

DISTRICT COURT
SAN JUAN COUNTY NM
FILED

2019 JUN -6 PM 12: 36

SB

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

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW the State of New Mexico, by and through its Assistant District Attorney, Brian D. Decker, and respectfully requests that the Court deny Defendant's Motion to Dismiss.

As grounds in support of this motion, counsel states:

I. FACTUAL BACKGROUND

On April 24, 2017, Farmington Police Department (FPD) went to a residence which was located in "Indian Country." FPD went to this residence because it was the address linked to the registered owner of a vehicle involved in a fatal collision earlier in the evening. Officers had no intention of taking any statements from anyone when they arrived at the residence. The purpose was to stay with the vehicle until they could follow proper channels to remove the vehicle.

While at the residence, Anthony Wagon (Defendant) exited the home and ducked behind the truck. At that point, FPD identified defendant and patted him down for their safety. At that point in time, Defendant began making statements about the homicide that occurred earlier in the evening. FPD did not ask Defendant anything about the incident earlier in the evening.

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After Defendant made the unsolicited statements, FPD asked if Defendant would be willing to make a statement at the police station. They also explained that Defendant was not required to go make a statement. Defendant agreed to make a statement at the police station. FPD then asked Defendant if there was anyone that could give him a ride to the police station. Defendant indicated that there was not someone that could give him a ride. FPD inquired if his parents who were at the residence could give him a ride to the station. Defendant responded that he did not want to wake his parents because they would be upset when they learned what happened. Instead, Defendant asked FPD for a ride.

FPD explained to Defendant that he was not under arrest and they did not have the authority to arrest him and remove him involuntarily from the reservation. They also explained again that Defendant had no obligation to leave with him. Defendant again wanted to go with FPD and asked FPD to place him in handcuffs. FPD eventually did give defendant a ride off the reservation, but they never placed D in handcuffs and they did not place him under arrest. He was given a ride in an unmarked police vehicle without any cage in it.

II. ARGUMENT AND AUTHORITIES

- A. *Defendant was not under arrest by FPD and Defendant left "Indian Country" voluntarily.*

"When state law enforcement officers arrest an Indian defendant on a reservation without utilizing the available extradition process, the arrest is invalid." *State v. Yazzie*, 108 N.M. 677, 917. "A determination of whether the officer in this case made an illegal de facto arrest, or simply conducted a permissible detention, ultimately depends on whether his actions were

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reasonable under Fourth Amendment standards." *State v. Werner*, 117 N.M. 315, 871 P.2d 971 at 973. (1994)

In this case, Defendant was not arrested or even detained by FPD. Defendant was told multiple times that he was not under arrest and was under no obligation to go with FPD. FPD even went so far as to explain the extradition procedure to Defendant and Defendant still requested to be taken to the station by FPD officers. Defendant acted voluntarily without the influence of unauthorized police action.

III. CONCLUSION

Defendant was not under arrest or detention by FPD. Defendant voluntarily left the reservation. FPD did not act without proper authority

WHEREFORE, the State respectfully requests that the Court enter an order denying Defendant's Motion to Dismiss.



Brian D. Decker
Deputy District Attorney
335 S. Miller Ave
Farmington, NM 87401
505-599-9810

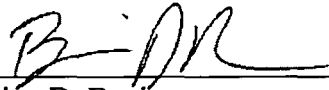
CERTIFICATE OF DELIVERY

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 June, 2019.

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Brian D. Decker
Deputy District Attorney

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