

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Court of Appeals of New Mexico

Filed 11/25/2025 10:03 AM

Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-41798

ERIK TSOSIE,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY

Louis E. DePauli, Jr., District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Henry Chynoweth, Honors Attorney/Assistant Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Melanie C. McNett, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

IVES, Judge.

{1} Defendant Erik Tsosie appeals the district court's denial of his motion to
suppress evidence arising from his detention by an off-duty, out-of-jurisdiction
officer. The district court concluded that, under *State v. Arroyos*, 2005-NMCA-086,
¶ 5, 137 N.M. 769, 115 P.3d 232, the officer could perform a citizen's arrest of

1 Defendant. Defendant argues that (1) his detention was not lawful because (A) the
2 proposition from *Arroyos* on which the district court relied is no longer good law
3 and (B) NMSA 1978, Section 66-8124(A) (2007) did not authorize his detention;
4 and (2) his detention violated his rights under Article II, Section 10 of the New
5 Mexico Constitution because it was unreasonably intrusive. We agree with
6 Defendant's first point that the officer was not authorized to detain him under
7 *Arroyos* or Section 66-8-124(A). However, we disagree with his second point
8 because we conclude that the officer was not acting as an agent of the government
9 but was instead acting as a private party when he detained Defendant, and so
10 constitutional protections against unreasonable searches and seizures do not apply.
11 So although Defendant's detention by the off-duty officer was unauthorized by
12 precedent or statute, the district court properly declined to suppress the fruits of the
13 subsequent investigation by law enforcement. We therefore affirm.

14 **DISCUSSION**

15 {2} “Appellate review of motions to suppress presents mixed questions of law and
16 fact,” and we therefore “examine whether there is substantial evidence to support
17 the district court’s factual findings” and “determine de novo the constitutional
18 reasonableness of the search or seizure.” *State v. Ontiveros*, 2024-NMSC-001, ¶ 8,
19 543 P.3d 1191. However, because the parties in this case do not challenge the factual
20 findings, our only task is to apply the law to the facts. *See id.*

1 **I. The Detention Was Unlawful Because it Was Not a Valid Citizen’s Arrest**
2 **and Officer Lasiloo Was Not a “Commissioned, Salaried Peace Officer”**
3 **Pursuant to Section 66-8-124(A)**

4 {3} Officer Anthony Lasiloo, an off-duty Navajo Nation police officer, observed
5 Defendant driving at a Gallup, New Mexico gas station. Suspecting Defendant of
6 driving while intoxicated, Officer Lasiloo notified the Gallup Police Department
7 (GPD) and followed Defendant from the first gas station to a second, also in Gallup.
8 After Defendant walked out of the second gas station’s store, Officer Lasiloo
9 handcuffed him and told him he was being detained until GPD arrived. A GPD
10 officer arrived eight to ten minutes later.

11 {4} Defendant was charged with one count of aggravated driving while
12 intoxicated, contrary to NMSA 1978, Section 66-8-102(D)(3) (2016), and one count
13 of possession of an open container, contrary to NMSA 1978, Section 66-8-138
14 (2013). Both of these charges are for violations of the Motor Vehicle Code. *See*
15 NMSA 1978, § 66-1-1 (1978) (identifying Chapter 66, Articles 1 through 8 as the
16 Motor Vehicle Code).

17 **A. The Detention Was Not a Valid Citizen’s Arrest**

18 {5} The district court denied Defendant’s motion to suppress because it found
19 *Arroyos* to be dispositive on the issue of the detention’s legality. In *Arroyos*, this
20 Court held that “any person . . . may arrest another upon good-faith, reasonable
21 grounds that a felony had been or was being committed, or a breach of the peace was

1 being committed in the person's presence." 2005-NMCA-086, ¶ 5. However, in
2 *State v. Slayton*, 2009-NMSC-054, ¶ 26, 147 N.M. 340, 223 P.3d 337, our Supreme
3 Court limited the scope of this holding, explaining that "[t]o the extent that *Arroyos*
4 suggests that a private citizen, including a commissioned peace officer acting outside
5 the scope of [their] territorial jurisdiction, may make a citizen's arrest for suspected
6 violations of motor vehicle laws, it and any other cases so holding are overruled."
7 Applying *Slayton* to the facts of this case, because Officer Lasiloo acted outside the
8 scope of his territorial jurisdiction and detained Defendant for a suspected violation
9 of motor vehicle laws, we disagree with the district court's conclusion that the
10 detention was a lawful citizen's arrest.

11 **B. The Detention Did Not Meet the Requirements of Section 66-81-24(A)**

12 {6} For purposes of the Motor Vehicle Code, an arrest includes a temporary
13 detention, *see Slayton*, 2009-NMSC-054, ¶ 20, and Officer Lasiloo's temporary
14 detention of Defendant therefore constitutes an arrest that is subject to Section 66-
15 8-124(A). That statute states that "[n]o person shall be arrested for violating the
16 Motor Vehicle Code . . . or other law relating to motor vehicles punishable as a
17 misdemeanor except by [(1)] a commissioned, salaried peace officer [(2)] who, at
18 the time of arrest, is wearing a uniform clearly indicating the peace officer's official
19 status." *Id.* As we will explain, we conclude that the first statutory requirement is
20 not satisfied here.

1 {7} Although tribal law enforcement officers can be cross-commissioned to
2 enforce state law on state land, *see* NMSA 1978, § 29-1-11 (2005), Officer Lasiloo
3 was not duly commissioned to enforce state law in New Mexico at the time of
4 Defendant’s detention. Therefore, Officer Lasiloo was not a “commissioned,
5 salaried peace officer” within the meaning of Section 66-8-124(A). *See State v.*
6 *Ryder*, 1981-NMCA-017, ¶ 7, 98 N.M. 453, 649 P.2d 756 (“[T]hose officers who
7 may effect traffic arrests must be members of the New Mexico State Police, sheriffs
8 and their salaried deputies and members of any municipal police force.” (alteration,
9 internal quotation marks, and citation omitted)). Because the first element of Section
10 66-8-124(A) is not met, we need not consider whether the second element—the
11 arresting officer being in uniform—is met to conclude that Officer Lasiloo lacked
12 statutory authority to detain Defendant.

13 {8} We disagree with the State’s argument that neither *Slayton* nor Section 66-8-
14 124(A) applies here because they apply “only to arrests made for the purpose of
15 upholding the New Mexico Motor Vehicle Code,” and Officer Lasiloo detained
16 Defendant because he “posed a danger, not because he committed a misdemeanor
17 violation of the [M]otor [V]ehicle [C]ode.” We believe this is a distinction without
18 a difference. Officer Lasiloo testified that because of his training and experience in
19 field sobriety testing, upon observing Defendant at the first gas station, he became
20 concerned Defendant was driving while intoxicated. According to the State, Officer

1 Lasiloo then detained Defendant “in order to prevent Defendant from reentering the
2 roadway, believing that Defendant was intoxicated and a threat to public safety.”
3 And the purpose of Section 66-8-102, the Motor Vehicle Code provision Defendant
4 was charged with violating, “is to protect the health, safety, and welfare of the people
5 of New Mexico from the risk of harm posed by intoxicated drivers.” *State v. Sims*,
6 2010-NMSC-027, ¶ 3, 148 N.M. 330, 236 P.3d 642 (emphasis, internal quotation
7 marks, and citation omitted). We see no meaningful distinction between an effort to
8 prevent the Motor Vehicle Code violation of driving while intoxicated and an effort
9 to prevent the threat to public safety caused by a person who is driving while
10 intoxicated.

11 {9} For these reasons, we hold that Defendant’s detention was not authorized by
12 Section 66-8-124(A) and was not a valid citizen’s arrest. A private citizen’s lack of
13 authority to arrest, however, does not by itself establish that the seizure is
14 unconstitutional. *See Slayton*, 2009-NMSC-054, ¶ 21 (observing that even an
15 arbitrary private action implicates constitutional protections only under certain
16 circumstances). We therefore must determine whether any constitutional violation
17 occurred, requiring the suppression of evidence.

II. The Detention Did Not Implicate Defendant’s Constitutional Rights Because it Was Made by a Private Actor, Not an Agent of the Government

{10} Defendant argues that the unlawful detention violated his constitutional rights because it was unreasonably intrusive. The Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution protect citizens from unlawful searches and seizures conducted by the government, including a private party acting as an agent of the government. *See State v. Santiago*, 2009-NMSC045, ¶ 17, 147 N.M. 76, 217 P.3d 89; *State v. Crane*, 2014-NMSC-026, ¶ 27, 329 P.3d 689. A private party acts as an agent of the government if (1) the government “knew of and acquiesced in the intrusive conduct” and (2) the private party “intended to assist law enforcement efforts,” rather than intending “to further [their] own ends.” *Santiago*, 2009-NMSC-045, ¶ 18 (internal quotation marks and citation omitted); *see id.* (establishing the test for searches); *see Slayton*, 2009-NMSC-054, ¶ 23 (extending the test to seizures). If one or both elements of this agency test are not satisfied, constitutional protections do not apply. *See Slayton*, 2009-NMSC-054, ¶ 23 (“[T]he Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on [their] own initiative.” (internal quotation marks and citation omitted)); *Crane*, 2014-NMSC-026, ¶ 27 (“Article II, Section 10, protects citizens from governmental intrusions, not intrusions from members of the general public.” (text only) (citation omitted)). As

1 we will explain, because we conclude that Defendant has not satisfied the first
2 element of this test, we hold that Officer Lasiloo was not acting as an agent of the
3 government and that constitutional protections against unreasonable searches and
4 seizures therefore do not apply.

5 {11} Seeking to establish the first element, Defendant argues that GPD knew of
6 Officer Lasiloo's conduct because Officer Lasiloo called GPD twice to inform it that
7 he was observing Defendant and had followed him. However, the question is
8 whether GPD "knew of and acquiesced in *the intrusive conduct*," *see Santiago*,
9 2009-NMSC-045, ¶ 18 (emphasis added) (internal quotation marks and citation
10 omitted), and the intrusive conduct Defendant complains of is not being observed
11 and followed; it is instead being detained in handcuffs until GPD arrived. The record
12 does not establish that GPD told Officer Lasiloo to detain Defendant or that GPD
13 was even aware of the detention. What GPD knew is that Officer Lasiloo observed
14 a person that he thought was intoxicated driving a vehicle and had followed
15 Defendant from the first gas station to the second, but this is insufficient to establish
16 an agency relationship between GPD and Officer Lasiloo regarding the detention.
17 *Compare id.* ¶¶ 19-23 (concluding that there was no agency relationship where the
18 record failed to indicate that the government "requested, encouraged, or otherwise
19 participated" in the complained-of search), *with Slayton*, 2009-NMSC-054, ¶ 24
20 (concluding that there was an agency relationship where the government directed

1 the police service aide, its employee, to investigate and the aide then detained the
2 defendant).

3 {12} We hold that Officer Lasiloo did not act as an agent of the government, and
4 therefore constitutional protections against unreasonable searches and seizures do
5 not require suppression of the evidence seized as a result of Officer Lasiloo's
6 detention of Defendant.

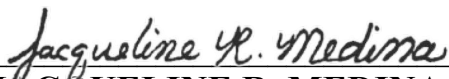
7 **CONCLUSION**

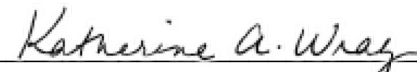
8 {13} We affirm.

9 {14} **IT IS SO ORDERED.**

10 
11 **ZACHARY A. IVES, Judge**

12 **WE CONCUR:**

13 
14 **JACQUELINE R. MEDINA, Chief Judge**

15 
16 **KATHERINE A. WRAY, Judge**