

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

UNITED STATES OF AMERICA,

CR 19-30017

Plaintiff,

DEFENDANT'S OBJECTIONS TO
REPORT AND RECOMMENDATION
FOR DISPOSITION OF MOTION TO
SUPPRESS EVIDENCE

vs.

AARON SANTISTEVAN,

Defendant.

Pursuant to 28 U.S.C. § 636(b)(1), Defendant Aaron Santistevan, by and through his attorney, Assistant Federal Public Defender Edward G. Albright, makes the following objections to the Report and Recommendation For Disposition of Motion to Suppress Evidence issued by the Magistrate Judge on April 15, 2019 (DCD 32).

The defense filed a motion and memorandum of law in support, seeking to suppress all evidence seized and derived from the stop and searches of Defendant (DCD 19 & 20), and further supplemented the written motion with an oral motion made at the motion hearing to suppress Defendant's statements under *Miranda* and involuntariness grounds. The Magistrate Judge recommends the suppression motion as amended be granted in part and denied in part. The Magistrate Judge recommends that the evidence shall not be suppressed, but that Defendant's

statements are inadmissible except for impeachment purposes. The defense objects to these findings and recommendations to the extent they deny Defendant's motion to suppress.

A. Stop.

The defense objects to the Magistrate Judge's findings of fact and legal conclusions that the stop of the vehicle was a valid traffic stop for a speeding violation. The defense asserts that stop was an unreasonable and pretextual seizure in an attempt to discover or obtain evidence of an unrelated alleged crime, and the defense relies on the arguments and authorities set forth in the defense memorandum in support of motion to suppress.

B. Vehicle Search.

The defense objects to the Magistrate Judge's findings of fact and legal conclusions that the tribal officers had probable cause to search the vehicle and its contents. The defense asserts that the search was unreasonable in several grounds: (1) that the tribal officers had no legal authority to search the car because Defendant was not an Indian and the tribe had no jurisdiction to charge him in tribal court with whatever evidence the officers were searching for, so they had no right to search in the first place; (2) that the tribal officers were not justified in searching his car incident to arrest because he no longer near the vehicle, under *Gant*; and (3) the entering of the trunk and opening a closed plastic bag was unreasonable as well and required suppression of the ammunition in the bag.

The defense objects to the Magistrate Judge's findings and recommendations that the detention of Defendant was valid, and that automobile exception and probable cause uphold the search of the vehicle. Furthermore, contrary to the Magistrate Judge's finding that the collective

knowledge of the officers was that Defendant was involved in the drug trade and carried a firearm on his person or under the seat of his vehicle, such finding was not supported by the officer's testimony at the motion hearing. Officer Antman testified, when asked if he was aware of an allegation that Defendant carried a firearm on his person or in his car under his seat, responded "I didn't know that." (Mot. Hrg. Tr. 24, lines 18-21). When asked if Defendant was allegedly involved in a drug trade and carried a firearm, Antman said "I can't recall that." (Mot. Hrg. Tr. 25, lines 6-9). He later testified "I wasn't aware of any reports about him carrying a gun." (Mot. Hrg. Tr. 26, line 16). Officer Dillon was asked if he was aware that Defendant was alleged to have carried a firearm on his person or under his car seat, to which Dillon said "I don't recall." (Mot. Hrg. Tr. 66, lines 17-20). Officer Dillon was asked about a phone call he received from Officer Roe regarding whether he was informed Defendant was allegedly involved in a drug trade and carried a firearm, and Dillon said "I don't remember the details of the phone call." (Mot. Hrg. Tr. 67, lines 4-9). These officers denied knowledge of the allegations of Defendant being involved in the drug trade and carrying firearms, and neither specifically said they recalled being aware of what Officer Roe put in his report. Nor did Officer Roe testify to his involvement in the search of the car and providing such information to those officers during the search. The defense asserts that such allegations, unknown to the officers conducting the search of the car, does not serve as basis for the search, that the search was unreasonable, and the defense relies on the arguments and authorities set forth in the defense memorandum in support of motion to suppress.

C. Statements.

The defense concurs with the Magistrate Judge's findings and conclusions that Defendant's statements were taken in violation of his *Miranda* rights and must be suppressed. The defense objects to the findings and recommendations that the statements were voluntary and therefore admissible for impeachment purposes if Defendant testifies.

D. Tainted Fruit.

The defense objects to the Magistrate Judge's findings of fact and legal conclusions that the January 5, 2019, search of the car was not the tainted fruit of the December 28, 2018, Fourth Amendment violation. The defense asserts that all evidence obtained following the issuance of the search warrant must be suppressed as the illegal fruit of the unreasonable stop and search of the car on December 28, 2018. The defense relies on the arguments and authorities set forth in the defense memorandum in support of motion to suppress.

WHEREFORE, the defense objects to the Magistrate Judge's Report and Recommendation and requests this Court to grant Defendant's motion to suppress.

Dated this 16th day of April, 2019.

Respectfully submitted,

NEIL FULTON
Federal Public Defender
By:

/s/ Edward G. Albright

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