

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

FILED

STATE OF NEW MEXICO,

2015 DEC 29 PM 5 03

Plaintiff,

vs.

DISTRICT COURT  
DONA ANA COUNTY NM  
NORMAN OSBORNE, CLERK

DANIEL HOOD,

Defendant.

No. D-307-CR-201500523

Judge Fernando R. Macias

**STATE'S RESPONSE TO DEFENSE  
MOTION TO SUPPRESS STATEMENTS**

COMES NOW, the State of New Mexico, by and through its Deputy District Attorney, Cynthia H. Clark, and respectfully requests that this Court deny Defense Motion to Suppress Statements. As grounds for denial of the motion, the State asserts as follows:

As grounds in support of this motion, counsel states:

1. On April 29, 2015, Agent Noe Alvarado, with the New Mexico State Police, was dispatched to the Southern New Mexico Correctional Facility with regard to the death of an inmate, identified as Frank Pauline. The crime scene and body of the victim were located in the recreational yard of the facility. As part of his criminal investigation, Agent Alvarado took a statement from the defendant, Daniel Hood, on May 7, 2015, at Southern New Mexico Correctional Facility, where the defendant is serving a sentence for homicide. At a pretrial interview held on September 4, 2015, with Agent Alvarado, defense counsel and the undersigned counsel, Agent Alvarado stated that *Miranda* warnings were not given to the defendant at the time the statement was given, but stated that the interview with New Mexico State Police had been requested by the defendant.

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2. Under *Miranda v. Arizona*, 384 U.S. 436 (1966), law enforcement officers must warn a person who is subjected to a custodial interrogation of his or her right against self-incrimination protected by the Fifth Amendment and extended to the states through the Fourteenth Amendment. *See Id.* at 444. A person is considered to be in custody if he or she is under formal arrest or if an officer restrains the person's freedom of movement to the "degree associated with a formal arrest." *Yarborough v. Alvarado*, 541 U.S. 652,663 (2004). The test is an objective one, depending on "how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action." *Id.* The court will look to the totality of the circumstances in order to ascertain whether an interrogation is objectively custodial. *See State v. Lopez*, 2000-NMCA-069, 129 N.M. 352, 8 P.3d 154. In *State v. Munoz*, 1998-NMSC-048,126 N.M. 535, 972 P.2d 847, the New Mexico Supreme Court cited the factors that should be considered in determining the level of the restraint on a suspect's freedom of movement, including (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; (4) the duration of the detention; and (5) the degree of pressure applied. *Id.* at ¶ 40.

3. Defense appears to argue that since the defendant was an inmate at Southern New Mexico Correctional Facility he was automatically not free to leave and must always be given *Miranda* warnings, due to his status of incarceration. The New Mexico Court of Appeals in *State v. Lopez*, 2000-NMCA-069, 129 N.M. 352, 8 P.3d 154, held that "whether an inmate is subjected to custodial interrogation depends on whether he has been subjected to **additional** restraints on his freedom of movement than is customary." *Id.* at ¶ 7 ( emphasis added). The court in *Lopez* did not find that

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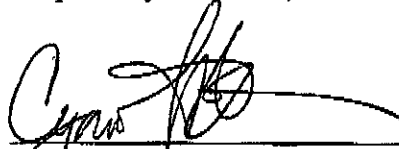
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handcuffing the suspect or interviewing in an office to be an "appreciable measure of pressure or coercion beyond the usual prison environment. See Conley, 779 F.2d at 973-94 (handcuffs were standard procedure for transporting inmates)" *Id* at ¶ 10. Similar to the facts in *Lopez*, the defendant was handcuffed and transported to an office at the prison, which is customary procedure in a correctional facility. Agent Alvarado will testify that he did not give *Miranda* warnings to the defendant but stated in his pretrial interview that the defendant requested the meeting through correctional officers at the prison. Additionally, the audio of the interview does not reveal that any threats or coercion were made by Agent Alvarado, prior to the defendant's confession. Thus, based on the totality of the circumstances, the defendant was not subjected to any additional pressure of a kind and intensity that would render subsequent statements by the defendant to be the product of unfair coercion.

4. Therefore, the defendant was not in custodial interrogation under which *Miranda* warnings were required and his statements to Agent Alvarado were not tainted and thus, do not require suppression.

**WHEREFORE**, based on the foregoing, the State respectfully requests that his Court deny Defense Motion to Suppress Statements.

Respectfully Submitted,



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