IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN NATION

CONFEDERATED SALISH, AND KOOTENAI TRIBES, Plaintiff - Appellee,	)	Cause No. AP-09-1587-CR
vs.	)	
THEORA MICHEL, Defendant - Appellant	)	OPINION

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes, Honorable David Morigeau, presiding (replacing the Honorable Acevedo).

Appearances:

Laurence Ginnings, Confederated Salish and Kootenai Tribes, Attorney for the Appellee.

James Gabriels, Confederated Salish and Kootenai Tribes, Tribal Defenders' Office, Attorney for the Appellant.

Before: Chief Justice Eldena Bear Don't Walk, Associate Justice Gregory Dupuis and Associate Justice Kenneth P. Pitt. Associate Justice Pitt delivers the Opinion of this Court.

I. INTRODUCTION

Defendant Theora Michel (hereinafter "Michel") filed a Motion to Exclude and Suppress in order to exclude evidence that she argues stems from an illegal search of her vehicle. Although the lower trial granted her a hearing on this Motion, the court ruled from the bench and denied her the opportunity to cross examine proposed prosecution witnesses. A subsequent decision by the lower court denied Michel's Motion to Dismiss, without addressing the merits of

that Motion. Michel pled guilty on June 13, 2012, to the alternative charge of: "Operating a non-commercial vehicle by a person with alcohol concentration of 0.08 or more," reserving her right to appeal any issues concerning pretrial motions, hearings or suppression issues. Michel filed a timely Notice of Appeal on July 12, 2012.

Michel states the issues before this Court should be: 1) whether the arresting officers, in light of the totality of the circumstances, were warranted particularized suspicion as grounds to stop her vehicle; 2) did the lower court error in denying her Motion to Exclude and Suppress evidence obtained from an alleged illegal seizure; 3) did the lower court error in denying her Motion To Dismiss after the arresting officers were not called by the prosecution to the evidentiary hearing; and 4) if the lower court erred, what is the appropriate remedy.

We address only the narrow and dispositive issues of: 1) whether the lower court erred in denying Michel's Motion To Exclude and Suppress without affording her the opportunity to cross examine the arresting officers in a separate evidentiary hearing; and 2) whether the lower court erred in denying her Motion To Dismiss after the arresting officers were not called by the Confederated Salish and Kootenai Tribes, through its prosecutor, to the August 24, 2011, hearing.

We VACATE Michel's Guilty Plea dated June 13, 2012, REVERSE that Bench Order dated August 24, 2011, VACATE That Order dated November 22, 2011, and REMAND back to the lower court for further proceedings consistent with this opinion.

II. JURISDICTION AND STANDARD OF REVIEW.

Whether a criminal defendant has the right to cross-examine opposition witnesses in a separate evidentiary hearing is a matter of first impression for this Court. This Court has

jurisdiction over this matter pursuant to the Confederated Salish and Kootenai Laws Codified ("the "Code") §1-2-801 (2013). To rule on this matter, this Court will rely on the Code and established case law of the Confederated Salish and Kootenai Tribes (hereinafter "the Tribes"). Should that law be silent, laws of other Indian Nations that have incorporated the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1302(2), will be considered. *CSKT v. Moulton,* AP-09-1864-CR (2013). As in a review of a criminal section of the Code there are several references to the Federal Rules of Evidence, should pertinent Tribal case law be silent, we rely on federal case law. *Id.* This Court reviews whether the lower court, given the facts, correctly applied the law, *de novo*. *Id.*

III. UNDISPUTED FACTUAL AND PROCEDURAL BACKGROUND

This case arose out of evidence seized from Michel for allegedly failing to yield to traffic control signs. Michel was initially stopped by Montana Highway Patrol Officer James Sanderson who then radioed for a Tribal Officer. That same night, on August 21, 2009, Tribal Officer T.J. Haynes, Jr., cited the Defendant for "Driving While Under the Influence of Alcohol" ("DUI"). *Id.* After the Tribal Prosecutor (hereinafter also referred to as "CSKT") filed a Criminal Complaint and Affidavit of Probable Cause, the lower court found probable cause to support the charge of DUI, a violation of Mont. Code Ann. § 61-8-401, incorporated by the Code at § 2-1-1301(1)(a). *CSKT v. Moulton,* AP-09-1864-CR (2013).

On April 29, 2010, Michel filed a Motion to Exclude and Suppress. On May 10, 2010, Michel filed a Brief in Support of the Motion to Exclude and Suppress. Also, on that same day, she filed an: "Affidavit of Theora Michel." That Affidavit supported Michel's contention that she did in fact stop at the traffic control sign. This Court notes that no specific mention of

suppression was included in this brief, as its central theme was the alleged failure by CSKT to produce Officer Sanderson's video recording. Exclusion and Suppression were requested remedies for this alleged failure.

Michel argued in her brief that the lower court should sanction the prosecution and exclude Officer Sanderson's testimony because of "dilatory conduct" and the prosecution's "failure to provide discovery or make a response." The Motion to Exclude and Suppress, citing *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and the "particularized suspicion" standard, articulated that Michel maintained she stopped and that all evidence obtained from the stop should be suppressed.

On June 2, 2010, CSKT filed an Answer Brief. Notably, CSKT acknowledged Michel's right to an evidentiary hearing and requested same from the lower court. On June 10, 2010, Michel filed a response to CSKT's Answer, but that response again did not mention suppressing all evidence obtained from the stop, rather it still focused on CSKT's alleged failure to provide Michel with Officer Sanderson's video.

On June 23, 2010, the lower court denied Michel's April 29, 2010, Motions. It restricted its ruling as to whether Officer Sanderson's video, which CSKT claimed was unusable, should be excluded from evidence. It found that since the video was unusable, it did not exist, and as such it was not discoverable. As it was not discoverable, the matter did not rise to the level of Exclusion and/or Suppression. The lower court's Order did not include any language addressing, and included neither findings of fact, nor conclusions of law regarding, the Motion to Exclude and Suppress on the basis of an unreasonable seizure.

On March 28, 2011, the lower court set the matter for jury trial. Several procedural matters occurred between March 28, 2011, and August 1, 2011, when Michel finally filed a

Motion for a Hearing to suppress evidence, specifically Officer Sanderson's testimony. By Order dated August 4, 2011, the lower court set a "hearing" for August 24, 2011.

At the August 24, 2011, hearing, CSKT was not represented by counsel, but by Stephanie Irvine, a CSKT Advocate. Ms. Irvine brought neither Officer Sanderson nor Officer Haynes to the hearing, and stated that the reason she did not have the officers present was because they would not be testifying to anything different than what was already contained in the probable cause and police reports. Ms. Irvine essentially argued that the correct place to determine the credibility of the arresting officers was in a jury trial and not in the aforesaid evidentiary suppression hearing.

As Michel has argued that she was entitled to a separate evidentiary suppression hearing to ascertain the credibility of the arresting officers, the following conversation from the August 24, 2011, hearing is critical to the matter at hand:

MICHEL: The [CSKT's] argument seems to be that we cannot challenge a stop. Of course we can challenge a stop. That just goes without saying. That's what a suppression hearing is all about, suppressing the evidence on the basis of something unlawful done by the police. If they want to show that the stop was indeed lawful, produce facts and evidence in the courtroom, they should have followed up and called the officer.

THE COURT: Okay. The question that I have is, is Ms. Michel prepared to offer anything other than oral testimony that she stopped? Anything other than – I mean the burden is not on her.

MICHEL: I'm sorry. I'm not sure. Anything besides oral testimony?

THE COURT: Yeah. Basically if we had everybody here and everybody testified, is basically all she's going to offer is that, yes I did stop?

MICHEL: Correct your Honor. *And we would also have the opportunity to cross examine. (emphasis added).*

THE COURT: And I understand that.

MICHEL: Okay. Yes that's right.

THE COURT: *So what I'm going to do is enter a ruling on the record that the issue before is – does come down to the credibility of Trooper Sanderson and/or Theora Michel. And credibility in weighing the witnesses' testimony is a problem for the finder of fact and is something that the court could leave to the finder of fact at trial.*

And if the issue is to suppress evidence or to dismiss the charge, the court is going to deny that at this time. [emphasis added]

This Court notes that the transcript of this August 24, 2011, hearing is devoid of any indication that Michel objected to the ruling itself at that time.

On September 9, 2011, Michel filed a Motion to Dismiss and Brief in Support. She argued that her due process rights were violated because she had not had the opportunity to cross examine the arresting officers in the August 24, 2011, hearing, and that CSKT had not met its burden of proof in failing to produce the two officers for cross examination at that hearing. CSKT responded on October 27, 2011, and argued that pursuant to Rule 14(5)(b) *CSKT Rules of Practice,*[1] the lower court was well within its authorized parameters by deciding the outcome of the August 24, 2011, evidentiary hearing on briefs.

On November 29, 2011, the lower court issued an Order denying Michel's Motion to Dismiss. The new presiding judge did not rule on the merits of Michel's Motion to Dismiss, but rather stated: "Since the Court denied [Michel's] Motion to Suppress, the then presiding judge has left office. The currently presiding judge finds it improper for him to review his predecessor's rulings and that this case should proceed to trial."

On June 13, 2012, Michel entered a guilty plea to the alternative charge of: "Operating a non-commercial vehicle by a person with alcohol concentration of 0.08 or more," reserving her right to appeal any issues concerning pretrial motions, hearings or suppression issues. Michel filed a timely Notice of Appeal on July 12, 2012.

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[1] This Court must wonder, in light of the fundamental and well recognized right to cross examine proposed prosecution witnesses in an evidentiary hearing, as to the constitutional legitimacy of Rule 14(5)(b) *CSKT Rules of Practice,* which does not provide for the right to such a hearing.

The matter was briefed by both parties, and oral arguments were heard on August 11, 2013. At that time, CSKT again stated it had no opposition to this Court remanding the matter to the lower court with instructions to conduct an evidentiary hearing.

IV. DISCUSSION

Did the lower court error and deny Michel "Due Process" when it denied her request to suppress evidence in the August 24, 2011 Hearing, without allowing her to cross examine the arresting officers? Did the lower court error when it denied her Motion to Dismiss without addressing the merits?

A. BURDEN OF PROOF:

Initially, we must address which party has the burden of proof at a motion to suppress hearing. Under the Code it is very clear that the burden of proof is on the prosecution.

> (1) A defendant aggrieved by an unlawful search and seizure may move to suppress as evidence anything obtained by an unlawful search and seizure. The motion must be filed at least 10 days before trial, unless good cause is shown for waiving the time restriction.
> 2) The motion must specify the evidence sought to be suppressed and the grounds upon which the motion is based.
> (3) When the motion to suppress challenges the admissibility of evidence obtained without a warrant, the *prosecution has the burden of proving,* by a preponderance of the evidence, that the search and seizure were valid. (*emphasis added*)

CSKT Laws Codified, § 2-2-802.

Here, CSKT argues that the lower court was in the best position to weigh the statements and facts in front of it. It contends that its burden of proof was met by justifying that stop was reasonable and within the confines of the law. It relies on the police reports and sworn statements of Officer Sanderson and Officer Haynes, which were submitted into evidence by Michel, and argues that these documents provide sufficient facts not only to justify the stop, but also to question the "self-serving" nature of Michel's Affidavit.

Michel argues that the lower court erred when it denied her request to have the officers testify, and also when it denied her request to suppress evidence. She argues that it is the job of the prosecution to bring a case from beginning to end and must do so in accordance with the law, and that CSKT did not meet that burden by failing to have the arresting officers present at the hearing. Had they been there, she could have cross examined them as to whether there was the required "particularized suspicion" needed to stop, and then conduct a warrantless search of, Michel. She argues that since everything flows from the legality of the initial stop, that legality is an essential part of the CSKT's case. Therefore, as CSKT allegedly did not meet its burden, she requests CSKT be sanctioned or disciplined, and any evidence obtained in violation of these fundamental rights be suppressed.

We find that CSKT has not yet met its burden of proof under the Code.

B. REQUESTED REMEDIES:

Michel's requested remedy is a reversal of the lower Court's decision, or a unilateral dismissal by this Court. She contends that such a dismissal by this Court of the case is not precluded by anything in the Code, and that it would be within this Court's discretion.

CSKT requests that we uphold the lower court's two rulings, or in the alternative that we remand this matter back to the lower court with instructions to conduct a full evidentiary suppression hearing.

C. CONTROLLNG LAW:

Tribal, state and federal officers are prohibited from stopping vehicles without probable cause or in a manner approved by law. *Walker River Paiute Tribe v. Jake,* 23 Indian Law Reporter 6205, No. WR-CR-96-50 (Walk. Riv. Tr. Ct., 1996).

Under Code section 2-2-214 there must be particularized suspicion prior to any investigative stop that the driver or occupant of the vehicle has committed, is committing, or is about to commit an offense. However, we need not here determine whether there was particularized suspicion. Rather, we only must review whether the lower court erred in denying Michel her due process rights.

Under the ICRA, "[n]o Indian tribe shall: . . . (6) deny to any person in a criminal proceeding the right . . . to be confronted with the witnesses against him." 25 U.S.C. § 1302(6). The Code also provides that "in all criminal proceedings, the defendant shall have the following rights: . . . (d) to confront and cross examine all prosecution or hostile witnesses;". Code § 2-2-104(1)(d). This language is consistent with the Sixth Amendment to the United States Constitution." The Confrontation Clause of the Sixth Amendment . . . provides that: "[I]n all criminal prosecutions, the accused shall enjoy the right to ... be confronted with witnesses against him." U.S. Const. amend. VI. "[T]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." *Whelchel v. Washington*, 232 F.3d 1197, 1203 (9th. Cir. 2000), citing, *Delaware v. Van Arsdall,* 475 U.S. 673, 678, 106 S.Ct,. 1431, 89 L.Ed.2d 674 (1986). This right has explicitly been recognized to apply in evidentiary suppression hearings. "Thus cross-examination is not a privilege, but is a right of the party against whom a witness is offered." *United States v. Green,* 670 F.2d 1148, 1154 (D.C. Cir. 1981).

D. HARM SUFFERED:

Here, CSKT argues that Michel was not substantially deprived of a fundamental right due to a procedural error when she was not able to confront the witness against her in the hearing. Indeed, CSKT, at Oral Argument, asserts it is "perfectly at peace" with this Court remanding the

case back for evidentiary hearing where Michel would have an opportunity to cross examine the witness. It argues that if there was any error, it was harmless.

Michel argues that she was substantially deprived of Due Process when the officers did not attend the evidentiary hearing because she did not have an opportunity to cross-examine them. She expressly asked the Court for Officer Sanderson to testify, but was denied. Michel argues that the error was not harmless because it deprived her of the protection recognized by the ICRA and the Code to be free from unreasonable seizures and the right to confront.

However, when queried at Oral Arguments as to what due process rights may have been violated. Michel's counsel responded:

> Specifically, I'm not sure she would be losing any due process rights, but what the Court would be saying is that the Tribes' failure to meet their evidentiary burden is somehow ok, that that's acceptable. And what I'm suggesting to you is that's not acceptable. Was she prejudiced by that misconduct? Yeah, she did not get her day in Court. And the Court just said [:] Well, we're not going to give it you then. And I think that is a substantial deprivation of her rights. She asked for that. They didn't give it to her. So that's the best answer I have. . . . But what you are saying is that everything that happened between filing of the charges and today has no bearing, it doesn't really count. And I'm trying to convince you it does count. That when there's an evidentiary hearing and the Tribes are asked to come in and present their burden of proof, they don't do it. And, I think they should be sanctioned for it.

E. CONCLUSION:

Given the need for particularized suspicion prior to making an investigative stop under the Code § 2-2-214, the lower court clearly erred when it denied Michel's request to suppress evidence at the August 24, 2011, hearing, without requiring the testimony from the officers involved in the stop. The lower court also erred when it denied Michel's Motion to Dismiss on November 29, 2011, without ruling on the merits of that Motion[2].

[2] CSKT argues that the lower court had no obligation to consider and rule on the Motion to Dismiss, as it had already ruled on the matter on August 24, 2011. We do not rule on this argument other than to note the

Without a full evidentiary suppression hearing, which should include the testimony of the arresting officers, the lower court had no basis to sufficiently evaluate the credibility of the conflicting statements as a piece of determining whether particularized suspicion existed. Therefore we find that the lower court did not apply the correct applicable law and the matter should be in part remanded, and in part vacated.

Finally, we believe an important point must be made here. CSKT filed its probable cause report with the lower court when it filed its Complaint. Michel filed the police reports as evidence only for the purposes of the August 24, 2011, suppression hearing, and not as evidence to be considered by a jury. This is a completely acceptable practice in federal criminal proceedings. *Simmons v United States*, 390 U.S. 377, 88 S.Ct 967, 19 L.Ed.2d 1247 (1968). Accordingly, we hold that, henceforth, a defendant may proffer evidence for purposes of a suppression hearing, but not as evidence to be considered by the trier of fact. We further hold that filing evidence by the defense for the purposes of a suppression hearing, does not waive the defense's right to object to that same evidence when it is being proffered by the prosecution for consideration by the trier of fact.

V. THE APPRPROPRIATE REMEDY

As the lower court incorrectly applied applicable law, the more difficult question for this Court is the appropriate remedy. The Supreme Court of the United States has developed an exclusionary rule for constitutional violations during the criminal process. See *Weeks v. U.S.*, 232 U.S. 383, 34 S.Ct 341, 58 L.Ed 652 (1914); *Mapp v. Ohio,* 367 U.S. 643, 81 S.Ct 1684, 6 L.Ed.2d 1081 (1961). The purpose of the rule is to deter violations of civil rights by the

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obvious, to wit, even if the lower court does provide a defendant an opportunity for a second chance to argue the merits, it is still compelled to protect the defendant's right of due process.

government. *Id.* Any evidence obtained from an unreasonable seizure should be suppressed. *CSKT v. Moulton, supra* at 15.

However, the courts have also accepted that it is proper to balance the costs and benefits of excluding evidence between the intended deterrent effect and the possibility of impeding the criminal justice system. *Swinomish Indian Tribal Community v. Reid*, 11 Am. Tribal Law 182, 186 (2012); citing *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

Michel, relying on *Simmons v. United States, supra*, asserts that she is being forced to give up one right to assert another, and that the correct remedy is to: 1) declare the stop unreasonable and to suppress any evidence related to that stop; or 2) to dismiss the matter in its entirety. We disagree. Michel does not have to give up one right to assert another. Even her counsel concedes that she has not lost any due process rights. There has been no jury trial, and a remand to the lower court to conduct a separate and full evidentiary suppression hearing as to the reasonableness of the stop, would fully protect her due process rights should the matter go to trial before a jury.

Neither do we find that *Simmons (supra),* nor *United States v. Isgro, et al*, 974 F.2d 1091, support Michel's argument that this Court should dismiss this matter. In *Simmons, supra*, the matter was remanded. In *Isgro (Id.),* the lower court dismissed an indictment because, in part, the prosecutorial misconduct: "resulted in a violation of defendants' due process rights sufficient to justify the use of its supervisory powers." *Isgro* at 1094. In *Isgro,* there was intentional and repetitive prosecutor misconduct, yet even there the Ninth Circuit reversed the dismissal stating: "[I]n its recent jurisprudence, however, the Supreme Court has moved away from this view and toward a rule that a court should not use its supervisory powers to mete out punishment absent prejudice to a defendant." *Isgro* at 1097.

Michel has not demonstrated that she sustained any irreparable injury or prejudice from this deprivation. As one Court has stated:

> For a constitutional individual rights claim to proceed, a person must assert that their case meets the specific parameters of the constitutional right in question. In the case of an allegation of a denial of due process of law, where the . . . constitution provides that the Tribe shall not "deny to any person within its jurisdiction the equal protection of its laws or deprive any person liberty or property without due process of law," a plaintiff must establish that they are within the tribe's jurisdiction, that they are a person, *that they have been deprived of either a liberty or a property interest,* and that they have been deprived due process of law in connection with that deprivation (*emphasis added*).

Carey v Victories Casino et al., #A-004-060, Appellate Court of the Little Traverse Bay Bands of Odawa Indians (2007), See also *Isgro, supra.*.

Here, Michel meets all these elements except that she has neither asserted that she has been deprived of her liberty, nor has she asserted that she has in fact been prejudiced. Accordingly it is doubtful that Michel can make a successful due process constitutional claim.

Although Michel is correct in her arguments as to what should have happened in the lower court, she also does not convincingly explain how remanding it to the lower court with instructions to conduct an evidentiary hearing would not remedy this due process deprivation, or how she is otherwise prejudiced.

It occurs to this Court that Michel, rather than suffering any irreparable injury or prejudice, merely wants us to discipline CSKT. We are not convinced, on the facts of the matter before us, and under the principals of judicial restraint, that disciplining CSKT is our role here, especially absent a claim of prosecutorial misconduct. Indeed, even where there has been the severe such misconduct, dismissal is not a favored remedy.

> Finally, the Supreme Court as well as the Ninth Circuit has repeatedly pointed out that dismissal of an indictment is a drastic matter. Accordingly the Supreme Court has cautioned that when faced with prosecutorial misconduct, a court should 'tailor' relief

> appropriate to the circumstances. . . Errors of the kind alleged in these cases can be remedied adequately by means other than dismissal.

Isgro at 1098.

On the other hand, CSKT would have us believe that the hearing would not have resulted in any different evidence, that is, the Officer would not have testified to anything different than what was in his report. We find this assertion baseless, as the very essence of cross examination is to ascertain information not contained in an Officer's report. CSKT also, somewhat more realistically, argues that Michel was not substantially deprived of due process rights because it could be remedied on remand. It notes that it had already asked the lower court for an evidentiary hearing, and invites this Court to remand the case for evidentiary hearing.

However, we are somewhat troubled by the CSKT's August 24, 2011, failure to present the law and procedure correctly to the lower court, and its failure to provide up the arresting officers for cross examination, even though we recognize in all fairness that CSKT has twice since requested just such a full evidentiary hearing. While we understand that Ms. Irvine is not a lawyer, it still remains a responsibility of the prosecutor's office to meet its burden of proof, and to make correct representations of law, fact and procedure to the presiding judge

Because of these failures, as we stated above, CSKT has not yet met its required burden of proof. Nevertheless, the record before us shows no indication of, nor have we heard any claim that, Ms. Irvine's mistaken statements of law rise to the level of prosecutorial misconduct. Accordingly, CSKT should be afforded an equitable opportunity to meet its burden of proof.

The final question then is the appropriate role for this Court when, on different occasions, counsel for both parties have performed legal functions at less than a stellar level, and

especially when inaccurate legal representations have been made. Is our role to be that of a disciplinarian and to accordingly to discipline CSKT for, at best, inadvertent legal mistakes? Or do we overlook such mistakes based on the premise that said mistakes can be "fixed" without any deprivation of Michel's fundamental rights of due process – in other words some sort of "harmless error?"

We conclude we should neither overlook these mistakes nor discipline CSKT. The balance of equities here require that this Court exercise judicial restraint and craft a narrowly tailored remedy – one that protects Michel's constitutional rights of due process and confrontation, yet one that does not unnecessarily impede the criminal justice system. Our remedy should only address and correct the problem and not be unnecessarily overbroad.

While it is certainly within this Court's authority to remand this matter to the lower court with instructions to suppress the arresting officers' testimony, we would in fact be making an unnecessary factual like ruling that is better left within the expertise and purview of the lower court. Indeed, this Court in a civil dispute stated: "Trial Judges are in the best position to determine the credibility of witnesses, and their conclusions in this regard are entitled to great deference," *Susan Stevens v. Albert J. Courville, CSKT app. AP-03-044-SC.* If Michel is still dissatisfied with the lower court's new evidentiary ruling, she can still protect her rights by appealing that determination to this Court. "While this Court gives great deference to lower courts as a trier of fact, it is this Court's responsibility to review those determinations in appeals. *CSKT v. Moulton, supra* at page 14.

VI. SUMMARY

The lower court should have conducted a full evidentiary hearing regarding the testimony of the arresting officers. It is accordingly ordered that Michel's June 13, 2012, guilty plea agreement is hereby VACATED. We also REVERSE the lower court's August 24, 2011, Bench Order denying Michel's request to conduct a full evidentiary suppression hearing, and VACATE that November 29, 2011, Order denying Michel's Motion To Dismiss. The matter is REMANDED to the lower court for proceedings consistent with this Opinion.

SO ORDERED this 10th day of December, 2013

Eldena N. Bear Don't Walk
Chief Justice

Gregory Dupuis
Associate Justice

Kenneth P. Pitt
Associate Justice

Cc: Laurence Ginnings, CSKT Prosecutor's Office
James Gabriels, CSKT Tribal Defender's Office

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 U.S. Mail, postage prepaid at Pablo, Montana, this 10th day of December, 2013.

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IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION

THEORA MICHEL, Defendant/Appellant, vs. CONFEDERATED SALISH, AND KOOTENAI TRIBES, Plaintiff/Appellee.	)	CAUSE NO. AP-09-1587-CR ORDER DENYING REQUEST FOR EN BANC HEARING

On December 24, 2013, Theora Michel, through counsel, filed a Petition for En Banc Hearing. An objection was filed by the Confederated Salish and Kootenai Tribes on January 7, 2014. Petitions for Rehearing En Banc are governed by Rule 21 of the Rules of Appellate Procedure (CSKT Law and Order Code, 2013).

Each party has had a chance to submit its stance on the issue of rehearing. Each justice has had a chance to review the final opinion as well as the request and objection for an en banc hearing.

After consultation with the entire panel, the Court DENIES the request for rehearing en banc.

SO ORDERED this 21st of January, 2014.

CONFEDERATED SALISH & KOOTENAI TRIBES COURT SEAL OF APPEALS FLATHEAD RESERVATION

Eldena N. Bear Don't Walk,
Chief Justice

Cc: Laurence Ginnings, CSKT Prosecutor's Office
James Gabriels, Tribal Defender's Office

Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the ORDER DENYING REQUEST FOR EN BANC HEARING to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, this 21st day of January, 2014.

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