United States v. Fowler, 48 F.4th 1022 (9th Cir. 2022)

- **Holding:** Motion to suppress evidence discovered during an impounded vehicle's search was properly denied where the impoundment occurred after an on-reservation stop and arrest of a tribal member by a state highway patrol officer authorized to enforce tribal law under a state-tribal cross-deputization agreement.
- **Summary:** This decision is in an appeal from the denial of a motion to suppress evidence recovered from an impounded vehicle by a Montana highway patrol officer. *United States v. Fowler*, 2021 WL 243150 (D. Mont. Jan. 25, 2021), summarized at https://docs.google.com/document/d/1HuraZw9jnb5Lzl_Pe23Weelw5Nqi6pZG/edit. Defendant is a member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. The state officer (Moon) stopped Defendant's vehicle in 2019 because it did not have license plate or temporary registration tag. After the stop, the officer learned not only that Defendant was an Indian but also from a dispatcher that he was a registered violent offender with a revoked driver's license. The officer cited him into tribal court for license-related offenses and impounded the vehicle. The former's actions in this regard were sanctioned under a 2000 cross-deputization agreement between the Tribes, the State of Montana, and various local governments. Once impounded, marijuana paraphernalia, a rifle and a sawed-off shotgun were discovered. Defendant was thereafter indicted in federal court for weapon-related offenses. Following denial of his suppression motion in district court, he entered a conditional guilty plea and appealed the denial.

  The Ninth Circuit agreed with the district court. The panel began by reviewing the cross-deputization agreement, which provided in part that

  > "certain officers of the local jurisdictions and [the Montana Highway Patrol] will be appointed as commissioned law enforcement officers of the Tribes" and, when acting within the Reservation, "shall have the same authority to arrest Indians for violations of Titles III and IX of the Tribal code and shall have the same authority to issue citations and/or summonses and to accept bond as officers of the Tribes."

  Officer Moon was commissioned under the agreement by a tribal resolution in 2014. Defendant challenged the officer's authority to cite him into tribal court and to impound the vehicle on two grounds: "(1) the Tribes lack authority to deputize state law-enforcement officers to enforce tribal law or, in the alternative, (2) the Tribes explicitly conditioned the cross-deputization agreement on federal approval, which they did not receive."

  The panel rejected the first theory because, contrary to Defendant's assertion that "'there is no mechanism provided by law that permits state law enforcement officers to exercise criminal jurisdiction over Tribal members' in these circumstances[,]" the agreement did "not grant the State of Montana authority to enforce its own criminal laws on the Fort Peck Reservation. Instead, it allows certain state actors to enforce certain *tribal* laws." It added that "[t]he right to enforce tribal law necessarily includes the right to select those individuals—whether they are employees of the tribe, private contractors, or, as here, employees of another sovereign." Nor did federal law expressly preclude this exercise of inherent tribal authority. Indeed, the opposite was true: "In the Indian Reorganization Act of 1934, Congress authorized tribes to adopt constitutions, and it provided that, '[i]n addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal

council the ... [power] to negotiate with the Federal, State, and local governments'" (quoting 25 U.S.C. § 5123(a) & (c)).

Defendant's second theory failed because "the cross-deputization agreement is not a Special Law Enforcement Commission agreement [which requires federal approval]. It is a compact between the Tribes and the State, and it neither deputizes non-federal officers to enforce federal law nor deputizes federal officers to enforce tribal law." Moreover,

> [c]onsistent with that understanding, both the Tribes and the State have deputized officers under the agreement for two decades even though the BIA did not sign it, and they continued to do so even after the BIA made clear that the deputized officers would not be treated as federal employees. We will not ascribe to the Tribes or the State an intent to condition their agreement on federal approval when neither party ever manifested such an intent.

Finally, like the district court, the panel deemed immaterial the fact that Officer Moon did not have the cross-deputization agreement-required "identification card[] identifying the commissioning agencies for which [he was] authorized to act" at the time of the stop and citation. It noted the absence of any explanation "why that provision of the agreement should be read to create judicially enforceable individual rights ... or why the appropriate enforcement mechanism would be the suppression of evidence[.]" It concluded with observation that "[t]he Fourth Amendment does not strip the Tribes of the sovereign authority to decide how—or whether—to enforce the provisions of their own agreements."

- **Relevant (2022) Deskbook Sections:** 4:22 nn.2, 3; 14:24 nn.3, 9, 21