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08/29/2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 16-0282

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 16-0282

ROBERT CRAWFORD,

Plaintiff and Appellant,

v.

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

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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

REPLY BRIEF OF THE APPELLANT

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(4/3/2013 Tr. at 92.) When Couture suggested they place Crawford on a parole hold, Deputy Read responded that they did not have a parole hold. (4/3/2013 Tr. at 93.)

This Court chose not to remand for determination of the facts, placing the burden upon Crawford to conduct further investigation on his own and at his own expense, what his counsel should have done prior to trial, then introduce through Petition for Post Conviction Relief, evidence "casting doubt on the authenticity" of the video provided by Couture. This Courts holding in Crawford, strongly departs from State v. Warwick, 158 Mont. 531, "the cases are in general agreement as to what constitutes a proper foundation for the admission of a sound recording. They also indicate a reasonably strict adherence to the rules prescribed for testing the admissibility of recordings, which have been outlined as follows:"

(1) a showing that the recording device was capable of taking testimony, (2) a showing that the operator of the device was competent, (3) establishment of authenticity and correctness of the recording, (4) a showing that changes, additions, or deletions have not been made, (5) a showing of the manner of the preservation of the recording, (6) identification of the speakers, (7) a showing that the testimony elicited was voluntarily made without any kind of inducement.

This Court should take judicial notice that the state never complied with the Montana Rules of Evidence, Rules 901, 1001, 1002, and 1004.

The view through the lens of Crawford's perspective is that the Montana Supreme Court, being comprised of five exprosecutors and two lawyers, amounts to a racketeer influenced corrupt organization. Where the American Citizen is not afforded a fair trial in Montana, where law enforcement officers, prosecutors, and attorneys are not held to ethical standards. They are allowed to use any means to gain convictions, destroying peoples lives without a showing of evidence, and without any consequences for their actions. One has just as much of a chance for justice here as in North Korea. This is Crawford's opinion after having been imprisoned for four and a half years toiling at the judicial grindstone. Watching State actors dance around, and avoid issues as they do

everything but produce the video or dispatch recordings.

Officer Coutures video camera is a digital system and the data is saved on an SD card, as testified to by Couture on 12/2/2013 (Attachment A pg. 168 at 17.) A transfer of digital information from an SD card to a disk requires the use of a computer. When the information is transferred it also transfers the originating equipment information commonly called "metadata". Unless the information is translated into a computer program and edited within the computer system. As stated above, Crawford has never been provided anything other than an edited version of Coutures dash video. The courts have never safeguarded Crawfords right to confrontation or a fair trial, through denying him access to the un-edited version of Coutures video.

Contrary to this Courts assertion in Crawford, ¶34, it does not take an expert to to authenticate digital data information, when digital information is so common place in todays society, where digital files are even downloaded from mobile phones and saved on San-Disks. Meta-data is transferred from your device to the computer system as it creates a file. The original containing the metadata should be within the Tribal Police Department server, and preserved as evidence along with Officer Coutures official police report. It seems only fitting that the Defendant's would spend so much money fighting to keep from revealing the truth. If the facts were in their favor they would have used the facts instead of banging on the table.

Pursuant to MCA, §26-10- Rule 201 and 202, this Court may take judicial notice of the law and true facts as provided for above, as the Defendant's raised the issue. Crawford's opinion the Court may take under advisement that frustrations occur when citizens are denied "meaningful redress", put yourself in the shoes of the person you are condemning on the word of an officer only.

III. The Defendants position on subject matter jurisdiction is misplaced where allegations against Couture and others unknown, if true would

amount to felony offenses.

The Defendant's admit that state court jurisdiction under P.L. 280 does include "all criminal laws of the state of Montana pertaining to felony offences (class E offenses in the Tribes code). Laws of the Confederated Salish and Kootenai Tribes, §1-2-105,(rev. 4-15-03) (see also MCA, §§2-1-301 through 2-1-307)."

For Crawford's position that the district court has jurisdiction, as the Complaint alleges felony offences, this Court should see specifically the complaint filed by Crawford, (D.C. Doc. 2 pg 4 at 50.) Couture alleged to Deputy Read the occupants are "known to be violent", if proved constitutes criminal endangerment, as this court has recognised by putting an officer on high alert without just cause, A felony offense.;(pg. 5 at 60-63) weapons drawn and threats made against the lives of Crawford and Mr. Craig. Crawford was in handcuffs at the time and in fear of assault by the officers. Felony offenses if proved.; (pages 5-7 at 68,69,81, and 93-95.) Tampering with and destruction of evidence are felony offences if proved.; (page 7 at 96,97,100 and 101) if proved are also felony offenses of perjury if proved. Felony offenses vest the state court with jurisdiction over Couture and Others Unknown.

IV. The conduct of Couture and Others Unknown disqualifies them tribal sovereign immunity.

The Defendant's allege that they are absolutly immune from suit citing laws of the Confederated Salish and Kootenai Tribes, §4-1-401. However it appears that the Defendant's expect this Court to overlook the disqualifier stated within the statute,"acting within the scope of their authority,". It is a well settled fact that false reports to law enforcement, false arrest, unlawful search and seizure, criminal endangerment, assault with a weapon, tampering with evidence, and perjury are not actions within the "scope" of Couture or Others Unknown's authority.

The Defendant's claim "Sovereign immunity protects tribes against unconsented lawsuits that would drain tribal treasuries, interfere with tribal government operations, and handicap the tribes ability to provide much-needed services to its people." However they have no concern for a Citizen when a Tribal officer exceeds the scope of his representational capacity or delegated authority, as did Couture, and drains a private citizens accounts, locks him away from his family, causes him to lose personal property, the means to provide for his family, damages his business reputation and credit.

Officer Couture is a Tribal Police Officer who as such lacked authority to perform beyond reporting to probation and parole, that he had contact with Crawford. The truth about the contact not the embellishments, designed to invade Crawfords privacy to further his objective. The false reports to law enforcement, false arrest of Crawford, involvement in a state prosecution providing tampered evidence and perjured testimony, strips Couture of his sovereign immunity. "Official action is still action of the sovereign, even if it is wrong, if it do[es] not conflict with the terms of [the officers] valid statutory authority..." Yakima Tribal Court, 806 F.2d at 860 (quoting Larson v. Domestic & Foreign Commerce Corp., (1949) 337 US 682, 695, 69 S.Ct. 1457, 1464 93 L.Ed. 1628). Moreover, a governmental officials scope of authority "turns on whether the government official was empowered to do what he did; i.e., whether, even if he acted erroneously, it was within the scope of his delegated power."Yakima Tribal Court,(quoting Pennhurst State School & Hospitalv. Halderman (1984), 465 US 89, 112 n. 22, 104 S.Ct. 900, 914, n.22, 79 L.Ed.2d 67). As a tribal officer, Officer Couture can not be said to be empowered to break the law in order to pursue an uncorroborated lead against a nonmember of the tribe, especially given the false reports made by Couture and other felonious conduct presented by complaint to the district court.(see D.C.Doc. 2 pg 15 at 6.) "Notification to the proper authorities of any and all crimes committed

by the Defendants;" That would stand to mean that if the court does not find it properly in the state forum, the court could move the case to the federal forum. But just as importantly upon determination of the merits criminal charges should have been recommended.

V. Tribal Officer and Others Unknown are not entitled to qualified immunity when they knowingly violate the law.

The Defendant's assert that even if there were a colorable §1983 claim, Tribal Officer Couture would still be entitled to qualified immunity. In a footnote the Defendant's raise this issue for the first time on appeal. (Response pg. 24 at footnote 4.)

Qualified immunity protects officials when their conduct, "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 US 800, 818 (1982) If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based upon qualified immunity is appropriate. See Malleyv. Briggs, 475 US 335, 341, 89 L.Ed.2d 271, 106 S.Ct. 1092(1986) (Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law"). Saucier v. Katz, 533 US 194, 150 L.Ed.2d 272, S.Ct. 2151 (2001). Officer Couture claims to have been trained by the Law Enforcement Academy in Montana. His training includes that police reports need to be accurate. (see Attachment A pg. 163 at 4-13) A reasonable person, officer or not, would clearly know that making false reports to a law enforcement officer, false arrest, unlawful search, planting evidence, tampering with evidence and lying under oath, are unlawful in any situation. The U.S. Supreme Court held:"The relevant, dispositive inquiry in determining whether a right is clearly established, is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." See Wilson v. Layne, 526 US 603, 615, 143 L.Ed.2d 818, 119 S.Ct. 1692 (1999).

This Court need look no further than Tribal Officer Coutures 4/3/2013 testimony before the district court to establish the fact that Couture violated the law, even though Crawford has provided multiple violations of law by Couture:

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 meth and robbery suspects going on, right?

A: Yes

Q: Okay. Even though you found nothing?

A: Yes

(see D.C.Doc. 7 at Ex.1 pg. 30 at 12-19).

For the foregoing reasons Officer Couture and Others Unknown are not entitled to qualified immunity.


CONCLUSION

The only Defendant's who could arguably be entitled to immunity to this action would be the Confederated Salish and Kootenai Tribal Government and the Flathead Tribal Police Department, unless discovery proves policies and practices that are not authorized by Montana law.

Casey Couture and Others Unknown, be they Tribal members, officers of the tribal police, Lake County employee's, or other capacity, are not entitled to qualified immunity once they "exceed the scope of their authority."

Accordingly, Crawford respectfully requests that the Court Reverse and Remand this case to the district court for a trial on the merits, or in the alternative, the Defendant's may wish to move this case into the Federal Court.


Respectfully submitted this 23rd day of August, 2016.


Robert Crawford

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 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, except quotations; is not more than 14 pages (9) excluding certificate of service and certificate of compliance.


Dated this 23rd day of August 2016.


Robert Crawford

CERTIFICATE OF SERVICE

I, Robert Crawford, do hereby certify that a true copy of the foregoing Reply was mailed postage prepaid, with the U.S. Mail to Shane Morigeau, Tribal Legal Department, Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo MT 59855-0278.

Dated this 23rd day of August 2016.


Robert Crawford