

WRITTEN MOTION TO SUPPRESS EVIDENCE SEIZED WITH A SEARCH WARRANT THAT LACKED PROBABLE CAUSE

If you or your property was searched by law enforcement who had a search warrant you might be able to challenge the validity of the search warrant and try to have any evidence seized from the search suppressed. If the search warrant was issued without probable cause use the motion to suppress evidence seized with a search warrant that lacked probable cause.

A warrant can only be issued upon the finding of probable cause found either by sworn testimony establishing grounds for issuance or by an affidavit establishing grounds for issuance and probable cause can be based on hearsay. This information is normally provided to the Court by law enforcement. Probable cause to issue a search warrant means that the facts and circumstances known to the officer at the time of request for a search warrant would cause a reasonable person to believe that a crime has been committed and that evidence of a crime is located on defendants person or property.

RST Constitution Article X Section 1(c) provides that the government of the Tribe shall not violate the right of the people to be secure in their persons, houses, papers, vehicles and effects against unreasonable search and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search and the person or thing to be seized, and any search or seizure taken in violation of this provision shall be excluded. RST Constitution Article X Section 1(d) further provides that search or arrest of any person without informing them of their right to remain silent, to have access to an attorney, to be informed that anything they say can be held against them in a court of law, to have these rights explained at the time of the search or arrest, and to ask them if they understand these rights.

Federal Statutory law found in the Indian Civil Rights Act at 25 U.S.C. §1302 a.(2) provides that no Indian Tribe in exercising powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

Search Warrants are authorized by and the requirements of such warrants are addressed in Title 7 Section I . A search warrant may only be issued by a tribal judge at the request of the tribal prosecutor or any police officer or other law enforcement officer authorized to make arrests on the Rosebud Reservation.

A warrant can be issued to search for and seize of property that constitutes evidence of the commission of a crime; contraband, the fruits of a crime or things criminally possessed, and property designed or intended for use or that has been used as the means of committing a crime.

A warrant can only be issued upon the finding of probable cause found either by sworn testimony establishing grounds for issuance or by an affidavit establishing grounds for issuance and probable cause can be based on hearsay. The Court may require affiant to appear and be

examined under oath.

Tribal law provides for exceptions to the warrant requirement. A law enforcement officer may search without a warrant if:

- (a) he or she knows or has reasonable cause to believe a person is engaged in the commission of an offense
- (b) incident to a lawful arrest
- (c) circumstances that would make it unreasonable to require the obtaining of a warrant prior to the search
- (d) stop any person in a public place he/she has probable cause to believe is in the act of committing or attempting to commit an offense and demand that person's name, address and explanation of the persons actions and frisk search that person for weapons if there are reasonable grounds to believe law enforcement officer's safety or safety of others is endangered.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out the attached form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

- (1) on this line insert your name. If you are charged with a crime(s) you are the defendant.
- (2) on this line insert the date you were arrested.
- (3) on this line itemize the charges against as reflected in each count of the Complaint.
- (4) on this line insert the date you sign the motion
- (5) on this line sign the motion

Note: Your motion must be signed and dated before the Clerk can accept it for filing and service

- (6) on this line date the day you mailed a copy of the motion to the RST Prosecutor's office. You are required to serve a copy of the motion on the RST Prosecutor's office.
- (7) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (6).

NOTE: You must file your motion with the RST Clerk of the Criminal Court and mail a copy to Tribe's Prosecutor's office.

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD SIOUX RESERVATION) SS
ROSEBUD, SOUTH DAKOTA)

IN CRIMINAL COURT

Rosebud Sioux Tribe, Plaintiff, v. (1) _____, Defendant.	DOCKET #CR _____ MOTION TO SUPPRESS EVIDENCE SEIZE WITH A SEARCH WARRANT THAT LACKED OF PROBABLE CAUSE
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Comes now, the above-named Defendant who moves this Honorable Court for an Order suppressing any and all evidence seized from the defendant pursuant a search warrant in violation of the Rosebud Sioux Tribe Constitution and the Indian Civil Rights Act; for the following reasons and upon the following grounds:

1. That on (2)_____ I was arrested and charged with (3)_____
_____.
2. That law enforcement searched and seized evidence pursuant to a search warrant issued by the Court that lacked probable cause and the Tribe intends to use said evidence against me at the trial herein.
3. Under Title Seven Section I, Subsection C of the Rules of Criminal Procedure of the Tribal Law and Order Code requires that a warrant can only be issued upon the finding of probable cause found either by sworn testimony establishing grounds for issuance or by an affidavit establishing grounds for issuance.
4. Article X Section 1(c) of the RST Constitution prohibits the government of the Tribe from violating the right of the people to be secure in the privacy of their own persons, houses, papers, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search, and the thing to be seized, and any search and seizure taken in violation of this provision shall be excluded.
5. 25 USC Section 1302 (a)(2) of the Indian Civil Rights Act provides that no Indian tribe in exercising the powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
6. That a review the affidavit and/or testimony of law enforcement the Court lacked probable cause to issue a search warrant constituting an unreasonable search and seizure.

7. Seizure of the evidence with a search warrant that the Court lacked probable cause to issue violates my rights against unreasonable search and seizure.

8. The search warrant lacks of probable cause and constitutes an unreasonable seizure of any evidence or statements obtained under the Tribal Constitution and the Indian Civil Rights Act.

WHEREFORE, the defendant requests that the Court issue its Order suppressing and excluding as evidence any and all evidence seized pursuant to the invalid search warrant.

(4) _____

(5) _____
Defendant

CERTIFICATE OF SERVICE

The defendant hereby certifies that on (6) _____ I did serve a true and correct copy of the Document in the above matter by mail on the Rosebud Sioux Tribal Prosecutor's Office at P.O. Box 500, Rosebud, SD 57570.

(7) _____
Defendant