

Michael J. Gee
Special Deputy Big Horn County Attorney
401 N. Last Chance Gulch
Helena, MT 59601
(406) 442-3261

**IN THE BIG HORN COUNTY JUSTICE COURT, STATE OF MONTANA
HON. ERNIE BEAR DON'T WALK, JUSTICE OF THE PEACE**

STATE OF MONTANA,

Plaintiff,

vs.

JASON PRIEST.

Defendants.

Cause No.: CR 165-2026-155

**STATE'S LIMITED RESPONSE TO
DEFENDANT'S MOTION TO DISMISS
AND MOTION TO DISMISS IN THE
FURTHERANCE OF JUSTICE**

The State of Montana, through the Big Horn County Attorney's Office, submits this limited response to Defendant's Motion to Dismiss with Prejudice. Pursuant to § 46-13-401(1), MCA, the State separately moves to dismiss the Complaint without prejudice in furtherance of justice.

INTRODUCTION

After reviewing Defendant's motion, the National Tribal Transportation Facility Inventory materials concerning BIA Route 0750, the relevant lease documents, and the available evidence concerning the locations and conduct at issue, the State has determined that continued prosecution is not warranted on the present evidentiary record.

The State does not concede Defendant's broader assertion that inclusion of Route 0750 in the National Tribal Transportation Facility Inventory conclusively establishes the dimensions of a public right-of-way, authorizes access to adjoining land, or renders all conduct occurring along the route privileged. Nor does the State concede that Defendant's Crow hunting and trespass permits authorized hunting contrary to their conditions or otherwise authorized entry upon land outside any lawful road corridor.

Nevertheless, the State's obligation extends beyond determining whether probable cause supported the original charges. The State must determine whether the admissible evidence will prove each element beyond a reasonable doubt. The presently available evidence does not establish with sufficient certainty the location and width of the lawful road corridor, the precise location of Defendant's activities in relation to that corridor and the leased premises, or the absence of a legal privilege to be at the specific place where the charged conduct occurred.

The State therefore requests dismissal in furtherance of justice, without a merits determination adopting either party's broader position concerning Route 0750.

BASIS FOR THE STATE'S DECISION

1. The charges were supported by a good-faith factual and legal basis.

At the time of charging, the available evidence indicated, among other things, that Defendant traveled the route for the purpose of scouting or hunting birds; that access was posted against hunting by nonmembers without a tribal outfitter; that Defendant was not accompanied by a Crow licensed outfitter or guide; and that permission had not been obtained from Monette Farms. Evidence also placed Defendant at or near the gravel-pit area accessed from the route.

Information obtained from local officials and property records provided an additional basis to believe that the road or relevant portions of the property were private. These circumstances provided a legitimate basis for investigation and commencement of the prosecution. The State's present decision does not amount to a concession that the initial charges were unsupported.

2. The subsequently developed record creates material uncertainty.

The materials presented by Defendant identify Route 0750 as an official tribal route in the National Tribal Transportation Facility Inventory. Federal law generally requires an approved NTTFI facility to be open and available for public use, subject to authorized restrictions and closures. See 25 C.F.R. § 170.114. The State has been informed Monette Farms and the Tribe

undertook conversations generally consistent with the authorized procedure to restrict access.

Hence the sign at the intersection of South Fork Coulee Road and the highway. However, it is not immediately clear whether that discussion involved the exact procedures outlined in the CFR.

At the same time, the inventory materials do not conclusively establish the dimensions of the relevant right-of-way or easement. The route report reflects no acquired right-of-way or easement for the listed sections, and the inventory itself is not necessarily dispositive of land ownership, the existence of an easement, or the boundaries of any public corridor.

The State obtained leases between the Crow Tribe and Monette Farms for the land in question. Namely, the gravel pit as well as all other checkerboarded reservation land within Monette Farms' land. The lease materials establish that Monette Farms possessed agricultural leasehold interests in land surrounding portions of the route. Those leases materially support Monette Farms' authority to control entry upon the leased premises. They do not, standing alone, establish Monette Farms' authority to close an otherwise public transportation facility. The leases are also subject to existing rights-of-way, and the present record does not reliably locate the defendants' conduct in relation to any such right-of-way.

Finally, Defendant's Crow permits did not confer unrestricted authority to hunt. The applicable tribal requirements provided that a nonmember hunter must be accompanied by a Crow licensed outfitter or guide, and Defendant was not so accompanied. That circumstance substantially undermines any contention that Defendant possessed unrestricted authority to hunt in the area. It does not, however, by itself resolve every element of the Montana offenses presently charged. The State also subsequently learned that in the 2025 hunting season, the Crow Tribe was not enforcing the requirement that a nonmember hunter must be accompanied by a Crow licensed guide.

3. The State cannot presently carry its trial burden.

The State continues to believe that the posted restrictions, lack of landholder permission,

absence of a tribal guide, and return to the area after an express warning presented serious legal and factual concerns. Defendant's justification at the time to FWP investigators (that the road was public due to it being on the Gas Tax Map) was not accurate. The Defendant did not know the NTTFI existed during the relevant times.

Nevertheless, criminal liability in this case turns on more than whether the Defendants should have been hunting in the area. For the offenses charged, the State must prove beyond a reasonable doubt that each Defendant entered or remained at a particular location without license, invitation, or other privilege, and, for the hunting-access charges, that the location was property for which the legally required permission had not been obtained.

The current evidence does not allow the State to establish those matters with the certainty required for a criminal conviction. In particular, the State cannot presently prove beyond a reasonable doubt whether each Defendant left whatever lawful road corridor existed and entered the leased or otherwise restricted property identified in the charging documents.

ARGUMENT

Section 46-13-401(1), MCA, authorizes the Court, upon the prosecutor's application, to dismiss a complaint in furtherance of justice. Dismissal is appropriate here because additional prosecution would require the parties and the Court to litigate unresolved questions concerning federal transportation records, tribal land status, lease boundaries, and the physical dimensions of an uncertain right-of-way, while the available evidence remains insufficient to establish the defendants' precise locations beyond a reasonable doubt.

Defendant seeks dismissal with prejudice based upon a categorical interpretation of the NTTFI designation and 25 C.F.R. § 170.114. The Court need not decide that broader legal question. The case may instead be resolved upon the State's independent determination that the present evidence is insufficient to warrant continued prosecution.

Defendant's motion also raises detailed factual disputes that ordinarily would not be resolved through a pretrial dismissal on the merits. *See State v. Giffin*, 2021 MT 190, ¶¶ 15, 20-21 (distinguishing probable cause from proof of guilt and recognizing that detailed factual challenges generally are resolved at trial). Because the State independently seeks dismissal, the Court need not (and lacks jurisdiction in this criminal proceeding to) enter the broader declaration requested by Defendant. Montana's Uniform Declaratory Judgments Act confers authority to declare rights, status, and legal relations upon courts of record acting within their respective jurisdictions. Section 27-8-201, MCA. The Big Horn County Justice Court is not a justice court of record established pursuant to § 3-10-101(5), MCA, and declaratory relief is not among the matters assigned to justice courts under § 3-10-301, MCA. Moreover, a justice court may not hear evidence upon or try an issue involving title to or possession of real property. Section 25-31-101(1), MCA; *Stanley v. Lemire*, 2006 MT 304, ¶¶ 52–56. The Court may determine whether the evidence in this criminal case is sufficient to proceed, but it should not purport to adjudicate the existence, dimensions, or continuing legal effect of a public right-of-way or easement over lands involving owners and governmental entities that are not parties to this prosecution.

The State has no present intention to refile these charges upon the existing evidentiary record. Dismissal without prejudice is nevertheless the appropriate procedural disposition because there has been no trial or merits determination and because presently unavailable federal, tribal, survey, right-of-way, or location evidence could materially clarify the circumstances.

CONCLUSION

At the end of the day, this case presents a good example of how the Criminal Justice System should work. The State investigated alleged criminal activity which it believed constituted probable cause for the charged offenses. This Court determined that probable cause indeed did exist. Then, able defense counsel presented a defense which yielded the present evidentiary difficulties for the

State. Instead of a recalcitrant persistence in the face of uncertain proof, the State is dismissing the case in recognition of doubt in its high burden to prove the case beyond a reasonable doubt.

The Defendant was contacted regarding this motion, through counsel, and indicated he has no objection to the State's motion to dismiss.

For these reasons, the State respectfully requests that the Court:

1. Grant the State's motion under § 46-13-401(1), MCA, and dismiss the Complaint without prejudice;
2. Deny the Defendant's motion as moot;
3. Exonerate any bond and discharge Defendant from any obligations arising from this case, as provided by law.

RESPECTFULLY SUBMITTED this 19th day of October, 2026.

/s/ Mike Gee
Mike Gee
Special Deputy Big Horn County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Dismiss was served upon the following by electronically mailing a true and correct copy thereof on this 19th day of October 2026, addressed as follows:

Clark Ramsey, Esq.
Ramsey Law
clark@ramlawmt.com
Attorney for Defendant

/s/ Mike Gee
Mike Gee
Special Deputy Big Horn County Attorney