

STATE OF NEW MEXICO
COUNTY OF DONA ANA
IN THE THIRD JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO
Plaintiff,

v.
DANIEL HOOD

Defendant.

No. D-307-CR-2015-523
JUDGE MACIAS

FILED
2015 NOV 23 PM 1:39
DISTRICT COURT
DONA ANA COUNTY, NM

MOTION TO SUPPRESS STATEMENTS

Daniel Hood, by and through his attorney, Mario Esparza, hereby moves this Court to suppress all evidence obtained from an improper custodial interrogation conducted on May 7, 2015 in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Article 2, Section 18 of the New Mexico Constitution. In support thereof, and for the purposes of this motion only, he avers as follows:

FACTS

On May 7, 2015, Defendant was in custody in Southern New Mexico Correctional Facility. On orders, Defendant was transported from his cell to a unit managers' office. In the office, Defendant waited in handcuffs to speak with two police officers. Agent Alvarado entered the room and introduced himself and Agent Palomares and stated that he wanted to talk to Defendant about an incident a few days ago in the rec-yard. Agent Alvarado then proceeded to ask a series of biographical questions, including asking twice if Defendant was a validated gang member. Eventually Agent Alvarado asked Defendant what he could tell them about the incident that happened in the rec-yard. Defendant initially stated that he didn't see the incident. Through continued interrogation, Defendant then made inculpatory statements.

rc: Judge

During this entire interrogation, which is recorded for a period of 43 minutes, Defendant was never advised his *Miranda* rights and never waived those rights.

LEGAL ARGUMENT

It is well settled in New Mexico and Federal constitutional law¹ that before statements stemming from custodial interrogation may be offered against a criminal defendant at trial, the State must first establish that:

1. The Defendant was properly advised of the *Miranda* rights, *State v. Verdugo*, 2007-NMCA-095, 142 N.M. 267 (rights explanation must be specific and complete), *State v. Salazar*, 1997-NMCA-044, 123 N.M. 778; *Miranda v. Arizona*, 384 U.S. 436 (1996);
2. The Defendant made a knowing, intelligent, and voluntary waiver of his or her right to remain silent, *Id.*;
3. The Defendant made a knowing, intelligent, and voluntary waiver of his or her right to consult with an attorney, *Id.*;
4. The Defendant's statement was voluntary pursuant to the due process clauses of Article 2, Section 18 of the New Mexico Constitution and the Fifth and Fourteenth Amendments to U.S. Constitution, *Aguilar v. State*, 1998-NMSC-004, 106 N.M. 798.

The burden of proof of a valid *Miranda* advisement and waiver is on the government. The New Mexico Court of Appeals has found "unless or until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be

¹ Article 2, Section 18 of the New Mexico Constitution provides greater due process rights in this context than do the Fifth and Fourteenth Amendments of the United States Constitution because the federal analysis is flawed, there are structural differences between the state and federal governments, and that there are distinctive New Mexico characteristics warranting a departure from federal analysis.

used against [the defendant].” *Verdugo*, ¶ 13 (citing *Miranda*, 384 U.S. at 479). *Miranda* rights must include informing the individual that they have the right to remain silent, that anything they say can and will be used against them, that they have the right to have an attorney present, and that if they cannot afford counsel, one will be appointed for them prior to any interrogation. *Verdugo*, ¶ 13 (citing *Miranda*, 384 U.S. at 479). Furthermore, the prosecution must demonstrate that after being advised of the *Miranda* rights, the defendant voluntarily, knowingly and intelligently chose to waive them. This has been described as a heavy burden. *See State v. Greene*, 1978-NMSC-099, ¶ 11, 92 N.M. 347, 350. Courts must indulge every reasonable presumption against waiver of such rights. *State v. Boeglin*, 1983-NMCA-075, ¶ 15, 100 N.M. 127, 131 (emphasis added).

The requirement of *Miranda* warnings is thereby triggered by two criteria: (1) the defendant must be under interrogation; and (2) the defendant must be in custody. *State v. Wilson*, 2007-NMCA-111, 142 N.M. 737; *State v. Snell*, 2007-NMCA-113, 142 N.M. 452.

A. Defendant was in “Custody” for *Miranda* Purposes.

The test to determine whether or not a person is in “custody” is whether a reasonable person in the defendant’s position would believe that his or her freedom of movement had been restrained to the degree associated with formal arrest. *See Wilson*, 2007-NMCA-111. The “relevant inquiry is how a reasonable man in the suspect’s position would have understood the situation;” thus, the subjective intent of the police officer to arrest or not arrest the suspect is irrelevant. *Berkemer v. McCarty*, 468 U.S. 420, 442-45 (1984).

Some of the factors relevant to whether a reasonable person would believe he was free to leave or is in custody for the purpose of *Miranda* include: (1) the purpose, place and length of the interrogation, (2) the extent to which the defendant is confronted with evidence of guilt, (3)

the physical surroundings of the interrogation, (4) the duration of the detention, and (5) the degree of pressure applied to the defendant. *Snell*, ¶ 10; *State v. Munoz*, 1998-NMSC-048, 126 N.M. 535.

All of the factors listed above weigh toward suppression in this case. Defendant was serving a life sentence in Southern New Mexico Correctional Facility. Defendant was handcuffed during the interrogation. Defendant was ordered to remove himself from his cell and speak with individuals who wanted to speak with him. Based on the totality of the circumstances here, Defendant was in custody for purposes of *Miranda*.

B. Defendant was “Interrogated” for Miranda Purposes.

“Interrogation” is defined as either express questioning by police, or words or actions which are reasonably likely to elicit an incriminating response. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 1689 (1980); *State v. Juarez*, 1995-NMCA-085, 120 N.M. 499. It is not necessary that the police have an actual, subjective intent of obtaining statements to incriminate a defendant in a crime, if they should have realized that the elicited statements would incriminate the defendant. *Juarez*, ¶ 13.

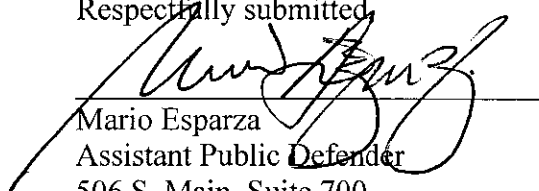
It is clear from the nature of Agents’ questions to Defendant, that Defendant was interrogated for purposes of *Miranda*. The interrogation began with a with a statement that they were going to talk to him about what happened in the rec-yard, then a series of biographical questions with a focus on Defendant’s alleged gang affiliation, and then a direct question as to what he observed that day. Although Defendant denied having any knowledge, the police persisted in their questioning of Defendant and elicit inculpatory statements from Defendant. There exists no credible explanation for how Defendant’s statements were unsolicited. This was a clear police interrogation lasting for a period of approximately 43 minutes.

CONCLUSION

On May 7, 2015, Defendant was subjected to a police interrogation while in custody. No *Miranda* rights were ever waived or discussed so the State cannot establish that Defendant understood his *Miranda* rights and waived them. Accordingly, any physical evidence obtained as a consequence of Defendant's statements, as well as Defendant's statements themselves, should be suppressed under the fruit of the poisonous tree doctrine. *See State v. Greene*, 1977-NMSC-111, ¶ 31-32, 572 P.2d 935 (stating "that courts must be willing to bar the physical fruits of inadmissible statements and confessions, as well as the confessions and statements themselves") (citing *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963)).

DEFENDANT HEREBY MOVES this Court based on this Motion and the record before the Court to suppress all statements made by Defendant on May 7, 2015 to police, including but not limited to audio recordings, police reports, testimony and physical evidence gathered as a result of Defendant's statements.

Respectfully submitted,



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CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was delivered to opposing counsel on this 23 day of NOV, 2015.


PUBLIC DEFENDER DEPARTMENT