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3 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**
4
5 **FOR THE COUNTY OF LINCOLN**

6 **STATE OF OREGON,**

7 Plaintiff,

8 vs.

9 **JACK EDWARD SIGLER,**

10 Defendant.

Case No: 20CR67214

**DEFENDANT'S MOTION TO SUPPRESS
STATEMENTS AND MEMORANDUM
OF AUTHORITY BASED ON
VIOLATIONS OF OREGON
CONSTITUTION ARTICLE 1 §11 AND
§12 AND VIOLATION OF THE US
CONSTITUTION 5th, 6th AND 14th
AMENDMENTS**

DEFENSE MOTION #10

HEARING REQUESTED

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16 JACK EDWARD SIGLER, through counsel Mark Sabitt, Steve Lindsey and Kristina
17 Kayl, respectfully submits this Motion to Suppress Statements and requests oral argument.

18 The accused is Jack Edward Sigler (Jr.), hereafter also referred to as Jack Sigler (client)
19 when referencing contact with the police during the investigation of these allegations in this
20 indictment. The defense moves to suppress Mr. Sigler’s statements and references to statements
21 made to any law enforcement agent, statements made in the presence of law enforcement, and
22 any obtained while in custody on December 6, and December 7, 2020, in any recorded
23 conversation, interview, and interrogation.

24 Law enforcement obtained additional statements from Mr. Sigler on December 9, 2020
25 and possibly December 10, 2020. Mr. Sigler was not provided counsel pursuant to his multiple
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VIOLATION OF THE US CONSTITUTION 5TH, 6TH AND 14TH AMENDMENTS
DEFENSE MOTION
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STEVE LINDSEY
ATTORNEY AT LAW, P.C.
405 NW 18TH AVENUE
PORTLAND, OR 97209
P: (503) 223-4822 | F: (503) 221-1632

1 requests for a lawyer before he was questioned again during the second arrest on December 9,
2 2020. The statements from Jack Sigler were obtained in violation of the 5th, 6th and 14th
3 Amendments of the United States Constitution and Article 1, §11 and §12 of the Oregon
4 Constitution.

5 The following list of issues is not exclusive, it is an outline of the multiple arguments
6 presented to the Court: The statements obtained by law enforcement and derivative
7 incriminating physical evidence are inadmissible at trial¹. The subsequent searches and any
8 fruits of the search conducted near in time to the contact and interviews on December 6, 2020,
9 were illegally conducted. The subsequent searches as well as any follow up interviews were
10 the result of invalid consent obtained by law enforcement because the consent was obtained as
11 Mr. Sigler asked for counsel and also asserted his right to remain silent. No items observed or
12 collected pursuant to Mr. Sigler's involuntary consent is admissible because of the illegally
13 obtained consent. The subsequent search warrants and information provided in support of the
14 search warrants were based on the illegally obtained statements, the impermissible searches, the
15 involuntary consent, or a combination of thereof. The defense moves to exclude and requests a
16 ruling on the admissibility of the items summarized below and further detailed in the arguments
17 contained herein and at the motion hearing on this matter as follows:
18

- 19 1) The Defense requests the Court to find that law enforcement knew Jack Sigler
20 (client) was in the entryway of his private living area, his home, when OSP
21 Trooper Severson asked to search: 'Do you mind if we walk in and look around
22 *your* place?' (italics added).
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26 ¹ The derivative evidence or 'tainted' evidence arguments are separately preserved and submitted in
27 contemporaneous motions to suppress. The authorities and arguments are incorporated by reference.
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- 1 2) The Defense requests the Court to find law enforcement searched Mr. Jack Sigler
2 (client) when Lincoln County Deputy Shinholster was at the entryway and asked:
3 'Can I see your hands really quick?'
- 3 3) The Defense requests the Court to find law enforcement further searched Mr. Jack
4 Sigler (client) when OSP Trooper Severson stated: 'Mind pulling up your
5 sleeves?'
- 6 4) The Defense requests the Court to find that Lincoln County Deputy Shinholster
7 searched Jack Sigler's (client) bedroom December 6 2020.
- 8 5) The Defense requests the Court to find that Lincoln County Deputy Shinholster
9 searched his personal belongings when she asked Mr. Jack Sigler (client) to move
10 his bed.
- 11 6) The Defense requests the Court to find that after Jack Sigler (client) moved his bed,
12 law enforcement stated to Jack Sigler (client): 'What are those?' and 'We gotta talk
13 about that'.
- 14 7) The Defense requests the Court to find that as the police handcuffed Jack Sigler
15 (client) he was instructed: 'turn around just so that we can *talk* to ya'. (Italics
16 added.)
- 17 8) The Defense requests the Court to find Mr. Sigler(client) invoked his constitutional
18 rights to counsel and to remain silent verbally and directly to the following law
19 enforcement officers:
 - 20 a. To OSP Trooper Severson on December 6, 2020
 - 21 b. To Lincoln County Deputy Shinholster on December 6, 2020
 - 22 c. To Lincoln County Detective Dorsey on December 6, 2020
 - 23 d. To Lincoln County Detective Urbigkeit on December 6, 2020
 - 24 e. To Lincoln County Deputy Honse on December 7, 2020.
- 25 9) The Defense requests the Court to find Mr. Sigler's invocation was unequivocal.
- 26 10) The Defense requests the Court to find that once Mr. Sigler invoked his right to
27 counsel any further questions must cease.
- 28 11) The Defense requests exclusion of any of the statements obtained after Mr. Sigler
invoked his right to counsel.

- 1 12) The Defense requests exclusion of any of the statements obtained after Mr. Sigler
invoked his right to remain silent.
- 2 13) The Defense requests the Court to find Mr. Sigler was denied the opportunity to
3 speak with counsel prior to and during his interviews at his home December 6,
4 2020.
- 5 14) The Defense requests the Court to find Mr. Sigler was denied the opportunity to
6 speak with counsel prior to and during his interview at the police station December
7 6, 2020.
- 8 15) The Defense requests the Court to find that Law enforcement acknowledged Mr.
9 Sigler's invocation at least two times, then continued to question him.
- 10 16) The Defense requests the Court to find Mr. Sigler did not knowingly, voluntarily,
11 and intelligently waive any of his constitutional rights to counsel or to remain silent
on December 6, 2020.
- 12 17) The Defense requests the Court to find Mr. Sigler did not voluntarily and
13 intelligently consent to a search of his person, his belongings, or his residence.
- 14 18) The Defense requests the Court to find Mr. Sigler lived in a separate room in the
15 detached area of the garage.
- 16 19) The Defense requests the Court to find Mr. Jack Sigler (Sr.) told Jack Sigler (his
17 son) to allow law enforcement into his son's separate living quarters.
- 18 20) The Defense requests the Court to find that any derivative statements obtained by
19 law enforcement on December 9, 2020 and/or December 10, 2020 relate back to
20 the contact and statements obtained by law enforcement on December 6, 2020 and
December 7, 2020.
- 21 21) The Defense requests the Court to find that any derivative statements obtained as
22 result of the initial, illegally obtained statements must be excluded.
- 23 22) The Defense requests the Court to find that Mr. Sigler was arrested at his home.
- 24 23) The Defense requests the Court to find Mr. Sigler's arrest on December 6, 2020 at
25 his home was without a warrant issued by the Court.

26 DECEMBER 2020 SUMMARY OF FACTS

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1 The accused is Jack Edward Sigler (Jr.), hereafter referred to as Jack Sigler (client) to
2 assist in specifically identifying who is being referred to at the address on 1040 S. Crestline in
3 Waldport, Oregon. Jack Sigler (client) lived in the detached garage at this address, inside the
4 garage is a distinct and segregated living area. Access to the garage in this investigation was
5 via a standard door entryway as opposed to a roll up garage door. The separate living quarters
6 were also closed off from a main area in the garage via a curtain or blanket being used as a
7 curtain. In the area behind the curtain Jack Sigler (client) maintained his bed, personal
8 belongings, and property. He has privacy interests in this area, the public does not have
9 authority to enter without permission. This area is under his control and only he lives in these
10 living quarters. Law enforcement acknowledged this area is the home of Jack Sigler (client).
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13 The following information is taken from the police reports and video recording(s) at Mr.
14 Sigler's residence on December 6, 2020, through December 10, 2020. Law enforcement
15 identified Jack Sigler (client) as a suspect of a crime or multiple crimes that occurred in the
16 early morning hours at approximately 3:30 am on December 6, 2020. These crimes occurred
17 at a triplex apartment complex a short distance south on S. Crestline Drive. This complex is
18 within six blocks of the Sigler residence.
19

20 On Sunday December 6, 2020 at 1430 hours, OSP Trooper Severson and Lincoln
21 County Sherriff's Office Deputy Shinholster responded to 1040 S Crestline Drive in Waldport.
22 Between 1430 and 1439 there is conversation between OSP Trooper Severson, Deputy
23 Shinholster, Jack Sigler Sr. (Father) and eventually Jack Sigler (client). Deputy Shinholster
24 notes in her report the statements obtained during this brief period.
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1 Deputy Shinholster states in her written report:

2 'Trooper Severson asked Jack if we could walk around and take a look at his
3 place, Jack initially said no.' (emphasis added)

4 Deputy Shinholster continues to write:

5 'Trooper Severson asked Jack again if we could step in and take a look
6 around.'

7 The video recording includes the complete detail of these exchanges. Mr. Sigler (client)
8 refused and did not consent to any search of his residence. After two requests by the officers to
9 search the premises Jack Sigler Sr. (Father) instructs his son: 'if they (the police) want to look
10 around to let 'em.' Mr. Sigler (client) can be observed to acquiesce during this point of the
11 contact due to the insistence of law enforcement.

12 Law enforcement entered Mr. Sigler (client)'s living quarters, the area where only he
13 resides. From this vantage point, Deputy Shinholster notes her observations of incriminating
14 items, some of the items were not in plain sight. Deputy Shinholster asks Jack Sigler (client) to
15 move the mattress on the bed to get a better vantage point and just to make sure nothing is under
16 there.

17 When Trooper Severson sees items of evidentiary value under the bed he tells Jack
18 Sigler (client) 'we gotta talk about that'. Jack Sigler (client) is then instructed to turn around
19 and he is informed by Trooper Severson this is done so the police can talk to him. Upon
20 making these observations, Deputy Shinholster notes in her report:

21 'Trooper Severson and I detained Jack. I observed Jack stated he wanted a
22 lawyer.'

23 Jack Sigler (client) was placed in handcuffs and under arrest. He was not arrested
24 pursuant to a warrant. Trooper Severson acknowledged the request for counsel. Trooper
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1 Severson responded ‘we’ll get ya a lawyer’. Jack Sigler (client) was removed from his residence
2 and placed outside next to his home.

3 Lincoln County Sheriff’s Office Deputy Honse arrives as Deputy Shinholster was
4 patting Jack Sigler (client) down; she speaks to Deputy Honse, refers to the man in handcuffs
5 and states his name was Jack Sigler. Deputy Honse does not indicate in his report if he is also
6 aware Jack Sigler (client) asked for counsel. This portion of the investigation is video recorded
7 by Deputy Honse’s badge camera and simultaneously by Deputy Shinholster. Afterward,
8 Deputy Honse also prepared a written report of his observations and contact during this portion
9 of the investigation. Deputy Honse notes in his written reports at least two questions asked by
10 law enforcement:
11

12 “Deputy Shinholster asked Sigler who else knew about that apartment, and who
13 he had told about it.”
14

15 Deputy Shinholster continued to question Mr. Sigler. More than nineteen questions
16 were asked, and the deputies know the questions were designed to illicit incriminating
17 responses. Deputy Honse also inquired, ‘who else do you know that was going in there?’
18 Deputy Shinholster’s multiple question and answer exchange included ‘you’ll show us what
19 you have?’ ‘how did you get in?’ ‘why are we here?’ all in reference to the apartment that is the
20 subject crime scene.
21

22 During this time, while handcuffed, Mr. Sigler communicates a second reference or
23 request for counsel. Deputy Shinholster ignores this second reference to a lawyer and
24 continues her questions. She asks at least six more questions, including “What are you in
25 possession of” and “who knows that you have it?”. The video concludes with a conversation
26

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1 between the officers instructing “Doug” (Deputy Honse) and Deputy Shinholster to finally
2 terminate questions because ‘he already said he wants a lawyer so don’t ask him any
3 questions’.

4 Mr. Sigler was later transported to the Waldport City Hall. He was interviewed again
5 and law enforcement confirmed his invocation earlier in the day.

6 The police obtained incriminating statements from Mr. Sigler (client) during the
7 contacts throughout the day and later in the evening on December 6, 2020. Jack Sigler (client)
8 was never provided counsel. It appears law enforcement obtained further incriminating
9 statements from Mr. Sigler (client) in subsequent personal contacts and questioning on or about
10 December 9, 2020 and/or December 10, 2020.
11

12 ARGUMENTS AND LEGAL AUTHORITY

13 I. ARTICLE 1 §11 AND §12 OF THE OREGON CONSTITUTION AND 5TH AND 14 6th and 14TH AMENDMENTS OF THE US CONSTITUTION

15 There is no question Mr. Sigler invoked at least three times December 6, 2020 as he was
16 speaking with law enforcement. "An invocation has occurred, and occurred unequivocally,
17 when 'the suspect expresses a clear intent to invoke his or her rights.'..." *State v. Tellez-Suarez*,
18 312 Or App 531, 493 P.3d 28 (Or. App. 2021) Reversed based on non-unanimous verdict.
19 When "... the invocation is unequivocal, there is but a single lawful response: interrogation
20 must immediately cease." *State v. Boyd*, 360 Or. 302, 318, 380 P.3d 941 (2016).
21

22 Federal law requires that a person be given "*Miranda* warnings" prior to custodial
23 questioning. Failure to provide these warnings violates the 5th and 14th Amendments to the

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1 United States Constitution. *Miranda v. Arizona*, 384 U.S. 436 (1966). The warnings must
2 clearly and effectively communicate the protected rights. *California v. Plysock*, 453 U.S. 355
3 (1981). The Oregon Constitution requires that defendant in custody must be given *Miranda*-
4 like warnings prior to police questioning. *State v. Magee*, 304 Or 261 (1987) In *Miranda*, the
5 Court held that an individual held for interrogation must be clearly informed that he has the
6 right to consult with a lawyer before questioning and to have a lawyer present during
7 interrogation. See also *Florida v. Powell*, 559 US 50, 130 S.Ct. 1195 (2010).

9 The right to counsel accrues immediately when a custodial suspect is brought in for
10 questioning. *Miranda* warnings to a custodial suspect are inadequate if they mislead him into
11 believing that the right to counsel is conditioned on some future event or that it does not accrue
12 immediately. A warning to a custodial suspect that the right to counsel accrues immediately
13 and unconditionally informs the suspect that he has a right to counsel before and during
14 interrogation. See *State v. Quinn*, 112 Or App 608, 831 P.2d 48 (1992).

16 In *State v. Dahlen*, 209 Or App 110 (2006) the Court addressed what constitutes an
17 unequivocal or equivocal invocation of a suspect's right to counsel. Article I, §11 and §12 of
18 the Oregon Constitution and the 5th, 6th and 14th Amendments of the United States Constitution
19 require that if there is an unequivocal invocation of right to counsel, all police interrogation
20 must immediately cease. *Id* at 362. In *Dahlen*, defendant was placed in a holding cell at the
21 police department. Defendant asked police "when can I call my attorney?" Defendant was kept
22 in his cell and approximately 45 minutes later asked again when he could call an attorney. The
23 trial court held that when the defendant's request of "when can I call my attorney?" was made,
24 he was not directly asking for a lawyer and that the request was equivocal. *Id*. In *Dahlen*, the

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1 Court reversed the trial court and held that "[g]iven the totality of the circumstances, we
2 conclude that defendant's request, 'When can I call an attorney?' cannot reasonably be said to be
3 equivocal either the first time he said it or the second time he said it less than an hour later." *Id*
4 at 363. Here, Mr. Sigler clearly said he wanted a lawyer in response to the advisal provided by
5 law enforcement.

6 In *State v. Alarcon*, 259 Or App 462 (2013) the Court addressed the specific request by
7 an in-custody defendant who said to law enforcement "when can I call an attorney?" holding
8 that it "constituted an unequivocal request for counsel." The *Alarcon* Court specifically
9 addressed the use of words by the defendant within their ordinary meaning. The Court
10 observed that "the phrase 'will I have an opportunity to' may express a present desire to do
11 something, or it may simply be intended to explore one's options. It is ambiguous. 'When can
12 I,' in contrast, expresses a present desire to do the things asked about." *Id.*; of *State v.*
13 *Charboneau*, 323 Or. 38, 55, 913 P.2d 308 (1996) (the query "Will I have an opportunity to call
14 an attorney tonight?" is equivocal). The *Alarcon* Court is distinguishing the analysis applied in
15 *Charboneau*.

16 In *Alarcon*, the defendant was arrested and placed in custody at the jail. That same day,
17 defendant was provided her *Miranda* rights and agreed to speak with police. Defendant then
18 made incriminating statements. The next day, defendant asked an officer at the jail "when she
19 could call a lawyer." Police gave the defendant an opportunity to call an attorney and asked if
20 she had an attorney to call. When the defendant told the officer that she did not, she was
21 informed that she would get an attorney when she was arraigned. Later that day, police again
22 provided defendant her *Miranda* rights and again the defendant made incriminating statements.

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ATTORNEY AT LAW, P.C.
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1 The interviewing officers never mentioned the defendant's earlier request to speak with an
2 attorney. *Id* at 366.

3 The Court held that, as in *Dahlen*, the defendant's statement "when can I call an
4 attorney" was an unequivocal request for counsel and that any subsequent statement must be
5 suppressed. The Court further held that "even if we were to conclude that defendant's question
6 constituted only an equivocal invocation of the right to counsel, officers in this case failed to
7 follow up with questions intended to clarify whether defendant meant to invoke her right to
8 counsel" *Id* at 386.

9
10 Further, when advising a defendant of his *Miranda* rights, police must clearly and
11 effectively communicate the protected the rights. *See California v. Prusock*, 453 US 355
12 (1981). Telling the defendant something that is inconsistent, undermines the *Miranda* warnings
13 and is a basis for suppressing any subsequent statement. *Miranda* warnings must "adequately
14 and effectively" inform the accused of his right to remain silent and right to counsel. *Miranda*
15 *v. Arizona*, 384 US 436, 467 (1966). Thus, to be valid, the "combination or wording of its
16 warnings cannot be affirmatively misleading" and must not be "susceptible to equivocation."
17 "When a warning not consistent with *Miranda* is given prior to, after, or simultaneously with a
18 *Miranda* warning, the risk of confusion is substantial, such that the onus is on the government
19 to clarify to the at Tested party the nature of his or her rights under the Fifth Amendment."
20 *United States v. Juan-Cruz*, 314 F.3d 384, 387 (9th Cir. 2002). It necessarily follows that any
21 words or conduct by law enforcement that tend to negate or temper the thrust of the required
22 warnings serve to invalidate the warnings (and, therefore, any subsequent waiver). *See United*
23 *States v. Womack*, 542 F.2d 1047, 1049-51 (9th Cir. 1976) (holding waiver invalid where

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1 actions by police officers negated their assertion that defendant had a right to counsel); *United*
2 *States v. Dohm*, 618 F.2d 1169, 1175 (5th Cir. 1980) (en banc) (holding magistrate's warning
3 that "you may say something that might hurt you in the future" to defendant testifying without
4 counsel at bail bond hearing insufficient for valid *Miranda* waiver). *See United States v.*
5 *Connell*, 869 F.2d 1394 (9th Cir. 1989) (holding that *Miranda* warnings given by arresting
6 officer, which suggested that attorney "might" be appointed if defendant was too poor to afford
7 one, were constitutionally inadequate).

8
9 In addition, statements by law enforcement officers that are simply incompatible with
10 the *Miranda* warnings render the warnings invalid. In *Hart v. Attorney General of Florida*, for
11 example, the Eleventh Circuit held that otherwise valid *Miranda* warnings were invalidated
12 when the interrogating officer told the defendant that "honesty will not hurt you," because that
13 phrase "is simply not compatible with the phrase 'anything you say can be used against you in
14 court.'" 323 F.3d 884, 894 (11th Cir. 1991) (holding *Miranda* waiver invalid because "by
15 telling the defendant that signing the waiver form would not hurt him the FBI agents
16 contradicted the *Miranda* warning that a defendant's statement can be used against the
17 defendant in court, thereby misleading him concerning the consequences of relinquishing his
18 right to remain silent"). In *United States v. Botello-Rosales*, the Court held that the fact that
19 police officers had previously administered correct *Miranda* warnings in English to Spanish-
20 speaking defendant did not cure the constitutional infirmity of the officers' subsequent Spanish-
21 language warning, which failed to reasonably convey to the defendant his right to appointed
22 counsel as required by *Miranda*; even if defendant understood the English language warnings,
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1 there was no showing that the officers clarified for defendant which set of warnings was
2 correct. 728 F.3d 865 (2013).

3 Here, law enforcement told Mr. Sigler (client) that he will get an attorney, but he was
4 not allowed to contact one. He was told by Trooper Severson he will *need* to talk about the
5 items under the bed. Mr. Sigler (client) was instructed to turn around *so that* the officers could
6 talk to him. Mr. Sigler (client) asserts, “right off the bat” his right to not speak and to obtain a
7 lawyer. Law enforcement acknowledged multiple times Mr. Sigler was invoking his rights.
8 When the police informed Mr. Sigler (client) that he will need to talk, this is contrary to his
9 right to remain silent and right to counsel. When he was told to turn around so he could keep
10 talking he was provided information that contradicts the *Miranda* warning that immediately
11 followed. Law enforcement intentionally violated the fundamental premises of Constitutional
12 protection under Oregon and Federal law.
13
14

15 *Missouri v. Seibert*, 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004), helps
16 illustrate the contrary and meaningless choices Mr. Sigler faced when he received the warnings
17 from OSP Trooper Severson and why the derivative information cannot be admitted. The
18 Constitution of the United States and the Oregon Constitution do not allow the state to exploit
19 Constitutional violations during the investigation of criminal offenses.
20

21 The Court reasoned:

22 "The problem that Seibert demonstrates * * * is that when the police question
23 first and warn later, their exhibition and exercise of authority and violation of
24 the defendant's constitutional rights may communicate to a defendant, as the
25 Court believed they did in that case, that, before the defendant will be released,
26 he or she must answer the questions asked. In that circumstance, the police not
only fail to provide the defendant with the information necessary to a valid
waiver-that the defendant has a right to remain silent and to confer with an

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1 attorney-the police also convey a contrary message. In that situation, when the
2 police later administer *Miranda* warnings, we cannot assume that the mere
3 recitation of *Miranda* warnings is sufficient to serve the intended informative
4 function.

5 Cited in *State v. Jarnagin*, 351 Or. 703,277 P.3d 535 (Or., 2012)

6 The first constitutional offense against Mr. Sigler (client) was the search of his person at
7 his home without voluntary consent. Questions were asked that law enforcement knew were
8 likely to illicit incriminating responses, and yet Mr. Sigler was not provided a *Miranda*
9 warning. Then his home was searched. When the officers conducted a warrantless arrest, the
10 police informed him they were going to talk about what was found. These errors are
11 compounded when law enforcement illegally and incorrectly ignored him when he did exercise
12 his rights. He was told “we’ll get you a lawyer”, it did not happen. The police continued to
13 exercise control and authority; Deputy Shinholster was aware Jack Sigler invoked; it is written
14 in her supplemental report. Mr. Sigler’s invocation was simply ignored in that moment, the
15 remainder of the day, later at the police station, later that same evening, and in subsequent
16 questions each time Jack Sigler was contacted over the next several days.

17 II. MR. SIGLER UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL

18 The Court has never established any particular set of magic words that a person in
19 police custody must utter in order to invoke his right to have an attorney before questioning.
20 *Arizona v. Edwards* 451 US 477, 481 (1981). The custodial setting of a police interrogation
21 room is inherently coercive and requires the police to advise a suspect of his rights pursuant to
22 *Miranda v. Arizona*, 384 U.S. 436 (1966), informing the suspect of his protected rights prior to
23 questioning.
24 questioning.
25

26 PAGE 14 OF 17 DEFENDANT'S MOTION TO SUPPRESS STATEMENTS AND MEMORANDUM OF
27 AUTHORITY BASED ON VIOLATIONS OF OREGON CONSTITUTION ARTICLE 1 §11 AND §12 AND
28 VIOLATION OF THE US CONSTITUTION 5TH, 6TH AND 14TH AMENDMENTS DEFENSE MOTION
#10 HEARING REQUESTED

STEVE LINDSEY
ATTORNEY AT LAW, P.C.
405 NW 18TH AVENUE
PORTLAND, OR 97209
P: (503) 223-4822 | F: (503) 221-1632

1 Mr. Sigler stated in a recording that he wanted an attorney. Mr. Sigler clearly expressed
2 his desire to speak an attorney.

3 The request required no clarification and must be scrupulously honored by law
4 enforcement. The trooper's response clearly acknowledges his understanding of Mr. Sigler's
5 request. Once Mr. Sigler invoked his right to counsel, he was not required to continue to
6 invoke with every other member of law enforcement. The police were required to respect his
7 rights and provide him the opportunity to speak with counsel before further inquiries. See also
8 *State v. Simonsen* 319 OR 510, 517 (1994) ("We hold that a lawyer's request to a responsible
9 officer of a police organization that any questioning of the lawyer's client cease must be
10 honored promptly by that organization, whether or not one or more members of the
11 organization individually are ignorant of the fact or nature of the request").
12

13
14 Despite Mr. Sigler's invocation, the police never provided him an opportunity to speak
15 with counsel.

16 III. THE ILLEGAL POLICE CONDUCT AND RESPONSE TO MR. SIGLER
17 INVALIDATES ANY SUBSEQUENT CONSENT AND ANY DERIVATIVE
18 STATEMENTS HE PROVIDED AND ANY SUBSEQUENT EVIDENCE OBTAINED WAS
19 IN VIOLATION OF HIS 6th and 5th AMENDMENT PROTECTION

20 In response to Mr. Sigler's statement, "I want a lawyer" the police officers continued to
21 question him. The Oregon Supreme Court recently addressed a particular harm that occurs
22 when police have refused to honor a suspect's invocation of Article I, §12, rights is that the
23 violation "created the impression that the assertion of one's rights was meaningless." *State v.*
24 *Foster*, 288 Or. 649, 656, 607 P.2d 173 (1980). *State v. Ward*, 367 Or 188, 202 475 P.3d 420
25 (Or. 2020). Law enforcement here rendered Mr. Sigler's invocation meaningless.

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1 Oregon Courts have firmly held that the right to counsel accrues immediately and is not
2 dependent on a specific condition. *State v. Lowely* 245 Or. 565 (1967), *State v. Quinn* 112 Or
3 App 608 (1992). Mr. Sigler requested an attorney, law enforcement clearly acknowledged but
4 denied his request. The State violated Mr. Sigler's rights under the 5th, 6th and 14th
5 Amendments and Article 1, §11 and 12 of the Oregon Constitution. Moreover, law
6 enforcement capitalized on this illegal conduct by continuing to question him. There was no
7 opportunity to make a phone call or other efforts provided to honor the request for counsel
8 whatsoever throughout the day and the ensuing days of the investigation.

10 *Miranda* requires that any waiver of counsel must not only be voluntary, but that it
11 "must also constitute a knowing and intelligent relinquishment or abandonment of a known
12 right or privilege." *Arizona v. Edwards* 451 US 477, 482 (1980). Any suggestion Mr. Sigler
13 waived a right here cannot be knowing and intelligent when he exercises his rights, is told he
14 can have a lawyer, yet nothing is done.

16 For purposes of evaluating the constitutional violations that occurred vis- à a-vis the
17 police's failure to respect Mr. Sigler's right to counsel, it is unnecessary for this Court to
18 consider whether there was any attempt to clarify Mr. Sigler's intent or if that clarification was
19 legally sufficient. As in *Dahlen*:

21 "[b]ecause defendant unequivocally requested counsel prior to the
22 interrogation, we need not consider whether" ... the police attempt... "to
23 clarify defendant's intent was adequate. All questioning should have ceased
24 until defendant had an opportunity to contact an attorney, and everything that
25 defendant said after the requests and before an attorney was provided was
26 subject to suppression." *Dahlen* at 364.

1 Further repetition of *Miranda* warnings are not recognized as legal attempts to clarify
2 an equivocal invocation of the right to have an attorney before being questioned.

3 Oregon law requires that Mr. Sigler articulate his desire to have counsel present clearly
4 enough that a reasonable police officer in the circumstances would understand the statement to
5 be a request for an attorney. Based on the recorded responses, every Law Enforcement Officer
6 understood Mr. Sigler was asking for a lawyer right then, right off the bat. From the point
7 when Mr. Sigler made clear his desire to have an attorney, he was held in custody, no further
8 questions are permitted, and he must be afforded the opportunity to consult with counsel. Law
9 enforcement bypassed Mr. Sigler's request for a lawyer. His statements must be suppressed.
10

11 Based on the arguments and authorities cited herein, Mr. Sigler respectfully requests the
12 Court to exclude the evidence and statements as requested.
13

14
15 RESPECTFULLY SUBMITTED.

16 DATED: Thursday, April 21, 2022.
17

18 /s/Steve Lindsey

19 Mark Sabitt, OSB #891155

20 Steve Lindsey, OSB #000745

21 Kristina Kayl, OSB #094031

22 Attorneys for Jack Sigler
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27 PAGE 17 OF 17 DEFENDANT'S MOTION TO SUPPRESS STATEMENTS AND MEMORANDUM OF
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STEVE LINDSEY
ATTORNEY AT LAW, P.C.
405 NW 18TH AVENUE
PORTLAND, OR 97209
P: (503) 223-4822 | F: (503) 221-1632

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******* CERTIFICATE OF SERVICE *******

I hereby certify that I caused to be served the *DEFENDANT'S MOTION TO SUPPRESS STATEMENTS AND MEMORANDUM OF AUTHORITY BASED ON VIOLATIONS OF OREGON CONSTITUTION ARTICLE 1 §11 AND §12 AND VIOLATION OF THE US CONSTITUTION 5th, 6th AND 14th AMENDMENTS (DEFENSE MOTION #10)* on the following person(s), in the following manner: by OJD File & Serve, by mailing (First-Class postage prepaid), by faxing; or by electronic mail, on the date subscribed below:

Ms. Lanee Danforth
Lincoln County District Attorney's Office
Lincoln County Courthouse
225 W. Olive Street, Suite 100
Newport, OR 97365
ldanforth@co.lincoln.or.us

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4/21/2022

DATED: Thursday, April 21, 2022.

/s/Jennifer Fashbaugh
Jennifer Fashbaugh
Legal Assistant

CERTIFICATE OF SERVICE

STEVE LINDSEY
ATTORNEY AT LAW, P.C.
405 NW 18TH AVENUE
PORTLAND, OR 97209
P: (503) 223-4822 | F: (503) 221-1632