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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERIC BRUCE FOWLER,

Defendant.

Case No. CR 20-30-GF-BMM

**DEFENDANT'S
BRIEF IN SUPPORT
OF MOTION TO
SUPPRESS EVIDENCE**

I. INTRODUCTION

Defendant, Eric Bruce Fowler, by and through his counsel of record R. Henry Branom Jr. and the Federal Defenders of Montana, moves to suppress evidence gathered as the result of an illegal search on or about May 5, 2019. This brief supports that motion.

II. WHAT HAPPENED

The following is taken from the discovery provided to Mr. Fowler by the government (Exhibit E, MHP Incident Report, 130).

On U.S. Highway 2 (on the Fort Peck reservation), Montana Highway Patrol Officer David Moon indicated he observed a vehicle traveling under the posted speed limit. As Officer Moon got closer to the vehicle, he noted the vehicle did not have a plate or temporary tag. Officer Moon also indicated that he observed the driver leaning towards the center of the vehicle and drift from the fog line to the yellow centerline. Officer Moon “waited for the vehicle to get into Wolf Point and then I activated my top lights for a traffic stop.”

After stopping Mr. Fowler and upon having discussions with him, Officer Moon arrested Mr. Fowler.

III. ARGUMENT

The Fourth Amendment protects the “right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. This protection extends to vehicle stops. *Whren v. United States*, 517 U.S. 806, 809-810 (1996). Law enforcement officers are authorized to conduct a traffic stop or detain an individual for investigative purposes, so long as the officer has reasonable suspicion that an individual is or has been engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). A *Terry* stop represents an intermediate response

allowing police to pursue a limited investigation when they lack the precise level of information necessary for probable cause to arrest. *United States v. Guzman-Padilla*, 573 F.3d 865, 884 (9th Cir. 2009).

Here, this Court need not even reach the issue of whether Officer Moon had reasonable suspicion to satisfy a *Terry* stop, however, because Officer Moon did not have jurisdiction to stop Mr. Fowler.

Indian country is subject to exclusive federal or tribal criminal jurisdiction, “[e]xcept as otherwise expressly provided by law.” 18 U.S.C. §1152. Congress has granted general criminal jurisdiction to some states over Indian country within their borders. *See* 18 U.S.C. §1162 (various states). Montana has no such provision.

Congress has also provided in 25 U.S.C. §1321 a statutory method by which a state, with the consent of the tribe, can assume jurisdiction over Indian country. As it concerns a Montana state highway patrol officer’s ability to stop an Indian on the reservation, the State of Montana has not acted to assume jurisdiction of the Fort Peck Tribe. Indeed, as it concerns the cross-deputization agreement for the Fort Peck, Assiniboine and Sioux Tribes (attached as Exhibit A), they failed to comply with 25 U.S.C. §1326 (which purports to give arresting jurisdiction powers to the State of Montana) by failing “to gain the BIA’s signatory approval” (*see* Douglas Noseep Letter, ¶2, attached as Exhibit B). The tribes’ agreement “does not meet the requirements of an official BIA SLEC deputization agreement.” (Ex. B at ¶3).

That being true, Montana's compact with the United States indicates, plainly, that "Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States. (Mont. Const., art. I, sec. I). Under our Constitution, States have no authority to reduce federal reservations lying within their borders. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2462 (2020) For a Montana highway patrol officer to gain jurisdiction over Indians on the Fort Peck reservation, an agreement must exist whereby the officer goes through a variety of steps. (*See* Exhibit C, Bureau of Indian Affairs Policy Manual). After completing these steps, the Bureau of Indian Affairs then issues an officer a Special Law Enforcement Card (SLEC) that authorizes them to act in their capacity as a law enforcement officer on the reservation. *Id.*

An arrest made outside of the arresting officer's jurisdiction violates the Fourth Amendment to the United States Constitution, because a warrantless arrest executed outside of the arresting officer's jurisdiction is analogous to a warrantless arrest without probable cause. *See Beck v. Ohio*, 379 U.S. 89 (1964) (constitutional validity of a warrantless arrest depends upon whether the arresting officer had probable cause). Absent exigent circumstances, such an arrest without probable cause is presumptively unreasonable. *Michigan v. Summers*, 452 U.S. 692, 700 (1981).

In Mr. Fowler's case, the government has not produced any evidence that Officer Moon has undertaken the necessary steps to act as a law enforcement officer on the Fort Peck reservation. Nor has the government produced evidence that Officer Moon has an SLEC card, thereby underscoring he did not have the authority to stop Mr. Fowler. There has been no express delegation of jurisdiction to the State of Montana (and its highway patrol officers), and there has been no grant of local jurisdiction.

Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right. *McGirt, supra* at 2482. Thus the potential existence of a *de facto* practice of allowing the Highway Patrol to operate on the Fort Peck Reservation does not render this search legal.

Because the State of Montana has neither received by express grant nor acted pursuant to congressional authorization to assume criminal jurisdiction over the Fort Peck Tribe, Officer Moon—a Montana state highway patrol officer—had no jurisdiction to stop and then arrest Mr. Fowler—a member of the Fort Peck Tribe on the Fort Peck reservation. *See e.g., United States v. Baker*, 894 F.2d 1144, 1146 (10th Cir. 1990) (county district court exceeded its authority in issuing search warrant for property within Indian country).

Absent authority to stop Mr. Fowler, all evidence seized thereafter must be suppressed as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471 (1963).

IV. CONCLUSION

WHEREFORE, Mr. Fowler requests the Court to suppress the evidence obtained in violation his constitutional rights.

RESPECTFULLY SUBMITTED this 31st day of July, 2020.

/s/ R. Henry Branom Jr.

V. CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief is in compliance with Local Rule 7.1(d)(2)(as amended). The brief's line spacing is double spaced, and is proportionately spaced, with a 14 point font size and contains less than 6,500 words. (Total number of words: 1,022 excluding tables and certificates).

DATED this 31st day of July, 2020.

/s/ R. Henry Branom Jr.

CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on July 31, 2020, a copy of the foregoing document was served on the following persons by the following means:

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	Hand Delivery
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1. CLERK, UNITED STATES DISTRICT COURT

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