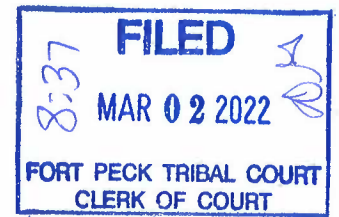


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FORT PECK COURT OF APPEALS  
ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
POPLAR, MONTANA

<p>Brock Day, Appellant,  v.  Fort Peck Tribes, Appellee.</p>	<p>CAUSE NO. AP # 825  ORDER DENYING APPEAL</p>
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Appeal from the Fort Peck Tribal Court, Stacie Fourstar, Presiding Judge.  
Appellant Brock Day appearing through Public Defender Terry Boyd  
Appellees Fort Peck Tribes, represented by Prosecutor David Mrgudich  
Before E. Shanley, Chief Justice, B.J. Jones, Associate Justice and Grant Christensen,  
Associate Justice

**BACKGROUND**

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on a petition for interlocutory appeal by Day from the Tribal Court's order declining to rule on a motion to suppress evidence obtained by a BIA officer. The Appellant claimed below in a motion to suppress that the officer lacked the authority to investigate violations of tribal law and thus the evidence obtained from the search should be suppressed. The

Tribes opposed the motion, but the lower court failed to address it in within the 30 days provided in tribal law. It was thus deemed denied.

### **STATEMENT OF JURISDICTION**

¶ 2 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The consideration of whether the failure of the lower court to rule on a motion to suppress is immediately reviewable in this Court has never been addressed, but the Court would note that in general an order denying a motion to suppress should be preserved at trial and then addressed after verdict. This Court holds therefore that the petition for interlocutory review be denied without prejudice to the right of the Appellant to preserve the issue at trial and raise it after verdict, if the Appellant is found guilty.

### **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**

**Whether the lower court's implicit denial of a motion to suppress is immediately appealable?**

### **DISCUSSION**

¶ 4 The Court notes that in general denials of motion to suppress are not immediately appealable, but that Fort Peck Code of Justice does provide for an interlocutory appeal of a procedural issue under 6 CCOJ §203 when it impacts a right preserved under the Indian Civil Rights Act. Rulings on motions to suppress evidence

are generally not proper matters to address on interlocutory appeals because they do not impact fundamental rights under the Indian Civil Rights Act. See *Application of Leahy*, 298 F.2d 233 (9<sup>th</sup> Cir. 1958). This Court declines to adopt a blanket rule, however, that rulings on such motions cannot be heard by this Court prior to trial, as in certain circumstances, for example where a motion to suppress is granted and the Tribes' prosecution is thus compromised, an interlocutory appeal may be the only way to address the issue because the Tribes cannot appeal an acquittal or dismissal by the lower court. Also, when it is blatantly obvious that the lower court's decision on the suppression of evidence is erroneous this Court reserves the right to intervene prior to trial to ensure that an unnecessary trial not take place.

¶ 5 In this case, however, the Appellant makes an argument that a BIA officer lacks the authority to investigate tribal crimes on the Fort Peck reservation. This Court notes that many crimes investigated by BIA police are potentially subject to concurrent federal and tribal jurisdiction, and additionally the assertion that BIA police cannot investigate tribal crimes runs contrary to many federal court decisions. See *Hopland Band of Pomo Indians v. Norton*, 324 F.Supp. 2d 1067 ( ND Cal. 2007). Ultimately the lower court can resolve this issue should this case proceed to trial and this Court will have the ability to assess the legal rationale for admitting or denying the evidence, should this matter come back before this Court.

#### **ORDER**

¶ 6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court denies the appeal at this time without prejudice to the right of the Appellant to appeal on the suppression issue should he be convicted of the counts in the complaint.

SO ORDERED the 16th day of February 2022.

FORT PECK COURT OF APPEALS

  
Erin Shanley, Chief Justice



Associate Justice

