

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR 17-30122

Plaintiff,

vs.

MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO SUPPRESS
STATEMENTS

CALVIN GILLETTE,

Defendant.

This memorandum of law is offered in support of Defendant Calvin Gillette's Motion to Suppress Statements.

STATEMENT OF FACTS

1. On September 12, 2017, an Indictment was filed in the United States District Court, District of South Dakota, Central Division, charging Defendant with Domestic Assault by an Habitual Offender, in violation of 18 U.S.C. § 117(a)(1). The offense was alleged to have occurred on January 31, 2017, in Todd County, South Dakota.
2. According to the discovery, Rosebud Sioux Tribal Police were dispatched to Fairgrounds Housing concerning an alleged domestic dispute. After entering the residence, Rosebud Sioux Tribe police officer Daniel Reynolds detained the Defendant and placed him in handcuffs. The officer spoke with the alleged victim and asked her what happened. The officer then turned to Defendant and

asked him what happened. Prior to asking the Defendant such question, there was no advisement of *Miranda*. The defense moves to suppress the statements Defendant made following the custodial interrogation as violating *Miranda*.

ARGUMENT AND AUTHORITIES

The defense asserts that Officer Reynolds questioned Defendant about the alleged incident while Defendant was in the officer's custody and without first advising him of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). The Defendant was handcuffed and not free to leave, thereby constituting custody. To determine if an individual is placed into custody for *Miranda* purposes, the Court must consider the circumstances surrounding the interrogation and whether a reasonable person would have felt he was not at liberty to terminate the interrogation and leave. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). The Court is to apply a "totality of the circumstances" approach. *Id.*, see also, *United States v. McKinney*, 88 F.3d 551, 554 (8th Cir. 1996). Under the circumstances of this case, Defendant was not free to leave and was being detained in the officer's custody.

The officer then interrogated the Defendant, asking him "what happened." The statements Defendant made thereafter were taken in violation of *Miranda* and must be suppressed.

Wherefore, the defense moves to suppress Defendant's statements.

Dated this 8th day of January, 2018.

Respectfully submitted,

NEIL FULTON
Federal Public Defender
By:
/s/ Edward G. Albright

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