

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

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2019 JUL 31 PM 2:50

STATE OF NEW MEXICO,
Plaintiff,

v.

No. D-1116-CR 201700404-6

ANTHONY WAGON,
Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS
and
ORDER RESERVING RULING ON DEFENDANT'S MOTION TO EXCLUDE AND
SUPPRESS EVIDENCE AND STATEMENTS
and
ORDER FOR ADDITIONAL BRIEFING

THIS MATTER comes before the Court on *Defendant's Motion to Exclude and Suppress Evidence and Statements* filed herein on April 25, 2019 and *Defendant's Motion to Dismiss Due to Violations of Navajo Tribal Sovereignty* filed herein on May 22, 2019. Having given due consideration to the papers filed by the parties, and the testimony of Farmington Police Detective Chris Stanton and Farmington Police Sergeant Travis Spruell, as well as the argument of counsel, at a hearing convened on June 11, 2019, the Court finds and rules as follows.

FINDINGS OF FACT

1. On the evening of April 24, 2017, the Farmington Police Department ("FPD") was investigating a vehicle and pedestrian collision that occurred in Farmington, San Juan County, New Mexico which resulted in the pedestrian's death at the scene.

2. The FPD was given information regarding the vehicle and the possible identity of the

DA/ACORN

driver as Defendant, Anthony Wagon. The license plate FPD was provided was registered to Herschel Wagon, who is the father of Anthony Wagon.

3. The address listed for Herschel Wagon was located on the Navajo Nation.

4. FPD Detectives Chris Stanton, Griggs, and Chad Herrera went to the Herschel Wagon address on the Navajo Nation in an effort to locate the Wagon vehicle that had been involved in the collision. They drove together in a single, unmarked, Ford F-150 crew cab pick-up police vehicle that has no protective barrier between the front and back seats. It looks like a regular pick-up. If they located the Wagon vehicle, they were to maintain the security of the vehicle and the integrity of any evidence it might contain until a search warrant could be obtained. Their purpose was not necessarily to locate Defendant because they made the assumption, or knew that Defendant was an enrolled member of the Navajo Nation and thus, they were fully aware that they had no authority to remove Defendant from the Navajo Nation. Detective Stanton had previously worked as a task force officer with the U.S. Marshall's Service and knew the requirements of the extradition process or the necessity of obtaining a federal warrant. If the Detectives were looking for Defendant or had any intention of taking Defendant from the Navajo Nation, they would have driven a police vehicle suited for that purpose. They did not.

5. It is not a finding of fact that Defendant, Anthony Wagon, is an enrolled member of the Navajo Nation because no such evidence was presented. However, the State did not argue otherwise. The Court will assume, for the purposes of the two motions at bar, that Defendant is an enrolled member of the Navajo Nation.

6. While the Detectives drove to the Navajo Nation, their supervisor, Sgt. Travis Spruell, went to other locations where Defendant Anthony Wagon was known to have contacts. He was looking for Defendant and the Wagon vehicle.

7. At a distance from the Herschel Wagon residence, the three FPD Detectives saw the vehicle they believed to be the one involved in the collision parked behind the Herschel Wagon residence. The Detectives observed damage to the front end of the vehicle.

8. As the three Detectives approached the Wagon property and while about 25 yards away they observed Defendant coming out of the house carrying something like a box. Defendant saw the Detectives and immediately ducked behind the back of the Wagon vehicle.

9. Keeping their distance, the Detectives shouted at Defendant identifying themselves as Farmington Police officers and for Defendant to come out from behind the vehicle. Detective Stanton testified that in this type of situation where a person has been seen holding something and is hiding, and does not immediately come out from hiding, he would typically draw his weapon for his own safety. However Detective Stanton could not testify with certainty that he did indeed draw his weapon. Defendant did not immediately comply with the Detectives' commands, but "finally" came out from hiding with his hands up. He immediately began to speak to the Detectives.

10. No weapons were drawn at any time thereafter. The remainder of the encounter was cordial; there were no raised voices or arguing. Defendant was calm, not overly agitated but worried about his parents finding out about what had happened.

11. Detective Stanton explained why they were there but Defendant stated he knew why they were there. Defendant immediately started making statements that implicated him in the crash.

12. Detective Stanton then advised Defendant of his 5th Amendment right to remain silent, and other rights included in the advisement of rights outlined in *Miranda*. He told Defendant that the FPD Detectives were not there to ask Defendant any questions; they were there

only for the vehicle.

13. The Detectives did not question Defendant. However, Defendant continued to talk. He talked about his involvement in the collision in a very incriminating way.

14. When Defendant said "I did it; arrest me," Detective Stanton told Defendant the FPD Detectives had no authority to arrest him because "you're a member of the Navajo Nation. My intention is not to place you under arrest."

15. As Defendant continued to make incriminating statements, Detective Stanton did start asking questions and told Defendant that Farmington Police detectives would probably like to talk to him, but that it would have to be voluntary on Defendant's part. So Detective Stanton asked Defendant if Defendant would be willing to go the Farmington Police Department to give his statement. Defendant said "yes." Since Defendant did not want his parents to know what he had done, he did not want to wake them up to take him to the Farmington Police Department. The Detectives would not allow Defendant to drive himself in the damaged vehicle for two reasons. Giving Defendant access to the vehicle could jeopardize the vehicle as evidence and it was obvious Defendant had been drinking and it is Farmington Police Department policy to not allow a person who has obviously been drinking to drive a vehicle. Defendant had also admitted to having been drinking. Detective Stanton asked if there was anyone else who could take Defendant, and Defendant said "No, but I'll go with you. Just put me in handcuffs." "Arrest me." Each of the several times Defendant told the Detectives to arrest him, the Detectives told Defendant they would not arrest Defendant.

16. The Detectives were hesitant to "even transport" Defendant to the Farmington Police Department, so they contacted Sgt. Spruell for guidance. Sergeant Spruell told the Detectives not to take Defendant from the Navajo Nation; but because of Defendant's insistence that he go with

the Detectives, Sgt. Spruell sought legal advice from Bill Hall, the FBI supervisor in Farmington who consulted with an Assistant U.S. Attorney. Word came back to Sgt. Spruell that as long as Defendant was not under arrest and was leaving the Navajo Nation voluntarily, the Detectives could take Defendant to the Farmington Police Department. Sergeant Spruell also talked with the Navajo Nation Police Department Supervisor in Crownpoint, but the outcome of that conversation was unclear from the testimony.

17. The three Detectives took Defendant in their crew cab pick-up and drove to a location just off the Navajo Nation where they had arranged to meet Sgt. Spruell who would then take Defendant to the Farmington Police Station. Sergeant Spruell had advised the Detectives not to leave an officer alone on the Navajo Nation without a vehicle of his own. Defendant was not handcuffed. There was no protection barrier between Defendant and the Detectives in the pick-up.

18. Detective Stanton and Sgt. Spruell both testified that if Defendant had indicated at any point that he did not want to complete the trip to the Farmington Police Department, the officers would have returned Defendant to his father's home on the Navajo Nation.

19. Although not established by the evidence, the Court will allow that Defendant was not wearing shoes when he made the trip to the Farmington Police Department. The Court does not find, as argued by defense counsel without evidence that Defendant asked to enter the Wagon residence to get his shoes before going with the Detectives but that the Detectives would not let him.

20. Sergeant Spruell met the Detectives as arranged. The Detectives drove back to the Wagon residence.

21. Sergeant Spruell confirmed with Defendant that Defendant was going to the

Farmington Police Department willingly. Defendant was not handcuffed. He got into the back seat of Sgt. Spruell's police vehicle behind the protective barrier and said "let's go." As they made the drive to the Farmington Police Station, Sgt. Spruell again verified with Defendant that Defendant was going to the station of his own free will and volition. As he did with the Detectives, Defendant continued to talk; making inculpatory statements. As they neared the station, Sgt. Spruell called in a "1012," meaning that he was bringing in a passenger. If Sgt. Spruell had a prisoner, he would have called in a "1015."

22. None of the interactions between Defendant and Detectives Stanton, Griggs, and Herrera were recorded; either by audio or audio/visual means. Detective Stanton explained that he activated his recording device and believed it to be recording. However, although it was on, it was not recording, either because the battery had failed or it had reached its recording limit.

23. Sergeant Spruell's interaction with Defendant was recorded by both the Sergeant's in-car camera and his body camera.

CONCLUSIONS OF LAW

1. There was nothing unlawful about the Farmington Police Department Detectives' presence on the Navajo Nation. The Wagon vehicle, where it was located, and its condition were in public view. The Detectives' observations were lawfully made and testimony at trial as to their observations should not be suppressed.

2. Defendant's immediately ducking behind the Wagon vehicle when he saw the Detectives clearly communicated that he did not want to interact with the Detectives. When the Detectives ordered Defendant to come out from hiding behind the Wagon vehicle, Defendant did not immediately comply. This was a further communication that Defendant did not want to speak

with the Detectives and did not want to engage in a consensual encounter with them.

3. The Detectives' repeated commands to come out from behind the Wagon vehicle would have communicated to a reasonable person that the person was not free to decline the Detectives' request and was not free to leave; for instance, to re-enter the home out of which he had just walked. Indeed, Defendant finally came out with his hands up and immediately spoke to the Detectives.

4. The Detectives had therefore seized Defendant under Article II, Section 10 of the New Mexico Constitution, as interpreted in case law.

5. The Detectives had no legal authority to seize Defendant on the Navajo Nation.

6. The Court rejects the State's only argument which is that the Detectives' conduct was lawful for purposes of "officer safety." Officers who are initiating a lawful seizure or who are engaged in a lawful investigative detention may take reasonable precautions to protect their safety. However, the Detectives here had no lawful authority to make the seizure in the first instance. The State has not provided this Court with law to support the State's argument which is essentially that "officer safety" permits, for safety reasons, a seizure that is otherwise unlawful. The Court does not doubt that the Detectives feared for their safety. However, under the circumstances of this case, that fear cannot bootstrap an unlawful seizure into a lawful one. The Detectives were 25 yards away from Defendant. They had their own vehicle nearby. Defendant made no aggressive movement and did not brandish a weapon. Defendant's period of hiding gave the Detectives some amount of time to take safety precautions that did not involve seizing Defendant. The Detectives had other options to protect their own safety besides unlawfully seizing Defendant.

7. There is no bright line test for evaluating when the conduct of law enforcement officers becomes invasive enough to become a de facto arrest. The weight of the evidence is that the

illegal seizure did not ripen into an illegal, de facto, arrest. Instead, the illegal seizure resolved almost immediately into a consensual encounter and it remained that way. The Detectives repeatedly told Defendant that they could not and would not arrest Defendant. Defendant was not in custody for *Miranda* purposes and was not under interrogation. Detective Stanton's advisement of rights under *Miranda* was therefore not constitutionally required. While relevant, the fact that Defendant was advised of his rights did not turn what had become a consensual encounter into a de facto arrest. Defendant understandably emphasizes that none of the three Detectives recorded their encounter with Defendant. Detective Stanton's explanation was not particularly satisfying, but it was a reasonable one. The absence of a recording does not vitiate Detective Stanton's testimony as evidence and does not persuade this Court that it should ignore Detective Stanton's testimony as untruthful.

8. Although Defendant was not illegally arrested on the Navajo Nation, the question remains whether it was illegal for the Detectives to take Defendant off the Navajo Nation. This Court concludes that under the circumstances of this case, it was not. The evidence shows that Defendant willingly and voluntarily left the Navajo Nation in the company of the three FPD Detectives and then willingly and voluntarily got into Sgt. Spruell's police vehicle in order to accomplish his purpose of getting to the Farmington Police Department. It may have been an improvident decision, but it was not a coerced one. Defendant was under the influence of alcohol which probably contributed to his improvident decision; but poor judgment does not make a decision an involuntary one. There was no evidence of the extreme intoxication described in *State v. Bramlett*, 1980-NMCA-042, 94 N.M. 263, for example, that persuades this Court that in the absence of official police coercion, Defendant's decision was nevertheless involuntarily made due to extreme intoxication. Before arriving at the Farmington Police Department, Sgt. Spruell

inquired of Defendant about Defendant's willingness to go, giving Defendant not only the opportunity, but the encouragement, to declare that if he did not want to go to the Farmington Police Department, he did not have to go. There is no reason to believe that Defendant's interaction with the three Detectives on the Navajo Nation was markedly different – or in contrast to Detective Stanton's testimony -- than Defendant's recorded interactions with Sgt. Spruell. Defendant would have the Navajo Nation operate as a prison, precluding him from leaving the Navajo Nation whenever and with whomever he wills. Defendant has not provided law for that proposition. *Defendant's Motion to Dismiss Due to Violations of Navajo Tribal Sovereignty* should be denied.

9. *Defendant's Motion to Exclude and Suppress Evidence and Statements* presents a closer call because the Court has ruled that Defendant's initial seizure was illegal. Whether the particular evidence the State seeks to admit at trial and Defendant seeks to suppress was discovered as a result of, or was derived from, the exploitation of Defendant's illegal initial seizure or whether the evidence may have been purged of the taint of the illegal seizure requires legal analysis that the parties have not briefed. The Court should therefore reserve ruling on *Defendant's Motion to Exclude and Suppress Evidence and Statements* to allow for briefing on whether evidence obtained subsequent to the initial, unlawful seizure is inadmissible as fruit of the poisonous tree.

IT IS THEREFORE HEREBY ADJUDGED, ORDERED AND DECREED that:

1. *Defendant's Motion to Dismiss Due to Violations of Navajo Tribal Sovereignty* is DENIED.

2. *Defendant's Motion to Exclude and Suppress Evidence and Statements* is denied to the

extent Defendant seeks the suppression of testimony by Detectives Stanton, Griggs, and Herrera about their observations of the Wagon vehicle while they were on the Navajo Nation and prior to their delivery of Defendant to Sergeant Spruell.

3. The Court reserves ruling on *Defendant's Motion to Exclude and Suppress Evidence and Statements* pending briefing on whether evidence obtained subsequent to the initial, unlawful seizure is inadmissible as fruit of the poisonous tree. The State shall brief the issue first and has 15 days, Defendant shall respond and has 15 days after the State's brief, then the State may then reply and has 15 days after the Defendant's response.


DAYLENE MARSH
District Court Judge

cc: Craig Acorn and Greg Shearer, Counsel for the Defendant
Brian D. Decker, Office of the District Attorney – San Juan County