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

**Fort Peck Tribes,
Plaintiff/Appellee**

Appeal No. 330

**vs.
Emma Buckles,
Defendant/Appellant**

ORDER DENYING APPEAL

An **APPEAL** having been filed **September 30, 1999** by **Emmett Buckles**, Tribal Public Defender on behalf of defendant, from an Order denying a Motion to Dismiss, both the motion and the denial having been given in open court on **September 29, 1999**, The **Honorable Barry Bighorn**, presiding, and good cause appearing therefor, the said Appeal is hereby denied for the following: reasons:

1. There is nothing in the record to indicate that the complaining witness, **Ford Falcon**, 'was served with a subpoena to appear at the jury trial Which had been scheduled for 9:00 a.m. on September 29, 1999. Appeal from the grant of that Motion was premature. A more appropriate course of action would have been to petition the Tribal Court, on or before the trial date, for a continuance in view of the short notice. Such a motion gives the Tribal Court an opportunity to assess the situation and grant the appropriate relief, When Warranted alternitively, the defendant could have sought an extraordinary wit from this Court before the trial date. Given both of these vehicles, this Court prefers the former, Which allow the Tribal Court an opportunity to correct its' own error, if necessary. It should also be noted that the extraordinary writ can always be sought in this Court after the Tribal Court refuses to grant the continuance, provided, of course, the Tribal Court is willing to stay the proceedings long enough for the defendant to pursue his extraordinary remedies.

2. In any case, Whatever potential harm might have befallen the defendant has now passed and the matter stands moot. Should the defendant believe that the criminal complaint against him should not have been amended in any event, he is free to bring that matter before the Tribal Court. By referring to this remedy, this Court does not suggest that it exists in this particular case. We merely wish to convey that our action on this Petition does not foreclose a second look, should one be warranted.

3. All Tribal Court orders heretofore stayed or not acted upon because of, or pursuant to, the pendency of this Appeal, are herewith restored and shall be given full force and effect without further delay.

Dated this 7th day of October, 1999.

BY THE COURT OF APPEALS:

Gary P. Sullivan
Chief Justice

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