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FILED
AUG 18 2023
FORT PECK TRIBAL COURT
CLERK OF COURT

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

<p>Fort Peck Tribes, Plaintiff-Appellee</p> <p>v.</p> <p>Troy D. Larson Jr., Defendant-Appellee</p>	<p>CAUSE NO. AP # 853</p> <p>ORDER DENYING APPEAL</p>
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BEFORE CHIEF JUSTICE SHANLEY, ASSOCIATE JUSTICES JONES,
GRIJALVA

After the Tribal Court denied the Appellant's motion to dismiss the charges of Rape and Family Member Assault, he petitioned this Court for review contending that the lower court erred in failing to dismiss because the Tribes do not have a "rape test kit" that it has provided to the Appellant and that this alleged deficiency proscribes the prosecution of him based on prior precedent of this Court. See Fort Peck Tribes v. Jeremy Adams, FPCOA 492, September 24,

2008. The Appellant misreads Adams as this Court has never held that the results of a rape test kit are mandatory for a Rape case to proceed.

In Adams this Court held that a criminal defendant's rights to due process of law under Brady v. Maryland, 373 US 83 (1963) and the right to confront, see Crawford v. Washington, 541 US 36 (2004), were violated when the Tribes were permitted to criminally prosecute a rape case when a "rape test kit" had been obtained from the victim, but made inaccessible to the Tribes and Defendant because of the federal government's investigation into the alleged crime causing the federal government to quarantine the evidence. This Court found that permitting a tribal prosecution to go forward when the results of the rape test kit could not be provided to the Defendant violated his right to confront all evidence against him as well as his right to potentially exculpatory evidence.

Judge Headdress, in denying the Appellant's motion to dismiss below, properly distinguished this case- where not rape test kit was done- from the Adams case where one was done but could not be made available to the Defendant. Nowhere in Adams did this Court rule that the performance of a rape test kit on the victim of rape was a legal prerequisite to the Tribes prosecuting a rape case. Such a ruling would, for example, potentially exclude all rape prosecutions where delay occurs between the time of commission of the crime and the reporting of the crime- not an uncommon occurrence in such cases.

This is not to say that a criminal Defendant cannot raise the failure of the Tribes to obtain such evidence when it could have been collected and preserved for evidence before the trier of fact as potentially exculpatory evidence. However,

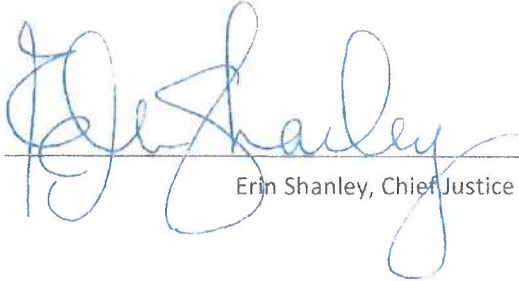
that issue is for the ultimate trier of fact and is not grounds for a preliminary dismissal of the charge unless some misconduct by the Tribes or police can be documented.

WHEREFORE IT IS HEREBY


ORDERED, ADJUDGED AND DECREED that the appeal in this matter be and hereby is DENIED without prejudice to the right of the Defendant to appeal should he be convicted of the crimes or crime charged.

SO ORDERED the 18 day of August 2023.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



Associate Justice

Associate Justice