

Sisseton, South Dakota
FILED
SISSETON-WAHPETON-SIOUX
TRIBAL COURT
5/16/16
Date
by: Sis Kahl
Clerk of Courts

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IN THE SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION
SUPREME COURT

In the Matter of:

NO. CR-15-986-686

TYLER BIRNEY

Appellant,

OPINION AND ORDER

v.

SISSETON-WAHPETON OYATE,

Appellee.

Per curium (Chief Justice Thor A. Hoyte, Associate Justice Russell Zephier, Associate Justice Pat Donovan)

In the matter of the appeal of Birney versus the Sisseton-Wahpeton Oyate, the Sisseton-Wahpeton Supreme Court held a hearing on April 4, 2016. Each side was present through counsel.

The parties submitted briefs and presented oral arguments. The Court has considered all materials and arguments and finds the following:

1) This Court's recent precedent, *Sisseton-Wahpeton Oyate v. Anderson*, CR-15-988-688 is controlling;

2) The Sisseton-Wahpeton Oyate may undertake drug testing of its employees pursuant to an adopted employment manual as a civil issue;

3) Appellant's Indian Civil Rights are at issue in all criminal matters;

4) The results of the drug testing cannot be used for criminal prosecution unless probable cause has been previously established;

1 5) Case is remanded with Order to suppress the drug test results in any criminal
2 prosecution.

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4 **DISCUSSION**

5 Our recent decision in *Sisseton-Wahpeton Oyate v. Anderson* discussed at length the use
6 of employment drug testing in criminal matters. An employment drug test, used in a criminal
7 prosecution, is a search as understood under the Indian Civil Rights Act. As such, the search
8 must be reasonable, and undertaken under color of warrant, or by an exception to the warrant
9 requirements.

10 Despite the lower court's best efforts, the record at trial is short of information about how
11 the drug testing list was created. We will not substitute our opinion on that issue for that of the
12 trial court.

13 However, whether there is probable cause, or voluntary consent, is at question. We find
14 the employment relationship is not voluntary. Therefore, the Oyate must, for use in a criminal
15 prosecution, show there was probable cause to take the drug test. The record does not show
16 there was probable cause. Therefore, Mr. Birney's ICRA rights were violated as to the
17 criminal charge based upon the employment drug test.

18 **DECISION**

19 This matter is REMANDED to the lower court with instruction to suppress all evidence of
20 the drug test.

21 Made, this 13th day of May, 2016, by



22
23 _____
24 Thor A. Hoyte
25 Chief Justice
26 Sisseton-Wahpeton Oyate Supreme Court