

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

UNITED STATES OF AMERICA,

CR 17-30122

Plaintiff,

MOTION AND MEMORANDUM TO
SUPPRESS TRIBAL COURT GUILTY
PLEA

vs.

CALVIN GILLETTE,

Defendant.

COMES NOW Defendant Calvin Gillette, by and through his attorney, Assistant Federal Public Defender Edward G. Albright, and moves the Court for its Order suppressing from use at trial in this case Defendant's guilty plea to domestic abuse in tribal court.

According to the discovery, Defendant pleaded guilty to domestic abuse in tribal court for the same offense he is presently charged with in federal court. The Government provided the defense with the tribal court criminal complaint and judgment, as well as an audio recording of the tribal court proceedings. The defense asserts that the guilty plea is constitutionally inadequate to permit its use in this federal proceeding.

The recording of the proceedings indicates that the tribal court asked the Defendant if he understood the maximum sentence and the complaint against him, that by pleading guilty he gives up the right to a jury trial, the right to confront and cross-exam witnesses, the right to call witnesses on his behalf, the right to testify, and Defendant stated he understood that. The Defendant answered in the affirmative that his guilty plea was voluntary.

The defense asserts that what makes this guilty plea inadequate consists of the following: there is no evidence that the person representing the Defendant in tribal court is a licensed lawyer as such providing the right to counsel under the Sixth Amendment; there is no evidence of any advisement of the constitutional rights that Defendant is presumed innocent and that the prosecution has the burden of proof to prove the Defendant guilty beyond a reasonable doubt. No open court reading of the complaint, nor any factual basis provided by the Defendant. The defense also asserts the guilty plea was not knowing and intelligent because there was no advisement to Defendant by anyone of the collateral consequences of pleading guilty to a domestic abuse in tribal court - specifically, how such guilty plea could be used against him in a subsequent federal court proceeding on the same offense. Taken as a whole, the defense asserts that the guilty plea proceedings were constitutionally inadequate in violation of the Fifth and Sixth Amendments to the United States Constitution to permit such guilty plea and conviction to be used against Defendant in the present case.

WHEREFORE, Defendant respectfully requests that this Court grant his motion to suppress Defendant's guilty plea and conviction.

Dated this 9th day of January, 2018.

Respectfully submitted,

NEIL FULTON
Federal Public Defender

By:

/s/ Edward G. Albright

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