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

**Fort Peck Tribes,
Petitioner/Appellant**

vs.

APPEAL NO. 355

**Dana Mireau,
Respondent/Appellee**

OPINION

This matter arises from an order of dismissal of a criminal complaint "without prejudice" due to failure of service of two material prosecution witnesses. The factual and legal setting is essentially the same as in **FPCOA #351 Tribes v. Stafne (2002)**.

On the day of trial, two of the prosecution's material witnesses had not been served and were not present. The Tribal Prosecutor requested a continuance and the defendant made a motion to dismiss. The Tribal Court dismissed the matter without stating its legal basis for doing so. A review of the procedural history of the case shows no threat of undue delay. Defendant did not raise 'speedy trial' as an issue, nor do we find such issue existing based upon the following chronology:

- 11 -25-99 Alleged assault**
- 11-29-99 Complaint issued**
- 12-01-99 Arraignment**
- 01 -06-00 Pre-trial conference**
- 05-10-00 Bench trial - complaint dismissed**

Based upon the reasoning set forth in **Stafne** we find that the Tribal Court abused its discretion in denying the Tribal Prosecutor's motion for continuance, therefore we set the order of dismissal aside and remand for further proceedings as deemed appropriate

Dated this 22nd day of February 2002.

FOR THE FORT PECK COURT OF APPEALS

BY _____

Gary P. Sullivan
Chief Justice

CONCUR

BY _____

Gerard M. Schuster
Associate Justice

I respectfully dissent for the same reasons set forth in my dissent in **FPCOA #351 Tribes v. Stafne (2002)**.

BY _____

Carroll J. DeCoteau
Associate Justice
