

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

UNITED STATES OF AMERICA,)	
)	CR08-30009 (KES)
Plaintiff,)	
v.)	GOVERNMENT'S RESPONSE
)	TO DEFENSE MOTION TO
ROBERT L. ERICKSON,)	SUPPRESS
)	
Defendant.)	
)	

COMES NOW the United States, by and through Assistant United States Attorney Randolph J. Seiler, and files this opposition and resistance to the defense motion to suppress evidence seized or observed by tribal law enforcement officers on October 29, 2007, and January 2, 2008.

It appears that the essence of the defense's request to suppress is based upon alleged non-compliance of the Rosebud Sioux Tribe with Rosebud Sioux Tribe Ordinance No. 91-05. This alleged tribal ordinance violation does not rise to the level of a constitutional rights violation or a federal statutory violation and therefore does not require suppression.

The tribal law enforcement officers involved in this matter were either tribal law enforcement officers or private citizens. If they were private citizens, the 4th Amendment does not require the exclusion of evidence obtained through a search or seizure by a private citizen acting on his own without government suggestion or participation. Coolidge v. New Hampshire, 403 U.S. 443 (1971); Burdeau v. McDowell, 256 U.S. 465 (1921). There are several factors to determine whether the private party was acting as an instrument or agent of the government. See, e.g., United States v. Crowley, 285 F.3d 553, 558 (7th Cir. 2002); State v. Ellyson, 326 F.3d 522 (4th Cir. 2003).

Additionally, common sense, not “hyper technical standards,” are to be used in determining suppression of evidence. United States v. Sumpter, 669 F.2d 1215, 1218 (8th Cir. 1982). See also, United States v. Ventresca, 380 U.S. 102, 108 (1965).

Additionally, the law enforcement officers in this case were acting in good faith and with apparent authority to perform law enforcement functions.

The exclusionary rule is not a personal constitutional right of a person aggrieved, but a judicially created remedy designed primarily to deter improper conduct by law enforcement. United States v. Leon, 468 U.S. 897 (1984). The exclusionary rule is only available for constitutional violations, not statutory or treaty violations. United States v. Lombera-Camorlinga, 206 F.3d 882 (9th Cir. 2000); United States v. Kontny, 238 F.3d 815 (7th Cir. 2001).

The police officers were acting in good faith and with apparent authority vested in them by the Rosebud Sioux Tribe and contracts with the Bureau of Indian Affairs, and no suppression of evidence needs to be accomplished to deter police misconduct.

WHEREFORE, the defense motion to suppress evidence based on the Rosebud Sioux Tribe’s alleged non-compliance with a Rosebud Sioux tribal ordinance should be denied.

DATED this 15th day of February, 2008.

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CERTIFICATE OF SERVICE

The undersigned attorney for the United States of America hereby certifies that on the 15th day of February, 2008, the foregoing was electronically transmitted by the clerk's office or mailed first-class, postage prepaid, hand-delivered, or faxed by the undersigned this date to the parties listed below:

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