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**IN THE APPELLATE COURT
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION, PABLO, MONTANA**

7)
8 **Confederated Salish & Kootenai) Cause No. AP-15-1550-CR**
9 **Tribes)**
10 **Appellant)**
11)
12 **vs.)**
13) **Opinion of the Court**
14 **Kyra Carpentier)**
15 **Appellee)**
16)
17)
18)
19)

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21 **Appeal from the Tribal Court of the Confederated Salish and**
22
23 **Kootenai Tribes, Honorable Wynona Tanner, presiding.**

24
25 **Appearances:**

26 **Robert McCarthy, Confederated Salish and Kootenai Tribes**
27 **Prosecutors Office, for the Appellant.**

28 **Michael Wheeler, Confederated Salish and Kootenai Tribes Public**
Defenders Office, for the Appellee.

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INTRODUCTION

The Tribal Court granted Defendant's Motion to Suppress in the underlying case based on Defendant's argument that the Montana State Highway Patrol initiated a traffic stop on the Defendant that lacked the particularized suspicion necessary to initiate such a stop. Defendant's Motion was granted. The Confederated Salish and Kootenai Tribes initiated this appeal arguing that the stop was legally proper, and the case should be returned to the Tribal Court for further proceedings. We REVERSE and REMAND back to the Tribal Court.

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BACKGROUND

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Review of the record and oral arguments reveals that the facts leading up to the stop at issue are undisputed by the parties. On October 25, 2015, Montana Highway Patrol Trooper Brian Casey was patrolling Highway 93 in Pablo, Montana. While stopped and waiting for a traffic signal, Trooper Casey performed a registration check on the vehicle in front of him. The check revealed the registration was valid, and that the registered owner was Kyra Carpentier. Trooper Casey then ran a driving status check on the registered owner, Kyra Carpentier, which came back with the status of revoked habitual offender. Trooper Casey observed the vehicle proceed through the intersection onto Clairmont Road and then left on Lewis Lane. Trooper Casey followed and initiated a stop on the vehicle. Trooper Casey made contact with the driver and asked for identification and insurance information. The driver was identified as Kyra Carpentier through a tribal identification card and insurance documentation in the vehicle revealed that it was expired. Trooper Casey contacted Tribal Dispatch and Tribal Officer Asencio arrived on the scene to take Carpentier into custody. Carpentier was cited and charged for "Driving While License is Suspended or Revoked" as well as "Operation of a Motor Vehicle without Liability Insurance".

1 Appellee filed a Motion to Suppress at the Tribal Court, which was granted. Appellant
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3 now comes before this Court praying for a reversal of the Tribal Court's decision on said
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5 Motion. This appeal is made by the Tribes pursuant to CSKT Laws Codified § 1-2-816(e)

6 **Discussion**
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8 **Did the Tribal Court err when it determined there was no particularized suspicion to**
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10 **initiate a traffic stop on Kyra Capentier's vehicle when Trooper Casey was not aware of**
11 **the identity of the driver of the vehicle?**
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13 The question before the Court is essentially one that asks whether or not, given the facts
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15 before the lower court, was there a correct application of law. We review mixed issues of law
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17 and fact using the *de novo* standard. *CSKT vs Mose Moulton*, AP-09-1864-CR (2013).

18 The above background facts have not been disputed by the parties. Therefore, we will
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20 limit our discussion to the law as applied by the lower court.
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22 The Confederated Salish and Kootenai Laws Codified govern criminal procedure for
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24 Court cases in the Tribal Court System. As noted above, this case is appealed from a ruling from
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26 a motion to suppress in the lower court. The code reads:

27 *Suppression of Evidence. (1). A defendant aggrieved by an unlawful search and seizure*
28 *may move to suppress as evidence anything obtained by the unlawful search and seizure.*

.. (4) If the motion is granted, the evidence is not admissible at trial. CSKT Code 2-2-

802.

The appealed issue asks whether the investigating law enforcement officer had the proper
amount of particularized suspicion to conduct a traffic stop. If not, then the evidence gleaned
from the stop would be inadmissible at trial. In the present case, the most relevant and

1 dispositive evidence found as a result of the stop was the actual identity of the driver of the
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3 vehicle, as well as the fact that the vehicle was not insured.

4 The Code mentions particularized suspicion in one part only. The Code reads:

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6 *Investigative Stop. In order to obtain or verify an account of the person's presence or*
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8 *conduct or to determine whether to arrest the person, a law enforcement officer may stop*
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10 *any person or vehicle that is observed in circumstances that create particularized*
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12 *suspicion that the person or occupant of the vehicle has committed, is committing, or is*
13 *about to commit an offense. 2-2-214*

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15 Because the Code is silent on the definition of particularized suspicion, we look to
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17 our case law for guidance. In *CSKT vs Mose Moulton*, AP-09-1864-CR (2013), this
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19 Court examined how we would define particularized suspicion. The Court determined in
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21 that case that a law enforcement officer must be able to take in all of the information
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23 available them, analyze it, and with experience and training, be able to explain why the
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25 officer chose the action. *Id* at 12.

26 In the present case, the officer knew the registered owner of the car had a revoked
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28 license and initiated the stop. He did not know whether the driver of the car, was in fact,
the registered owner. The Tribes argue that an officer may rationally infer the driver of a
vehicle is the vehicle's registered owner unless the officer is aware of any facts that
would render that inference unreasonable. The Appellee argues that officers must make
some sort of additional identification of the actual driver before initiating the stop.
During oral argument, the Appellee acknowledged that her position is contrary to most
case law throughout Montana and the United States, as well as case law from the various
Tribal nations.

1 We look to our own precedent first when applying the law. We then look to other
2 Tribal Court systems and then to the Federal and State systems respectively. Appellant
3 has provided an abundance of law to support the prevailing standard adopted by most
4 Courts. Appellee has not provided the Court with other authority, on point, which would
5 sway this Court to implement a stricter standard for particularized suspicion, than almost
6 all jurisdiction within Indian Country and the United States. In oral argument, counsel
7 for the Appellee was likewise pressed for any other law or authority in our Tribal laws
8 which provided greater privacy rights than those set forth in the United States and
9 Montana Constitutions, and Appellee could not.

10 Therefore, this Court will follow the overwhelmingly prevailing standard adopted
11 by most jurisdictions. We hold that law enforcement officers have particularized
12 suspicion to stop a vehicle for an investigatory stop if the registered owner of the vehicle
13 has a suspended or revoked license if the officer is unaware of any facts which would
14 render that inference unreasonable. *State v. Halvorson*, 299 Mont. 1 (2000), *Village of*
15 *Lake in the Hills v. Lloyd* (1992.) 227 Ill.App.3d 351., *State v. Pike* (Minn 1996), 551
16 N.W. 2d 919., *State v. Candelaria*, 149 N.M., 245 P.3d 69, 2010.

17 This is not to say a law enforcement officer will always be entitled to initiate
18 stops on vehicles registered to suspended or revoked drivers. For instance, if an officer
19 identified the gender of a driver and knew a registered owner to be the opposite gender, a
20 stop would not be justified under this standard. We believe this standard to be consistent
21 with our ruling in *Moulton* as well, where this Court said a law enforcement officer must
22 be able to take in all of the information available them, analyze it, and with experience
23 and training, be able to explain why the officer chose the action. *Id* at 12.

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No undisputed facts before the Court indicate that Trooper Casey was aware of any fact to indicate another person other than the registered owner would be a driver of the vehicle. We therefore REVERSE and REMAND to the Tribal Court for proceedings consistent with this OPINION.

Submitted this ^{25th} ~~11th~~ day of July, 2017. ^{March, 2019}



Joshua C. Morigeau
Joshua C. Morigeau
Associate Justice
Thor Hoyte
Thor Hoyte
Associate Justice
Robert McDonald
Robert McDonald
Associate Justice

Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Opinion to the persons first named therein at the addresses shown below by depositing same in the interoffice mail, at Pablo, Montana, this 25th day of March, 2019.

**Tribal Prosecutors Office
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Acting Clerk of Tribal Court
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**Abigail Dupuis
Appellate Court Administrator**