

ELEVENTH JUDICIAL DISTRICT  
COUNTY OF SAN JUAN  
STATE OF NEW MEXICO  
IN THE DISTRICT COURT

DISTRICT COURT  
SAN JUAN COUNTY NM  
FILED  
2019 MAY 22 PM 3: 13

**STATE OF NEW MEXICO,**  
**Plaintiff,**

vs.

**No. D-1116-CR-2017-00404**

**ANTHONY WAGON,**  
**Defendant.**

**DEFENDANT'S MOTION TO DISMISS DUE TO VIOLATIONS OF NAVAJO TRIBAL  
SOVEREIGNTY**

Defendant Anthony Wagon, by and through undersigned counsel, moves this Court to enter an Order dismissing this case due to Mr. Wagon's arrest being a violation of Navajo tribal sovereignty. In the alternative, Defense moves this Court to enter an Order suppressing and excluding statements made by Mr. Wagon during the arrest, all statements made by Mr. Wagon since his incarceration began, also suppressing all physical evidence that was collected as a result of the violation of Navajo tribal sovereignty.

Defendant brings this Motion pursuant to Article II, Sections 10 and 18 of the New Mexico Constitution, and the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments to the Constitution of the United States, NMRA 5-501 et seq., 5-503 et seq., 5-601 et seq., §11-61 et seq., and 11-701 et seq., and as grounds states:

1. Defendant Anthony Wagon is charged with a single count of murder in the first degree (willful and deliberate).
2. A preliminary hearing was held on May 3, 2017 and, by Order dated May 16, 2017, Mr. Wagon was bound over on a single count of murder in the first degree (willful and deliberate).

3. Substitute counsel for Mr. Wagon was obtained and entered his appearance on behalf of Mr. Wagon on November 29, 2018.
4. Upon investigation of Mr. Wagon's detention and arrest by the Farmington police, defense counsel questioned whether the arrest was performed lawfully.
5. Mr. Wagon is a registered member of the Navajo Nation.
6. At the time of his detention and arrest, Mr. Wagon resided with his parents in a home which is and was within "Indian Country", as defined in 18 U.S.C. 1151.
7. Officers with the Farmington Police Department ("FPD") went to that residence in the late night hours of April 24, 2017.
8. By all accounts, Mr. Wagon was intoxicated at the time of the encounter with FPD officers.
9. Mr. Wagon was outside of the home, and ducked behind a pickup truck when the FPD officers arrived.
10. The officers confronted Mr. Wagon and performed a "Terry Pat" search of Mr. Wagon.
11. The FPD officers "asked" Mr. Wagon to come with them. "I advised him he would not be handcuffed if he was willing to return to the city limits to speak with a detective" Detective Griggs Supplemental Narrative ¶5.
12. Mr. Wagon was barefoot at the time and asked if he could get his shoes, but the officers did not allow him to do so.
13. Mr. Wagon was placed into the backseat of an FPD pickup truck.
14. At some point the FPD officers read Mr. Wagon his *Miranda* rights.
15. The FPD requires officers to record interactions with citizens like the one they had with Mr. Wagon using their body camera and/or their dashboard cameras. It seems that not a single

officer recorded this their interaction with Mr. Wagon while on Navajo land. No such recording has been disclosed to defense.

16. Mr. Wagon was transported in the backseat of the pickup to Sgt. Spruell who was waiting just outside of the borders of the Navajo Nation. Mr. Wagon was transferred from the original truck to the back of Sgt. Spruell's gated police car. Sgt. Spruell did have recording devices running during his interactions with Mr. Wagon.
17. Sgt. Spruell transported Mr. Wagon to the Farmington Police stations, where he was further interrogated.
18. The FPD has no memorandum of understanding with the Navajo Nation that grants them authority to exercise police powers on Nation territory.
19. The FPD was not accompanied to Mr. Wagon's home by Navajo Nation Police, nor by any United States federal law enforcement officers, nor any law enforcement officer authorized to take enforcement action on Navajo territory.
20. The FPD officers had no arrest warrant, no extradition document, nor any legal process document authorizing their actions that night.
21. By all accounts, the FPD was not engaged in "hot pursuit" of Mr. Wagon.
22. Mr. Wagon gave a statement to detectives that they used as part of their investigation and which the State intends to use against him, together with other evidence, including a vehicle, developed from this statement, at trial.
23. The FPD officers later returned to Mr. Wagon's house, and had a pickup truck towed from the home. There is no documentation that the officers obtained approval from Navajo Nation police prior to seizing this vehicle.

**I. The Officers Were Not In Hot Pursuit.**

The FPD Officers who contacted Mr. Wagon were not in hot pursuit when they entered the Navajo Nation. *See State v. Wise*, 1954-NMSC-013, ¶ 2 (law enforcement followed suspect across state lines in hot pursuit of a felon, allowing law enforcement to immediately remove the suspect to New Mexico). Hot pursuit between state lines is differentiated from hot pursuit onto Tribal land. *State v. Harrison*, 2010-NMSC-038, ¶ 34; *see also* 17 NNC §1951. Even if the officers were in hot pursuit, they would not be able to arrest Mr. Wagon without a proper extradition from the President of the Navajo Nation. *Benally v. Marcum*, 89 N.M. 463, 466 (1976)(“*Benally I*”) (hot pursuit onto Navajo Territory still requires proper extradition in compliance with Navajo extradition laws).

## II. The Detention Of Mr. Wagon Was A De Facto Arrest.

The New Mexico Supreme Court has determined that “a de facto arrest require[s] determining questions of reasonableness and balancing factors based on undisputed facts”. *State v. Werner*, 1994-NMSC-025, ¶ 9.

There will be few uncontested, or undisputed facts regarding when Mr. Wagon was placed in custody, or whether his freedom of movement was constrained to the degree associated with formal arrest, because the FPD officers failed to turn on body cameras, lapel cameras, dash cameras, belt tapes, or any other type of recording device when they made contact with Mr. Wagon. The first recording comes from Sergeant Spruell when Mr. Wagon was transferred from the pickup to the gated patrol car.

Defense contends that the lack of recording devices negates any claim of voluntariness of Mr. Wagon alleged actions. It is alleged that Mr. Wagon decided to “voluntarily” ride with FPD officers, and “voluntarily” sat in the truck without his shoes on, and “voluntarily” spoke with police

officers. The officers all violated their SOPs by not using recording devices during their interactions with Mr. Wagon while on the Navajo Reservation.

The facts that defense counsel can stipulate to are: Mr. Wagon was taken from his home by Farmington police department. Mr. Wagon lived on the Navajo tribal lands. Mr. Wagon is an enrolled member of the Navajo Tribe. Mr. Wagon was stopped from going back into his home to retrieve shoes. Mr. Wagon was transported from his home barefoot. Mr. Wagon was placed in the back seat of a FPD truck. At some point prior to moving from the truck to another police car Mr. Wagon was given his Miranda warning. All other facts, including statements by Mr. Wagon, the voluntariness of his actions, and the timeline of events are in dispute due to the complete disregard these FPD officers showed for their standard operating procedure by refusing to turn on their body cameras.

Defense asks this Court to consider the following factors in determining whether the alleged investigatory detention of Mr. Wagon was in fact an arrest. First, that Mr. Wagon was taken from his home, and not allowed to return inside. A reasonable person who was not allowed by police officers to put shoes on prior to being placed in the back of a police vehicle would believe that they are under arrest. Second, the lack of a time frame. It is unknown how long the officer's were at Mr. Wagon's house prior to Mr. Wagon being placed in the backseat of the police truck, unknown how long Mr. Wagon sat in the truck while it was parked at his home, and unknown how long of drive it was from Mr. Wagon's house to where Mr. Wagon was placed into the second police vehicle. Third, that Mr. Wagon was transported away from his home in the backseat of a police truck. Fourth, that Mr. Wagon was read his Miranda rights. It is unclear when these rights were read to Mr. Wagon, but it is clear that Miranda rights are only necessary when a reasonable person would feel as if their freedom of movement was curtailed to the extent

associated with formal arrest. *See Miranda v. Arizona*, 384 U.S. 436, 484 (1966). Fifth, Mr. Wagon was taken away from his home by Farmington Police, without any means to transport back home.

The New Mexico Supreme Court has stated clearly that 45 minutes in the back of a stationary police car is a de facto arrest. *Werner*, 1994-NMSC-025, ¶ 18. Other courts have said that a “brief period of time” and “15 minutes” do not constitute a de facto arrest. *United States v. Lego*, 855 F.2d 542, 545 (8th Cir.1988); *United States v. Manbeck*, 744 F.2d 360, 376-80 (4th Cir.1984) both cited in *Werner*. To contrast Mr. Wagon to the established case law it is in dispute, if not unknown how long Mr. Wagon was in the backseat of the police truck. Further, unlike the other situations, Mr. Wagon was transported by police from his home to a police station; in the other cases the defendants were in the back of stationary police vehicles, rather than transported across jurisdictions.

To properly determine whether this was a de facto arrest we must balance the above facts with reasonableness. *Werner*, 1994-NMSC-025, ¶ 9. The officers refused to obey their own department’s standard operating procedure.<sup>1</sup> Unreasonable. The officers placed Mr. Wagon in the back of a police car without allowing him to put on shoes.<sup>2</sup> Arrest. The officers decided to transport Mr. Wagon from the jurisdiction where he lived, to the jurisdiction where the alleged crime occurred.<sup>3</sup> Unreasonable. The officers read Mr. Wagon his Miranda Warning at some point prior to transferring to another police car.<sup>4</sup> Arrest. Mr. Wagon was taken from his home on Navajo

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<sup>1</sup> *State v. Ware*, 1994-NMSC-091, ¶ 23 (“State’s failure to gather evidence may amount to suppression of material evidence.”)

<sup>2</sup> *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (“Detention for custodial interrogation – regardless of its label– intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.”)

<sup>3</sup> 17 NNC §1951

<sup>4</sup> *Miranda v. Arizona*, 384 U.S. 436, 484 (1966)

shoeless, Mirandized at some point, then finally placed in handcuffs at the Farmington Police Station. Unreasonable Arrest.

Based on the above facts the detention of Mr. Wagon was a de facto arrest rather than an investigatory detention.

### **III. The Arrest Of Mr. Wagon Did Not Follow Navajo Procedure.**

The state of New Mexico must follow the proper procedures when extraditing a suspect from the Navajo reservation to the State. *State v. Yazzie*, 108 N.M. 677, 678 (Ct. App. 1989); *City of Farmington v. Benally*, 1995-NMCA-019, ¶ 8 (“*Benally II*”). The extent that the state of New Mexico can reach into tribal lands is limited only to processes where there Tribal law does not provide a mechanism to achieve the end. *Harrison*, 2010-NMSC-038, ¶24-25.

The police in the State of New Mexico may not perform substantive acts of law, such as arrest where they interfere with Tribal law mechanisms. *Id.* The proper mechanisms to extradite a person from the Navajo Nation were not followed when the FPD removed Mr. Wagon from the reservation. The proper mechanism, found at 17 NNC §1951:

Whenever the President of the Navajo Nation is informed and believes that a person has committed a crime outside of Indian Country and is present in Navajo "Indian Country" and using it as an asylum from prosecution by the state, the President of the Navajo Nation may order any Navajo police officer to apprehend such person and deliver him or her to proper state authorities at the Reservation boundary.

The FPD did not contact Navajo law enforcement prior to removing Mr. Wagon from Navajo land. Defense counsel has not been shown any contacts, nor attempted contacts between the FPD and the office of the President of the Navajo Nation.

Because a mechanism exists for the extradition of a person from the Navajo Nation, and because the Farmington Police Department did not attempt to go through the proper channels to

arrest Mr. Wagon, and because the Navajo Nation has created their own policies for this exact situation, the arrest of Mr. Wagon on Navajo land is an affront to tribal sovereignty.

**IV. The Officers Acted In A Manner To Circumvent, or Contravene The Laws Of The Navajo Nation.**

“We conclude that state officers have the authority to enter Indian country to investigate off-reservation crimes committed in their presence by Indians, so long as the investigation does not infringe on tribal sovereignty by circumventing or contravening a governing tribal procedure.” *Harrison*, 2010-NMSC-038, ¶ 34.

As argued in section II of this motion defense asserts that Mr. Wagon was not detained in an investigatory or voluntary way, but was under arrest, de facto. If this Court decides that Mr. Wagon was not under de facto arrest then the actions of the FPD were carried out in a manner to intentionally circumvent the laws and sovereignty of the Navajo Nation.

A review of the provided discovery seems to indicate that the officers claim Mr. Wagon came voluntarily (note again that no recordings were made of this event). If the court decides that Mr. Wagon did come voluntarily, the next question should be, “did the officers intentionally circumvent the laws of the Navajo Nation?”. *Id.* Mr. Wagon is an enrolled member of the Navajo Tribe. It seems that the officers knew that they could not arrest Mr. Wagon while on Navajo land. The officers instead led Mr. Wagon to “voluntarily” come with them, and conveniently refused to turn on their body cameras during this interaction. The officers did not attempt to follow Navajo law by getting an order of extradition from the President of the Navajo Nation.

If this Court finds that the detention and transport of Mr. Wagon was de facto arrest, then the Farmington Police Department contravened the laws and sovereignty of the Navajo nation, which is impermissible under *Harrison*, 2010-NMSC-038, ¶ 34. If this Court finds that Mr. Wagon was not under de facto arrest, then the FPD intentionally circumvented the laws and sovereignty of the



Navajo Nation, which is impermissible as well. *Id.* As stated in *Benally II*, “[e]ither way, there is a Navajo tribal procedure for dealing with the suspect. Failure to follow that procedure violates tribal sovereignty. 1995-NMCA-019, ¶ 8.

**V. The Removal Of Mr. Wagon From Navajo Lands Was Illegal And A Violation Of Tribal Sovereignty.**

“When state law enforcement officers arrest an Indian defendant on a reservation without utilizing the available extradition process, the arrest is invalid.” *Yazzie*, 108 N.M. 677, 678 (Ct. App. 1989). Suppression of the evidence is the appropriate remedy when this occurs. *Id.* at 680. It is undisputed that Mr. Wagon is Indian who was removed from tribal land without following any extradition process.

“A state officer’s investigative authority in Indian country is necessarily limited by tribal sovereignty.” *Harrison*, 2010-NMSC-038 ¶ 20. In *Harrison*, the Court held that because the defendant was not removed from Indian land in violation of tribal sovereignty and there was not a governing tribal procedure regarding the issue, the investigation by a state officer of a Navajo on the reservation was valid. After the holding in *Harrison*, the Navajo Nation amended their code to specifically bar any type of search or arrest by non-Navajo law enforcement, and non-cross-commissioned law enforcement.

**17 NNC §1820: Search and arrest by state officers prohibited except by agreement**

No State, county, or municipal law enforcement officers may search or arrest any Indian within the territorial jurisdiction of the Navajo Nation absent a duly approved cross-commission or deputation agreement.

According to *Benally I*, the courts of New Mexico do not have proper personal jurisdiction over a suspect who they arrest on Navajo land without proper extradition. 89 N.M. 463, 466 (1976). The court held that the proper redress to this type of illegal extradition was dismissal of the case,

which could be refiled if the defendant was properly arrested in the future. *Id.* at 467-68 (“If the petitioner is to be tried by the Farmington Municipal Court he must be legally arrested through the established extradition process of the Navajo Tribe, or by other legal means.”). This holding in *Benally I* only applied to misdemeanors because at the time there was no statute allowing hot pursuit of misdemeanors between counties in New Mexico. *Id.* That holding was extended to all Indians arrested on Indian land in *Benally II*.

“[E]ven though a state court may exercise personal jurisdiction over a citizen of another state or foreign country who has been illegally arrested and returned for criminal prosecution, we believe that when the suspect is an Indian illegally arrested on Indian land, the court may not exercise its jurisdiction over his or her person.” *Benally II*, 1995-NMCA-019, ¶ 14.

All Indians being taken from Indian land to New Mexico court jurisdictions must be processed through the proper channels where they exist. *Id.*; *Yazzie*. 108 N.M. 677, 678 (Ct. App. 1989). Mr. Wagon was not properly extradited through the Navajo Extradition process.

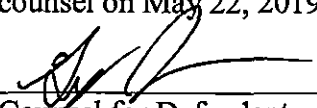
Due to the officers removing Mr. Wagon from the reservation, and due to the officer’s being strictly barred from searching, and arresting on tribal lands, this Court does not have personal jurisdiction over Mr. Wagon.

## CONCLUSION

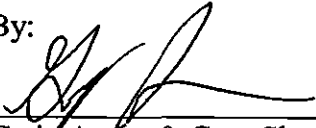
As Mr. Wagon was illegally removed from the Reservation, this either invalidates the arrest, meaning the case should be dismissed (per *Benally I* and *II*); or should result in the suppression of all evidence gathered from the arrest, including statements made by Mr. Wagon, photographs of Mr. Wagon or of other evidence that was taken from the scene, and suppression of all statements made by Mr. Wagon since his illegal detention began on April 24, 2017 as is the proper remedy outlined in *Yazzie*. 108 N.M. 677, 678 (Ct. App. 1989).

Respectfully submitted,

This will certify that a copy of the foregoing was delivered to opposing counsel on May 22, 2019.

  
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