

FILED  
DISTRICT COURT OF  
GRANT COUNTY, N.M.

2018 AUG 13 PM 1:02

*George Harrison*  
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8/13/18

STATE OF NEW MEXICO  
COUNTY OF GRANT  
SIXTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,  
Plaintiff,

vs.

ISAIAS LOBATO-RODRIGUEZ,  
Defendant.

NO. D-608-CR-201700069

JUDGE JAROD K. HOPACKET

**SECOND MOTION TO SUPPRESS**

COMES NOW, the defendant, Isaias Lobato-Rodriguez, through his attorney of record, George Harrison and respectfully moves this Court to suppress all statements made by the defendant in violation of his rights under the United States Constitution and the New Mexico Constitution. As grounds for this motion, Defendant states:

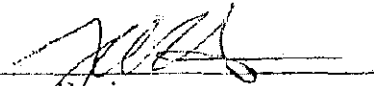
1. Counsel for the defendant located the audio of the interviews with Agents Garcia after the first hearing on this issue.
2. A transcription of the interview is attached and the recording can be provided to the Court.
3. The defendant is a Mexican national with little education who speaks Spanish.
4. The defendant was detained as an illegal alien by Border Patrol Agent John Enriquez shortly after 4:30 pm on March 17, 2017.
5. Agent Enriquez is not fluent in Spanish.
6. John Enriquez never advised the defendant of his Miranda rights.
7. Agent Enriquez made clear at the hearing that the defendant was in custody.
8. Agent Garcia is fluent in Spanish.
9. Border Patrol Agent Adrian Garcia arrived and questioned the defendant. The defendant gave incriminating statements.
10. Agent Garcia then advised the defendant of his Miranda rights and questioning ceased.
11. The BP watch commander advised all agents to stop questioning at the scene.
12. The defendant was taken to a State Police facility in Deming NM and advised of his rights by Agent Mascorro. The defendant asserted his right to an attorney and no further questions were asked.

**ARGUMENT**

The defendant has a right against self-incrimination under the United States Constitution, Amendment V, and the New Mexico Constitution Art. II, Section 15. The defendant has a right to a hearing on this motion. State v. Lacour, 1973-NMCA-022. The statements made without timely Miranda warnings should be suppressed. State v. Olivas, 2011-NMCA-030. The recent case of State v. Widmer, 2018-NMCA-035 states that any words or actions that the police know are likely to elicit an incriminating response are questioning and require Miranda warnings. Citing Rhode Island v. Innis, 446 U.S. 291,301 (1990). Here the recorded statement of Agent Garcia states that "I asked him what happened? Did she, killed herself? Is that what you're trying to tell me?" These questions would and did lead to incriminating statements by the defendant. Both Agents made clear that the Miranda warnings were given after these statements were made. Midstream warnings are not effective to cure the Constitutional violation. State v. Filemon V., 2018-NMSC-011 and Missouri v. Seibert, 542 U.S. 600, 617 (2004).

**WHEREFORE** the defendant prays for this Honorable Court to grant the defendant a hearing on his Motion to Suppress and to suppress all statements made without timely Miranda warnings.

Respectfully Submitted,  
CONTRACT NEW MEXICO PUBLIC  
DEFENDER

  
George Harrison  
Contract Public Defender  
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Las Cruces, New Mexico 88011  
Phone: 575-522-8000

**CERTIFICATE OF DELIVERY/MAIL**

I hereby certify that I have delivered a copy of the foregoing to opposing counsel on this 13<sup>th</sup> day of August 2018.

  
George Harrison

**Agent Adrian Garcia**

Moises: Okay umm, Today's date is umm March 19<sup>th</sup> 2017. Approximate time is 11:12am here at the state police station in Las Cruces NM, myself as agent Moises Mascorro along with agent Orlando Erros and were here with Border patrol agent Adrian Garcia umm Adrian the reason why I called you in is because you were semi involved in the incident that happened on March 17<sup>th</sup> 2017 over there in, uhh near Hachita NM uhh State road 9 near mile marker 48 approximately umm what I want to get from you is uhhh your involvement, how did you get involved in that incident uhh so I'll let you take the floor

Adrian: uhh well I was responding to what I thought was ahh vehicle accident or, or maybe well the supervisor described on the radio was ah, a ahh deceased person of, in a vehicle so I immediately responded from mile marker 56 on highway 9 he was at mile marker 48, and uhh he only saw one person and well when he described on the, on the, on over the radio was that there was one deceased person, nobody else in the vehicle, but the doors were open so I immediately started responding that way, and before I got there he mentioned that there was a second subject coming from the, from the North umm I believe it was maybe somebody that needed assistance so I continued to go that way and uhh when I showed up I parked on the uhh South side and the super, supervisor uhh Enriquez he was talking to the, to this subject, he was sitting on the ground and uhh Enriquez was holding his passport and umm so I approached him and I was thinking that this had been an accident so I asked the subject that he was alright and if he was hurt and he began mumbling umm about this lady that she was gonna kill and I couldn't understand what he was saying so uhh Enriquez tells me that umm that he is an illegal Alien and then he tells me, there's a belt wrapped around her neck so I looked at her and then he begins just talking and talking and, and (2:58) I asked him what happened? Did she, killed herself? Is that what you're trying to tell me? And he was like "no I killed her because she was going to take me to get my family and she was going to kill me and my family" and I asked him so you, you did this? You, you killed her? And he admitted to it, he said "yes, I did" and at that moment I, I uhh I asked uhh Enriquez if he had mirandized him already because I guess, he was, this, this, this was this was the initial moment when he was just talking and uhh and he said "no not yet" so I, I took out my my my um warning as to rights card and I asked him if he preferred to be read in Spanish or English and he said Spanish, I read the rights in Spanish and I asked him if he understood his rights he said yes and he continued to talk uhh without any questioning he just can't continue to talk he kept repeating him self that she was gonna kill so he had to do it and he said, he mentioned that uhh his daughters, I think he said daughters, either daughters or family were gonna cross with him but he told them no so he told them no that he would cross first and he would send for them later and then he said that there was more people hiding in the brush which at that moment we had I was standing him up to put him in the hand cuffs I told him that we were going to place him in the hand cuffs and we were placing him under arrest and I let him know that uhh it was for his safety our safety until we found out what was going on, he told me that there was more people in the brush I uhh I gave the subject to Enriquez so he could uhh handcuff him and I wanted to make sure the scene was safe so I went to look around for foot sign which footsteps in the ground for uhh for any other subjects leaving the vehicle uhh I walked the perimeter all around the vehicle and uhh the only sign that I could find the only foot prints that I could find was his. He went North about half a mile and then he came back to the vehicle and there was more of his foot prints around the vehicle I don't know if that was when he opened the doors or when he walked back umm but that was the only foot prints that I was, was that I was able to find leaving and coming back to the vehicle and oh yeah and one more thing he mentioned cause uh we weren't really questioning him to

Exhibit A

Adrian: I'm thinking we had it as ahh 4:37 pm because I was not far at all from him and we have the initial umm I guess he initially made called it out at 4:30 and you know it took me minutes to get there.

Moises: ummkay, ummm anything else happen, uh with him? Did he get checked by EMS or anything like that?

Adrian: no, they didn't even check him. umm they didn't look like he was any had any injuries. The vehicle wasn't so damaged as far as like, like a rollover it was just uh scratches from uh from the barbwire fence so uhh it didn't really look like he had been hurt so I don't believe EMS even talked to him

Moises: ummkay, umm can you remember what he was wearing?

Adrian: uhh I don't remember he was wearing jeans, but uh I remember he was wearing a white tank top like those, like those ones you wear under, under dress shirts

Moises: Like a muscle shirt

Adrian: Yes

Moises: Ummkay

Adrian: and uhh he was wearing uh like uh necklaces one of them like had a, a shark tooth and he had like a gold watch, he had a bunch of accessories all over, and he had long hair umm yeah I don't remember ex everything I know was wearing a bunch of accessories on his hands and that shark tooth necklace, and that gold watch for sure, golden color.

Orlando: do you uhh do you mind?

Moises: go ahead

Orlando: sorry about that

Moises: so Enriquez turned off the vehicle?

Adrian: Yes sir

Orlando: okay, you said you got the phone call umm by who? Who was it? That or, or you were dispatched to that right?

Adrian: yeah he, he called it on the radio, it was Del, it was Delta 45 Enriquez

Orlando: Oh okay he was the one that called it in through the radio and then that's when you went

Adrian: umm humm

Orlando: because at first it came in as a, a rollover vehicle or like a crash right?

Adrian: um huh yeah cause what I heard on the radio was that the vehicle went, went uh, went off, off the road and

Moises: So you assumed it was a vehicle crash

Adrian: Yeah yeah we assumed it was a vehicle, he said there was one deceased person so, so were all like wow it's an accident

Moises: But when you got to the scene it was totally different

Adrian: um huh

Moises: scenario

Moises: did umm you guys take anything out of the uhh the males um uh person or anything?

Adrian: No

Moises: Or was he left with everything there?

Adrian: He was left with everything umm we patted him down, we, we didn't remove anything from him

Moises: did he have any weapons when you patted him down?

Adrian: no, he had his wallet and in I think since I passed him over to umm Enriquez cause I felt his wallet and I think I told him you can leave that there and since I gave him to Enriquez and when I saw

Adrian: uhh I don't recall that, that vehicle that but from what the other agents saw, they, they saw that white Tacoma, and I do remember the white, the white Tacoma traveling with another vehicle (16:02) so I believe that was the vehicle that was, that was traveling with the White Tacoma.

Moises: ummkay,

Adrian: yeah Agua Prieta is just South of Douglas

Moises: ummkay

Adrian: and I think that's what, where he said so

Orlando: the White Tacoma um so you seen it around

Adrian: (16:25) oh I saw it when I was at that mile marker 62 before cause I went to mile marker no I'm sorry not 62, 65 I was up at the, at the 65 I stopped there for a little bit and then I, I drove to the 5-6 and as soon as I got to the 5-6 I was already I was about to start my cut and uh and that's when uh, when the traffic started

Moises: The radio traffic

Adrian: Uh huh.

Moises: so when you saw the white pickup, it was how long before the traffic would have been? an estimated time

Adrian: let me think, crap, well I was at the 6-2, and it had to be at least half an hour earlier

Moises: half an hour earlier

Adrian: um huh

Moises: okay

Adrian: more or less around there

Moises: and during this time you were, you were on duty, correct?

Adrian: yes

Moises: okay, and your duty stations around this area

Adrian: oh well our area of operation is umm from the border to highway 9 from hachita and maybe, uh we, we, we go from west of hachita all the way to uh Arenas which is that mile marker 102, our station is in Deming, North of, North of the area there

Moises: ummkay, do you have any other questions Orlando?

Orlando: as far as when you made contact with the individual, had Enriquez already made contact with him?

Adrian: yes, I think that's when he was, he was establishing immigration

Adrian: yes

Orlando: okay, umm and you said that he kept repeating it

Adrian: yes, he just kept repeating, and repeating himself

Orlando: and this was, this was before you mirandized him or after?

Adrian: uhh

Orlando: you said at first

Adrian: before and, and, and during uhh no not during, during the mirandize, he stayed quiet and he kept saying he understood and while we were uh standing him up and handcuffing him he just kept on talking and talking and repeating himself

Orlando: oh he kept saying the same thing over and over

Adrian: yes

Orlando: okay

Adrian: umm he would, we weren't really asking him any questions he was just throwing everything out

Orlando: okay

Adrian: in Spanish

Orlando: gotch you, and then like as far as, as far as you guys don't carry any recorders or stuff like that right?

Adrian: no

Orlando: That's, that's your policy, you guys don't need to

Adrian: yeah we don't, we don't carry any uh any personal stuff that uh unless it was uh issued by the government, were not

Orlando: you not carrying any

Adrian: carrying any

Moises: did you guys ever take any pictures or anything of the scene

Adrian: umm no actually I, I was told not to take any pictures so I didn't take any pictures

Moises: did you see the female on the driver's side?

Adrian: yes, I saw her uh when uh I mean I saw her at first when uh it was hard to see the belt right from the beginning especially when you had the subject there and uh sitting right by the not to far from the driver and the umm that's when Enriquez told me she's got a belt around her neck and I look and that's, that's, that was like when the scenario changed for me you know from an accident to, to a possible you know

Moises: but was he on duty when

Adrian: uh I'm not sure if he was already off duty he was just coming to town uh towards uh \_\_\_ B, to bring back food for the guys

Moises: ummkay

Orlando: In your experience umm not saying that you run into these type of people but do you run into people who have uh and you check them and they have like large amounts of money or they have something on um their person

Adrian: its very unusual, unless they have it hidden

Orlando: okay

Adrian: to have large amounts of money umm from my experience they roll it up into um like they roll up the money as tight as you can possibly do it and they can stick it in their belts, in their seems, they'll cut out the seam around their waist line, wither that or in their shoes, umm there's very few times where they have a lot, large amounts of money in their wallets. They, they will have umm maybe 1000 pesos or maybe a hundred dollars

Orlando: a hundred dollars, okay

Adrian: you know just, probably just everything they own or whatever they have, and it's not much

Orlando: okay, and these are like illegal immigrants that are trying to crossover

Adrian: yes

Orlando: okay

Moises: ummkay, uh any other questions? Okay I don't have any other questions for you right now uhh thank you for coming in

Adrian: alright

Moises: that concludes the interview at 11:37am