

**Second Place
By Kristian Macaron
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FOURTEENTH JUDICIAL DISTRICT COURT
COUNTY OF SKYWALKER
STATE OF NEW MEXICO

STATE OF NEW MEXICO,
PLAINTIFF.

V.

CR 2005-71487

JAKE KORIE,
DEFENDANT.

BRIEF IN RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS

Comes now the State, by and through its counsel of record and respectfully offers for the consideration of the Court this Brief in Response to the Defendant's Motion to Suppress.

The Court has before it two issues which are determinative of the Defendant's Motion to Suppress the Evidence in this case.

Issue 1. Should a Motion to Suppress the Evidence collected as a result of the overheard conversation be granted?

Issue 2. What rights, if any, does a concerned parent have concerning the conduct of their underage children?

Summary

It was approximately seven-o'clock in the evening when Deborah Sylver received a phone call from her boyfriend Jake. Her mother was the person who answered the telephone, and she promptly called her daughter, Deborah, who answered the phone upstairs in her room and heard the other receiver click downstairs.

Deborah was happy to hear from Jake, but as of late she had been avoiding him as he had been associating with a group of people that she did not approve of. It had only been a matter of time before Jake found himself in trouble. Talking on the phone with him that night, Deborah knew immediately that something was wrong. She asked Jake what was wrong. He instantaneously told her that he was in "serious trouble".

Jake had gone with a group of kids into town after school and he explained to Deborah how they had broken a car window and stole the purse sitting inside of the car. A passerby saw them break into the car, and the man proceeded to call the police while yelling at Jake and his friends. The perpetrators fled. As they ran away Jake stated that he could hear the police sirens. He was sure that the man who reported them could give a pretty accurate description of him to the police. Jake asked Deborah what she thought that he should do. Deborah, in shock, told Jake that she would have to call him back.

It so happened that Deborah's mother heard the entire conversation. When Ms. Sylver heard that Jake was on the line she hung up the phone and pushed the speaker button, which allowed her to listen to the conversation between Jake and her daughter. Ms. Sylver did not approve of Jake and did not see any harm in listening to their conversation. As a mother, she decided to do something about this situation. She called her friend in the sheriffs department and told him about the conversation that she had just heard. Jake was directly picked up by the police and placed under arrest.

Argument

1. Ms. Sylver intercepted the message between her daughter and the defendant as a concerned parent who is by law responsible for the welfare other daughter. She was also to person in lawful possession,

control and ownership of the household telephone. Because of these truths in relation to the status of Ms. Sylver in this case, the court should deny the Defendant's request to suppress the evidence.

- a. New Mexico Statute 30-12-1 B. states that interference with communication consists of cutting, breaking, or tapping an instrument of communication belonging to another without the consent of that person who owns, possesses, and controls that property is illegal. However, Ms. Sylver is and was the owner other household telephone. She is the person who possessed, and controlled this phone. Not once at the time in question did Ms. Sylver relinquish control, nor did she illegally cut, break, or tap into the phone line which she owned.
 - b. New Mexico Statute 30-12-1 C. also does not apply due to the fact that Ms. Sylver did not read, interrupt, take, or copy the message overheard. In addition to it not applying, neither Deborah nor Jake could reasonably retain an expectation of privacy as to the content of their conversation. There was implied consent on the part of Deborah Sylver that other family members could access her conversations because she knew the broadcasting functions of the household telephone and the fact that its system allowed phone conversations to be publicized over a speakerphone if needed. It is reasonable to say that the Sylver family had a telephone with this function for a reason and the members of this family were well aware of the breach of privacy that it could impart. Jake Korie had no reason to expect privacy when he called a phone which he knew was owned, possessed and controlled by someone other than Deborah. By calling this phone he submitted to Ms. Sylver's control over his conversation with Deborah Sylver. Jake instigated the conversation to Ms. Sylver's underage daughter in the home of Ms. Sylver and through Ms. Sylver's telephone. Therefore it would not be rational for Jake to assume complete privacy from Ms. Sylver.
 - c. Because New Mexico Statute 30-12-1 does not apply, and neither does New Mexico Statute 30-12-8. Under part B of this statute it is stated that a Motion to Suppress the evidence collected from any "intercepted wire or oral communication" can only be suppressed if 1)" the communication was unlawfully intercepted". This communication was not unlawfully intercepted. Ms. Sylver was not acting as an employee of the government, but as the person in authority of her household and as the owner of the telephone on which the conversation was held. As the person in control of the telephone system in her household Ms. Sylver needed no authorization or court order to be concerned of to whom her daughter was talking to or the contents of her daughter's conversation with her boyfriend, a potential criminal.
2. By law parents have the authority and responsibility to take action in the best interests of their underage children. Under the facts of this case, the State does not have lawful authority over the privileges and rights exercised by Ms. Sylver over her minor daughter.
 - a. The Fourteenth Amendment of the United States of America states that without due process of law no person should be denied "life, liberty or property". It also states that the government should have no law wherein it "shall abridge the privileges or immunities of citizens". This includes the rights of parents to raise their children without government interference.

Ms. Sylver had the duty as well as the right to be concerned for her daughter's well being and the influence of Jake over Deborah. Therefore, she was reasonably exercising her right as a concerned mother by listening to the conversation between Deborah and Jake. Stated in the Fourteenth Amendment of the United States of America, Ms. Sylver had the parental rights to be aware of this conversation in which a crime was discussed. She was ensuring that her daughter did not become directly or indirectly involved in assisting a felony for which she could have been taken to court. Ms. Sylver has the legal responsibility to be conscious of the needs and welfare of her minor daughter. She has the ability and the authority to perform these responsibilities without the interference of the government. Deborah Sylver, as a minor, is under the jurisdiction of her parents and the place where she and her family reside. Pursuant to the rights protected under the Fourteenth Amendment of the United States Constitution, the State cannot limit the rights of Ms. Sylver to meet her moral, legal and ethical responsibilities as a parent.