

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 12-CF-2967-A

STATE OF FLORIDA,

Plaintiff(s),

vs.

DAVID MALONEY,

Defendant(s).

FILED IN OFFICE  
MARRIANE MORSE  
CLERK, CIRCUIT COURT  
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SEMINOLE CO. FLA.  
D.C.

**ORDER SUPPRESSING EVIDENCE**

The Defendant was charged with three counts of second-degree murder and two counts of attempted first-degree premeditated murder. He was tried from March 31 – April 9, 2014. The Court granted a judgment of acquittal as to count one, the jury found the Defendant not guilty on counts 2 – 4, and a mistrial was granted on Count 5 when the jury was unable to reach a verdict on that count.

On April 11, 2014, the Defendant filed a “Motion to Suppress Statements and Evidence.” The statements and evidence at issue were obtained at the scene of the shootout on September 30, 2012. The Court held an evidentiary hearing on this motion on May 13, 2014. At the hearing, Sergeant Brad Dula, Officer Nathan Ecalbarger, Sergeant Clint Gionelli, Sergeant Brad Heath, and Investigator Valerie Riddick testified.

The facts pertinent to this motion are relatively undisputed, it is only their legal significance that must be determined. At approximately 10:30 a.m. on September 30, 2012, shots were fired between rival motorcycle gangs at a VFW Post in Winter Springs. Winter Springs dispatch requested all available law enforcement units to assist, including officers in surrounding jurisdictions. At the scene, 30-40 people were temporarily detained and handcuffed face down on the ground for officer safety and to allow the officers to secure the scene.

The Defendant was one of the people detained. He was kept in investigative detention for approximately twelve hours. He remained in handcuffs for most of that time, but was briefly uncuffed to consume water and to submit to a gunshot residue test. At some point during the afternoon, he was moved from the VFW to a nearby neighborhood senior center. The law enforcement officers maintained that he was not placed under arrest at any time during this detention. At the outset, he was patted down for weapons by Longwood Police Officer Ecalbarger, who seized a .22 caliber derringer and a double-edged knife. Shortly after that, Sergeant Heath took custody of the Defendant and asked him to identify

his property from among all of the property seized by law enforcement from the detainees. He claimed the .22 caliber firearm and knife. At that time, Sergeant Heath noticed that the Defendant wore a holster that appeared too big for the .22 caliber handgun. Sergeant Heath then inquired as to the whereabouts of the weapon that fit the holster. The Defendant then indicated that he had a .380 caliber firearm and gestured to its location on the ground in the parking lot. The Defendant remained in investigative custody until that evening, when Investigator Riddick conducted a formal interview with him at approximately 10:00p.m. Immediately before that interview, the Defendant was read *Miranda* for the first time. After the interview, at approximately midnight, the Defendant was formally placed under arrest.

The Defendant asserts several legal grounds for the suppression of the statements and evidence. First, he asserts that the initial detention was not based upon probable cause or reasonable suspicion. He next claims that the initial pat down was unlawfully conducted by a Longwood police officer acting outside of his territorial jurisdiction. Finally, he claims that his admissions regarding his ownership of the knife and firearms were given in response to custodial interrogation without having been first advised of his *Miranda* rights.

The first issue is whether his initial detention, while being handcuffed and patted down, was lawful. In light of the fact that officers responded to reports of multiple gunshots, arrived at a chaotic scene with 30-40 people present and several injured or deceased people on the ground, it was reasonable for officers to temporarily detain everyone in the area to investigate who the participants were. *Reynolds v. State*, 592 So. 2d 1082, 1084-85 (Fla 1992). Moreover, because it was likely that any of the participants were armed, officer safety allowed law enforcement to handcuff the detainees for officer safety. *Id* at 1085. Thus, the initial investigative detention of the Defendant was lawful.

At that point, a pat down search of the Defendant for weapons would have been authorized under Fla. Stat. §901.151(5). However, that pat down search was conducted by Officer Ecalbarger, a Longwood Police Officer acting outside his jurisdiction. Officer Ecalbarger testified that he was authorized to participate in the investigation under the Mutual Aid Agreement in effect in Seminole County at the time. However, the State failed to establish that there was an operative Mutual Aid Agreement in effect on September 30, 2012. Even if this Court accepted Officer Ecalbarger's testimony that there was such an agreement in place, there was no evidence that the Mutual Aid Agreement was properly invoked, that officers complied with the conditions of the Mutual Aid Agreement, or that the Mutual Aid Agreement allowed for an out-of-jurisdiction officer to conduct a physical search.

The State alternatively claims that in the absence of a Mutual Aid Agreement, Officer Ecalbarger was acting in his capacity as a private citizen and therefore not subject to the constraints of the Fourth Amendment. Officers may conduct citizen's arrests when outside their jurisdiction, as long as they do not act under color of office. *Phoenix v. State*, 455 So. 2d 1024, 1025 (Fla 1984). Here, there was no basis

for Officer Ecalbarger to conduct a citizen's arrest. A citizen's arrest may be made upon "a person who commits a felony in [the citizen's] presence, or ... where a felony has been committed, and where the arresting citizen has probable cause to believe, and does believe, the person arrested to be guilty." *Collins v. State*, 143 So. 2d 700, 703 (Fla. 2d DCA 1962). Here, no felony occurred in Officer Ecalbarger's presence, and there was no indication that he had probable cause at that time to believe that the Defendant committed any felony. Thus, there was no legal authority for Officer Ecalbarger to conduct a citizen's arrest. Nor does a valid citizen's arrest permit a search of a constitutionally protected area or seizure of evidence as a result of that search. *Id.*

Moreover, even had a valid basis existed to conduct a citizen's arrest, the facts of this case preclude such a finding because he clearly acted under color of office. He helped to take control of the scene by ordering people to the ground. He assisted in handcuffing the Defendant, took control of the Defendant, and conducted a pat down of the Defendant. As a result of the pat down he seized a .22 caliber Derringer and double-edged knife from the Defendant's person. These actions mandate a finding that he acted under color of law. *Ripley v. State*, 898 So. 2d 1078, 1080 (Fla. 4th DCA 2005). Thus, he was a state actor, and his actions violated the Defendant's Fourth Amendment rights. Under any interpretation, there is no evidence that Officer Ecalbarger had the authority to search the Defendant, therefore, the evidence seized during that search, specifically the .22 caliber Derringer and the double-edged knife, must be suppressed.

After Officer Ecalbarger conducted the pat down search and seizure, the Defendant was returned to the ground in the grassy area. Sergeant Heath of the Winter Springs Police Department approached him a short time later. The Defendant remained handcuffed during this interaction. Sergeant Heath and another officer escorted the Defendant over to the site of the collection of property seized from the group of persons detained, and requested that the Defendant identify his property. The Defendant claimed the .22 caliber Derringer and the knife. Upon further inquiry by Sergeant Heath, the Defendant also claimed a .380 caliber firearm in the parking lot. He had not been advised of his *Miranda* rights at this time.

The Defendant was clearly subjected to interrogation by Sergeant Heath.<sup>1</sup> Interrogation occurs when a person is "subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response." *Traylor v. State*, 596 So. 2d 957, 966 n.17 (Fla. 1992). Sergeant Heath clearly intended to elicit a response that could be incriminating.

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<sup>1</sup> In the motion, the Defendant claims that these statements were made to Officer Whitmore of the Winter Springs Police Department, but at the hearing Sergeant Heath claims to have elicited the statements in the presence of Officer Matt Scoval.

The next question is whether the Defendant was in custody at this point. "A person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest." *Ramirez v. State*, 739 So. 2d 568, 573 (Fla. 1999). Law enforcement's characterization of the detention as an investigatory detention is irrelevant. "The proper inquiry is not the unarticulated plan of the police, but rather how a reasonable person in the suspect's position would have perceived the situation." *Davis v. State*, 698 So.2d 1182, 1188 (Fla.1997). Here, the Defendant was one of 30-40 people at the VFW Post at the time shots were fired. He was ordered to the ground and continuously kept handcuffed for 30-45 minutes at the point of his contact with Sergeant Heath. There was no evidence presented that he was a suspect at this time. Law enforcement searched him and escorted around him to various places in the parking lot of the VFW post. No officer advised the Defendant that he was not under arrest or that a criminal investigation was being conducted. While law enforcement's actions at this point may have been valid in order to take control of the scene and to provide for officer safety, a reasonable person in the Defendant's position would have believed that his freedom of action was curtailed to a degree associated with a formal arrest. *Ramirez*, 739 So. 2d at 568. Thus, he was in custody for purposes of *Miranda*.

Since he was subjected to custodial interrogation by Sergeant Heath, he should have been advised of his *Miranda* rights. The failure to first advise him of his rights renders his subsequent statements to Sergeant Heath inadmissible. *Id.*

**ORDERED AND ADJUDGED:**

1. The .22 caliber Derringer and the double-edged knife seized from the Defendant by Officer Nathan Ecalbarger on September 30, 2012 are **suppressed**.
2. The statements made by the Defendant to Sergeant Heath, including those statements admitting ownership or possession of the .22 caliber Derringer, the double-edged knife, and the .380 caliber handgun, are **suppressed**.

**DONE AND ORDERED** in chambers at Sanford, Seminole County, Florida this 11 day of July, 2014.

  
MARLENE M. ALVA, Circuit Judge

Copies furnished this 11 day of July, 2014 to:

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JUDICIAL ASSISTANT