Ninth Circuit Court of Appeals Number 21-30172
District Court Number 4:20-cr-00030-BMM-1

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-vs-

ERIC BRUCE FOWLER
Defendant-Appellant.

OPENING BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

HONORABLE BRIAN M. MORRIS
UNITED STATES DISTRICT JUDGE, PRESIDING

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SUBMITTED: December 3, 2021

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I. STATEMENT OF JURISDICTION

A. Subject Matter Jurisdiction in the District Court

The United States District Court for the District of Montana had jurisdiction over the original criminal action because the government brought an Indictment against Eric Bruce Fowler ("Mr. Fowler") charging him with prohibited person in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) , and possession of an unregistered firearm, in violation of 26 U.S.C. § 5861(d). CR 2, ER 134. Those allegations qualify as "offense[s] against the laws of the United States," giving the district court jurisdiction over the matter under 18 U.S.C. § 3231.

B. Jurisdiction in the Court of Appeals

Mr. Fowler appeals from the final judgment imposed by the district court. CR 93, ER 4. This court has jurisdiction under 28 U.S.C. § 1291 and Rule 32 of the Federal Rules of Criminal Procedure.

C. Appealability of District Court Order and Timeliness of The Appeal

Pursuant to a plea agreement with the United States, Mr. Fowler entered a conditional guilty plea in this matter on April 14, 2021. CR 79. The final judgment in this case was filed and entered in the district court on July 22, 2021. CR 93, ER 4. A notice of appeal was filed on August 4, 2021. CR 99. This appeal is timely under Rule 4(b)(2) of the Federal Rules Appellate Procedure.

II. STATEMENT OF THE ISSUES

I. Whether the District Court erred in determining that a Montana Highway Patrol Trooper had the jurisdictional authority to search Mr. Fowler while on the Fort Peck Indian Reservation under either the 2000 Cross Deputization Agreement or the Amended 2003 Cross Deputization Agreement between the Montana Highway Patrol and the Tribes of the Fort Peck Reservation.

II. Whether the District Court erred in determining that Trooper Moon's failure to carry an identification card as required by both versions of the Cross Deputization Agreement was harmless.

III. STATEMENT OF THE CASE

A. Proceedings in the District Court.

Mr. Fowler was charged by Indictment on May 27, 2020 with one count of prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), one count of possession of an unregistered firearm in violation of 26 U.S.C. § 5861(d), and a forfeiture allegation pursuant to 18 U.S.C. § 924(d). CR 2, ER 134. Mr. Fowler was arraigned on July 7, 2020, at which time he pled not guilty and was detained. CR 11.

On July 31, 2020, Mr. Fowler filed a Motion to Suppress Evidence and Brief in Support, seeking to exclude evidence gathered as a result of an illegal search on May 5, 2019. CR 22, 23. Specifically, the motion sought to exclude evidence gathered during a Montana Highway Patrol Trooper's search of a vehicle Mr. Fowler was driving on the Fort Peck Reservation. *Id.*

The government responded to the Motion in opposition and a suppression hearing was held on December 11, 2020. CR 70. After testimony and argument from the Government and the Defendant, the Court permitted supplemental briefing from the parties. *Id.* Mr. Fowler filed a supplemental brief on December 17, 2020. CR 71. The Court issued a written order denying Mr. Fowler's motion in its entirety on January 25, 2021. CR 74, ER 11.

Mr. Fowler pled guilty to Count I of the Indictment on April 14, 2021, pursuant to a conditional plea agreement with the United States in which he reserved the right to appeal the adverse ruling on the motion to suppress. CR 78. On July 21, 2021, Mr. Fowler was sentenced to 48 months imprisonment in the Federal Bureau of Prisons, followed by 3 years of supervised release. CR 93, ER 4. Mr. Fowler filed a Notice of Appeal to this Court on August 4, 2021. CR 99.

B. Statement of Relevant Facts

On May 5, 2019, Montana Highway Trooper David Moon ("Trooper Moon") was patrolling U.S. Highway 2 within the boundaries of the Fort Peck Indian Reservation in northeastern Montana. ER 32. Trooper Moon observed a truck traveling without a license plate or temporary tag, so he initiated a traffic stop near the town of Wolf Point, Montana. ER 33. The stop took place entirely within the bounds of the Fort Peck Indian Reservation. ER 43. When the truck pulled over, the driver immediately got out of the vehicle as Trooper Moon was exiting his own vehicle. ER 34. Trooper Moon recognized the driver as Eric Fowler as he "knew of Mr. Fowler prior to the stop." ER 36.

Upon approaching the truck and Mr. Fowler, Trooper Moon claims he observed a pry bar on the floor near the driver's seat. ER 35. He instructed Mr. Fowler to step away from the vehicle and conducted a pat-down search for

weapons. *Id.* He did not locate any weapons on Mr. Fowler's person. *Id.* While Trooper Moon was standing by the driver's side door, however, he looked into the truck and claims to have observed an alcohol container and a rifle. ER 38. Trooper Moon testified at the suppression hearing that he saw the rifle "behind the driver and passenger's front seat." ER 38 – 39. He claimed he viewed the rifle "on the floorboard area" in the "rear of the cab of the truck." ER 40. Trooper Moon initially testified that the truck was a two-door model but later stated he did not remember whether it was two or four-door. ER 39 – 40.

After running Mr. Fowler's driver's license, and determining that he did not have insurance, Trooper Moon issued Mr. Fowler tribal citations for no seatbelt, no financial responsibility, and no driver's license. ER 42. Trooper Moon established that Mr. Fowler was a member of the Assiniboine or Sioux Tribes of the Fort Peck Indian Reservation. ER 43. He issued tribal citations "because he [Mr. Fowler] is a tribal member, and the offense took place on the tribal reservation." ER 44.

Trooper Moon testified that he believed to have the authority to issue tribal citations on tribal land because he "[h]ad to go through four steps. Initially, did a background check, they did a background check on me. Then had to go to criminal jurisdiction in Indian Country training. Then I went through a cultural awareness training put on by Captain Summers. And then I went in front of the tribal council.

ER 45. After going through these four steps, Trooper Moon "was told by my sergeant I was authorized to make stops on the reservation for tribal and nontribal members, and cite them into whatever court was appropriate." *Id.*

Trooper Moon did not reference any formal grant of authority authorizing him to "make stops on the reservation for tribal and nontribal members and cite them into whatever court was appropriate" until prompted by the United States Attorney. He testified on direct examination:

> Q: So, were you – is it your understanding that you have been cross-deputized by the Fort Peck Tribe to issue citations on behalf of the Fort Peck Tribe to Indian members of either the Fort Peck Tribes or some other federal Indian Reservation?
>
> A: Correct. Any United States Native American.
>
> Q: And that's based on that cross-deputization agreement?
>
> A: Yes, sir.

ER 47. The AUSA later asked Trooper Moon if he was ever issued "any type of card or insignia from the Fort Peck Tribes after you were cross-deputized." ER 54. Trooper Moon stated that he was issued a badge to wear on his uniform. *Id.* He was then asked:

> Q: How about a card of any kind?
>
> A: Yes, sir.
>
> Q: Issued any card? When was that card actually issued to you?

A: It was – I could look at the date.

Q: Well, was it issued to you before or after this incident?

A: After this incident.

Q: Okay. So, during the time of this incident, were you aware that you were supposed to have a card?

A: No, sir.

Q: How did you find out that you were supposed to be carrying a card?

A: When my sergeant contacted me after Ms. Adams contacted him.

Q: And Ms. Adams, that's Cassady Adams from my office; correct?

A: Yes, sir.

Q: She was the prosecutor that initially had this case?

A: Yes, sir.

ER 54 – 55.

On cross-examination, Trooper Moon testified that he had never read the cross-deputization agreement referenced by the AUSA, that he was unaware of specific provisions contained therein, specifically that the agreement states that all commissioned law enforcement officers shall be treated as federal employees under the agreement (ER 118), and that the agreement had never been explained to him. ER 57. Trooper Moon affirmed that he did not possess a cross-deputization ID card when he stopped Mr. Fowler. ER. 59.

The cross-deputization agreements referenced in Mr. Fowler's suppression motion and at the hearing refer to two agreements, titled, respectively, *Cooperative Agreement Providing for Cross-Deputization of Law Enforcement Officers of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the City of Wolf Point, the City of Poplar, the Montana Highway Patrol, and Roosevelt County*, executed in 2000 (ER 111), and *2003 Amendment of Cooperative Agreement Providing for Cross-Deputization of Law Enforcement Officers of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the City of Wolf Point, the City of Poplar, the Montana Highway Patrol, Roosevelt County and Valley County* (ER 93) (collectively, "the Agreements"). There are two differences between the 2000 Agreement and the 2003 Amendment. The first, the inclusion of Valley County, is insignificant to Mr. Fowler's argument. The second is very significant: the 2003 Amendment lacks the signature of one of the parties, Ed Naranjo, District Five Commander and BIA (Bureau of Indian Affairs) Designee of the U.S. Secretary of the Interior. ER 110.

The basic intent of the Agreements is to "establish a mechanism whereby citation and arrest authority of the Tribes over Indians on the reservation is extended to commissioned law enforcement officials of the State of Montana…". ER 94, 112. The Agreements state 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, and with the Federal Tort Claims Act, 28 U.S.C. §§ 2401, 2671 – 2680, when performing duties under their commission." ER 98, 117. The parties to the Agreements include: Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation; the County Commissioners of each party county; the Mayor of each party city, Attorney General of the State of Montana for the Montana Highway Patrol; and the District Five Commander as the BIA Designee of the U.S. Secretary of the Interior. ER 108 – 110, 129 – 130. The 2000 Agreement is signed by all of these parties. ER 129 – 130. The 2003 Amended Agreement is signed by all parties *except* the BIA Designee. ER 110.

On February 16, 2016, Douglas Noseep, the Special Agent in Charge of the BIA District Five wrote a letter to the Chairman of the Fort Peck Executive Board addressing the 2003 Agreement. ER 91. The letter points out that despite the statement that all law enforcement officers shall be treated as federal employees under the Agreement, the Tribe "failed to gain the BIA's signatory approval." *Id.* The letter states that the 2003 Agreement, to version in place to-date, does not meet the requirements of a BIA deputization agreement. *Id.*

After Trooper Moon issued the tribal citations on May 5, 2019, Mr. Fowler left the scene, but the truck was seized and Trooper Moon ran a K-9 search on the

vehicle because he had seen a marijuana grinder inside when retrieving Mr. Fowler's coat for him. ER 48 – 49. The K-9 alerted and Trooper Moon then sought and obtained tribal search warrant for the truck. ER 52 – 53. Mr. Fowler was indicted on the evidence (the firearm in the truck) obtained as a result of Trooper Moon's search that day. ER 135.

C. Bail Status

Mr. Fowler is currently in the custody of the Bureau of Prisons.

IV. SUMMARY OF THE ARGUMENT

The District Court erred in finding that Trooper Moon had the jurisdictional authority to search Mr. Fowler under either the 2000 Cross Deputization Agreement or the Amended 2003 Cross Deputization Agreement. Both Agreements are invalid under Montana and Federal law. Indian country is subject to exclusive federal or tribal criminal jurisdiction "[e]except as otherwise expressly provided by law." 18 U.S.C. § 1152. There is no express law granting the state of Montana criminal jurisdiction in Indian Country. The most recent version of the Cross Deputization Agreement at the time of Mr. Fowler's stop, the 2003 Amendment, was not sanctioned or approved by the Federal Government as evidenced by the lack of signature from the BIA Designee of the U.S. Secretary of the Interior, as well as the 2016 letter from Special Agent in Charge of the Bureau

of Indian Affairs disavowing the Agreement. The Agreement was invalid as a matter of law.

Even if the Court finds that the Agreements were valid and granted Trooper Moon lawful authority to search Mr. Fowler, Trooper Moon did not follow proper procedure under the Agreements when he failed to possess or carry an identification card as expressly required by the terms of the Agreements. The District Court erred in finding that Mr. Fowler suffered no prejudice from this violation of proper procedure. Trooper Moon and the Montana Highway Patrol's failure to adhere to the requirements of the authority purportedly granted to them by the Tribes renders the search unlawful and thus all evidence gathered therefrom must be suppressed.

V. ARGUMENT

Standard of Review

A District Court's denial of a motion to suppress is reviewed *de novo*. *United States v. Bynum*, 362 F.3d 574, 578 (9th Cir. 2004). Alleged constitutional errors are reviewed *de novo* as are questions of law. *United States v. Yarbrough*, 852 F.2d 1522, 1529 (9th Cir. 1988). Mixed questions of law and fact are also reviewed *de novo*. *United States v. Wilkes*, 662 F.3d 524, 532 (9th Cir. 2011). "If *any* ruling that forms the basis for the conditional [guilty] plea is found to be

erroneous, we [the Court] are required to permit the Defendant to withdraw his guilty plea." *United States v. Grubbs*, 377 F.3d 1072, 1080 (9th Cir. 2004) (reversed on other grounds), citing *United States v. Mejia*, 69 F.3d 309, 316 n.8 (9th Cir. 1995).

Reviewability

Mr. Fowler moved the Court to exclude evidence of the May 5, 2019 search in a Motion in Suppress filed on July 31, 2020. CR 22. The District Court denied the motion in an Order entered January 25, 2021. CR 74, ER 11. Mr. Fowler's plea agreement reserves the right to appeal the adverse ruling on the motion to suppress pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure. CR 78.

Argument

A. The District Court erred in finding that the Cross-Deputization Agreements conferred authority upon a state law enforcement officer to perform a Fourth Amendment search of a tribal member on tribal land, because tribal land is under the exclusive jurisdiction of the Federal Government or the Tribes absent special circumstances, which were not met.

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. Unites States*, 517 U.S. 806, 809-810 (1996). Trooper Moon's exceeded his authority when he instigated a criminal investigation into Mr. Fowler after realizing that Mr. Fowler was a Tribal

member. The Cross-Deputization Agreements (both the 2000 and 2003 Agreements will be referenced collectively as the "CDA" when dealing with the substance of the Agreements) were invalid as a matter of law because there is no mechanism provided by law that permits state law enforcement officers to exercise criminal jurisdiction over Tribal members. 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 some states general criminal jurisdiction over Indian Country, but Montana is not one of those states. The State of Montana is precluded from exercising criminal jurisdiction over Indian Country and its citizens. Moreover, in this instance, the Federal Government had explicitly disavowed the CDAs. *Noseep letter*, ER 91-92.

There is a lawful method by which a state, in the absence of express authority, can assume jurisdiction over Indian Country. 25 U.S.C. §§ 1321, 1326. It requires the consent of the tribe by special election called by the Secretary of the Interior:

> State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses . . . shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

25 U.S.C. § 1326. While the Tribes of the Fort Peck Reservation did accept the jurisdiction of the State of Montana via the CDAs, and the CDAs were approved by a Tribal Resolution (ER 93, 111), the Secretary of the Interior, represented by the BIA, did not call a special election as required by the statute, did not sign the most recent CDA, and disavowed its validity. ER 91. The Federal Government, via the BIA, was a party both Agreements. When it came time to approve the latest version, the 2003 version, the BIA declined. The legitimacy of the CDAs is dependent upon that approval.

Much was made of the SLEC process in the suppression hearing and in the District Court's order denying Mr. Fowler's motion. ER 16 – 17, 83 – 84. This is what the BIA believed the CDAs intended to implement but failed to accomplish according to law. ("After careful review of the cooperative agreement, it has been concluded that this is the tribe's version of the Bureau of Indian Affairs (BIA), Special Law Enforcement Commission (SLEC) Deputization Agreements . . . The tribe's agreement does not meet the requirements of an official BIA SLEC deputization agreement.") *Noseep* letter, ER 91.

The District Court accused Mr. Fowler of "confus[ing] cross-deputization agreements between the State of Montana and the Tribes with SLEC agreements between the federal government and the Tribes." ER 16. It held the "requirements

of a SLEC agreement are irrelevant to the validity of the 2000 CDA." ER 17. This is not entirely true. What Mr. Fowler is arguing is congruent to Mr. Noseep's opinion: that by including the BIA as a party to the CDAs and expressly stating that all cross-deputized law enforcement officers under the Agreements are to be treated as federal employees, the Tribes themselves confused their Agreements with SLEC agreements. While the District Court is correct that the stop and search of Mr. Fowler "did not implicate the federal government or tribal officers enforcing federal law," (ER 17) it failed to recognize that absent the mechanisms of 25 U.S.C. § 1326, SLEC agreements are the only other valid, legally permissible way for *state* law enforcement officers to exert any authority whatsoever over tribal members.

The State of Montana has a compact with the Unites States that plainly indicates "Indian tribes shall remain under the absolute jurisdiction and control of the United States." Mont. Const., art. I, sec. I. The CDAs do not provide a valid exception to that compact. The CDAs cite as authority for their own existence the "Indian Law Enforcement Reform Act, 25 U.S.C. §§ 2801 – 2804 [which] provides the Secretary of the Interior with the authority to enter into and approve such cooperative law enforcement agreements. ER 93, 111. The parties clearly intended to condition the Agreements upon the approval of the Secretary of the

Interior. Whether this was intentional or not, they failed to obtain such approval, making the Agreements invalid.

The District Court inquired as to the freedom of the Tribes to contract with whomever they choose. In this case, the Tribes did freely contract – with the BIA. The CDAs provide that the "standards contained in Mont. Code Ann. § 7-32-303 *and in the Law Enforcement Handbook, United States Department of the Interior, Bureau of Indian Affairs, Vol. I, Chapter 2, Sec. 4*, provide the appropriate minimum standards for the issuance of commissions." ER 99, 116 (emphasis added). In short, the CDAs were conditioned in more than one way upon the approval of the BIA. That approval was denied.

Mr. Fowler, along with all of the members of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, are subject to these Agreements which are unclear at best and invalid at worst. If he is to be subject to extra criminal jurisdictional authority from the state, he deserves an enforceable and legitimate Agreement as to who may execute that authority. These Agreements are neither.

B. Regardless of the legality of the CDAs, Trooper Moon did not abide by either version when he failed to carry an identification card as expressly required.

The District Court summarized this argument as the "swan song" of Mr. Fowler's Motion to Suppress, but it is in fact a critical failure to follow proper

procedure. The District Court's flippant dismissal of this blatant disregard for the rules and requirements of the very parties who enacted the CDA is dangerous. It undermines the importance of having safeguards against the exercise of power, especially over historically marginalized populations like the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

Trooper Moon testified that he was not issued an identification card pursuant to the Agreement until after the stop of Mr. Fowler. ER 55. He testified that he was not even aware that he was required possess or carry a card until the initial prosecuting attorney in this matter contacted his Sergeant after the fact. *Id.* Trooper Moon testified that he had never read a CDA nor been instructed as to the conditions of his authority thereunder. ER 57.

Trooper Moon did not comply, nor was he even aware, of the requirements imposed upon him under the Agreements which purported to give him authority to search and cite the Defendant. It appears his superiors were also unaware. If Trooper Moon's authority as a Tribal law enforcement officer is based entirely in the Agreement, then compliance with that Agreement is crucial. Trooper Moon did wear an insignia (badge), which is optional under the Agreement, but an identification card is not. The CDAs are not vague on this requirement:

I. Identification.

> A. All commissioning agencies shall issue identification cards, and may issue insignia to officers commissioned pursuant to this Agreement. All commissioned officers must wear their insignia, if issued, and carry the identification cards with them at all times while acting under the authority of the commissioning agency. The identification cards must bear signatures or other insignia to identify each of the commissioning agencies for which the commissioned law enforcement officer is authorized to act. Commissioned law enforcement officers must immediately display these identification cards to individuals upon request. The identification card must include the following identification date: name and recent photograph of the holder of the commission; the date of birth; height; weight; eye and hair color; and social security number. The holder of the commission and the authorized representative(s) of the commissioning agency(ies) must sign all identification cards.

ER 103, 122.

If the District Court takes no issue with Trooper Moon and his supervisors' failure to comply with this very clear requirement, then which other portions of the CDAs can law enforcement ignore with the sanction of the court? How can a law enforcement officer uphold the law if he doesn't even know the bounds of his own authority?

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, both rewarding wrong and failing those in the right. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2482 (2020). The fact that Trooper Moon was operating under an Agreement conferring authority unto him which he had never

read and did not revere enough to comply with its simple mandates regarding ID cards, is not without consequence to Mr. Fowler or the countless other tribal members who have been subject to the jurisdiction of the Montana Highway Patrol since the inception of these Agreements. The degree of disregard of their disregard by the Montana Highway Patrol, and that sanctioning of that disregard by the District Court, is deeply troubling for obvious reasons.

The District Court "fail[ed] to make the connection between any constitutional violation whose remedy is suppression with Trooper Moon's . . . violation of the 2000 CDA." ER 21. The constitutional violation is that of the right to be free from unreasonable searches and seizures under the Fourth Amendment as cited herein. Trooper Moon was only (arguably) granted the authority to search Mr. Fowler's person and vehicle by way of the CDA. Trooper Moon was not in compliance with the CDA, therefore his authority to act as law enforcement was invalid and his authority to search Mr. Fowler was invalid. It is well established that an arrest made outside of the arresting officer's jurisdiction violates the Fourth Amendment and is analogous to a warrantless arrest without probable cause. *See Beck v. Ohio*, 379 U.S. 89 (1964). Absent exigent circumstances, such an arrest is presumptively unreasonable. *Michigan v. Summers*, 452 U.S. 692, 700 (1981). Trooper Moon's failure to act in accordance with the authority (arguably) granted to

him by the CDA while performing a search is akin to making an arrest outside of his jurisdiction.

Absent the CDA, there would not even be an argument that Trooper Moon had any authority to stop Mr. Fowler within the bounds of the reservation. If Trooper Moon was not acting in accordance with the mandates of that CDA, it is not possible that he was acting under any appropriate color of law, in any jurisdiction, in accordance with any of the protections offered by the Fourth Amendment.

VI. CONCLUSION

The District Court fundamentally misunderstood the law governing criminal jurisdiction in Indian Country when it validated the Cross Deputization Agreements despite lack of BIA approval. It ignored the very provisions of the CDAs requiring such approval. Further, even if the Agreements were valid, the Trooper who conducted the search was in violation of their express requirements. All evidence gathered from the search of Mr. Fowler's vehicle on May 5, 2019 should have been suppressed. Mr. Fowler's decision to plead guilty was influenced by the District Court's erroneous ruling. For these reasons, Mr. Fowler respectfully requests this Court find that the District Court erred in denying his Motion to Suppress, remand, and allow Mr. Fowler to withdraw his plea.

Respectfully submitted December 3, 2021.

ERIC BRUCE FOWLER

By: Megan M. Moore
WATSON LAW OFFICE P.C.
Counsel for Defendant-Appellant

VII. CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed.R.App.P. Rule 32(a)(7)(C) and Ninth Circuit Rule 32-1, this Opening Brief complies with the type-volume limitations of Fed.R.App.P. Rule 32(a)(7)(B) because it contains 4,256 words, excluding parts of the brief exempted by Fed.R.App.P. Rule 32(a)(&)(B)(iii). (An Opening Brief must not exceed 14,000 words, excluding tables and certificates).

This brief complies with the typeface requirements of Fed.R.App.P. Rule 32(a)(5) and the type style requirements of Fed.R.App.P. Rule 32(a)(6) because this brief has been prepared in a proportionally spaced type face using Microsoft Word, in Times New Roman 14.

RESPECTFULLY SUBMITTED this 3rd day of December, 2021.

ERIC BRUCE FOWLER

By: Megan M. Moore
WATSON LAW OFFICE P.C.
Counsel for Defendant-Appellant

VIII. STATEMENT OF RELATED CASES

The undersigned, counsel of record for the Defendant-Appellant, certifies pursuant to Rule 28-2.6 of the Rules of the United States Court of Appeals for the Ninth Circuit, that to his knowledge there are no related cases.

DATED this 3rd day of December, 2021.

ERIC BRUCE FOWLER

By: Megan M. Moore
WATSON LAW OFFICE P.C.
Counsel for Defendant-Appellant

IX. CERTIFICATE OF SERVICE
Fed.R.App.P. 25

I hereby certify that on December 3, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

Eric Bruce Fowler
Defendant-Appellant

By: Megan M. Moore
WATSON LAW OFFICE P.C.
Counsel for Defendant-Appellant