

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES FARDEN,

Plaintiff,

1:23-cv-00851-KK-LF

v.

UNITED STATES,

Defendant.

RESPONSE OPPOSING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Based upon the available evidence, a reasonable fact finder could conclude that Officer Vigil lacked reasonable suspicion to drive off of Buffalo Trail Rd. and onto Mr. Farden’s family property on the date in question, or to exit his vehicle and approach Mr. Farden to question and subsequently detain Plaintiff. All without a warrant.

A reasonable fact finder could conclude that far from having reasonable, particularized suspicion, Officer Vigil acted on a mere hunch that the smell of Cannabis outdoors in a rural area on the date in question, and which a colleague had smelled a day before east of 80 Buffalo Trail Rd., was originating from Mr. Farden’s family property. Even if probable cause to arrest Mr. Farden was later established by Officer Vigil; this does not retroactively justify the officer’s initial actions. Specifically, Officer Vigil’s entry onto Mr. Farden’s family property, approach of Mr. Farden, and questioning of Mr. Farden are not made retroactively constitutional by Officer Vigil later obtaining an admission that Plaintiff was growing state licensed medical Cannabis on the property.

Plaintiff therefore respectfully asks the Court to deny Defendant’s request for summary judgment as to Mr. Farden’s False Arrest claim. Plaintiff does not oppose entry of summary judgment in favor of Defendant with respect to Plaintiff’s claim for battery/excessive force.

**RESPONSE TO STATEMENT OF
ALLEGEDLY UNDISPUTED MATERIAL FACTS**

1. Plaintiff admits UMF No. 1, 2, 3, 4, and 5.
2. Plaintiff denies UMF No. 6. While a person may be able to see the very top of the fenced in area Defendant references, a person seated in their vehicle traveling along Buffalo Trail Rd. could not see into the fenced area or see Plaintiff walking around inside the fenced area. [Exhibit One, *Affidavit of Charles Farden* at parags. 8, 9, and 10 and at photographs 3, 4, and 5].
3. Plaintiff admits UMF No. 7.
4. Plaintiff denies the allegations in UMF No. 8 that Officer Vigil could see cannabis plants within a barbed wire fence area from the driveway of Mr. Farden's family property. This is not possible. [Exhibit One, at parags. 11-16 and photographs 6-11]. Plaintiff admits the remainder of the allegations set forth in UMF No. 8.
5. Plaintiff admits UMF No. 9-20.
6. Plaintiff denies the allegations set forth in UMF No. 21 that Officer had a plain view of the cannabis plants in the field from Buffalo Road or from the driveway to the family property. *See* response to UMF No. 6 and 8 *supra*. Plaintiff admits the remainder of the allegations set forth in UMF No. 21.
7. Plaintiff admits UMF No. 22-35.

ARGUMENT

Defendant is Not Entitled to Summary Judgment on Mr. Farden's False Arrest Claim

8. There is no dispute that Officer Vigil effectuated an arrest of Mr. Farden without a warrant. [UMF No. 15, Officer Vigil handcuffed Mr. Farden and UMFs *generally*, no

mention of Officer Vigil seeking or obtaining a warrant to search Mr. Farden's family property or to arrest Plaintiff]; *Cortez v. McCauley*, 478 F.3d 1108, 115 (10th Cir. 2007) (An arrest, rather than an investigative detention, occurs if an officer uses firearms, handcuffs, or other forceful techniques).

9. A reasonable finder of fact could conclude, based upon the evidence, that Officer Vigil lacked reasonable suspicion to turn his cruiser off of Buffalo Trail Rd., drive onto Mr. Farden's family property, park and exit his vehicle, approach Mr. Farden, and question Plaintiff regarding the odor of Cannabis. The Court should therefore deny Defendant's request for summary judgment on Mr. Farden's claim for false arrest.
10. "A police officer may, in appropriate circumstances approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." *State v. Contreras*, 2003-NMCA-129, 134 N.M. 503, 505, 79 P.3d 1111 (internal citation omitted).
11. The officer, looking at the totality of the circumstances, must be able to form a reasonable suspicion that the individual in question is engaged in or is about to be engaged in criminal activity. *State v. Urioste*, 2002 NMSC 23, P10, 132 N.M. 592, 52 P.3d 964. "Reasonable suspicion must be based on specific articulable facts and the rational inferences that may be drawn from those facts." *State v. Flores*, 1996 NMCA 59, P7, 122 N.M. 84, 920 P.2d 1038. Reasonable suspicion is dependant on both the content of information possessed by the police and its degree of reliability. *Ala. v. White*, 496 U.S. 325, 330, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990).
12. The purpose of requiring objectively reasonable suspicion based on the circumstances "is to prevent and invalidate police conduct based on 'hunches.'" *State v. Ochoa*,

2009-NMCA-0002, 25, 146 N.M. 32, 206 P.3d 143 (internal citation and quotation omitted).

13. Here, Officer Vigil took these actions without a warrant based upon a mere hunch. On the date in question, Officer Vigil was aware that his colleague had smelled the strong odor of Cannabis the day prior coming somewhere from east of 80 Buffalo Trail Rd. [UMF No. 1-2]. On the next day, Officer Vigil claims that he smelled the strong odor of Cannabis outdoors while driving along Buffalo Trail Rd. [UMF No. 5].
14. Smelling the odor of Cannabis *outdoors* while driving along a rural road does not give rise to *reasonable* inference that Mr. Farden's family property was the source of the odor.
15. Officer Vigil also did not have a plain view of the enclosed area where Mr. Farden was growing his state licensed medical cannabis plants from inside his cruiser driving along Buffalo Trail Rd., or of the cannabis being grown inside of it. [Exhibit One at parags. 8, 9, and 10 and at photographs 3, 4, and 5].
16. Based upon this limited information, a reasonable fact finder could conclude that it was unreasonable for Officer Vigil to enter onto Mr. Farden's family property or to approach Mr. Farden for purposes of conducting an investigation into the source of the Cannabis odor.
17. Only after approaching and speaking with Mr. Farden, did Officer Vigil arguably developed probable cause to arrest given Mr. Farden's admission that he was growing medical Cannabis on the property. [UMF No. 8, 9, and 10].
18. The admission obtained by Officer Vigil was directly contingent upon the preceding constitutional violation. Specifically, the officer's entry onto Mr. Farden's family property and subsequent approach of Mr. Farden occurred without reasonable suspicion, rendering the admission unobtainable otherwise.

19. Subsequent probable cause for arrest does not rectify the initial constitutional breach. The determination of Officer Vigil's reasonable suspicion hinges solely on the information accessible to him at the time of the action, and is not influenced by later-acquired evidence—including Mr. Farden's admission. *See, State v. Urioste*, 2002 NMSC 23, P10. Furthermore, a genuine factual dispute exists regarding Officer Vigil's claim that he could see cannabis growing in plain view when he entered his cruiser in Mr. Farden's driveway. [Exhibit One, at parags. 11-16 and photographs 6-11].
20. Defendant is therefore not entitled to summary judgment on Mr. Farden's false arrest claim.

WHEREFORE, Mr. Farden respectfully asks the Court to deny Defendant's *Motion for Summary Judgment* as to Plaintiff's False Arrest claim and for any other forms of relief the Court deems just and proper.

Respectfully submitted,

CANDELARIA LAW LLC

/s/ Jacob R. Candelaria

Jacob R. Candelaria
P.O. Box 27437
Albuquerque, New Mexico 87125
Ph: 505-295-5118
jacob@jacobcandelaria.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I filed a true and correct copy of the foregoing document with the Court's electronic filing and service system on June 9, 2025, which thereafter caused a true and correct copy of the same to be promptly and electronic served upon all parties entitled to notice of the same, as more accurately set forth in the Court's record of electronic delivery.

/s/ Jacob R. Candelaria

Jacob R. Candelaria