

**FILED**

**OCT 22 2021**

**FORT PECK  
TRIBAL COURT OF APPEALS**

Appellate Court  
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**FORT PECK COURT OF APPEALS  
ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
POPLAR, MONTANA**

<p>Fort Peck Tribes, Appellee</p> <p>v.</p> <p>Jennifer Long Hair, Appellant.</p>	<p>CAUSE NO. AP # 815</p> <p>ORDER</p>
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Appeal from the Fort Peck Tribal Court, Stacey Four Star, Presiding Judge.  
Appellant Jennifer Long Hair, appearing through Advocate Terry Boyd.  
Appellees Fort Peck Tribes, represented by Prosecutor David Mrgudich.  
Before E. Shanley, Chief Justice and B.J. Jones, Associate Justice.

**BACKGROUND**

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on an appeal from the implicit denial of a motion in limine to restrict the Tribes' use of a field test called TRUNARC in the Tribes' case in chief in a criminal prosecution where the Appellant is charged with Unlawful Possession of Dangerous Drugs (methamphetamine) in violation of Title 7, CCOJ §413-A. The Appellant moved the trial

court to suppress any reference to the results of the TRUNARC test, alleging that its admission would be more prejudicial than probative because the test result is not scientifically reliable evidence. Because the lower court did not act on the motion it is deemed denied under the Tribal Code and this appeal then ensued. The Appellant, through his counsel, Public Defender Terry Boyd, argues that the lower court erred in not granting the motion. She contends that the Fort Peck Code requires that any substance alleged to be an illegal drug under the Code be examined by the Montana state laboratory under Title 6-508(b) of the Code and that this implies that other methods of identification are insufficient under the Code. The Tribes contend that the Code adopts Federal Rule of Evidence 703 and permits the Tribes to offer, and the Court to consider: §508(c)(2) "Records from the examination, description, or testing of any physical evidence of the case at hand", provided the evidence meets the evidentiary standards laid out at subsection (d).

### **STATEMENT OF JURISDICTION**

¶ 2 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The implicit denial of a motion in limine to restrict admission of evidence is a final order.

### **STANDARD OF REVIEW**

¶ 3 This Court reviews de novo all determinations of the lower court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. 2 CCOJ §202.

## ISSUE

**¶ 4 Whether the lower court erred in implicitly denying a motion in limine to restrict a police officer from testifying as to the results of a TRUNARC field test in a drug possession case.**

## DISCUSSION

**¶ 5** In general Federal Rule of Evidence 703 requires the Tribes to demonstrate that the evidence being offered is “scientifically reliable.” This Court finds that the Fort Peck Code, by adopting the Federal Rules of Evidence<sup>1</sup>, does not per se prohibit the introduction of evidence other than laboratory results from the Montana state laboratory to prove that a substance is an illicit drug banned under tribal law.

**¶ 6** By adopting Federal Rule of Evidence 703, the Tribal Court should permit the Tribes to offer under §508(c)(2) “Records from the examination, description, or testing of any physical evidence of the case at hand”, provided the evidence meets the evidentiary standards laid out at subsection (d). The Tribal Court must then decide the admissibility of the scientific test of a substance to determine whether it is an illicit drug based on whether the test kit utilized produces a scientifically reliable result that is more probative than prejudicial and whether the officer performing the test has been sufficiently trained to administer the test.

**¶ 7** The Tribal made no findings with regard to the scientific reliability of the test in this case, nor as to the certification of the officer who administered the test. On remand the Court must make those findings before admitting the results of the test at trial, but

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<sup>1</sup> Fort Peck Comprehensive Code of Justice applies the Federal Rules of Evidence in all Tribal Court Procedures. Title 6, Chapter 5, § 510(a).

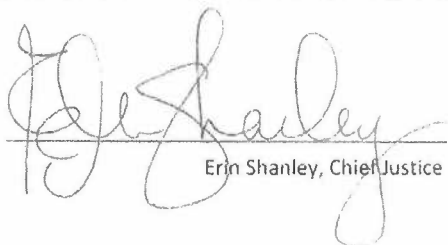
the Court rejects the argument that the test results are per se inadmissible. It is true that the best scientific test of an illicit substance would be a toxicology or chemical test by the Montana State laboratory, but this Court understands that in certain cases the right of the Defendant to a speedy trial may be denied if the Tribes has to wait on the results from the state lab, and since the Tribal Code does not mandate that the results from the State lab be the only admissible scientific evidence of the identify of illicit drugs, alternative scientific evidence may also be admissible.


**ORDER**

¶ 8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this case be remanded to the Tribal Court with the requirement that the lower court make an independent examination of the reliability of the TRUNARC test and the qualifications of the officer administering it prior to admitting any results into the trial of the Defendant.

SO ORDERED the 9<sup>th</sup> day of September 2021.

FORT PECK COURT OF APPEALS

  
Erin Shanley, Chief Justice

  
Associate Justice