

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR 08-30009-01-KES

Plaintiff,

MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS

vs.

ROBERT L. ERICKSON,

Defendant.

This memorandum of law is offered in support of Defendant Robert L. Erickson's Motion to Suppress pursuant to D.S.D. L.R. 7.2.

STATEMENT OF FACTS

1. On October 29, 2007, Rosebud Sioux Tribe (RST) employee William Cummings observed a large white van in Mission, South Dakota. Dispatch contacted Cummings and directed him to the Brave Hawk house in Mission. RST employees Iron Heart, Walter, and Martell were also on the scene. Cummings observed Defendant in the driver's seat of a van and was informed that Defendant had been trying to fight. Defendant was questioned and ordered out of the car where he was physically searched. Cummings located a box cutter and arrested Defendant for DUI. The officers returned to the van and ordered the passenger out. The van was searched, evidence was seized, and photographs were taken. The passenger was arrested. Items seized from the van included a knife, axe

handle, scissors, and a skewer. No *Miranda* warnings were provided, nor was a search warrant obtained.

2. Sixty-five days later, on January 2, 2008, RST employees Calvin Waln, Jr., Avery Black Bear, William Moran, and Anthony Long responded to a report of a stabbing in Mission. The alleged perpetrator was Defendant. Ambulance staff informed Long, who informed Waln, that they had seen a male walking on the street west of the scene. Waln located an individual walking north of the scene, identified him as Defendant, and ordered him to the ground at gunpoint. Waln placed his boot in Defendant's back and read him his *Miranda* rights. Defendant was loaded and transported to jail. At some point during the apprehension or booking, employees Waln and Black Bear observed dried blood on Defendant's hand and photographed it.
3. Defendant was indicted on January 7, 2008, and charged with Assault with a Dangerous Weapon and Assault Resulting in Serious Bodily Injury, in violation of 18 U.S.C. §§ 1153, 113(a)(3), 113(a)(6), and 3559(f)(3).
4. Rosebud Sioux Tribe Ordinance No. 91-05 (Policy for Issuance of Tribal Commissions) outlines requirements that must be followed for tribal police officers, security guards, probation officers, process servers, and wildlife wardens to be commissioned as such. The ordinance states that, in addition to being properly trained, "an applicant must fill out a notarized form" which is reviewed by a tribal judge, the judiciary committee, and the tribal president. The

commission must be signed by the tribal president, contain a photograph, identify the duty for which it is issued, and be carried by the officer at all times. Five separate classes (A through E) are outlined. The commission, if issued, can either be temporary (six months) or permanent (two years). Said policy received its first reading on September 12, 1991, and second reading on October 9, 1991, and was unanimously approved.

ARGUMENTS AND AUTHORITIES

1. October 29, 2007

Defendant moves this court for its Order suppressing all evidence seized or observed by employees of the Rosebud Sioux Tribe during, or as a result of his arrest in October 29, 2007.

A. No probable cause.

As grounds, Defendant states that probable cause did not exist for the actions taken. It was not alleged that Defendant was driving the vehicle during an alleged traffic offense. Defendant was confronted and ordered out of a vehicle by employees of the Rosebud Sioux Tribe. He was searched without probable cause, as was the vehicle. No warrant was ever obtained. The seizure and search of Defendant and the van violated Defendant's rights under the Fourth Amendment to the United State Constitution, and all evidence obtained must be suppressed under the Exclusionary Rule.

B. Lack of Commission

The Rosebud Sioux Tribe has established guidelines and requirements for becoming a commissioned officer with authority to police on the Rosebud Sioux Tribe Indian Reservation.

These requirements have been in effect for over 16 years. Officers that are commissioned have authority to do whatever their individual commission states they have the authority to do. If an officer does not have a commission, they are without authority to conduct any police business.

Defendant asserts that there is a question as to whether the alleged officers who made the arrests in question were commissioned officers of the Rosebud Sioux Tribe as required by Rosebud Sioux Tribe Ordinance No. 91-05. If they were not, they were without legal authority to arrest, search, detain, seize evidence, or engage in any other activity described by RST Ordinance 91-05.

The suppression of evidence is a remedy available to aggrieved defendants in order to prevent their trial from being “tainted” with evidence seized by illegal means and to serve as a deterrent for future police misconduct. *Weeks v. United States*, 232 U.S. 383 (1914).

Suppression of evidence is typically used “where its deterrence benefits outweigh its ‘substantial social costs’.” *United States v. Leon*, 468 897, 907 (1984).

If the “tribal law enforcement officers” acted without legal authority in arresting defendant, wielding firearms, seizing evidence, and making observations, all evidence resulting from Defendant’s October 29, 2007 arrest, search, and seizure should be suppressed.

2. January 2, 2008

Defendant asserts the same argument for suppression of evidence seized on January 2, 2008, as previously argued for suppression of evidence gathered on October 29, 2007.

If the “tribal law enforcement officers” acted without legal authority in arresting defendant, wielding firearms, seizing evidence, and making observations, all evidence resulting

from Defendant's January 2, 2008, arrest should be suppressed.

CONCLUSION

Defendant moves this Court for its Order suppressing all evidence and observations made by non-commissioned tribal "officers" during his October 29, 2007, arrest, search, and seizure, due to a lack of probable cause. Defendant further argues that the arrest, searches, and seizures conducted on January 2, 2008, were done by non-commissioned officers of the Rosebud Sioux Tribe who were acting without legal authority. As such, all items seized on that date should be suppressed.

WHEREFORE, Defendant urges this Court to suppress all evidence and observations made by non-commissioned tribal "officers" during Defendant's October 29, 2007, and January 2, 2008, arrests.

Dated this 12th day of February, 2008.

Respectfully submitted,

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/s/ Edward G. Albright

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