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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
REPLY 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, replies to the government's response as follows.

II. REPLY ARGUMENTS

The government has now provided, for the first time, a cross-deputization agreement that it contends gives Officer Moon “authority as an MHP trooper who was cross-deputized by the Tribes to enforce tribal traffic law.” (Doc. 28 at page 13). The government further contends Mr. Fowler is confused by reference to the SLEC deputization agreement (Doc. 28 at page 11) since Officer Moon “was not purporting to act pursuant to any federal authority when he stopped Fowler for a traffic offense.” (Doc. 28 at page 13).

What remains confusing, however, is the government’s argument that Officer Moon was not acting under any federal authority when—by the very agreement the government has now proffered—Office Moon is considered a federal employee while performing his commissioned duties. (*See* Doc. 28-1 at page 7) (“It is the intent of the parties to this Agreement that all such commissioned law enforcement officers shall be treated as federal employees in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804 . . . when performing duties under their commissions.”); (Doc. 28 at page 13) (“However, all such commissioned law enforcement officers shall be treated as federal employees, in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671-2680, and to the extent applicable, the Indian Self Determination and Education Assistance Act, 25 U.S.C. § § 450-450n, when

performing duties under their commissions.”); (Doc. 28 at page 13) (“The BIA agrees that all commissioned law enforcement officers shall be treated as federal employees, in accordance with the Indian Law Enforcement Reform Act, 25 U.S.C. § 2804, the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671-2680, and other applicable federal laws, when performing duties under their commissions.”). Indeed, the government states it “has never asserted that Trooper Moon is a federal employee” (Doc. 28 at page 14), and yet the agreement it relies upon clearly delineates Officer Moon as one.

That fact is relevant to Mr. Fowler’s argument. (*See* Doc. 28 at page 11). First, because if Officer Moon is a federal employee, he thereby must comport with federal law which, as already argued, did not give him the authority to arrest Mr. Fowler on the Fort Peck Indian reservation. And second, because the government failed to note that pursuant to the agreement it provided under the “Arrest and Investigative Authority” subsection, commissioned law enforcement officers when acting within the reservation “have the same authority to arrest Indians for violation of Titles III and IX of the Tribal code.” (Doc. 28 at page 8). Titles III and IX of the Tribal code do not target the criminal citations that Mr. Fowler was cited for. Consequently, again, Officer Moon was acting without even the state or tribal authority the government argues Officer Moon has. (*See* Doc. 28 at pages 10-11).

Moreover, while the government has now provided information about a cross-deputization agreement between the Fort Peck Tribe and Montana Highway Patrol, it has not provided evidence that Officer Moon has complied with that agreement. In particular, the government has not provided any evidence that: (1) Officer Moon met “the qualifications for Reservation police” (Doc. 28 at page 6); (2) Officer Moon completed the training course (*Id.*); (3) Officer Moon completed cultural sensitivity training (*Id.*); (4) Officer Moon was commissioned by compliance with Article VI and issuance of an identification card (*Id.* at page 16); (5) Officer Moon was wearing his insignia (if issued) (*Id.* at page 12); (6) Officer Moon was carrying his identification card with him (*Id.* at page 12); (7) Officer Moon immediately displayed his identification card (*Id.* at page 12); (8) Officer Moon informed Mr. Fowler of his “commission from the Tribes for the purpose of enforcing Tribal law” (*Id.* at page 8); and/or (9) Officer Moon had “general law enforcement authority by the State of Montana” (Fort Peck CCOJ § 3-2-208).

The government’s reliance on *United States v. Patch*, 114 F.3d 131 (9th Cir. 1997) is misplaced. In that case, the Ninth Circuit affirmed the defendant’s conviction holding that when the deputy observed the defendant’s traffic offense, the deputy had authority to stop the defendant to ascertain if he was an Indian or non-Indian in order to determine the deputy’s jurisdiction to issue the citation. *Patch*, 114 F.3d at 134. That authority was a logical application of the investigative

stop doctrine in *Terry v. Ohio*, 392 U.S. 1 (1968), because when the deputy originally saw the offense occur, that offense occurred within the deputy's jurisdiction. *Patch*, 114 F.3d at 134. Mr. Fowler was never within Officer Moon's jurisdiction. Without the ability to stop Mr. Fowler, the evidence in this case would not have been inevitably discovered.

III. CONCLUSION

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

RESPECTFULLY SUBMITTED this 21st day of August, 2020.

/s/ R Henry Branom Jr.
R. HENRY BRANOM JR.
Assistant Federal Defender
Counsel for Defendant

IV. 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: 837 excluding tables and certificates).

DATED this 21st day of August, 2020.

By: /s/ R. Henry Branom Jr.
R. HENRY BRANOM JR.
Federal Defenders of Montana
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V. CERTIFICATE OF SERVICE

L.R. 5.2(b)

I hereby certify that on August 21, 2020, a copy of the foregoing document was served on the following persons by the following means:

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