IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

STATE OF ALASKA, **Plaintiff,** **v.** **COLETON HAYWARD,** **Defendant.**	**Case No. 1KE-25-00199CR**

ORDER RE: TRIBAL SOVEREIGN IMMUNITY QUESTION

An Alaskan search warrant cannot validly authorize state law enforcement officers to search and seize Tribal Nation property. The state search warrants issued and served on the Metlakatla Indian Community (the Community) for Tribal property were therefore unenforceable and a violation of the Community's sovereign immunity. But the Community has since affirmed its willingness to share the seized property with the State of Alaska. And so, while the search warrants violated Tribal sovereignty, there is no need for the court to craft a remedy for this violation.

I. BACKGROUND

The court outlined the factual background in its Order Inviting Responses to Tribal Immunity Question. In brief, in February 2025, state law enforcement requested a state court to issue search warrants to allow state law enforcement officers to search and seize Tribal property. The State believed the material could show evidence of the Community not

adequately investigating reports of child abuse and sexual abuse. A state court issued these warrants. A cadre of state and federal law enforcement agents then went to Annette Island and executed the warrants. Tribal officials assisted state law enforcement in locating and gathering responsive material.

As a result of evidence gathered from the execution of these warrants and subsequent investigation, the State charged Mr. Hayward with the present case. During a hearing on discovery issues, the State outlined (in part) the history of its operation on Annette Island, including the subject search warrants. Concerned that the state search warrants could raise an issue of Tribal sovereign immunity, the court solicited briefing from the legal parties and invited the Community and two potentially interested organizations to respond. The State, the Community, and the Native American Rights Fund (NARF) responded. The court very much appreciates the thorough and instructive briefing provided by NARF, the insight offered by the Community, and the analysis by the State.

II. DISCUSSION

A. The court is required to raise issues of subject matter jurisdiction when the parties do not.

"Subject matter jurisdiction is 'the legal authority of a court to hear and decide a particular type of case.' "[1] "The doctrine of subject matter jurisdiction applies to judicial and

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[1] *Nw. Med. Imaging, Inc. v. State, Dep't of Revenue*, 151 P.3d 434, 438 (Alaska 2006) (quoting ERWIN CHEMERINSKY, FEDERAL JURISDICTION 257 (3d ed. 1999)).

quasi-judicial bodies to ensure that they do not overreach their adjudicative powers."[2] "As a court which does not have subject matter jurisdiction is without power to decide a case, this issue cannot be waived, and can be raised at any point during the litigation."[3] While courts typically refrain from raising issues *sua sponte*, subject matter jurisdiction "must be raised by the court if not raised by one of the parties"[4] because "a court which does not have subject matter jurisdiction is without power to decide a case."[5]

The Alaska Supreme Court has tempered this directive when it comes to sovereign immunity, noting that it "[i]t may be forfeited where the [sovereign] fails to assert it."[6] But here, the sovereign at issue – the Community – is not a legal party to these proceedings. And so, when the court learned that the vast majority of the evidence against Mr. Hayward was Tribal property seized pursuant to a state warrant, the court had an obligation to raise the issue of subject matter jurisdiction. Further, no party had the opportunity to address this issue prior to the court issuing the search warrants. Given the secrecy of those proceedings, the issuing court could not solicit briefing on this issue at that time. Raising the issue at this time allows all interested parties an opportunity to address this important issue

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2 *Id.*

3 *Wanamaker v. Scott*, 788 P.2d 712, 713 n.2 (Alaska 1990).

4 *Burrell v. Burrell*, 696 P.2d 157, 162 (Alaska 1984) (citations omitted).

5 *Wanamaker,* 788 P.2d at 713 n.2.

6 *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska,* 403 P.3d 1172, 1178 (Alaska 2017) (internal quotations and citations omitted).

Whether or not the court had the authority to issue the search warrants is a question of subject matter jurisdiction. If the court lacked authority to issue the warrants, then the court would need to decide whether the State could use any evidence obtained through those warrants. If the court instead ignored the issue of Tribal sovereignty and its impact on the court's jurisdiction, then the court would run the risk of permitting the case to continue even if the case was built on invalid warrants that exceeded the court's subject matter jurisdiction. While the court undoubtedly has personal jurisdiction over Mr. Hayward and subject matter jurisdiction over a felony criminal offense allegedly committed on Annette Island, the question here is whether or not the court had the authority to issue a search warrant for Tribal property and, if it does not, whether the violation of Tribal sovereign immunity in this case requires a remedy.

B. An Alaska state court does not have the authority to issue search warrants for Tribal property.

A court's ability to issue a valid search warrant is defined by its jurisdictional reach. An Alaska superior court's jurisdiction "extends over the whole of the state."[7] It does not reach records and evidence held by law enforcement and other agencies of a Tribal Nation.

"Indian tribes are sovereign, self-governing entities."[8] "The powers of Indian tribes are, in general, inherent powers of a limited sovereignty which has never been

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[7] AS 22.10.020(b).

[8] *Ollestead v. Native Village of Tyonek,* 560 P2d 31, 33 (Alaska 1977).

extinguished."[9] "[T]ribal sovereignty with respect to issues of tribal self-governance exists unless divested."[10] Because Tribal Nations are sovereign entities, the United States Supreme Court has recognized that Tribal Nations are immune from suit unless Congress has authorized the suit or the Tribal Nation has waived its immunity.[11] Tribal sovereignty extends not only to governmental activities but also business activities of the Tribal Nation.[12] This means that "tribal sovereign immunity serves as a jurisdictional bar under federal law"[13] and that when a "tribe is entitled to [sovereign] immunity, [Alaska] courts '*may not exercise jurisdiction.*'"[14]

A state issued search warrant has no authority to compel the production of a Tribal Nation's property. There is no clear Alaska caselaw on this point, but this issue has arisen in federal caselaw, which the court looks to for guidance.[15] NARF thoroughly outlined the federal caselaw on this point, which the court adopts by reference. Of particular note, in

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9 *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978).

10 *John v. Baker*, 982 P.2d 738, 752 (Alaska 1999).

11 *Kiowa Tribe v. Mfg. Techs.*, 523 U.S. 751, 754 (1988).

12 *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006), citing *Am. Vantage Cos. V. Table Mountain Rancheria*, 292 F.3d 1091, 1100 (9th Cir. 2002) and *Marceau v. Blackfeet Hous. Auth.*, 455 F.3d 974, 978 (9th Cir. 2006).

13 *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 403 P.3d 1172, 1176 (Alaska 2017)

14 *Id.* (quoting *Puyallup Tribe, Inc. v. Dep't of Game of the State of Wash.*, 433 U.S. 165, 172, 97 S.Ct. 2616, 53 L.Ed.2d 667 (1977)) (emphasis original)).

15 *See, e.g., Douglas Indian Ass'n*, 403 P.3d at 1178, taking guidance from federal law on an issue of sovereign immunity.

Bishop Paiute Tribe v. County of Inyo, the Ninth Circuit explicitly held that the Tribal Nation's sovereign immunity barred execution of state search warrants for Tribal property.[16] This holding is directly applicable here: the state issued search warrants had no validity over the Community's property.

C. There is no clear evidence that the Community waived its sovereign immunity. But because it presently agrees to the State keeping the records, the court is not ordering a remedy for the violation of sovereign immunity.

A sovereign, whether that be a state or a Tribal Nation, may waive its sovereign immunity.[17] Any waiver must be "clearly expressed."[18] And, as explained in NARF's briefing, a waiver is only valid if it is made "by an officer or body of the Tribal Nation with authority to waive sovereign immunity."[19]

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[16] *Bishop Paiute Tribe v. Cnty. of Inyo*, 291 F.3d 549, 558 (9th Cir. 2002), vacated sub nom. *Inyo Cnty., Cal. v. Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony*, 538 U.S. 701, 123 S. Ct. 1887, 155 L. Ed. 2d 933 (2003) (holding "We conclude that the execution of a search warrant against the Tribe interferes with 'the right of reservation Indians to make their own laws and be ruled by them.'" (quoting *Williams v. Lee,* 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959)). As noted, this decision was later vacated and remanded on standing grounds, but its reasoning, which was a natural outgrowth of existing federal cases, is still informative.

[17] *Native Vill. of Eyak v. GC Contractors*, 658 P.2d 756, 759 (Alaska 1983).

[18] *Ito v. Copper River Native Ass'n*, 547 P.3d 1003, 1010 (Alaska 2024) (unreported) (citing *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418, 121 S.Ct. 1589, 149 L.Ed.2d 623 (2001)).

[19] Brief of Amicus Curiae Native American Rights Fund in Support of Neither Party at 15 (discussing and citing federal cases analyzing this principle).

The briefing focuses on what is described as the Community's consent to the searches, arguing that the Community's purported consent authorized the State's actions. But with respect to the State's searches, the issue is not the Community's *consent* but whether it *waived its sovereign immunity*.[20] While a Tribal Nation may waive its sovereign immunity by voluntarily producing documents to another government,[21] the production here occurred in the broader context of the invalid warrants.

The violation of the Community's sovereign immunity occurred when the court issued the warrants and continued when the State attempted to execute the warrants. If the Community agreed to share documents and other material with the State, then there would be no reason for the State to seek warrants. Instead, the State sought warrants in order to compel the production of the material and proceeded to execute the warrants. There is no evidence that individuals vested with the necessary authority permitting them to waive the Community's sovereign immunity ever did so.[22] The focus on the Community's purported

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[20] *See, Ito v. Copper River Native Ass'n*, 547 P.3d 1003, 1027–28 (Alaska 2024) ("Our reasoning is consistent with the well-recognized principle that a tribe's compliance, or agreement to comply, with a particular state law does not amount to an unequivocal waiver of that tribe's sovereign immunity. Merely agreeing to comply with a law does not approach the requirement of an explicit waiver of immunity.")

[21] *United States v. James*, 980 F.2d 1314 (9th Cir. 1992).

[22] *Id.* (Observing that "to discern whether a tribe has clearly and unequivocally waived immunity, it is crucial to understand the tribe's intent. And such understanding requires full consideration of a tribe's own expression of its intent, as well as contextual information that reflects the tribe's intentions.) The State has noted the statements and actions of various Community government officials, but has not sufficiently explained the Community's governing

consent after state law enforcement arrived on Tribal property is irrelevant. It is impossible to consent to an invalid warrant. The Community's actions, then, are best understood not as a waiver of sovereign immunity at the time of the searches but instead a subsequent voluntary decision to share records and property with the State of Alaska.

As a sovereign, the Community has the authority to share its records and property with another sovereign. The Community made clear in its letter that it is willing to have the State keep the seized material. This is consistent with the State's representations at hearings in this case, where it described its collaborative relationship with the Community. And so, there is no need for the court to issue a remedy for the violation of the Community's sovereign immunity.

Although the court finds there is no need for a remedy to this violation of Tribal sovereign immunity given the Community's subsequent consent, the court stresses that the warrants in this case were invalid. They violated the Community's sovereign immunity. Any searches pursuant to those warrants were a violation of Tribal sovereignty. The court expects the State will not seek future warrants for Tribal Nation property absent a showing that the law in this area has changed. The court expects this court's judicial officers would deny any similar future requests. The State is certainly free to engage in government-to-government record sharing with the Community or other Tribal Nations, as it has done here. Sovereign-

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structure in order for the court to conclude whether those officials did or did not have the requisite authority.

to-sovereign communication and diplomacy is valuable and encouraged. Because of those efforts, it appears the Community is willing to presently voluntarily share the material. And so given that decision, there is no need to consider ordering the return of the material as a remedy for the violation of the Community's sovereign immunity.

III. CONCLUSION

The court appreciates the State's, Community's, and NARF's participation in addressing this important question. At this time, there does not appear to be a further issue of subject matter jurisdiction tied to the issuance and execution of the underlying search warrants and so the court considers this issue closed.

IT IS SO ORDERED.

Dated at Ketchikan, Alaska this 6th day of March 2026.

Katherine H. Lybrand
Superior Court Judge

Alaska Trial Courts

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