

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR 17-30122

Plaintiff,

vs.

CALVIN GILLETTE,

GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO
SUPPRESS STATEMENTS AND
TRIBAL COURT GUILTY PLEA

Defendant.

COMES NOW the United States of America, by and through Assistant United States Attorney Daniel C. Nelson, and submits this Response to Defendant's Motion to Suppress Statements and Tribal Court Guilty Plea and Memorandum of Law in Support of Motion to Suppress Statements and Tribal Court Guilty Plea (Documents 31, 32 and 33).

FACTS

In the early morning hours of January 31, 2017, Amanda Roubideaux contacted law enforcement to report that the victim had been involved in a domestic dispute with the Defendant. Rosebud Sioux Tribe Law Enforcement (RSTLES) Officer Daniel Reynolds responded to the house where the victim and Defendant were located. The house was located in the Fairgrounds Housing in Rosebud, SD. Officer Reynolds was wearing a body camera that was recording the entire time he was on scene.

After Officer Reynolds walked into the house, he found the victim and Defendant inside a back bedroom. Officer Reynolds placed the Defendant in wrist restraints and ushered him into the living room. The Defendant was not given the Miranda warning by Officer Reynolds. Officer Reynolds begins speaking with the victim, who reports that the Defendant came over to the house the previous night and began acting belligerent. After passing out on the floor inside the home, the Defendant awoke upset and began demanding that the victim return money that he had given her for their kids. The victim reported that the Defendant started throwing various items around the house before eventually pushing and slapping the victim while they were inside the bedroom.

When Officer Reynolds was speaking with the victim, the Defendant interrupted the conversation by disagreeing with the victim's account, so Officer Reynolds approached the Defendant and began questioning him on what happened. The Defendant responded by stating he was intoxicated the night before and struggled to remember anything. He stated that he was attempting to pack his things that morning and leave the residence. While speaking with Officer Reynolds, the Defendant and victim begin arguing about what happened and the details surrounding the incident.

Officer Reynolds eventually arrests the Defendant for Domestic Abuse and ushers him out to his patrol vehicle. While walking him out to the patrol vehicle, the Defendant runs away to a nearby house where he attempts to hide in the basement. Officer Reynolds successfully find and secure the Defendant. During the securement, officers deployed pepper spray to remove the Defendant from the

home. The Defendant at the time of his arrest had been previously convicted of Domestic Abuse in Rosebud Sioux Tribal Court in June 2015 and April 2016 resulting in the now pending Indictment.

On May 2, 2017, the Defendant, who was represented by counsel, appeared in Rosebud Sioux Tribal Court and entered a guilty plea to Domestic Abuse. The Rosebud Sioux Tribal Court criminal complaint filed in CR 17-0368 alleged that on January 31, 2017, the Defendant knowingly caused bodily injury to the victim by striking her in the face.

LAW AND ARGUMENT

A. The Defendant's Statements to Officer Reynolds are Admissible

The Fifth Amendment guarantees a suspect the right to remain silent and the right to an attorney during custodial interrogations. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966). The requirements of *Miranda* “are triggered only when a defendant is both in custody and being interrogated.” *United States v. Head*, 407 F.3d 925, 928 (8th Cir. 2005). “*Miranda* warnings ‘protect the individual against the coercive nature of custodial interrogation’ and are required only when a person is in custody.” *United States v. Thomas*, 664 F.3d 217, 222 (8th Cir. 2011) (citation omitted). *Miranda* warnings are not imposed because the questioning is conducted in a certain place or because the person being questioned is suspected of having committed some offense. *United States v. Boucher*, 909 F.2d 1170, 1174 (8th Cir. 1990).

The *Miranda* warnings do not, however, apply to all questioning by law enforcement. As a general rule, the burden of proof is on the defendant who seeks

to suppress evidence. *United States v. Phillips*, 540 F.2d 319 (8th Cir. 1976). The Government, however, bears the burden of proving that *Miranda* warnings were either not necessary or that they were given and effectively waived. *Miranda*, 384 U.S. at 475. The standard of proof is a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477 (1972).

After entering the home, Officer Reynolds locates the Defendant and the victim in a back bedroom. Officer Reynolds immediately asks the Defendant to place his hands behind his back to secure wrist restraints. While Officer Reynolds is securing the wrist restraints, the Defendant and victim begin arguing about money located inside the Defendant's pant pockets. The Defendant states it's his money and that he works hard for it. The statement should not be suppressed, as the Defendant is volunteering information and not replying to questions posed by the officer. Therefore, no Fifth Amendment right was violated during the Defendant's statement in the back bedroom.

Officer Reynolds advised the Defendant he was not under arrest but was handcuffed for the purpose of detainment. The Defendant and Officer Reynolds walked to the front door where he placed the Defendant before interviewing the victim. During Officer Reynolds interview of the victim, the Defendant made repeated attempts to interrupt the conversation by disputing the victim's claims. One such interruption occurred when the Defendant stated that he needed to look out for himself because he's being kicked out to the cold weather. The Defendant further interjects by stating this is not the first time an incident between him and the victim has occurred. As a follow-up to those interruptions,

Officer Reynolds approached the Defendant and asked him what happened. The Defendant replies that he was intoxicated the night before and once he awoke in the morning, he and the victim began arguing. Officer Reynolds directs no further questions to the Defendant. The Defendant proceeds to volunteer information by engaging an argument with the victim regarding the circumstances of the reported assault. Officer Reynolds is silent during this exchange and makes no effort to illicit the Defendant's voluntary statements.

Officer Reynolds was attempting to clarify the Defendant's statement regarding him having to now look out for himself, being kicked out into the cold weather, and that it is not the first time an incident like this has occurred between him and the victim. To understand and clarify the context of those statements, Officer Reynolds did not broaden or expand the Defendant's statements by simply asking what happened. Therefore, the Defendant's statements do not violate his Fifth Amendment rights, as Officer Reynold's questioning was permissible follow-up and not interrogation and any statement made to the victim was voluntary and free from any coercion.

B. The Defendant's Guilty Plea and Conviction is Admissible.

"The Bill of Rights, including the Sixth Amendment right to counsel, therefore, does not apply in tribal-court proceedings." *United States v. Bryant*,--- U.S.---, 138 S. Ct. 1954, 1962, 195 L. Ed. 2d 317 (2016) (citations omitted). "Therefore, the use of those convictions in a federal prosecution does not violate a defendant's right to due process." *Id.* at 1966. "The Indian Civil Rights Act of 1968 (ICRA), which governs tribal court proceedings, accords a range of

procedural safeguards to tribal court defendants ‘similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment.’” *Id.* at 1956 (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978)). The ICRA entitles criminal defendants appearing in a tribal court proceeding to appointed counsel when their sentence of imprisonment is one year or more. *United States v. Long*, 870 F.3d. 741, 747 (8th Cir. 2017). Indigent defendants in Rosebud Sioux Tribe have the right to be presented by professional attorneys and lay counsel. *Id.* at 747.

The Defendant appeared in Rosebud Sioux Tribal Court on May 2, 2017, and entered a guilty plea to an allegation of Domestic Abuse that occurred on January 31, 2017, which was charged in a criminal complaint. The criminal complaint alleged that on January 31, 2017, the Defendant “purposely or knowingly cause apprehension of bodily injury to Lucille Running Enemy, a household member, by yelling at her, and striking her in the face, in violation of RSTLOC 5-38-2.” *See Exhibit 1*. The tribal court advised whether the Defendant understood the complaint against him, which he replied “yes” to the court. The Defendant was sentenced to 365 days incarceration and 272 days suspended. The Court imposed a \$1000 fine, with \$500 of that fine suspended along with other terms and conditions. The Defendant was represented by counsel, as the tribal court and the prosecutor acknowledged his representation of the Defendant at the May 2, 2017 hearing.

First, the defense argues the Defendant was not counseled by a licensed lawyer. The Court in *Long* discussed that either lay counsel or a professional

attorney may provide representation of a criminal defendant in Rosebud Sioux Tribal Court, which will satisfy the requirements of the Rosebud Sioux Tribe Law and Order Code. *Id.* at 747. The tribal court in the recorded proceedings on May 2, 2017, did not object nor did the prosecution when the Defendant's attorney of record made his appearance. The Defendant's counsel indicated that he had been in contact with the prosecutor's office about resolving his client's case and that they had reached a plea agreement. The Defendant's counsel outlined the plea agreement to the tribal court and the sentencing recommendation. The defense has not shown or made any arguments regarding what the Defendant's counsel did at the hearing to suggest he was not a competent attorney. Therefore, the government submits the Defendant was represented by competent counsel at his guilty plea and sentencing hearing on the Domestic Abuse charge.

Second, the Defendant argues that his Sixth and Fifth Amendment rights under the constitution are triggered as a criminal defendant appearing in tribal court. As thoroughly detailed in *United States v. Bryant*, the Court plainly stated that neither the Sixth Amendment nor Fifth Amendment apply to tribal court proceedings. *Bryant*,---U.S.---, 138 S. Ct. 1954, at 1962, 195 L. Ed. 2d 317 (2016) (citations omitted). Because the IRCA controls rather than the United States Constitution in tribal court criminal proceedings, the government submits *Bryant* summarily halts the question on whether the Defendant's can claim a Sixth or Fifth Amendment right attached to his May 2nd hearing.

Third, the complaint sufficiently sets forth the facts to support a guilty plea. The tribal court asks the Defendant whether he understands the complaint

against him and he affirmatively answers yes. The complaint alleged that the Defendant knowingly caused bodily injury by striking the victim, a household member, in the face on January 31, 2017, on the Rosebud Sioux Indian Reservation. The complaint accurately set for the victim's name, location, time, and elements of Domestic Abuse, which the government submits is a sufficient factual basis to support the plea of guilt.

CONCLUSION

It is the position of the United States that there is no basis for suppressing the statements made by the Defendant to law enforcement on January 31, 2017, nor the guilty plea by the Defendant to Domestic Abuse on May 2, 2017. For the foregoing reasons, the United States respectfully requests that the Court deny the Defendant's Motion to Suppress Statements and tribal court guilty plea in all respects.

Dated this 16th day of January, 2018.

Respectfully submitted,

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