

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

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UNITED STATES OF AMERICA,

CR 08-30009-01-KES

Plaintiff,

SUPPLEMENT TO MOTION TO  
SUPPRESS

vs.

ROBERT L. ERICKSON,

Defendant.

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Comes now Defendant Robert L. Erickson, by and through his attorney, Assistant Federal Public Defender Edward G. Albright, and submits this Supplement to his previously filed Motion to Suppress. This supplemental motion requests for the suppression of evidence and statements taken, and observations made, by alleged Rosebud Sioux Tribe police officers who were not commissioned by the Rosebud Sioux Tribe to perform law enforcement duties, and therefore, acted as law enforcement officers without the lawful tribal authority to do so. The Defendant moves to suppress evidence/statements taken from Defendant following his January 2, 2008 arrest; evidence and statements taken from, and observations made of, the alleged victims and scene on January 2, 2008; and evidence/statements/observations relating to prior alleged bad acts that may potentially be used against the Defendant at trial. Defendant makes this supplemental motion to suppress pursuant to FED. R. CRIM. P. 12. The basis for suppression is the same as set forth in the previously filed motion to suppress.

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**I. Evidence/Statements/Observations of Defendant on 1/2/08.**

According to the tribal police reports, Defendant was arrested on January 2, 2008, on tribal charges of aggravated assault by alleged Rosebud Sioux Tribal Police Officers Calvin Waln and Avery Black Bear. Waln alleged that Defendant engaged in non-cooperative conduct during the arrest, and allegedly gave gang signs while photographs were being taken of his hands. Both Waln and Black Bear claim to have observed dried blood on Defendant's hand, and photographs were taken of his hand.

Later that same day, Ken Fisher attempted to interview Defendant at the tribal jail. After advising Defendant of Miranda rights, Defendant stated "I got nothing to say."

Defendant moves to suppress all evidence and statements taken from Defendant, photographs and observations of him, and his conduct following his tribal arrest on January 2, 2008, on the grounds that those individuals were not commissioned police officers by the Rosebud Sioux Tribe and, therefore, the statements/evidence/observations were taken by a person unlawfully acting as a law enforcement officer for the tribe.

**II. Evidence/Statements/Observations of Alleged Victims and Scene.**

Defendant also moves to suppress the evidence and photographs taken of the alleged victims and the scene of the incident, statements taken from the alleged victims and observations made by the alleged Rosebud Sioux Tribe police officers who responded to the scene and investigated the case. The tribal police reports indicate that Avery Black Bear, Anthony Long, William Moran, Ken Fisher, and Calvin Waln were involved in this case by way of taking either photographs, statements, evidence, or observations of the alleged victims and scene. Those

alleged tribal officers were not commissioned police officers by the Rosebud Sioux Tribe and, therefore, the evidence, photographs, statements, etc., that those people took from the alleged victims and scene, were taken by persons unlawfully acting as law enforcement officers for the tribe.

### **III. Alleged Other Bad Acts Evidence.**

The government provided defense counsel copies of Rosebud Sioux Tribe police reports in which Defendant was arrested tribally with other alleged offenses. Although these charges are not part of this federal indictment, the government may attempt to introduce such alleged prior acts under Fed. R. Evid. 404(b). In the event the government attempts to do so, the defense moves in advance to suppress the evidence, statements of alleged victims, and observations of the alleged tribal officers on the grounds that they were not commissioned police officers by the Rosebud Sioux Tribe and, therefore, the evidence, photographs, statements, etc., that those people took from the alleged victims and scene, were taken by persons unlawfully acting as law enforcement officers for the tribe. These incidents are summarized as follows:

A) October 7, 2007, domestic abuse charge against Defendant on Donella Marshall, in which Defendant was accused of punching Marshall. Alleged tribal police officers Kory Provost and Frank Iron Heart responded to the scene and prepared a written report, spoke to the alleged victim and made an observation of the alleged victim and blood on another girl's shirt, and arrested Defendant.

B) October 29, 2007, aggravated assault charge against Defendant on John White in which Defendant was accused of threatening to fight White with a knife. Alleged tribal police

officers William Cummings, Mike Walters, and Clifford Martell responded to the scene and prepared a written report, spoke to the alleged victim, searched the Defendant and the van he was in, seized evidence, and arrested Defendant.

C) December 1, 2007, child abuse charge against Defendant, in which Defendant was accused of trying to assault Kendra Small Bear and Maria Desersa. Although Kendra Small Bear denied the allegation, both she and Defendant were arrested. Alleged tribal police officers Kory Provost and Calvin Waln responded to the scene and prepared a written report, spoke to the alleged victim, and arrested Defendant.

#### **IV. Argument and Authority.**

In these instances, the alleged tribal officers were not commissioned police officers by the Rosebud Sioux Tribe as required by Rosebud Sioux Tribe Ordinance No. 91-05 at the time they were involved in the investigation, arrest of Defendant, and seizure of evidence in those cases. That being the case, 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).

Defendant asserts that the alleged “tribal law enforcement officers” acted without legal authority in arresting defendant, wielding firearms, seizing evidence, and making observations,

and that all evidence, observations, statements, photographs, etc. should be suppressed.

In addition, the Rosebud Ordinance No. 91-05 states that “Unless otherwise specified by the RST Law and Order Code, the penalty for not carrying a tribal commission shall be a Class A or other crime for tribal members as a prescribed in Title 5, Chapter 16, Section 8, “Impersonating an Officer or Public Servant. . .”.

An evidentiary hearing is already scheduled for this matter to provide further information in support of this motion. The previously filed memorandum of law sets forth the legal authority in support of this motion.

WHEREFORE, Defendant requests that this Court grant his motion to suppress.

Dated this 7<sup>th</sup> day of March, 2008.

Respectfully submitted,

JEFFREY L. VIKEN  
Federal Public Defender  
By:

*/s/ Edward G. Albright*

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2008, a true and correct copy of the Supplement to Motion to Suppress were served upon the following persons, by placing the same in the service indicated, as follows:

Randy Seiler	<input type="checkbox"/>	U.S. Mail
Assistant U.S. Attorney	<input type="checkbox"/>	Hand Delivery
225 S. Pierre Street, #337	<input type="checkbox"/>	Facsimile
Pierre, SD 57501	<input checked="" type="checkbox"/>	Electronic Case Filing

*/s/ Edward G. Albright*

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Edward G. Albright, Assistant Federal Public Defender