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FILED  
AUG 21 2017  
Fort Peck Tribal Court  
of Appeals

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

<b>FORT PECK TRIBES, Appellee</b>  <b>vs.</b>  <b>BRITTNEY MARTELL, Appellant</b>	<b>CAUSE NO. AP # 744 B</b>  <b>ORDER DENYING MOTION TO RECONSIDER</b>
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Appeal from the Fort Peck Tribal Court, Marvin Youpee, Presiding Judge.  
Appellant appears with Counsel, Dustin Kuipers.  
Before Smith, Chief Justice, and Shanley and Knudsen, Associate Justices.

**Introduction**

¶1 Brittney Martell filed a motion on May 5, 2017 requesting re-consideration, under Rule 9, FPCOA Rules of Appellate Procedure, of this Court's order issued on April 28, 2017 affirming the lower court's denial of the Writ of Habeas Corpus. The Appellant filed a brief in support of the motion on May 5, 2016. No responsive pleading was filed by the Fort Peck Tribes.

**Background**

¶2 This Court affirmed the lower court's denial of the Writ of Habeas Corpus. After review of the lower court record, this Court determined the record was not sufficiently developed to evaluate whether probable cause existed to support the

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warrantless arrest of Appellant Martell based on admissible evidence. This matter was remanded back to the lower court in order to determine the probable cause issue. This Court's decision considered the remedial suppression principles articulated by the United States Supreme Court in *Miranda v Arizona*, 384 U.S. 436 (1966), and found that court's reasoning appropriate in this situation given that the tribal code does not articulate the legal consequences associated with law enforcement failing to immediately advise an individual of her or his rights upon arrest.

¶3 Appellant misconstrues the scope of *Fort Peck Tribes v First*, FPCOA #467; this Court's previous order in this matter and what remedies may be available for this violation of the tribal code. The *First* Court did not say that dismissal was the only remedy available for failing to immediately advise an individual of her or his rights upon arrest. Rather, the *First* Court upheld the lower court's dismissal of the action against Appellant First based on law enforcement's failure to immediately advise the individual of his rights. Unlike the *First* case, this Court is not being asked to uphold a dismissal as a matter of law, but rather is being asked to review the lower court's denial of a writ of habeas. This type of proceeding requires this Court to determine if a person "is unjustly imprisoned or otherwise unlawfully deprived of his/her liberty." 8 CCOJ §404.

¶4 In order to determine if a person is being unjustly detained, this Court must evaluate whether there is sufficient evidence in the lower court record to establish whether probable cause exists to support the arrest. Probable cause is defined as "such facts and circumstances which would lead a reasonable person to believe that an offense has been committed." 6 CCOJ §201(c). The facts and

circumstances must sufficiently demonstrate probable cause existed prior to any arrest. In warrantless arrest situations, such as Appellant Martell's circumstance, the officer must be able to articulate that probable cause existed prior to arresting Appellant Martell. This determination is separate from the determination of the sufficiency of the evidence for a conviction which may also be impacted by the lower court's decision to suppress evidence due to law enforcement's failure to immediately advise Appellant Martell of her rights upon arrest.

¶5 If Appellant Martell does not feel there was sufficient probable cause to support her arrest this must be raised in connection with an evidentiary hearing. This Court simply does not find anything in either the *First or Fort Peck Tribes v Bighorn*, FPCOA # 279 (1997) decision from this Court that would mandate automatic dismissal of a criminal matter when law enforcement does not immediately advise an accused of her or his rights upon arrest.

¶6 This Court did not address the sufficiency of any admissible evidence to support convicting Appellant Martell of the offense for which she has been charged, for that issue was not before this Court and must be examined by the Tribal Court in the first instance. The only issue this Court reviewed was the issue of whether Appellant Martell was unlawfully detained. In the absence of a lower court record specifically ruling on the sufficiency of the admissible evidence and testimony used to establish probable cause, this Court finds no grounds to reconsider the denial of the writ of habeas requested by Appellant Martell.

¶7 As Appellant Martell has acknowledged, the Fort Peck Tribes felt it was appropriate to enact a statute that was consistent with the federal and state warnings established through *Miranda*. Exhibit A. Absent tribal legislative action

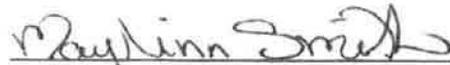
imposing dismissal of the charged offense as the only remedy available for law enforcement's failure to immediately advise an accused of her or his rights, this Court will continue to consider all appropriate remedies for this violation of tribal law; including suppression of evidence or testimony and dismissal, where appropriate.

¶8 Based on the nature of a writ of habeas corpus, this Court did not find grounds for over ruling the lower court's denial of this writ. Dismissal of the action would have exceeded the authority of this Court without anything in the lower court record demonstrating that the arrest was made without sufficient probable cause. Remand back to the lower court for a probable cause determination was appropriate in this situation.

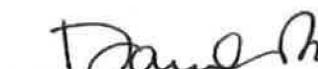
¶9 The previous order issued by this Court on April 28, 2017 stands.  
SO ORDERED this 21<sup>st</sup> day of August 2017.

**FORT PECK COURT OF APPEALS**

BY

  
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Maylinn Smith, Chief Justice

  
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Erin Shanley, Associate Justice

  
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DANIEL P. KNUDSEN  
Associate Justice