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

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Fort Peck Tribes,  
Plaintiff/Appellee

vs.  
Rayette Lambert,  
Defendant/Appellant

**Appeal No. 339**

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**OPINION**

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The Tribal Prosecutor appeals from an order dismissing the criminal complaint against defendant alleging Simple Assault, a violation of **Title VI CCOJ 2000 § 231**. Defendant's motion was untimely and we reverse.

**BRIEF FACTUAL OVERVIEW AND PROCEDURAL HISTORY**

On August 20, 1999, Tammy Nygard requested an officer at her residence regarding alleged harassment of her minor daughter by an adult female. Upon arrival at the residence, the officer met with Tammy and her daughter, J.N. Tammy advised the officer that Rayette Lambert had been harassing her daughter for several days. On August 15th, Rayette allegedly 'elbow' J.N. as she walked by Rayette at the B&S Quick Stop in Brockton, MT. On August 19th, J.N. and her friends were walking around town in Brockton when Rayette allegedly drove up behind them in a pick-up truck and if J.N. had not moved out of the way, Rayette would have hit her. As Rayette passed J.N. she began shouting 'things' at J.N. On August 20th, at the B&S Laundromat, Rayette, with her infant, were walking out of the door and jumped into the passenger side of the pick-up truck and laughed at J.N. Rayette then pulled out of the parking lot. Tammy expressed her concern to the officer for her daughter's safety. J.N. then completed a statement regarding these reported events.

On the same day, the officer located Rayette at a residence that he identified as belonging to Rayette's boy friend, Kermit Lambert. The facts are in dispute as to what happened at the residence and whether the officer entered the home or not. The officer testified that he did not enter the home, but rather, stood "on the steps". He stated that Kermit's brother answered the door. He also stated that he

recognized Kermit's brother and that he knew that the brother did not live there but was from Utah. The brother "went and got Rayette" and upon her arrival at the doorway, the officer advised her of the complaint and asked her if she had been "having some problems" with J.N. She advised the officers "yes" that they had had some problems. Rayette was advised of her rights and then placed under arrest for Simple Assault. She was released on a \$200 bond with arraignment scheduled for August 23,1999.

Rayette testified that she was in "her home", where she lives with her husband and her 2-month-old infant. Rayette further testified that her husband's brother and his 11-year-old son were visiting from Utah. Rayette stated that on the night of the arrest, her husband was visiting his sister down the street, she had just fed her baby and was in bed. Her niece and her husband's nephew were in the living room when the officer came to the door. She did not testify as to the location of her husband's brother. Rayette testified that her niece came into her room and told her that "the cops are here" and that they wanted to speak to her. Rayette went to the door and asked "over and over" what this was all about. After she was told that she was under arrest, she stated that she would not leave until her Mother came to watch her baby. Rayette testified that the officer "crossed the threshold" by coming into an entryway of her home.

A criminal complaint was issued against Rayette on August 23, 1999 for a violation of what is now **Title VI CCOJ 2000 § 231**. Simple Assault. Rayette was arraigned, pled not guilty and waived her right to a jury trial, all on that same day. A pre-trial conference was calendared for September 22, 1999, with a bench trial to follow on January 11,2000. Emmett Buckles, the Tribal Public Defender, filed a Notice of Appearance on September 16,1999 and filed a Motion for Discovery on the same day.

The record is silent as to what occurred at the pre-trial conference. On January 11, 2000, immediately prior to the trial, the Public Defender made a motion to dismiss based upon a typographical error in the complaint, which charged the defendant with a violation of Title III CCOJ § 216 [1] (domestic abuse) instead of a violation of Title III CCOJ § 215 [2] (simple assault). The prosecutor objected to the motion as untimely and countered with a motion to amend the complaint. After asking the Public Defender whether his client had been prejudiced by the error and determining that no prejudice occurred, the Tribal Court Judge denied the motion to dismiss and granted the motion to amend. The Public Defender then made a second motion to dismiss, this time based upon an illegal entry by the police in the arrest of the defendant. The motion was based upon a violation of the Fourth and Fourteenth Amendments to the U.S. Constitution) and the Indian Civil Rights Act (**25 USC 1302{2}**)

After taking testimony from the defendant and the arresting police officer, the Court granted the defendant's motion to dismiss on the basis of an illegal entry into the defendant's home, stating that the niece and nephew were too young to grant consent to enter the premises. The prosecutor filed a timely NOTICE OF APPEAL on January 20,2000.

## **ISSUE PRESENTED**

The Tribal Prosecutor raises two issues on this appeal contending that: **1)** Defendant's motion to dismiss was untimely in that it was made at the time of trial and that the Tribes had no time to respond; and **2)** The facts in this case do not support an "illegal search and seizure". We hold that the Tribal

Court abused its discretion by granting an untimely motion; therefore it is unnecessary to reach the Tribes' second issue.

## STANDARD OF REVIEW

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review *de novo* all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence". **Title II CCOJ 2000 § 202**. We review a Tribal Court's dismissal of a criminal complaint for abuse of discretion.

## DISCUSSION

### **Whether the granting of defendant's motion to dismiss at the start of the trial constitutes an abuse of discretion by the trial judge?**

The Tribal Prosecution argues that he was not given the opportunity to prepare a response to the defendant's motion to dismiss at the start of the trial. Thus he contends that the motion was untimely and prejudicial to the Tribes. We agree. One of the factors we consider in reviewing abuse of discretion in a dismissal is timeliness.

The Fort Peck Tribal Court has not adopted Rules of Criminal Procedure. Nonetheless, we find guidance in Rule 7-1 Motions. Civil Rules of Procedure, which states: "Upon serving and filing a motion, or within 5 days thereafter, the moving party shall serve and file a brief. The adverse party shall have 10 days after receipt of the motion and brief within which to serve and file an answer brief." There is no doubt that the public defender failed to serve, file or brief his motion and waited until the last possible opportunity (i.e. at trial) to bring his motion before the court. The record does not sustain, nor does the defendant offer, any support or reasoning for the untimeliness.

We also note that **Fed. Rules Cr. Proc. Rule 12(b)** requires that motions to suppress evidence "... *must be raised prior to trial.*"

It is our firm belief that the Tribal Court has broad discretion. Thus, there is no question that it has the authority to dismiss a complaint when otherwise proper to do so. The pertinent question is, "In dismissing the complaint, did the Tribal Court 'step over the line' in exercising that authority." **Hopkins v. Youpee. FPCOA #309 (2000) @ p. 4.**

The facts herein are somewhat similar to those in our recent opinion in **Ft. Peck Tribes v. Hawk FPCOA #331 (2001)**. In **Hawk**, the public defender filed his notice of appearance December 8, 1998. Ten months later, at the beginning of the trial, he made an oral motion to dismiss based on several claims. The Tribal Court denied the motion, stating that it was untimely. We affirmed that ruling.

The question of "timeliness" is one of the important factors in reviewing for abuse of discretion. Did the defense know the facts that were disclosed by the testimony of the defendant and the arresting officer

prior to trial? Was there adequate time to file and brief the motion? If so, why wasn't the motion filed prior to trial and adequate notice given to the prosecution?

Certainly, there are motions that can only be made at the beginning or during the trial. Nonetheless, if a defendant wishes to motion the court for a dismissal based on a violation of his constitutional rights, he must do so in a timely manner. If the defendant has the opportunity to make the motion before trial and fails to take advantage of the remedy available to him, an oral motion at the start of trial will not avail him.

Did the trial judge's decision to grant the oral motion in this instance constitute abuse of discretion? We think so. Where the trial court acts within its discretion, this Court will not reverse. However, when the Tribal Court grants an oral motion to dismiss at the start of trial with no showing of good cause given preventing the defendant from filing his motion at least 10 days before trial, giving the other side sufficient time to evaluate the merits of the motion and to respond, we think the Court has "stepped over the line".

Accordingly, in the interest of justice, we hold that the trial judge abused his discretion in dismissing the matter and we reverse.

**NOW THEREFORE:** It is ordered that the judgment of dismissal is reversed and the matter is remanded for a full hearing on the merits.

**BY THE COURT OF APPEALS:**

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Gerard M. Schuster  
Chief Justice

**Concur:**

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Gary P. Sullivan  
Associate Justice

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James DeCoteau  
Associate Justice

[1] Now Title VII CCOJ 2000 § 244.

[2] Now Title VII CCOJ 2000 § 231