IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-42589**

MIGUEL ANGEL LEMUS MARTINEZ,

Defendant-Appellant.

APPEAL FROM THE METROPOLITIAN COURT OF BERNALILLO COUNTY
Maria I. Dominguez, Metropolitan Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Caitlin C.M. Smith, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

DUFFY, Judge.

{1} Defendant appeals from the denial of two motions to suppress he filed in the trial court. This Court issued a calendar notice proposing to summarily affirm. Defendant filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} "In reviewing the [trial] court's denial of a defendant's motion to suppress, the factual determinations are subject to a substantial evidence standard of review, but the application of the law to the facts is subject to de novo review." *State v. Serna*, 2018-NMCA-074, ¶ 9, 429 P.3d 1283. As we noted in our calendar notice, both motions were denied orally and the trial court did not enter any written findings. When there are no findings of fact and conclusions of law, we "will draw all inferences and indulge all presumptions in favor of the [trial] court's ruling." *State v. Funderburg*, 2008-NMSC-026, ¶ 10, 144 N.M. 37, 183 P.3d 922 (internal quotation marks and citation omitted). "When the evidence conflicts, we consider the evidence that supports the [trial] court's ruling; and we will draw all inferences and indulge all presumptions in favor of the [trial] court's ruling." *State v. Jason L.*, 2000-NMSC-018, ¶ 11, 129 N.M. 119, 2 P.3d 856.

{3} Defendant contends that the "illegal arrest by private security guards constituted state action that violated [Defendant]'s rights under Article II, Section 10 [of the New Mexico Constitution]." [MIO 7] Defendant articulates his argument under Article II, Section 10 of the New Mexico Constitution and relies on *State v. Santiago*, 2009-NMSC-045, 147 N.M. 76, 217 P.3d 89, which conducted its analysis of whether there was state action under the Fourth Amendment of the United State Constitution. [Id.] The Fourth Amendment of the United States Constitution does not protect against intrusions by private actors, unless "the private party acted as an

instrument or agent of the [g]overnment." *State v. Slayton*, 2009-NMSC-054, ¶ 23, 147 N.M. 340, 223 P.3d 337 (internal quotation marks and citation omitted) (interpreting the federal constitution). To determine whether a private person was acting as an agent or instrumentality of the government, *Santiago* developed a two-factor test that requires consideration of "(1) whether the government knew of and acquiesced in the intrusive conduct; and (2) whether the party performing the search intended to assist law enforcement efforts or to further [their] own ends." *Id.* ¶ 18 (internal quotation marks and citation omitted). Defendant does not suggest any basis for departing from the federal analysis, and thus we apply the two-factor test articulated in *Santiago*. *See State v. Powers*, 1998-NMCA-133, ¶ 21, 126 N.M. 114, 967 P.2d 454 ("We may depart from the federal analysis and afford broader protection under the New Mexico Constitution if we determine that: (1) the federal analysis is flawed or undeveloped; (2) there are distinctive state characteristics; or (3) there are structural differences between state and federal government.").

{4} In our calendar notice, we relied on *Santiago* in proposing to conclude that Defendant had not established the first factor: that the government knew of and acquiesced in the intrusive conduct. [CN 8] *Santiago*, 2009-NMSC-045, ¶ 18. In his memorandum in opposition, Defendant continues to rely on many of the same factual assertions in support of his argument as he presented in the docketing statement. Because these factual assertions were already addressed in the context of

the first *Santiago* factor in the calendar notice and do not cause us to reevaluate our proposed conclusion, we refer Defendant to the analysis therein. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (holding that "[a] party responding to a summary calendar notice must come forward and specifically point out errors of law and fact," and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{5} However, Defendant also now relies on the fact that a security guard informed the 911 operator that his supervisor had Defendant in his unit. [MIO 9] Defendant contends that "[i]t does not appear that the 911 operator told the guard to let [Defendant] go" and that "[e]ven though the State was then on notice that the private security guards were detaining [Defendant,] it took approximately an hour for police to arrive at the scene." [Id.]

{6} This assertion also does not cause us to reevaluate our proposed disposition in the calendar notice. As we noted in our calendar notice, *Santiago* held that "after-the-fact knowledge and acquiescence by law enforcement cannot transform the relationship between the employees and the police into an agency relationship. There must be some evidence of . . . government participation in the private search or affirmative encouragement." 2009-NMSC-045, ¶ 20 (alteration, omission, internal quotation marks, and citation omitted); *see Slayton*, 2009-NMSC-054, ¶ 23 (holding

that appellate courts apply the same test from *Santiago* to seizures). Defendant was already in the security vehicle prior to the 911 call and remained there until Officer Yaokuahtli Ortega arrived. [DS 8] Defendant does not assert that the 911 operators were law enforcement operators, nor does Defendant argue that Officer Yaokuahtli had knowledge that private security guards had detained Defendant prior to arriving on the scene. Based on the circumstances as presented in the MIO, there is nothing to suggest that police "requested, encouraged, or otherwise participated in" the detention, and we conclude the facts presented "fall[] short of satisfying the criteria for an agency relationship." *Santiago*, 2009-NMSC-045, ¶¶ 20, 22. Consequently, as was the case in *Santiago*, the unilateral actions of the security guards in this case cannot be attributed to the State. *Id.* ¶ 28 ("The security guards' unilateral action in this case cannot be attributed to the [s]tate. Merely accepting the evidentiary fruits, without more, does not constitute ratification of the security guards' conduct."). We therefore conclude that Defendant has not established the first *Santiago* factor, the security guards were not agents of the government, and the trial court did not err in denying Defendant's motion to suppress on these grounds.

{7} Defendant also relies on *State v. Wright*, 2022-NMSC-009, ¶ 27, 503 P.3d 1161, for the following proposition: "When an agent acting on behalf of the government—like the security guards here—arrests a person without statutory authority, a court uses a balancing-of-interests test to determine if the arrest was

constitutionally unreasonable under Article II, Section 10." [MIO 11] However, *Wright* is inapplicable here based on our conclusion that the security guards were not agents of the government. Indeed, *Wright* involved a situation where the state conceded the private actor made an arrest as a state actor. *Id.* ¶ 19.

{8} Defendant next contends that the trial court erred because he was subjected to a custodial interrogation that triggered his *Miranda* rights. [MIO 13] At the suppression hearing, Officer Ortega testified that he did not provide the *Miranda* warnings to Defendant because it was only an investigatory detention. [DS 8] "*Miranda* warnings are required when a person is (1) interrogated while (2) 'in custody.'" *State v. Wilson*, 2007-NMCA-111, ¶ 12, 142 N.M. 737, 169 P.3d 1184. Our ultimate inquiry in determining whether someone is in custody for *Miranda* purposes is whether there was "a formal arrest or restraint of freedom of movement of the degree associated with a formal arrest." *Id.* ¶ 23.

{9} In asserting that he was subjected to custodial interrogation, Defendant mainly relies on *State v. Snell*, 2007-NMCA-113, 142 N.M. 452, 166 P.3d 1106. However, the facts of that case are distinguishable. *Cf. id.* ¶ 17 ("[O]ur Supreme Court has held that the bare fact that a defendant is questioned while in a police vehicle is in itself insufficient to constitute a custodial interrogation."). In *Snell*, the trial court found that the "[d]efendant was threatened with arrest, physically escorted to the police vehicle, placed in the back seat, and instructed to remain there." *Id.* ¶ 20. The doors

to the police vehicle were locked and the defendant was not able to leave. *Id.* The police later returned and either questioned the defendant from the front seat of the police vehicle while the defendant was locked in the back or while the officer stood outside the opened door of the police vehicle, blocking the defendant's exit from the vehicle. *Id.*

{10} These facts are not present here. As we noted in the calendar notice, Defendant was not in a police vehicle, he was not handcuffed, there was no testimony that the doors to the security vehicle were locked, and he was not informed that he could not leave the vehicle or that he was under arrest. [CN 4-5] Although Officer Ortega briefly shut the door to the security vehicle during the course of his investigation, we do not believe this was a restraint of movement of the degree associated with a formal arrest that was present in *Snell*. *See Wilson*, 2007-NMCA-111, ¶ 15 (holding that a person can be seized during a routine traffic stop and may believe they are not free to leave, but they are not in custody for the purposes of *Miranda*); *Armijo v. State*, 1987-NMCA-052, ¶ 6, 105 N.M. 771, 737 P.2d 552 ("The fact that the motorist may temporarily feel that he is not free to leave does not render him 'in custody' for purposes of *Miranda*."). After Defendant had already showed signs of impairment, had admitted to drinking, and had informed Officer Ortega of the empty beer cans in his wrecked vehicle, Officer Ortega told Defendant that he needed to wait in the security vehicle "for a second" before Officer Ortega administered the

standardized field sobriety tests and while he briefly went to investigate Defendant's vehicle containing the beer cans. [CN 2-3] *See State v. Sanchez*, 2001-NMCA-109, ¶ 22, 131 N.M. 355, 36 P.3d 446 (holding that reasonable requests to perform standardized field sobriety tests do not rise to the level of custodial interrogation, which would require *Miranda* warnings). In sum, Defendant was subject to a driving while intoxicated investigation while he was seated in the security vehicle, rather than his own vehicle, which according to Officer Ortega's testimony, was inoperable and not safe for Defendant to occupy. [DS 7] In light of our standard of review, we conclude that Defendant's movement was not restrained to a degree associated with a formal arrest during Officer Ortega's questioning; Defendant was subject only to an investigatory detention. *See Armijo*, 1987-NMCA-052, ¶ 6 ("*Miranda* warnings are required after a traffic stop only if [the] defendant can demonstrate that, at any time between the initial stop and the arrest, he was subjected to restraints comparable to those associated with a formal arrest." (internal quotation marks and citation omitted)). The trial court did not err in denying Defendant's motion to suppress based on an alleged violation of his *Miranda* rights.

{11} Accordingly, for the reasons stated in our notice of proposed disposition and herein, we affirm.

{12} **IT IS SO ORDERED.**

Megan P Duffy

MEGAN P. DUFFY, Judge

WE CONCUR:

ZACHARY A. IVES, Judge

Katherine A. Wray

KATHERINE A. WRAY, Judge