

FILED

07/01/2016

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 16-0282

**ORIGINAL**  
*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA  
Case Number: DA 16-0282

---

ROBERT CRAWFORD,

Plaintiff and Appellant,

v.

CASEY COUTURE, FLATHEAD TRIBAL POLICE  
OFFICER; FLATHEAD TRIBAL POLICE DEPT.;  
CONFEDERATED SALISH KOOTENAI TRIBAL  
GOVERNMENT; and OTHERS UNKNOWN,

Defendants and Appellees.

---

**BRIEF OF APPELLANT**

---

**APPEARANCES:**

ROBERT CRAWFORD #44213  
Appearing pro-se  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, MT 59722

Pro-se' Appellant and  
Plaintiff

SHANE MORIGEAU  
Tribal Legal Department  
Confederated Salish Kootenai Tribes  
P.O.Box 278  
Pablo, MT 59855-0278

Attorney for the Defendant and  
Appellee.

**FILED**

**JUL -1 2016**

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

## TABLE OF CONTENTS

|                                                                                                                                                                                                                    |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF CONTENTS                                                                                                                                                                                                  | i  |
| TABLE OF AUTHORITIES                                                                                                                                                                                               | ii |
| STATEMENT OF THE ISSUES                                                                                                                                                                                            | 1  |
| STATEMENT OF THE CASE                                                                                                                                                                                              | 1  |
| STATEMENT OF THE FACTS                                                                                                                                                                                             | 2  |
| SUMMARY OF THE ARGUMENT                                                                                                                                                                                            | 4  |
| STANDARD OF REVIEW                                                                                                                                                                                                 | 7  |
| ARGUMENT                                                                                                                                                                                                           | 7  |
| 1. DOES A DISTRICT COURT HAVE JURISDICTION TO HEAR CASES WITH MIXED STATE AND FEDERAL CLAIMS?                                                                                                                      | 7  |
| 2. DID THE DISTRICT COURT ERROR WHEN IT ORDERED CRAWFORDS §1983 COMPLAINT DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION WHEN THE DEFENDANTS COULD BE FAIRLY SAID TO HAVE ACTED UNDER COLOR OF STATE LAW?       | 11 |
| 3. IS THE DISTRICT COURT PROTECTING TRIBAL OFFICER CASEY COUTURE AND OTHERS UNKNOWN, BY IGNORING THE FUNDAMENTAL FACT THAT FALSE REPORTING TO LAW OFFICERS, TAMPERING WITH EVIDENCE AND PERJURY ARE CRIMINAL ACTS? | 15 |
| CONCLUSION                                                                                                                                                                                                         | 18 |
| CERTIFICATE OF SERVICE                                                                                                                                                                                             | 19 |
| CERTIFICATE OF COMPLIANCE                                                                                                                                                                                          | 20 |
| APPENDIX                                                                                                                                                                                                           | 21 |

## TABLE OF AUTHORITIES

### CASES

|                                                                 |         |
|-----------------------------------------------------------------|---------|
| Atkinson Trading Co., 532 US 656                                | 12      |
| Big Spring v. Conway, 2011 MT 109, 360 Mont. 370                | 12      |
| Boag v. MacDougall, 454 US 354 (1982)                           | 7       |
| Butte Community Union v Lewis, 219 Mont. 426 (1986)             | 10      |
| Crowe v County of San Diego, 608 F3d 406 (9th cir 2010)         | 13      |
| Dorwat v Caraway, 2001 MT 240, 312 Mont.1                       | 9,10,11 |
| Evans v McKay, 869 F2d 1341 (9th cir 1989)                      | 14,15   |
| Ex parte Young, 209 US 123,(1908)                               | 9       |
| Gen. Agric. Corp. v. Moore, 166 Mont. 510 (1975)                | 8       |
| Haines v. Kerner, 404 US 519 (1972)                             | 7       |
| Hydrick v. Hunter, 449 F3d 978 (9th cir 2006)                   | 13      |
| Keller v. Smith, 170 Mont. 399 (1976)                           | 8       |
| Kloss v Edward D. Jones & Co., 2002 MT 129, 310 Mont. 123       | 11      |
| Liberty Northwest Ins. v. State Fund, 1988 MT 169, 289 Mont.475 | 7       |
| Lopez v Dept of Health Services, 939 F2d 881 (9th cir 1991)     | 14      |
| Lugar v Edmonson Oil Co. Inc., 457 US 922 (1982)                | 5,14    |
| McCarthy v United States, 850 F2d 558 (9th cir 1988)            | 13      |
| Meagher v Butte- Silver Bow County, 2007 MT 129, 337 Mont. 339  | 7       |
| Montana v United States 450 US 544 (1981)                       | 13      |
| Morigeau v Gorman, 2010 MT 36, 355 Mont. 255                    | 7       |
| Mysse v Martens, 279 Mont. 253 (1996)                           | 9       |
| Shaw by Strain v Strackhouse, 920 F2d 1135 (3rd cir 1990)       | 5,15    |
| Smith V Salish Kootenai College, 434 F3d 1127 (9th cir 2006)    | 12,13   |
| State v Anderson, 285 Mont. 510 (1993)                          | 15      |
| United States v Yi, 704 F3d 800 (9th cir 2013)                  | 18      |
| Walker v State, 2003 MT 134, 316 Mont. 103                      | 9,10    |

Williams v Lee, 358 US 217 (1959) 11,12

STATUTES

United States Code

§42 USC 1983 4,9

Federal Rules of Civ. P. 56(a) 7

Montana Code Annotated

§3-5-302 4

§20 (Mont. R. Civ. P. 56(a)) 7

§27-1-801 4

§27-1-803 4

§46-23-1023 14

OTHER AUTHORITIES

Montana Constitution

Art. II, §16 4

Art. III, §3 5,8

Art. VII, §4 4,9

Montana Constitution Bill of Rights Committee Proposal Vol. II, 619. 10

### STATEMENT OF THE ISSUES

1. Does a state district court have jurisdiction to hear cases with mixed state and federal claims?
2. Did the district court error when it ordered Crawford's §1983 complaint dismissed for lack of subject-matter-jurisdiction when the Defendant's could fairly be said to have acted under color of state law?
3. Is the district court protecting Tribal Officer Casey Couture and Others Unknown, by ignoring fundamental facts, that false reporting to law enforcement officers and tampering with evidence are criminal acts committed by public trust servants?

### STATEMENT OF THE CASE

This case stems from a civil cause where the Appellant sought redress for injuries inflicted upon him by a tribal police officer, who deprived and violated multiple constitutionally protected rights under the United States and the Montana State Constitutions, rights guaranteed to protect the Appellant these rights were violated by the Defendant's while acting under the color of state law.

Civil action pursuant to §1983 was filed seeking to hold the officers accountable for statutory and constitutional violations. The Tribes and the Tribal Police Department were also named as Respondeat Superiors liable for the offending employees which they failed to properly train and supervise.

The Defendant's responded with a frivolous motion to dismiss, claiming the state court lacks subject matter jurisdiction, because the Tribal Officer is an Indian, wholly failing to address the fact raised on the record that the officer was acting under color of state law, not tribal law.

The Defendant's motion to dismiss should have been **denied** by the very authorities they cited. It is as if the district court failed to read the briefing. The court, as its rationale, makes no finding or conclusion only

the wholesale adoption of the Defendant's authority and argument from their briefs, as the District Court Judge James Manley issued the courts order dismissing the complaint solely for lack of subject matter jurisdiction. Appeal from this order is now sought.

#### STATEMENT OF THE FACTS

Appellant (Crawford) filed a multiple count complaint against Flathead Tribal Police Officer Casey Couture, demanding within a trial by jury. (DC-doc 2).

Crawford's complaint clearly set forth that defendant Couture was employed by the Flathead Tribal Police Department, and was acting under the pretense of color of Montana State Law.(DC-doc.2 pg.1,10 and 11)

The complaint sets forth that Officer Couture initially stopped the vehicle Crawford was driving on 13 March 2012, arresting a passenger, Asa Lehrke, for outstanding warrants. Not finding any criminal activity Crawford was allowed to leave. Once taken into custody Mr. Lerke informed Officer Couture that one of the guys is a meth cook and two others are armed robbery suspects. (DC-doc. 2 pg 2, see also DC-doc. 7 pg 1-2 and Ex.1).

Officer Couture conducted extensive online research into the information provided to him by Mr. Lehrke, finding only Crawford's past criminal history. (DC-doc. 2 pg 2, see also DC-doc. 7 pg 1-2 and EX. 1)

During the late night of 13 March 2012 through the early morning of 14 March 2012, Officer Couture communicated a series of FALSE reports to several State agents as well as to other tribal officers. Many of these agents contacted Crawford's State Parole Officer Karley Kump, communicating the false information to her causing her great concern. (DC-doc. 2 pg 3, see also DC-doc 7 pg 1-2 and Ex's 1 and 4)

Capt. Clark is a Captain at the Montana State Prison in Deer Lodge Montana, outside of the Confederated Salish Kootenai Tribe (CSKT), Flathead

Indian Reservation. (DC-doc. 2 pg 2)

State Probation and Parole Officer Karley Kump is an employee of the State of Montana Department of Corrections and works as such from the office located in Butte, Montana, along with her supervisor PO-2 Don Kelley. The Butte office is located outside of the Flathead Reservation exterior boundaries (DC-doc. 2 pg 3).

Kevin Maloughney is a detective of the Butte City Police and is located outside of the exterior boundaries of the Flathead Indian Reservation. Det. Maloughney is also a member of the Drug Task Force, a state and federal agency. (DC-doc. 2 pg 3)

Deputy Levi Read is employed by the Lake County Sheriff's office, whose duty is to enforce state and federal laws. Lake County is located inside of the exterior boundaries of the Flathead Indian Reservation. (DC-doc.2 pg 4)

Moments prior to the 17 March 2012 contact with Crawford, Officer Couture falsely reported to Deputy Read that Crawford was manufacturing Methamphetamine and that the occupants of the Crawford vehicle were known to be violent, causing a violent confrontation. (DC-doc.2 pg 4-5, see also DC-doc. 7 pg 2 Exs 1,2,4 see also 6,7,8,and 10)

During the first contact with Crawford on 17 March 2012, Officer Couture removed several items from the floor of the vehicle and later claims to have removed them from Crawford's pockets. Officer Couture reset his in-vehicle camera to remove evidence of police misconduct. (DC-doc 2 pg 5-7, see also DC-doc. 7 Exs 6,7,8 and 10)

After Tribal Dispatch advised Officer Couture that Crawford was a valid driver with no wants, warrants or holds, Officer Couture called a local State Probation Officer, seeking authorization to detain and search Crawford and the vehicle. Officer Couture again relied upon information that he knew to be false. Amy Rehbien is employed by the State of Montana Department of Correct-

ions. (DC-doc 2 pg 6)

Officer Couture provided an edited copy of his in-vehicle camera recording of the events surrounding Crawford's arrest and questioning. This version has no originating equipment information, is missing several minutes of the initial confrontation with law enforcement and a significant portion of the conversation surrounding the lack of authorization to detain and search Crawford. (DC-doc 2 pg 6-7, see also DC-doc 7 pg 2 and EX. 1,2,4,6,7,8,and 10 generally)

Officer Couture also testified falsely to the authenticity of his arrest video. (DC-doc. 2 pg 7 see also DC-doc 7 pg 2 and Exs, 1,2,4,6,7,8,and 10)

Crawford seeks recovery from Tribal Police Officer Casey Couture, in his individual capacity, and in his capacity as a Tribal Police Officer, the Flat-head Tribal Police Department and the Tribes for respondeat superior liability (DC-doc.2) Crawford also seeks recovery from Others Unknown at this time that did conspire with Officer Couture, and took action in that conspiracy to tamper with a police video, and destruction of additional evidence to deliberately avoid discovering other outrageous police misconduct. Others Unknown may be employed within the Lake County Sheriff's Office or otherwise employed.

#### SUMMARY OF THE ARGUMENT

The district court wrongfully issued an order to dismiss Crawford's complaint for lack of subject matter jurisdiction, where the Defendant's could fairly be said to be State actors.

Montana courts are open to every person and afford a speedy remedy to every injury of person, property or character, as provided in the Montana Constitution, Article II §16. Montana district courts have original jurisdiction as may be delegated by the laws of the United States or the state of Montana Art. VII §4; §3-5-302, MCA. Claims for defamation and slander under §§ 27-1-801 and 803, MCA, and claims of constitutional deprivations by a person acting under color of state law under 42 USC §1983 are civil actions within the



jurisdiction of the district courts.

District court judges are required by oath to support, protect and defend the Constitution of the United States and the Constitution of the State of Montana, Art. III §3; The civil complaint filed pursuant to the laws of Montana and the claims listing numerous constitutional violations should have triggered scrutiny and protection from the district court, where a person reasonably said to be a state actor violated both Federal and State Constitutionally protected rights under the color of State law.

The state action required of a §1983 can be satisfied when the party charged with committing a constitutional violation "may fairly be said to be a state actor." Lugar v. Edmonson oil Co., Inc., 457 US 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482(1982). "[I]n order to prevail in a §1983 action, a plaintiff must establish... that 'the conduct complained of was committed by a person acting under color of state law.'" Shaw by Strain v Strackhouse, 920 F2d 1135, 1141 1142 (3rd Cir 1990). Crawford's complaint clearly established that Tribal Officer Couture was a Tribal Police Officer, (DC-doc2 ¶4-6) Officer Couture (Couture) conducted extensive online research into informant information garnered from Asa Lehrke about one of the occupants of the vehicle being a meth cook and two others being armed robbery suspects, finding only Crawfords past criminal history, (DC-doc 2 ¶¶ 16-21). Officer Couture then contacted numerous state law enforcement agents including but not limited to probation and parole, with information that he knew to be false. (DC-doc 2 ¶¶22-38 and ¶¶46-50).

Officer Couture was recognized as a police officer in uniform as he placed handcuffs on Crawford, removed items from the floor of the vehicle and demanded Crawford tell him where the meth-lab was, threatening Crawford. (DC-doc 2 ¶¶51-63) After tribal dispatch returned "valid neg. 29" Couture insisted Deputy Read place Crawford in the Lake County Patrol vehicle driven by Deputy Read, until the subject vehicle could be searched. Couture made contact with a State Prob-

ation and Parole (P&P) Officer with information that he already knew to be false to obtain authorization to arrest and search Crawford and the vehicle. Much of this has been edited from the video provided by Couture.(DC-doc. 2 ¶¶79-84)

Couture is also alleged by complaint to have tampered with the police video provided by him to prosecute Crawford in state district court, where Couture also provided testimony he knew to be perjured. (DC-doc.2 ¶¶91-97) The forementioned acts and conduct of Couture had no bearing on Tribal law within the scope of Coutures authority as a tribal officer, beyond the duties of a tribal officer as well. Once Couture began contacting State agents, using illegal practices, conducting an illegal investigation, and furthering his practices after he handed me over to Deputy Read, Couture was fairly said to be a state actor.

Coutures conduct appears to be routine and common place within the tribal police department. Couture's actions as well as those of Others Unknown at this time, resulted from the carelessness and negligence of the CSKT and their Tribal Police Department, its agents, servants, employees, or other representatives, in hiring and failing to train and supervise Tribal Officer Couture and Others Unknown, especially as multiple investigations and press reports made known a general knowledge to the public that corruption within the police departments in Lake County was an issue and would frequently cause a deprivation of a citizens constitutional rights. Furthermore, failure to train or allowing as a matter of internal policy, tribal officers to assist state agents, or conduct state investigations themselves in effect is outside the tribal police officers role in the internal governance of the tribe, subjecting the officers to the same consequences of law when they violate public trust, and deprive citizens of constitutionally protected rights. Manufacturing probable cause by false reports to other law enforcement officers, by any police officer, no matter what capacity they work, is an impermissible police practice and one not to be

encouraged. False reports by any police officer to other officers, is not related to the officers performance of duties, and violates United States Constitutional Amendment 4, as well as his Oath of Office and Code of Ethics.

#### STANDARD OF REVIEW

The Montana Supreme Court reviews de novo a district courts decision on a motion to dismiss, construing the complaint in the light most favorable to the plaintiff. Morigeau v. Gorman, 2010 MT 36, ¶16, 335 Mont. 255, 255 P.3d 1260; (citing Meagher v. Butte-Silverbow County, 2007 MT 129 ¶13, 337 Mont. 339, 160 P.3d 552. When deciding a motion to dismiss based upon lack of jurisdiction, the district court must determine whether the complaint states facts that, if true, would vest the court with subject matter jurisdiction. Morigeau (citing Liberty Northwest Ins., Inc., v. State Fund, 1998 MT 169, ¶17, 289 Mont. 475, 962 P.2d 1167).

A grant of summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to summary judgment as a matter of law." Fed. R.C.P 56(a) (mirrors Mont.R.Civ.P.56(a)).

Pro-se litigants pleadings are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers; if the court can reasonably read to state a valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements. Haines v. Kerner, 404 US 519, 30 L.Ed. 2d 652, 92 S.Ct. 594 (1972); followed in Boag v. MacDougall, 454 US 364, 70 L.Ed.2d 551, 102 S.Ct. 700 (1982).

#### ARGUMENT

1. Does a state district court have jurisdiction to hear cases with mixed state and federal claims?

"The same rules of construction apply in determining the meaning of constitutional provisions as apply to statutory [con]struction." Keller v. Smith 170 Mont. 399, 404, 553 P.2d 1002, 1006 (1976)(citations omitted). "In determining the meaning of a given provision, the intent of the framers is controlling." Keller, 170 Mont. @ 405, 553 P.2d @ 1006(citations omitted). "Such intent shall first be determined from the plain meaning of the words used, if possible and if the intent can so be determined, the courts may not go further and apply any other means of interpretation." Keller, 170 Mont. @405, 553 P.2d @ 1006 (citations omitted). "If the language itself is not clear,"we must resort to extrinsic rules of construction." Keller, 170 Mont. @406, 553 P.2d @1007.

Using this framework as a guide, the court first looks at the words of the constitution. Constitutional language should be given its natural or ordinary meaning. Gen. Agric. Corp. v. Moore, 166 Mont. 510, 516, 534 P.2d 859, 863 (1975)(citations omitted). Montana Constitution Article III §3 provides: Oath of Office. "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust. Under the natural or ordinary meaning of Art.III §3, all judges in the state of Montana are bound by oath to support and defend the constitution of the United States and the constitution of the State of Montana alike. And further to discharge the duties of office with fidelity, (the Oxford New Desk Dictionary, third edition, defines fidelity as 1) faithfulness; loyalty and 2) strict accuracy). So a failure to support, protect and defend the Constitutions and those they were written to protect, denies those citizens constitutionally protected rights under color of state law. The Supreme Court of the United States stated that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had

deprived another of a federal right under color of state law. Ex parte Young, 209 US 123, 28 S.Ct. 441, 52 L.Ed 714 (1908) applies with equal force against both state and tribal officials....when a state officer acts under a state law in a manner violate of the federal court, he "comes into conflict with the superior authority of that court, and he is in that stripped of his official or representative character and is subjected in his person to consequences of his individual conduct. The state has no power to impart him any immunity from responsibility to the Supreme Authority of the United States."(this would include even judges that knowingly deprive citizens of constitutionally protected rights.)

Next, Article VII §4, of the Montana Constitution provides: District Court Jurisdiction. (1) The district court has original jurisdiction in all cases amounting to a felony and all civil matters and cases at law in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state. (2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies. (3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction as may be provided by law. Pursuant to the plain language of MT Const. Amend. Article VII §4, Crawford's complaint was properly before the district court for factual determinations on the merits concerning constitutionally protected rights. A claim pursuant to 42 USC §1983 is a claim for which the district court has jurisdiction,( see generally Walker v. State, 2003 MT 134, 316 Mont. 103, 68 P.3d 872; Dorwat v. Caraway, 2002 MT 240, 312 Mont. 1, 58 P.3d 128; and Mysse v. Martens, 279 Mont. 253, 260, 926 P.2d 765, 769 (1996). A denial of meaningful redress for injury violates the very protect-

ions the district court is constitutionally required to provide to Crawford.

Montana courts are open to every person and afford a speedy remedy to every injury of person, property or character... Right and justice shall be administered without sale, denial, or delay.,(as provided in Mont. Const. Art. II §16. However it would appear that the district court did not even read the complaint of Crawford or the response to the Defendants motion to dismiss. The injury was clear, leaving Crawford no confidence in the courts protection.

The Montana Supreme Court has repeatedly recognized the rights found in Montana's Declaration of rights as being "fundamental," meaning these rights are significant components of liberty, any infringement of which will trigger the highest level of scrutiny, and, thus, the highest level of protection by the courts. Walker v State, 2003 MT 134, ¶74, 316 Mont. 103, 68 P3d 872; Dorwat v Caraway, 2002 MT 240, ¶96, 312 Mont. 1, 58 P3d 128(Nelson J.,Concurring)(citing Butte Community Union v Lewis, 219 Mont 426, 430, 712 P2d 1309, 1311 (1986).)

When the Montana Constitutions "Declaration of Rights" was framed, the Bill of Rights Committee (Committee) intended it to stand on its own footing and to provide individuals with fundamental rights and protections far broader than those available through the federal system. The Committee's February 22, 1972 transmittal letter to the Convention delegates states that "new safeguards" had been added to the Declaration of Rights "to meet the changing circumstances of contemporary life" and that:

In presenting this proposed Declaration of Rights, the committee notes that the guidelines and protections for the exercise of liberty in a free society come not from government but from the people who create that government.

It is that spirit which has motivated this committee to insure for Montana's future, through this Bill of Rights, a more responsible government that is Constitutionally commanded never to forget that government is created solely for the welfare of the people so that the people can more fully enjoy the heritage of American Liberty within the structure of that government.

Montana Constitutional Convention Bill of Rights Committee Proposal, Vol.II, 619.

"Constitutional rights that can not be enforced are illusory. It is as if

those rights cease to exist as legal rights." Kloss v Edward D. Jones & Co., 2002 Mt 129, ¶158, 310 Mont. 123, 54 P3d 1 (Nelson, J., concurring). The importance of being able to enforce ones constitutional rights through the courts and receive meaningful redress for public or private injury cannot be overstated. If an individuals constitutional rights can be violated by the government, or by the government's officers, secure in the knowledge that nothing will come of the wrong doing, then it follows that the constitution provides no protection at all. It is but a collection of elegant words without substance; it is a shield made of little more than aspirations and hopes. See Dorwat, ¶197. Crawford has a right to the states protection, the district court has failed to provide that protection by granting the Defendants motion to dismiss without considering the merits of Crawford's claims. It is as if the district court did not read Crawford's complaint or response to the defendant's motion for ~~for~~ summary judgment, which if proven would be a violation of federally protected rights by a government officer under color of state law.

2. Did the district court error when it ordered Crawford's §1983 complaint dismissed for lack of subject matter jurisdiction, when the Defendant's could be fairly said to have acted under color of state law?

The Defendant's brief in support of their Motion to dismiss relied on three cases for authority, (DC-doc 5):

1) Williams v Lee, 358 US 217,(1959): Crawford defended against this application ,(DC-doc.7 pg 3-4) In Williams, the plaintiff owned a store on the reservation, sold goods to tribal member defendants on credit, then tried to sue in state court to collect the debt. It was in these circumstances that the Supreme Court explained that the plaintiff "was on the reservation and the transaction with an Indian took place there." Crawford does NOT have any of the attributes of a "private commercial actor" and the Defendants have not established a "private consensual relationship" with Crawford as the Supreme Court has set

forth in Williams. Further, "A non members consensual relationship in one area. ... does not trigger tribal civil authority in another...."Atkinson Trading, 532 US at 656. Thus, for example, by their mere presence within a reservation and their "actual or potential receipt of tribal police, fire and medical services," nonmembers "have not consented to the Tribes adjudicatory", see Smith v Salish Kootenai College, 434 F3d 1127 (9th Cir 2006). Crawford a non-member, only entered the reservation in an attempt to recover items stolen from his home in Butte Montana, that were vital to his business. The Tribal Police Officer, working on conjecture, escalated the situation into a manhunt for a meth-lab and armed robbery suspects (which he knew through his own research to be false.), this is by no means a consensual relationship under Williams.

2) Big Spring v Conway, (In re Estate of Big Spring) 2011 MT 109, 360 Mont. 370, 255 P3d 121; Crawford defended against the Big Spring decision (DC-doc 7 pg 5) Big spring is in no way similar to the instant case. Big spring hinges on the facts that "because all parties to the probate were member Indians, the entire estate was located in Indian Country, the matter occurred within the exterior boundaries of the Blackfeet Reservation, and the nature of the case was a civil adjudicatory action of a private dispute. Because there was no Congressional limitation, the Blackfeet Tribe maintained 'sovereign power', and therefore exclusive jurisdiction, over the probate of Big Spring's Estate." It is worth noting that the CSKT has consented to state jurisdiction by the institution of Tribal Ordinance 40-A, The Blackfeet Tribes have no such ordinance, and therefore no state district courts on their reservation.

Crawford has no similarities with the holding in Big Spring, ; and

3) Smith v Salish Kootenai College, 434 F3d 1127 (9th Cir 2006), wherein the Smith Court stated, "we hold that a non member who knowingly enters tribal courts for the purpose of filing suit against a tribal member has, by the act of filing his claims, entered into a "consensual relationship" with the tribe



within the meaning of Montana v United States, 450 US 544, 101 S.Ct. 1245, 67 L.Ed.2d 493, (1981)." Crawford did not subject himself to the same disadvantage as Smith, furthermore, because the complaint filed by Crawford brings to light criminal acts, some amounting to a felony, the tribal court would be divested of jurisdiction, (see DC-doc.2 pg 15) Crawford asked the court to notify the proper authorities of any and all crimes committed by the Defendant's.

In Reply, the Defendant's assert that Smith, was simply provided to identify that the Defendant's should all be considered tribal members in this case just as the Smith court found the Salish Kootenai College to be a tribal member on the reservation." Crawford agrees that the Defendant's should all be considered individual tribal members. Crawford sees the need to amend the complaint to properly state individual capacities. However, the amendment should wait until the policies and practices of the Tribal Police Department are heard and the Others Unknown have been named through discovery.

The above arguments of this section, although stand on their own, are not the controlling issue, the controlling issue is subject matter jurisdiction. Crawford presented a claim to the district court, which he supported with factual evidence in his Response to the Defendant's Motion to Dismiss, (see Response DC-doc.7 and Exhibits), of a §1983 claim. The court "is not restricted to the face of the pleadings, but may review any evidence to resolve factual disputes concerning the existence of jurisdiction. McCarthy v United States, 850 F2d 558, 560 (9th cir 1988). The purpose of a §1983 is to DETER state actors from using the badge of their authority to deprive individuals of their constitutionally protected rights. Crowe v County of San Diego, 608 F3d 406 (9th cir 2010).

Although there is no pure respondeat superior liability under §1983, a supervisor is liable for the constitutional violations of subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them. Hydrick v Hunter, 449 F3d 978 (9th cir 2006).

In the context of a §1983 claim against a tribal officer in his or her individual capacity, the plaintiff still has the burden of demonstrating §1983's dual requirements that: (1) the allegedly unlawful conduct was committed by a person acting under the color of state law, and (2) such conduct deprived the plaintiff of constitutionally protected rights, privileges, or immunities. Evans v McKay, 869 F2d 1341, 1347 (9th cir 1989).

Regarding the first element, an action is under color of state law when the states role in the action is "significant." Lopez v Dept. of Health Service, 939 F2d 881, 883 (9th cir 1991). The degree of state involvement is a question of fact. Generally speaking, tribal officers "who act in concert with officers of the state are acting under color of state law within the meaning of §1983." Evans, 869 F.2d at 1348. Tribal Officer Couture became a state actor when he began contacting state agents with the pretence of enforcing state probation and parole Statute §46-23-1023, MCA. However, Officer Couture became a criminal when he knowingly communicated information known to him to be false to officers of the state, both on and off of the reservation. (see DC-doc.2 ¶122-38, 45-50 and Appendix A). Despite the fact that Crawford was handed over to Deputy Read by Couture, and Deputy Read was investigating Crawfords status through a call to the Butte Office of P&P, and tribal dispatch advising Couture that Crawford was a valid driver and no wants or holds, Couture contacted a local state probation officer Amy Rehbien, with claims of meth-labs and armed robbers, to obtain authorization to detain and search Crawford and the vehicle. (DC-doc.2 at 79-84, see also DC-doc.7 and Exhibits) The U.S. Supreme Court has held that the state action requirement of §1983 can be satisfied when the party charged with committing a constitutional violation "may fairly be said to be a state actor." Lugar v Edmonson Oil Co., Inc., 457 US 922, 937, 102 S.Ct. 2744, 73 L.Ed 2d 482 (1982). There is no question as to whether Officer Couture made false reports to state officers, placed Crawford into handcuffs, or otherwise acted

in concert with state and county officers. (DC-doc.7 pg 2 Ex.1) Tribal officers should be enforcing tribal laws when they are on duty, (making this case a mixed facial and factual challenge) Crawford has submitted sufficient evidence in response to Defendant's motion for dismissal, that Couture was acting in concert with state and county law enforcement officers and not acting on his own to solely enforce tribal laws. This case is controlled by Evans v McKay(see Response DC-doc.7 and Exhibits).

Regarding the second element, the question of whether the false reports to other law enforcement, planting of evidence, tampering with evidence, and perjury was justified is a question on the merits, which is not before this court at this time, as the lower court did not address the merits. These issues are the basis of the constitutional claims against the Defendant's.(see Complaint DC-doc.2, and Response DC-doc.7 with Exhibits) Crawford has established that "the conduct complained of was committed by a person acting under color of state law." in conformance with Shaw by Strain v Strackhouse, 920 F2d 1135, 1141, 1142 (3rd cir. 1990), vesting the district court with jurisdiction to hear these claims.

3. Is the district court protecting Tribal Officer Casey Couture, and Others Unknown, by ignoring the fundamental fact that false reporting to law officers, tampering with evidence and perjury are criminal acts?

Crawford came to Lake County attempting to retrieve his business computer and hard-drives, vital to his business, that were stolen from his home in Butte Montana. Although on parole and out of his district, Crawford was not involved in the manufacture, sale, or the use of illegal drugs, nor had he, or any of the occupants of the vehicle been involved in any armed robberies. No evidence has ever been produced to support such claims.

Chronologically- Officer Couture, acting upon a citizen informant tip, by Asa Lehrke,(with a lengthy history of fraud,drug use and thefts) searched online

for information to corroborate Mr. Lehrke's claims that "There were two males in the vehicle that were armed robbery suspects and that one of the males in the vehicle was a meth cook." According to Coutures testimony he did the research extensively online before he contacted any other officers. (Appendix A)

The only person that Couture found anything on was Crawford. That information was from Con-web and was his past criminal history. Later on that shift Couture began calling other officers of the tribe and the state, including but not limited to drug task force agents and P&P officers. The information communicated by officer Couture included but was not limited to; Crawford is living with a girl named Abigail, there is a known meth-lab, Crawford is distributing meth out of a teal F-150 pick-up truck, and the occupants are known to be violent. (DC-doc.2, DC-doc.7 and Exhibits) (see also Appendix A-D). None of this information was true. In fact Officer Couture knew the information was false when he did his "extensive" online research. Even if Crawford was the meth cook Mr. Lehrke referred to, that does not mean that Mr. Lehrke saw Crawford with any precursors, in fact the officer himself had no such observations either. Couture testified on 3 April 2013 about the fact that he didn't find any information to support what he reported to other law enforcement officers:

Q: And that happened before the stop on March 17--

A: Yes

Q: --You knew that information? But on March 17th when you stopped this vehicle, there was still--when you spoke with Deputy Read, there was still the allegation of the meth and robbery suspects going on, right?

A: Yes

Q: Okay even though you found nothing?

A: Yes

(see Appendix A)

In State v Anderson, (1993)285 Mont. 510, 853 P.2d 1245, an informant

tipped the police that a blue pickup carrying a large quantity of marijuana would be traveling from Washinton to Montana. The officers did not corroborate the tip and pulled the truck over anyway. The vehicle had not broken any traffic laws justifying the stop. Consequently, the Montana Supreme Court held that there was no objective data to give rise to a resulting suspicion and search, the search of Andersons truck was unlawful. The facts of the case now before this court clearly shows that Officer Couture attempted to corroborate the information he received from Asa Lehrke, finding the information not to be credible. Instead of reporting the information that he did have to P&P, Officer Couture embellished the information, reporting that Crawford was living in Lake County and had a known meth-lab (Appendix B), before his shift ended.

Four days later Officer Couture was still communicating information to other officers about meth-labs and armed robbers, up to and during the contact with Crawford at a gas station parking lot. Deputy Read had just been informed by Couture only moments before the contact, that if he had contact with the subject vehicle he was to be careful as the "occupants are known to be violent". Also that the occupants of the truck were wanted, manufacturing meth and distributing meth out of this truck. (Appendix C and D)(see also DC-doc.2, and DC-doc.7 with Exhibits) As with Anderson there were no traffic infractions to justify the stop, a violation of Crawfords 4th Amendment. The only parole violation was initiated by false reports made by Couture to other officers.

Crawford has provided sufficient evidence to show that four days had elapsed since Couture began spreading information he knew to be false. A common sense analysis of the totality of the circumstances makes it clear that these practices presented are not lawful and the judge in the district court should have protected Crawford instead of granting an ill-prepared frivolous motion to dismiss for lack of subject matter jurisdiction. Furthermore, when Crawford has charged that the police provided recording of his arrest has been

edited to conceal police misconduct, Crawford has a right to have the court examine the evidence to determine if Crawford is right. (DC-doc.2 at 68,69,91-94). Crawford has a right to challenge the officers unlawful actions that deprived him of state and federally protected rights, the court had jurisdiction to hear the claims but chose to ignore Crawford's merits.

Deliberate ignorance contains two prongs: (1) subject belief that there is a high probability that a fact exists; and (2) deliberate actions taken to avoid learning the truth. United States v Yi, 704 F3d 800(9th cir 2013). Crawford's filed action and responses to the Defendant's motion provided the court with more than enough evidence that Officer Couture acted under color of state law and made false reports to law enforcement officers.(Appendix A), as well as multiple attempts by Crawford and former counsel to obtain evidence the state and the district court denied without a showing of evidence, calling Crawford's efforts a "fishing expedition". Crawford has obtained some evidence yet the court refuses to allow proceedings to develop the record further. It really is that simple, and this court should not play party to the shielding of Officer misconduct that violates Crawford's federally protected rights. There is more than a reasonable probability that Couture tampered with evidence. What is abundantly clear is the fact that Couture admitted to making false reports to state law officers about Crawford, this fact alone cannot be ignored.

#### CONCLUSION


A common sense analysis of the totality of the circumstances show that the Defendant's violated federally protected rights while acting under color of state law. Manufacturing reasonable suspicion is not a permissible practice, in fact to communicate false reports to law enforcement officers with the intent to have ~~their~~ privacy invaded is a criminal act. So is tampering with evidence.

This case should be reversed and remanded to the district court for a trial by jury on the merits of Crawford's complaint. Furthermore, Crawford should be

allowed to amend his complaint once the disclosure, interrogatory, and discovery has been completed.

And any other relief this court deems just and proper.

Respectfully submitted this 28<sup>th</sup> day of June 2016.


  
Robert Crawford, Appellant

CERTIFICATE OF SERVICE

I, Robert Crawford, do hereby certify that a true copy of the foregoing Brief of the Appellant was placed in the U.S. Mail for delivery to the attorney for the Appellee at the following address:

Shane Morigeau  
Tribal Legal Department  
Confederated Salish Kootenai Tribes  
PO Box 278  
Pablo, MT 59855-0278


Dated this 28<sup>th</sup> day of June 2016.

  
Robert Crawford

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(b) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a mono-spaced Courier text typeface of 12 points; is double spaced; is not more than 30 pages (23) excluding certificate of service and certificate of compliance.

Dated this 28<sup>th</sup> day of June 2016.

  
Robert Crawford/Appellant