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

FORT PECK ASSINIBOINE and SIOUX
TRIBES,
Plaintiff/Appellee

Appeal No. 106

vs.

VICTOR and PATTI GRANT,
Defendants/Appellants.

THIS APPEAL is from an order of the Fort Peck Tribal Court, Chief Judge Bemer presiding, in which he suppressed evidence obtained in the process of search within the Defendants' home in Poplar, Montana. The Court ruled that a **SEARCH WARRANT** should have been obtained by the officer handling the matter prior to the search.

APPEARING FOR DEFENDANTS/APPELLANTS (Victor and Patti Grant): Clayton Reum, Wolf Point, Montana

APPEARING FOR PLAINTIFF/APPELLEE (Fort Peck Tribes): Ronald Arneson, Special Prosecutor, Wolf Point, Montana

Argued: August 6, 1990

Decided: August 6, 1990

**CRIMINAL: ORDER SUPPRESSING EVIDENCE WAS PROPERLY GRANTED IN
WARRANTLESS SEARCH OF APPELLANTS' HOME WHERE EXIGENT CIRCUMSTANCES DID
NOT EXIST FOR WARRANTLESS SEARCH.**

OPINION delivered by Gerard M. Schuster, Gary James Melbourne and Debra Johnson, Justices by unanimous opinion.

HELD: ORDER SUPPRESSING EVIDENCE OBTAINED IN WARRANTLESS LESS SEARCH OR APPELLANTS' HOUSE IS SUSTAINED.

FACTS:

Prior to the search of the Grant residence, a vehicle was seen leaving the Grant residence by officers while they were conducting a surveillance of the residence. The vehicle was stopped and the occupant was arrested after the officers determined that the driver was in possession of what they believed to be marijuana cigarettes. The person was taken to the Bureau of Indian Affairs Detention Center where she was interviewed. The information gained from the interview was that the marijuana was allegedly purchased from Victor Grant. Officers then proceeded to the Grant residence where a search of the home was conducted and resulted in the confiscation of several articles which the Prosecution contended were illegal drugs and contraband. Several people were arrested after the search.

This incident occurred shortly after noon on September 15, 1989, during normal Court business hours.

It is abundantly clear from the transcript presented in this matter that the statements given by the female arrested and taken to the BIA Detention center could have provided probable cause for the issuance of a search warrant to search the Grants' home.

The record is completely lacking in facts which show that exigent circumstances existed at the time of this search which would allow the officers to search a residence around mid day when the Court was in session, without a warrant.

Title II, Section 303 CCOJ provides:

No Law Enforcement Officer shall conduct any search without a valid warrant except:

- (1) When he/she is making a lawful arrest; or
- (2) With the voluntary consent of the person being searched or the person entitled to possession of property being searched; or
- (3) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

The lawful arrest of the female witness may have provided an opportunity to establish probable cause for issuance of a search warrant, but that fact does not meet the criteria of Section 303 for a warrantless search.

Further, the test set forth in United States vs. Winsor 816 F. 2d 1384 (9th Cir., 1987) must be met by the prosecution. This test is two-fold.

(1) It must show probable cause to search the residence, and

(2) It must show the evidence of **exigent circumstances** to excuse the lack of a warrant.

The record here shows that the officers had ample opportunity and probable cause to request a search warrant. The Grants' house had been under surveillance; there were numerous reports from citizens regarding the suspected drug activity at the Grants' home; a female leaving the home in her automobile was in possession of substance believed to be marijuana; the officer had reason to believe this suspected marijuana was obtained at Grants' home; an interview indicated that the marijuana joints had been purchased from Victor Grant at the Grant home.

The test set forth in Winsor, supra, is clearly not met. Here, with all of the above information available to the officers during normal Court business hours, a search warrant could have been easily obtained.

THEREFORE, IT IS THE UNANIMOUS CONCLUSION OF THIS COURT THAT THE ORDER SUPPRESSING EVIDENCE ISSUED BY THE COURT IS SUSTAINED AND UPHELD.

DATED this _____ day of August, 1990.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, Chief Justice

GARY JAMES MELBOURNE, Associate Justice

DEBRA JOHNSON, Associate Justice
