

DISTRICT COURT
SAN JUAN COUNTY NM
FILED
2019 AUG 16 AM 10:26

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff,

vs.

ANTHONY WAGON,

Defendant.

No. D-1116-CR-2017-00404

Judge Marsh

SUPPLEMENTAL BRIEF RE DEFENDANT'S MOTION TO SUPPRESS

COMES NOW the State of New Mexico, by and through its Deputy District Attorney, Brian D. Decker, and respectfully submits the following supplemental brief regarding defendant's motion to suppress as ordered by the court:

On June 11, 2019, a hearing was held on defendants motion to suppress. Following that hearing, the issue of whether or not defendant's statements to law enforcement are inadmissible as being "fruit of the poisonous tree" due to what the court ruled to be an illegal seizure.

"The 'fruit of the poisonous tree' doctrine" bar[s] the admission of legally obtained evidence derived from past police illegalities." *State v. Monteleone*, 2005-NMCA-129, at ¶ 16.

"The main inquiry under this doctrine is "whether ... the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *State v. Monafó*, 2016-NMCA-092 at ¶ 12.

"To determine whether there was 'sufficient attenuation,' we consider the temporal proximity of the arrest and the consent, the presence of intervening circumstances, and the flagrancy of the official misconduct." *Monteleone* at ¶ 17. In determining the flagrancy of the official misconduct, "Defendant would have to establish purposeful and flagrant official misconduct

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where: (1) the impropriety was obvious, or the official knew his conduct was likely unconstitutional but continued nonetheless; or (2) the misconduct was investigatory in design and purpose." *Monafo* at ¶ 15.

In looking at the first factor, the temporal proximity of the illegal seizure and the consent, there is not a lot of time between the seizure and the statements made to Detective Stanton. However, there is a significant amount of time that lapsed between the seizure and the statements made to Sgt. Spruell and later to Detective Solomon at the Farmington Police Department.

Second, the court should consider intervening circumstances. It is important to note that Farmington Detectives told Defendant that they were not present to arrest him. They did not interrogate him, and they told him he was not required to make a statement. Detectives told Defendant that they were only there to secure the vehicle until a warrant could be obtained. Defendant volunteered this information without any prompting from the police. As the court noted, the illegal seizure ended almost immediately and turned into a consensual encounter. At that point, Defendant began making statements without questioning from the officers. These statements did not flow from the seizure as contemplated by the "fruit of the poisonous tree" doctrine, but it was information volunteered by Defendant.

Even if the statements made to Detectives Stanton, Griggs, and Herrera flowed from an illegal seizure, the statements defendant made to Sgt. Spruell and Det. Solomon did not. By the time Defendant made those statements, Officers had taken substantial steps to cure the taint of any illegal seizure. These intervening circumstances include telling defendant they would not arrest him, telling him they could not take him from the reservation against his will, advising him

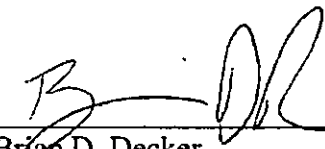
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of his *Miranda* rights though not legally required to do so, assuring that he wanted to leave the reservation of his own accord, taking time to seek advice from the FBI, and asking defendant if anyone else could take him off the reservation to make a statement. Officers repeated these efforts with defendant multiple times before defendant made his statements to Sgt. Spruell and Det. Solomon. Even if the statements to Detectives Stanton, Griggs, and Herrera were not sufficiently attenuated from the initial seizure, the statements made to Sgt. Spruell and Det. Solomon were.

Third, the court must consider the flagrancy of the illegal seizure. Again, the court has already noted that the illegal seizure ended almost immediately and turned into a consensual encounter. The initial seizure, though ruled illegal at the outset, did not remain an illegal seizure. After the initial contact with Defendant, Officers took many precautions as detailed above to make sure Defendant's constitutionally protected rights were not violated.

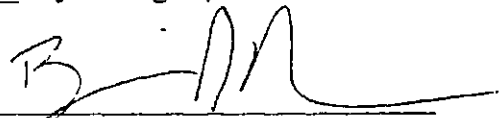
In conclusion, the statements made by Defendant did not flow from the initial illegal seizure. They were voluntarily given by Defendant and were free from taint. Furthermore, even if the statements made to Detectives Stanton, Griggs and Herrera did flow from the illegal seizure, the statements made to Det. Solomon and Sgt. Spruell were sufficiently attenuated from the illegal seizure and should not be suppressed.



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CERTIFICATE OF DELIVERY

I hereby certify that I caused to be delivered a true and correct copy of the foregoing pleading to defense counsel, Craig Acorn, on this _____ day of August, 2019.



Brian D. Decker
Deputy District Attorney

16-CR-2017-1347