UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. AARON SANTISTEVAN, Defendant.	CR 19-30017 MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE

This Memorandum of Law is offered in support of Defendant Aaron Santistevan's Motion to Suppress Evidence, pursuant to the local rules of the United States District Court for the District of South Dakota.

STATEMENT OF FACTS

1. An Indictment was filed against Defendant on February 13, 2019, charging him with Possession of Ammunition by a Prohibited Person in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(d).

2. According to the Rosebud Sioux Tribe law enforcement reports, tribal officer Joshua Antman reported that on December 28, 2018, at approximately 9:07 p.m., Antman observed a vehicle (beige 2008 Lincoln MKZ with Colorado plates) he believed to be speeding and gauged the speed on radar as being either 65 m.p.h. or 59 m.p.h. in a 45 m.p.h. zone on U.S. Hwy 18. Antman reported that as he

passed the car he observed it to be a Lincoln MKZ with a Colorado license plate. Antman turned around and proceeded to pull the car over.

3. Prior to this stop, tribal law enforcement was on the look-out for this vehicle. On June 26, 2018, tribal officer Gerald Dillon requested a full registration check on this vehicle. On October 28, 2018, it was alleged to law enforcement that Defendant has been known to carry a firearm on his person or in his vehicle under his seat. On December 25, 2018, officer Chad Roe made a report that this vehicle was parked at a "drug house" target location, ran the Colorado plates and learned it belonged to Defendant. Law enforcement's intel from a couple weeks prior was that the Defendant was involved in a drug trade and that he carries a firearm. Roe reported that law enforcement was attempting to locate him "for some time now but he had been out of the area." After doing further checking, the officer learned that Defendant is a convicted felon and prohibited from owning a firearm. It is under this backdrop that Officer Antman proceeded to stop the Defendant's vehicle three days later on December 28, 2018, for an alleged speeding violation.

4. When Antman stopped Defendant on December 28, 2018, he approached the passenger side door and opened the door. He advised the Defendant that he was stopped for speeding, but the Defendant denied he was speeding. Antman told the Defendant that he was not going to argue with Defendant, and requested the Defendant's license and registration. Antman's body cam does not show the radar speed of Defendant's vehicle. There is no evidence to support Antman's

claim that Defendant was speeding, other than the body cam video of Antman claiming Defendant was speeding and Defendant denying doing so. The evidence does show that law enforcement was on the lookout for this car, but had not sought any warrant to search it or arrest Defendant for any misconduct prior to pulling him over that night.

5. While at the passenger side door of the car, Antman told the Defendant "nice car you got" and inquired if Defendant was a tribal member, to which Defendant advised he was not. Antman observed a Corona bottle in the middle cup holder and requested the bottle. Antman observed inside the bottle was a plastic bag, with what appeared to be green crumbs, stems and an alleged marijuana seed.

6. Antman was advised by dispatch that Defendant's license was suspended. Antman requested a drug dog to the scene and asked if a sheriff was available. When Antman returned to the Defendant, Defendant had his hand on the shifter and appeared to have the car in drive. Antman asked Defendant if he was going to take off. Antman opened the door and Defendant took off.

7. Tribal law enforcement engaged in a pursuit of Defendant. During the pursuit, an officer claimed Defendant threw something out of the car, but no evidence was obtained of that item. Ultimately, spikes were placed on the road, the tires were spiked and the car stopped on the side of the road. A toy on the passenger side of the car floorboard was on fire and officers got the item out of the car and extinguished the fire. Defendant was placed under arrest and was detained by tribal police until a Todd County Sheriff deputy arrived.

8. After the Defendant had been arrested and handcuffed and away from the passenger compartment of the car, the tribal police searched the car. An officer used the car key to open the trunk. There was a white Scheels bag that was tied shut. Another officer used a knife or something similar to cut the bag open. The contents of the bag were two boxes of Hornady 50 AE caliber rounds of ammunition. Also taken from Defendant was U.S. currency in the amount of $16,145.

9. Defendant was charged in state court in Todd County, Sixth Judicial Circuit, South Dakota, with Possession of a Firearm and Driving with a Suspended License, by complaint dated December 31, 2018. The charges were dismissed on January 17, 2019.

10. The car was towed to the Rosebud Law Enforcement building and stored in a garage until Ben Estes obtained a federal search warrant. Included in the Affidavit for Search Warrant was the officers search of the trunk and seizing the ammunition, which is the evidence of the charge in the Indictment.

ARGUMENT AND AUTHORITIES

The defense moves to suppress the evidence seized from Defendant's person and from the Lincoln MKZ on the grounds that the initial basis for stopping the car was an illegal pretextual stop and not the alleged speeding violation that Antman claims, and that the subsequent search of the car was illegal and violated the Defendant's Fourth Amendment rights. The defense asserts that the tribal police officers search of Defendant's vehicle was unconstitutional and requires suppression of the evidence found in the vehicle. The Fourth

Amendment to the United States Constitution forbids unreasonable searches and seizures." Under the Fourth Amendment's Exclusionary Rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of an illegal search and seizure. *Mapp v. Ohio*, 367 U.S. 643, 654 (1961).

A. Illegal Stop.

The law is settled that in Fourth Amendment terms a traffic stop entails a seizure of the driver even though the purpose of the stop is limited and the resulting detention is quite brief. *Brendlin v. California*, 551 U.S. 249, 255 (2007). Here, the defense asserts that the tribal law enforcement conducted a pretext stop, based upon claims that Defendant's vehicle was seen at a drug house, and that Defendant was alleged to have a firearm and was a convicted felon. The defense disputes the officer's claim that Defendant was speeding. The alleged speeding violation was merely a pretext for stopping the Defendant in an attempt to discover or obtain evidence of an unrelated crime. A pretextual traffic stop violates the Fourth Amendment. *United States v. Pereira-Munoz*, 59 F.3d 788, 791 (8th Cir. 1995). In that the stop was not based on a reasonable suspicion or probable cause, the stop becomes unreasonable under the Fourth Amendment. Any evidence subsequently obtained from Defendant or the vehicle must be suppressed under *Mapp v. Ohio*, 367 U.S. 643 (1961), and constitutes "fruit of the poisonous tree" under *Wong Sun v. United States*, 371 U.S. 471 (1963).

B. Illegal Search of Car on December 28, 2018.

Under *Arizona v. Gant*, 556 U.S. 332, 343-44 (2009), the police were not justified to search the car as a search incident to arrest, since Defendant was no longer in or near the vehicle when it was searched, but was instead arrested, handcuffed, and taken away from the passenger

compartment of the car. Defendant's conduct constituted driving with a suspended license and fleeing from the officer, evidence of neither would be found in the car, let alone the inside the trunk in a closed plastic Scheels bag. Therefore, the extent of then search, entering the trunk and opening a closed plastic bag, was unreasonable and requires suppression of the ammunition found.

In addition, the tribal law enforcement officers who conducted the search on December 28, which yielded the ammunition evidence, acted beyond their powers. The defense asserts that the law enforcement reports do not establish that Defendant is Indian, and therefore, as a non-Indian the Defendant is not subject to the criminal jurisdiction of the Rosebud Sioux Tribe. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 195 (1978). This is supported by the fact that tribal law enforcement turned custody of the Defendant over to the Todd County sheriff's deputy, and Defendant was charged in Todd County, South Dakota state court, rather than tribal court. The Supreme Court in *Duro v. Reina*, 495 U.S. 676, 697 (1990), recognized that tribal law enforcement authorities have the power to restrain those who disturb public order on the reservation, and may exercise their power to detain the offender and transport him to the proper authorities. However, tribal officers must avoid effecting a constitutionally unreasonable search or seizure. Here, the tribal officers had no legal authority to conduct a search of the car. The Defendant could not be prosecuted in tribal court for evidence found in the car, therefore, conducting a search of the car at the scene was constitutionally unreasonable.

Finally, the observations made by Antman and the bottle taken at the time of the initial stop was insufficient to support probable cause to search the car for drugs. The defense received no evidence that the items inside the Corona bottle were in fact illegal drugs. The officer did not

claim smelling the odor of marijuana or any other indicia of an illegal drug. And, as argued above, Rosebud Sioux Tribe lacks criminal jurisdiction to charge a non-Indian with a drug offense.

C. Illegal Search of Car on January 5, 2019.

The fruits of the January 5, 2019, warrant search were the products of the illegal December 28, 2018, search of the trunk and opening the Scheels bag. When officers conduct an illegal search (on December 28), and then present the fruits of that illegal search to a judge to obtain a warrant (set forth in the affidavit for search warrant), then the evidence found during execution of the warrant is the fruit of the earlier illegal search. *Murray v. United States*, 487 U.S. 533, 542–44 (1988). And "[a] warrant obtained after an illegal search is not an independent source if either of the following are true: 'if the agents' decision to seek the warrant was prompted by what they had seen during the initial [search],' [or] 'if information obtained during that entry was presented to the Magistrate and affected his decision to issue the warrant.'" *United States v. Swope*, 542 F.3d 609, 613 (8th Cir. 2008) (quoting *Murray*, 487 U.S. at 542). "Once the defendant comes forward with specific evidence demonstrating taint"—as here, where the warrant affidavit included the fruits of the earlier illegal trunk and Scheels bag search—then "the ultimate burden of persuasion to show the evidence is untainted lies with the government." *United States v. Riesselman*, 646 F.3d 1072, 1079 (8th Cir. 2011). The government can't meet this burden.

Finally, the defense resists any claim by the government of an inevitable discovery claim that the federal search warrant executed on January 5, 2019, constitutionally authorized the vehicle search of the car. As shown above, probable cause would not have supported a warrant

without the December 28, 2018, unconstitutional search of the trunk, and such evidence would not have inevitably discovered by law enforcement.

For these reasons, the defense moves to suppress the evidence seized in this case, particularly the ammunition inside the Scheels bag found in the trunk.

Dated this 15th day of March, 2019.

Respectfully submitted,

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