for the dope, I mean calling places. I couldn't get the phone numbers.

ES: What was Debbie saying?

ET: Huh?

ES: What was Debbie saying?

ET: Saying?

ES: What did she say? How did you guys decide to go ahead and go? Whose idea was that?

ET: Hers.

ES: She asked you to call medical?

ET: No, no.

ES: She asked you to call for help?

ET: No.

ES: Was Scotty still sitting there, laying there moaning?

ET: Ya.

ES: Was he moaning when you left?

ET: I think so.

ES: Which door did you go out of?

ET: That door.

ES: Did you leave it unlocked or did you lock it?

ET: I locked it I think.

ES: How does it lock?

ET: Just push the button in.

RE: Was the front door already locked?

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ET: Ya.

RE: What did Debbie say to you while you was riding around?

ET: Well she said that we could go back and get it on and....

RE: And what else?

ET: I don't know just.

RE: Edgar?

ET: Huh?

RE: I think it's time you start telling us the truth.

ET: That's the truth.

ES: Edgar?

ET: What.

ES: We think it's time you start telling us the truth. The whole truth. I think what you're saying is, is close, but I think there's some other things that you know that you're just not telling us.

RE: I think you're fantasizing about a few things here and what we'd like you to do is tell us exactly what happened. Truthfully.

ET: That's what happened.

RE: Why did you shoot Suzie?

ET: I loved her.

RE: What happened that you got so angered that you went into the back bedroom, got a gun, walked up to the foot of the couch, pulled the weapon up to your eye, took aim and shot her in the head?

ET: I didn't shoot her, I mean, I pulled it down like that, I just ...

RE: Show me again.

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ET: Like that.

RE: Stand up and show me, I can't....

ES: Stand up. Okay, I'm on the couch. Which hand did you have the gun that you shot Suzie with?

ET: This one here.

ES: That's your left hand, you had the .22?

ET: Ya.

ES: How many times did you squeeze the trigger?

ET: Once.

ES: What could you see?

ET: I wasn't sure.

RE: Is the .22 an automatic or a revolver?

ET: An automatic.

ES: ...inaudible....

ET: Huh?

ES: ...inaudible...is that from the stroke?

ET: Ya.

RE: Edgar, why did you shoot Suzie. If you loved her, you wouldn't have shot her. You've know her for ten years. You've talked to her before, you've been able to talk problems out before. What problem manifested itself tonight or today or last night that gave you the impulse to kill her?

ET: I don't know.

RE: Something had to turn you, what turned you?

ES: You say you were talking to her when you walked up and at the bottom of the couch. What was she saying to you?

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ET: She was telling me I was disgusting.

RE: Why?

ET: I don't know.

ES: Now tell us.

RE: I'm going to talk to Debbie and Debbie's going to tell us her side of the story, so I want you to tell ya, tell us your side before we talk to her.

ET: That is my side of the story.

RE; Did you get that sexually aroused by killing those people that you....

ET: No.

ES: Then why after killing the woman you love, do you have intercourse with her sister?

ET: Cause I liked Debbie second. I love all women.

RE: Edgar, start telling the truth. There's something that snapped in that trailer house, last night or early this morning that made you kill Suzie.

ET: I don't know what happened.

RE: It wasn't the devil. You didn't hear voices. What happened?

ET: I don't know.

ES: When she said that you were disgusting, when did she say that?

ET: She said, she said I was disgusting.

ES: What was happening before that? She sat on the couch and yelled down the hall? Is that disgusting?

ET: No, she was laying there. She called me ...inaudible...

RE: She called you what?

ET: Tiede.

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ES: Is that a nickname?

ET: Ya.

ES: What did she say?

ET: She said you were disgusting.

ES: What had you done?

ET; Nothing.

ES: Was this when you had the guns in your hand or before?

ET: I had the guns in my hand.

ES: Okay, something had to have happened as you walked down the hall with two guns in your hand. Not one gun, two guns. Something had to got happened for you to come from your bedroom down the hall, two guns in your hand, point the gun at Debbie, at Suzie and take a shot.

ET: I don't know.

RE: After you shot Suzie, did you do anything else to her?

ET: No, I covered her up.

RE: With the blanket?

ET: Ya.

ES: What was she wearing?

ET: I don't know.

RE: Did she have any blankets on her?

ET: I think so, I don't know.

RE: Or did you just cover her head up?

ET: Her whole, her whole body.

RE: So she was laying on the couch with any covers on her when you shot her?

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ET: No, she was, she had covers down to her, down around here.

RE: Down to her waist?

ET: Ya.

RE: Did she have her bra on?

ET: I don't know.

RE: Did she have clothing that covered her?

ET: Ya.

RE: Did she sit up when you shot her?

ET: No.

RE: She was laying down?

ES: Edgar, did you ask her to come in the hall before you shot her?

ET: No.

ES: Had you asked her to come and sleep with you earlier?

ET: Ya.

ES: What did she say?

ET: Just telling me I was disgusting.

ES: How did this conversation begin. They're doing heroin, Debbie and Suzie are doing heroin, where are they doing their heroin?

ET: Ah, sometimes my bathroom other times....

ES: Where were they doing it this time?

ET: I think they was using the bathroom over there because I, seven, seven fifteen, fourth north and 740 East, Apartment C.

ES: They were doing heroin before they got to your house?

RE: Who with?

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ET: I don't know.

RE: With him?

ET: I don't know.

RE: Is Debbie a prostitute, too?

ET: I think so.

ES: So you asked Suzie to sleep with you and she called you disgusting?

ET: Ya, I guess so.

ES: Well no, is it true or not?

ET: I thinks it is.

ES: Okay, I'm just telling you what you told me.

ET: Ya.

RE: Edgar?

ET: Huh?

RE: Why did you shoot them?

ET: I don't know.

RE: Why did you shoot Scotty and Chuck then?

ET: I don't know. I just, I don't know.

RE: Have we made any threats to you during this interview?

ET: No.

RE: Have we promised you anything?

ET: No.

RE: Are you making this statement on your own free will?

ET: Ya.

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RE: Is there anything else that you can tell us in your defense?
Is there anything that you want to tell us to help us?

ET: I don't want to make any appeals and I want to be put to death
by lethal injection.

RE: You know you're going to be charged with a capital homicide?

ET: I know.

RE: Why did you do it?

ET: I don't know.

RE: Are you under any influence of any other drugs or alcohol?

ET: Just toluene.

RE: How do you feel?

ET: Lousy.

RE: Okay, do you understand everything I've said?

ET: Sometimes.

RE: You've made a response to everything I've asked you, is that
correct?

ET: I think so.

RE: Do you have anything else to say?

ET: I'll think of something in a while.

RE: Okay, we're going to conclude this interview, same date at
3:00 PM.

Addendum D

ADDENDUM D

Trial Court's Ruling on Defendant's Confession

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

THE STATE OF UTAH,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 021912452
vs.	:	
EDGAR TIEDEMANN,	:	
Defendant.	:	

This matter is before the Court on defendant's Motion to Suppress Illegally Obtained Statements. The Motion raises three legal issues. First, whether defendant invoked his *Miranda* rights; second, whether defendant's confession was involuntary; and finally, whether defendant was competent during his interrogation.

FACTS

Detective Ron Edwards ("Det. Edwards") and Sergeant Ed Spann ("Sgt. Spann") of the West Valley Police Department, began the interrogation of defendant, Edgar Tiedemann, on November 2, 1991, at 1:58 p.m. Det. Edwards began by asking the defendant to sign the paper placed before him and explained for the benefit of the camera and the defendant that defendant had received his *Miranda* rights and was not intoxicated. The defendant corrected Det. Edwards, stating that he was intoxicated on Toluene. Det. Edwards asked the defendant how long he had been intoxicated on Toluene and

the defendant responded, stating "since 1962." When asked if he was incapable of understanding or answering questions, the defendant responded, "Sometimes, I don't know." At this point, the tape stopped and started again at 2:13 p.m.

Det. Edwards read the defendant his *Miranda* rights. The defendant said that he was intoxicated on Toluene and confirmed that he was willing to answer questions with the police and did so voluntarily. The defendant continued the interrogation with his head lowered, and he infrequently looked up into the camera.

When Det. Edwards asked, "What happened to her (Suzie)?" the defendant said, "I don't want to talk about it." Immediately afterward, when asked, "What don't you want to talk about?" he remained silent. Immediately thereafter, when asked, "Who is Suzie?" he responded without delay, "The woman that I love." The defendant readily answered other questions throughout the interrogation, except when asked, "What happened to Suzie?"

The defendant did not remember the day of the week even though Det. Edwards told him the date at the beginning of the interview, and he did not remember if the victims moved in his house during the day or night. The defendant did provide several complex answers during the interrogation, including the license number and make of his car, the year he had his stroke, the physical effects of his stroke and other detailed information.

When responding to Det. Edwards' question if he had any mental problems, the defendant said "Ya. All kinds. See, I think I'm Adolph Hitler. Adolph Hitler died in May of 1945 and I was born in 19, October 1946. I think I'm Adolph Hitler." When asked by Det. Edwards if he heard voices, the defendant stated, "I think so. I don't know." When asked by Det. Edwards who was telling him to shoot them, the defendant responded, "the devil." The defendant also responded that he was a religious person.

The defendant's interview ended at 2:58 p.m., having lasted just under one hour. During the interview, he did not request a break, did not directly request to stop the interview or request to have an attorney present.

ANALYSIS

"The Due Process Clause of the Fourteenth Amendment provides that no State shall `deprive any person of life, liberty, or property, without due process of law.'" Colorado v. Connelly, 479 U.S. 157, 163 (1986). A defendant in custody has the right to remain silent, the right to have an attorney present and the right to stop an interrogation at any time. Miranda v. Arizona, 384 U.S. 436 (1964). Under the Due Process Clause, "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned." Id.

"Voluntariness" is not the sole consideration when considering whether admission of a confession violates the Fifth or Fourteenth Amendment. State v. Rettenberger, 984 P.2d 1009, 1013 (Utah 1999). "Coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.'" Connelly, 479 U.S. at 167. Analysis of whether a confession is admissible must consider the "totality of circumstances" to determine if the confession was "made freely, voluntarily and without compulsion or inducement of any sort." Withrow v. Williams, 507 U.S. 680, 689 (1993). The "totality of the circumstances" takes into account "both the characteristics of the accused and the details of the interrogation." State v. Strain, 779 P.2d 221, 225 (Utah 1989). "Courts must consider such external factors as the duration of the interrogation, the persistence of the officers, police trickery, absence of family and counsel, and threats and promises made to the defendant by the officers." Rettenberger, 984 P.2d at 1013.

"Courts must also consider such factors as the defendant's mental health, mental deficiency, emotional instability, education, age, and familiarity with the judicial system." Id. at 1014. Accordingly, the Utah Supreme Court states, "a defendant's mental condition is not in itself sufficient to make a confession involuntary." Id. The mental state of a defendant "is relevant to

the extent it made him more susceptible to mentally coercive police tactics." Id.

The court sets forth objective and subjective factors that a court should consider when conducting a "totality of the circumstances" examination. Id. at 1015. Objective factors include police misrepresentation, the false friend technique, threats and promises and other factors such as "whether the defendant is subject to extended periods of incommunicado." Id. at 1015-1018. In explaining subjective factors, the court lists whether the interrogators deny any of the defendant's requests, whether the defendant had prior experience with the judicial system, whether the defendant was particularly vulnerable to psychological manipulation, or whether the defendant was more susceptible to stress and coercion than the average person. Id. at 1019-1020.

I. Violation of Miranda

The defense argues the defendant affirmatively invoked his right to remain silent, and that right was violated when police detectives continued his interrogation. The defendant cites State v. Gutierrez, 864 P.2d 894, 897 (Utah App. 1993), to show that an effective initial waiver of the right to remain silent does not nullify a suspect's ability to subsequently invoke this right during the course of an interrogation. In Gutierrez, when the

defendant said, "I ain't going to say nothing," the Utah Court of Appeals found the defendant invoked his *Miranda* rights. *Id.* In *Guitierrez*, with continued questions and the police interrogator's suggestion that he was only using self-defense, the defendant was provoked into a confession. *Id.* *Guitierrez* is distinguishable because the interrogators were more forceful and suggestive in their questioning and the defendant was referring to the entire interview, not a particular question.

Here, the defendant did not want to talk about the specific bodily harm to Suzie, but was otherwise cooperative and willing to talk to the interrogators. The defendant answered affirmatively that he understood his *Miranda* rights, he refused to answer questions regarding the bodily harm that was inflicted upon Suzie, but unhesitatingly answered all other questions. His purposeful silence lasted only a brief period of time and only to questions regarding bodily injury to Suzie. He did not indicate, at any time, that he wished to stop the interrogation.

Accordingly, the Court finds that the defendant did not invoke his *Miranda* rights. Therefore, the Court need not reach the issue of whether the defendant's statements are still admissible for purposes of impeachment.

II. Involuntary Statements

The defense argues that the defendant's statements were not made voluntarily, in violation of federal due process. In analyzing whether the defendant's confession is voluntary, the Court will address both the objective and subjective factors of the defendant's interrogation.

a. Police Misrepresentation, False Friend Technique, Threats or Promises and Other Objective Factors

The defense argues the defendant's interrogation was subject to police coercion due to questionable interrogation techniques. Specifically, the defense cites Rettenberger to show the use of false friend technique, mental coercion, the lack of presence of counsel, family or friends. 984 P.2d at 1013. Rettenberger is clearly distinguishable in that the police coercion was much more extensive. Here, the interrogators did not make use of false statements or half-truths. They did not use the false friend technique by implying they were acting in the best interest of the defendant by the simple use of his first name. The detectives did not use any threats or promises to entice the defendant into a confession. The entire interrogation took place within one hour, and during the investigation the interrogators did not deny any special requests of the defendant. There is no evidence of any ethical misconduct by the police. In short, the record shows that

the detective's interrogation was absent of suggestive and coercive techniques. The Court finds no reason to believe the interrogation method used techniques that were sufficient to render the defendant's confession involuntary.

b. Subjective Factors That Make the Defendant More Susceptible to Manipulation

Turning to a review of the subjective factors that may make the defendant more susceptible to manipulation is a more difficult process than reviewing for police misconduct. The defense argues that the defendant's diminished mental capacity, the influence of drugs, his references to Hitler and Satan, and his lack of verbal skills and ability to express himself deem the defendant incapable of a voluntary confession.

The defendant's prolonged use of Toluene, the stroke he suffered in 1982, or a head injury received as a child might be the cause of his generalized cerebral damage resulting in severe impairment of intellectual functions and an 82 I.Q. (Memorandum in Support of Defendant's Motion to Suppress, p. 14.) The defendant's reference that he believes he is Adolph Hitler indicates that he knows Hitler is dead and he does not have an actual belief that he is Hitler. His reference to Satan telling him to commit the criminal act may also stem from his religious beliefs. "A perception of coercion flowing from the 'voice of God' is a matter

to which the Federal Constitution does not speak." Connelly, 479 U.S. at 517. In reviewing defendant's interrogation it is evident he did not answer all questions intelligently. On the other hand, the defendant provided clear and detailed answers to many of the questions.

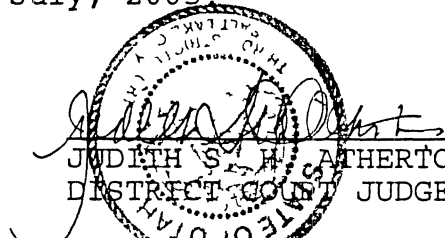
III. Incompetent

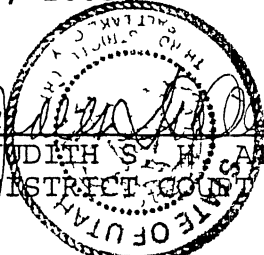
The defense argues that the defendant was incompetent, rendering him incapable of voluntarily and knowingly waiving his constitutional rights at the time of his interrogation. The defense cites Blackburn v. Alabama, 361 U.S. 199, 207 (1960), where the Supreme Court held the defendant's confession involuntary and reversed the conviction. There the defendant had a long history of mental illness, was interrogated for eight to nine hours in a small room filled with police officers with no relatives or counsel present and his confession was written by a police officer. The court found that the defendant was "insane" before, during and after the robbery. At the time of the robbery he was absent without authorization from a mental ward, where he had been placed due to his Veteran's Administration classification of 100% incompetence resulting from a diagnosis of "schizophrenic reactive, paranoid type." Id. at 201. The factors addressed by the court in Blackburn are not present in the instant case. Prior to his

interrogation, defendant had not been found incompetent or "insane," and similar coercive factors were absent.

Considering the totality of the circumstances surrounding the defendant's interrogation, including his treatment by the detectives and his mental state, the Court finds his confession did not violate his Fifth or Fourteenth Amendment rights and is admissible. The Motion to Suppress is denied.

Dated this 22 day of July, 2005.


JUDITH S. W. ATHERTON
DISTRICT COURT JUDGE



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 22 day of July, 2005:

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Addendum E

ADDENDUM E

Trial Court's Ruling on Destruction of Evidence

SEP 29 2005

SALT LAKE COUNTY


Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 021912452
vs.	:	
EDGAR TIEDEMANN,	:	
Defendant.	:	

This matter is before the Court on defendant's Motion to Quash Count III, or, Alternatively, Motion to Amend Count III, and defendant's Motion to Dismiss Based on Destruction of Exculpatory Evidence. This Court has reviewed the Memoranda of counsel and heard oral argument on these Motions.

I. DEFENDANT'S MOTION TO QUASH COUNT III, OR ALTERNATIVELY
MOTION TO AMEND COUNT III

Defendant argues that Count III of the Information, the count that alleges Murder of Scott Liam Bunnell, Jr., should be dismissed because the State failed to show probable cause at the preliminary hearing. At the preliminary hearing, Deborah Southerland Pryor testified that on the evening in question she was in the bedroom of defendant's trailer when he came in, shot several times into the

bedroom, closed the door and left. She heard several shots fired in the front room, and subsequently went out to the front room and observed Mr. Bunnell's injuries. In addition, the State submitted an autopsy by Dr. Edward Leis, completed after Mr. Bunnell's death in 2001. The autopsy concluded that Mr. Bunnell had died from complications of paraplegia caused by the gunshot wound inflicted by defendant.

At a preliminary hearing "the prosecution must present sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it." State v. Clark, 20 P.3d 300 (Utah 2001). At a preliminary hearing "the magistrate must view all evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution." State v. Hester, 3 P.3d 725, 728 (Utah App. 2000). This Court finds that evidence produced by the State at preliminary hearing was sufficient to bind over Count III. In the alternative, the defendant has moved the Court to amend Count III to Attempted Homicide. Having found that there is sufficient evidence to bind over Count III on the greater offense, the alternative Motion need not be addressed. Therefore, defendant's Motion is denied.

II. MOTION TO DISMISS BASED ON DESTRUCTION OF EXCULPATORY EVIDENCE

Defendant has moved this Court to dismiss the charges against him based on the State's "willful destruction of all potentially exculpatory evidence."

Defendant argues that the destruction of the evidence is in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 12, of the Utah Constitution.

In 1991, defendant was charged with two counts of Aggravated Murder, one count of Attempted Aggravated Murder, one count of Aggravated Kidnapping, and one Count of Aggravated Sexual Assault. All charges were dismissed on June 11, 1992, after defendant was found incompetent to stand trial. After that time, numerous items, including handguns, ballistic evidence, "Code R" data, blood and tissue samples, gunshot residue tests, fingerprints, drugs and paraphernalia, and clothing and bedding items were destroyed. These items were destroyed sometime between 1993 and 1994. In 2002, defendant was found competent to stand trial and charges were re-filed. Defendant is now charged with three counts of Criminal Homicide, Murder, all first degree felonies.

Under federal law, a defendant's due process rights are violated if evidence destroyed has "exculpatory value that was apparent before the evidence was destroyed and [is] of such nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." California v. Trombetta, 467 U.S. 479, 489 (1984). The destroyed evidence also must be material, and "the possibility that the [evidence] could have exculpated [defendant] if preserved or tested is not enough to satisfy the standard of constitutional materiality." Arizona v. Youngblood, 488 U.S. 51, 58 (1988). If evidence is only potentially useful, defendant bears the burden to show that police acted in bad faith in not preserving the evidence. Id. "Bad faith requires that a defendant prove more than mere negligence; a defendant must show that 'the police...by their conduct indicate that the evidence could form a basis for exonerating the defendant.'" State v. Holden, 964 P.2d 318, 323 (Utah App. 1988) (quoting Youngblood, at 109).

Defendant asserts that "bad faith should be presumed in this case unless and until the government is able to offer an explanation for the destruction of this evidence." Defendant's Memorandum at pp. 6-7. Defendant misstates the legal requirement.

As stated *infra*, the burden is upon the defendant to show that the State acted in bad faith in destroying the aforementioned property. The defendant has failed to meet that burden.

Defendant further argues that under the Utah Constitution, Article I, Section 12, defendant is afforded a higher degree of protection than under the Federal Constitution. The State argues that defendant's argument lacks merit because Utah has adopted the United States Supreme Court's standard. This Court cannot find support for the State's argument. Both cases cited by the State in support, State v. Bakalov, 979 P.2d 799 (Utah 1999), and State v. Holden, 964 P.2d 318 (Utah App. 1998), were based on the state courts adhering to federal precedent when issues are argued under the Federal Constitution. Defendant correctly notes that Utah appellate courts on occasion have been willing to consider a different interpretation of Utah Constitution, Article I, Section 14, than the Fourth Amendment of the United States Constitution addressing the matter of search and seizure. The Utah Supreme Court has stated, "choosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating the state's citizens from the vagaries of inconsistent interpretations given to the Fourth Amendment by the

federal courts." State v. Larocco, 794 P.2d 460 (1990), (quoting State v. Watts, 750 P.2d 1219, at n.8 (Utah 1988)).

In State v. Bobo, 803 P.2d 1268, 1272-73, n. 5 (Utah App. 1990), the Utah Court of Appeals suggested a three-prong analysis in determining whether the Utah Constitution should be interpreted differently from a similar provision in the United States Constitution. First, the moving party should analyze the "unique context in which Utah's Constitution developed", second, "should demonstrate the willingness of state appellate courts to regularly interpret textually similar state constitution provisions in a manner different from federal interpretation of the United States Constitution, and that it is entirely proper to do so in the federal system," and third, the moving party should cite to "other states supporting the particular construction urged by counsel." Id.

In the instant case, defendant has offered no analysis concerning the unique context in which Utah's Constitution developed, nor shown why this State's Constitution should be interpreted differently than the Fifth and Fourteenth Amendments of the United States Constitution.

In addition, defendant has made reference to numerous cases in other state jurisdictions that have "rejected Youngblood". However, defendant has not articulated the rulings of other states correctly. For example, in State v. Morales, 657 A.2d 585, 594 (Conn. 1995), the Connecticut Supreme Court concluded:

That the good or bad faith of the police in failing to preserve potentially useful evidence cannot be dispositive of whether a criminal defendant has been deprived of due process of law. Accordingly, we, too, reject the litmus test of bad faith on the part of police which the United States Supreme Court adopted under the Federal Constitution and Youngblood. Rather, in determining whether a defendant has been afforded due process of law under the state constitution, the trial court must employ...[a] balancing test, weighing the reasons for the unavailability of the evidence against the degree of prejudice to the accused. More specifically, the trial court must balance the totality of the circumstances surrounding the missing evidence, including the following factors: The materiality of missing evidence, the likelihood of mistaken interpretation of it by witnesses or the jury, the reason for its nonavailability to the defense, and the prejudice to the defendant caused by the unavailability of the evidence. (Quoting State v. Asherman, 478 A.2d 227 (1984)).

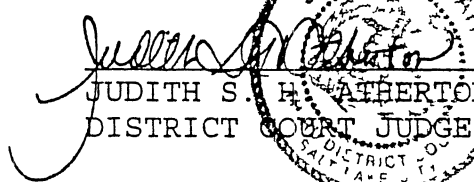
In the instant case, defendant has only urged this Court to reject the bad faith Youngblood standard, but he has not suggested a viable alternative standard.

Because defendant has failed to offer a Utah Constitutional basis, nor a viable alternative to Youngblood based on the Utah

Constitution, this Court cannot appropriately address the constitutional issue. Therefore, this Court finds defendant's Utah Constitutional argument inadequate.

Accordingly, having found no United States Constitutional basis nor Utah Constitutional basis to dismiss this case, defendant's Motion to Dismiss based upon destruction of exculpatory evidence is denied.

Dated this 19 day of September, 2005.


JUDITH S. H. MATHERTON
DISTRICT COURT JUDGE

