

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

TOM TEN EYCK and MICHELLE TEN EYCK, GUARDIANS of MORGAN TEN EYCK,  <div style="text-align: center;">Plaintiffs,</div>  vs.  UNITED STATES OF AMERICA, ROBERT NEUENFELDT, individually and UNKNOWN SUPERVISORY PERSONNEL OF THE UNITED STATES, individually,  <div style="text-align: center;">Defendants.</div>	4:19-CV-4007  <b>RESPONSE TO COURT’S ORDER (DOC. 21)</b>
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COMES NOW, the Defendant, Robert Neuenfeldt (“Neuenfeldt”), by and through his undersigned counsel, and in response to the Court’s Order (Doc 21) hereby provides the following response.

Counsel for the parties has conferred both individually, and by conference call on April 13, 2020, related to the four (4) categories of questions proffered by the Court. Defendant Neuenfeldt is of information and belief that the parties have reached an agreement and stipulation related to the first two (2) categories. Defendant Neuenfeldt is of information and belief that the Defendants, the United States of America and Robert Neuenfeldt agree with

respect to categories three (3) and four (4), but that the Plaintiffs disagree with the Defendants on those particular topics. Defendant Neuenfeldt's answers are provided below.

(1) Whether Morgan Ten Eyck and Talen Bourassa ("Bourassa"), the driver of the vehicle, are non-Indians, or if Indians, whether they are members of the Flandreau Santee Sioux Tribe?

- The parties agree that Morgan Ten Eyck and Bourassa are not enrolled members of the Flandreau Santee Sioux Tribe. Defendant Neuenfeldt does not have any basis to confirm nor deny their status as Indians or non-Indians. Defendant Neuenfeldt understands from Plaintiff's counsel, that they are non-Indians.

(2) If the initial stop of Bourassa was on tribal land?

- No.

(3) Which officer or officers (if more than one officer) actually made the stop?

- The parties have been unable to agree to a response to this question. The Plaintiffs assert that Defendant Neuenfeldt made the stop. Defendant Neuenfeldt asserts that there was no stop (the vehicle refused to stop), but that Sergeant Isaac Kurtz, with the South Dakota Highway Patrol, was the first officer to attempt to stop and make contact with the vehicle. Defendant Neuenfeldt has provided a summary of the relevant facts below.
- Moody County Sheriff's Office Deputies Carl Brakke and Logan Baldini conducted a security check on a rural property located at 24364 484<sup>th</sup> Avenue, due to an owner request as a result of previous break-ins. There were a significant of individuals at the property, with an estimated fifteen (15) or more people that fled when officers arrived. Officers from the Moody County Sheriff's Office, South Dakota Highway Patrol, Flandreau Tribal Police Department, and Flandreau Police Department responded to a call asking for assistance at the property. As officers were in the process of clearing the property, a vehicle was observed driving eastbound at a slow rate of speed on 244<sup>th</sup> Avenue. The vehicle stopped briefly and appeared as though it may have possibly picked up someone who had fled from the property. Sergeant

Isaac Kurtz of the South Dakota Highway Patrol, began traveling on 484<sup>th</sup> Avenue to make contact with the vehicle. Sergeant Kurtz and the vehicle met traveling opposite directions on 484<sup>th</sup> Avenue. Sergeant Kurtz slowed nearly to a stop as the vehicle approached, and immediately began turning around behind the vehicle as it passed. As soon as Sergeant Kurtz began to turn around, the vehicle accelerated quickly. Sergeant Kurtz turned around and activated his lights to stop the vehicle. As the vehicle approached the property, it slowed like it may stop. Deputy Brakke activated the emergency red and blue lights on his vehicle in case the pickup turned into the driveway because he didn't want to get hit. Deputy Baldini and Chief Neuenfeldt stood in the roadway and signaled at the vehicle with their flashlights. Chief Neuenfeldt raised his right hand to signal the vehicle to stop. The vehicle accelerated rapidly as it approached Chief Neuenfeldt and Deputy Baldini, as evidenced by the whistle of the turbo on a diesel engine, the rear wheels spinning, and the rear of the vehicle fishtailing sideways. The vehicle struck Chief Neuenfeldt in the left leg and shoulder area, knocking him to his knees. Sergeant Kurtz initiated pursuit of the vehicle.

(4) What was the reason for the stop? Did the stop occur because of a violation of tribal, state, or federal law?

- Sergeant Kurtz initiated the stop based on reasonable suspicion that the vehicle came from or had occupants that fled the property. The stop occurred because of a suspected violation of State Law.

Dated this 15<sup>th</sup> day of April, 2020.

This Document has been Electronically Filed

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/s/ Robert J. Galbraith

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