

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Harold J. Olson,

Appellant,

No. 2017-0351

v.

D. Ct. No. 31-2017-CV-00113

North Dakota Dept. of Transportation,

Appellee.

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Appeal from a September 2017 Judgment,  
Mountrail County, N. Central Judicial District,  
Honorable Richard L. Hagar

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**BRIEF OF APPELLANT**

**OLSON**

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**Statement of the Issues.**

[¶ 1] Background. 25 USC Sec. 1301 vests the Three Affiliated Tribes (Tribe) with authority to arrest Indians from another Tribe. The Tribe regulates traffic on the Ft. Berthold Reservation. Issues:

1. Did the county deputy lack authority, under federal law, to arrest T. Mt. Indian Olson on the Fort Berthold Reservation?

2. Did the deputy's arrest of Olson infringe on tribal law that regulates traffic on the Reservation?

**Statement of the Case.**

[¶ 2] May 2017. A tribal officer called the county deputy, who arrested Olson for DUI on the Reservation. The deputy issued a notice for refusing a breath test under the implied consent law. A hearing was held. Olson moved to dismiss for lack of jurisdiction, saying the deputy lacked authority on the Reservation. The hearing officer ruled the police could assist anywhere, and revoked Olson's license. Appendix at 3.

[¶ 3] In June 2017 Olson appealed to the district court. Doc. Id. 1-2. After briefing, an order affirmed the agency decision. Appendix 4. On September 26, 2017 a Judgment was entered. Appendix 8. Olson's appeal followed on October 2, 2017. Appendix 9 – 11. The appeal was timely, N. D. R. App. P. 4

(a). This court has jurisdiction under N.D.C.C. 28-27-01.

**Statement of Facts.**

[¶ 4] Regulatory framework. The Tribe and Mountrail County do not

have a formal cross-deputy agreement. The Tribe exercises criminal and civil jurisdiction over members and other Indians as permitted by federal law. *See United States v. Lara*, 541 U. S. 193 (2004). The county police lack authority to arrest Indians on the Fort Berthold Reservation under case law. The county and tribal police handle cases on the Reservation as follows:

A. Indian defendant. When a tribal member or Indian from another tribe is stopped for an alleged traffic offense, he/she is handled by the Fort Berthold District Court.

B. When a “white person” [or non-Indian] is stopped by the tribal police, they call the county police to handle the alleged traffic offense.

[¶ 5] Facts. In May 2017, the tribal police did not know that Olson was an Indian, and called the county deputy. The deputy arrested Olson for DUI on the Fort Berthold Reservation. Later, the hearing officer found that Olson was an enrolled member of the Turtle Mountain Chippewa, and the arrest took place on the Reservation. Appendix 3. Olson presented exhibits the Tribe regulates traffic by criminal and civil laws. Doc. Id. 11.

[¶ 6] After an arrest, a person is advised to take a test, implied consent law, N.D.C.C. 39-20-01 (3). In this case, Olson was arrested then refused a breath test. The hearing officer said state law allowed the deputy to “assist” anyplace in North Dakota upon request by another police officer. Appendix 3. The threshold issue is whether the deputy had authority to arrest T. Mt. Indian Olson on the Reservation.

## Argument

[¶ 7] Standard of Review. When the jurisdictional facts are not disputed, subject matter jurisdiction is a question of law, and review is de novo. *Gustafson v. Poitra*, 2011 ND 150, 800 N. W. 2d 642 at ¶ 9. An agency decision will be reversed when the decision is not in accordance with the law. *Kroschel v. Levi*, 2015 ND 185, 866 N. W. 2d 109 (NDSU campus police lacked authority to arrest Kroschel outside the campus). The high court reversed the license suspension. *Id.* See also, *Davis v. Director, NDDOT*, 467 N. W. 2d 420 (ND 1991) (state police lacked authority to test T. Mt. Chippewa member on the Reservation). As the police lacked authority, the failure to test is “not a refusal.” *Id.* at page 5.

**1. Under federal law, the deputy lacked jurisdiction to arrest Olson on the Reservation. The agency decision is contrary to law.**

[¶ 8] The Tribe (Three Aff. Tribes) exercises criminal jurisdiction over members and Indians from other tribes. This authority was upheld in *United States v. Lara*, 541 U. S. 193 (2004). Defendant Lara ( T. Mt. Chippewa) was charged in Sioux tribal court over misconduct on the Spirit Lake Reservation Lara challenged the tribal prosecution. The USSC ruled that a non-member Indian could be tried in a tribal court. The court discussed a 1991 federal statute, 25 USC Sec. 1301(2), that affirmed tribal authority to “exercise criminal jurisdiction over all Indians.”

[¶ 9] *Davis* notes that a state highway on a Reservation is considered “Indian Country” under 18 USC Sec. 1151. In this case, Highway 23 runs

through the Fort Berthold Reservation. The deputy admitted the arrest (east of New Town, ND) was on Reservation. Doc. Id. 7 (transcript at page 13). The arrest took place on the Reservation. Agency Decision, Appendix 3. *Lara* bars the county police from arresting Indians, including Olson, on the Reservation.

[¶ 10] In the related criminal case, *State v. Harold Olson*, the DUI charge was dismissed upon the prosecutor's motion, for lack of state jurisdiction. The June 2017 motion notes that Olson is an enrolled Indian (Turtle Mt. Chippewa) and the arrest took place on the Reservation. Order and motion Appendix at 10. The state order properly followed *Lara*.

[¶ 11] Errors. The hearing officer erred by finding the arrest of Olson was valid, contrary to *U. S. v. Lara*. Next, the hearing officer misread *Davis v. Dir., NDDOT*, to wrongly conclude the county deputy could arrest Olson on the Fort Berthold Reservation.

**A. Remedy. When a person is improperly arrested, the license sanction must be vacated. *Kroschel v. Levi*, 2015 ND 185.**

[¶ 12] A police officer acting outside his territorial jurisdiction is without power to arrest a driver. *Kroschel v. Levi, supra*. The campus police wrongly arrested her off campus so the license sanction was invalid.

[¶ 13] Here, Olson's arrest was invalid under *Lara*. It follows that the county deputy lacked authority to direct Olson to take a breath test. *Levi, supra* (reversed license sanction due to invalid arrest).

[¶ 14 ] **State Defense.** The state law cited by the hearing officer is not controlling. The agency decision says N.D.C.C. 44-08-20 (3) gave deputy had power “to act anywhere within the state of North Dakota upon a request to assist.” Appendix 3. This expansive view of police power is contrary to case law.

[¶ 15] *Kroschel v. Levi* rejected this argument by the agency NDDOT. This court discussed N.D.C.C. 44-08-20 (3) and 44-08-24 and said these laws provide for only “temporary assistance” between state enforcement agencies. These laws did not give the campus police “authority to arrest Kroschel ....” *Id.* at ¶ 22-24. Concerning Olson, merely because the tribal police called the county deputy, this does not equal state jurisdiction.

[¶ 16] 25 USC 1301 (2) bars state jurisdiction and the agency decision that relies on state law is specious. Next, the district court compounded the error by affirming the agency decision. The district court failed to apply *Lara*. Appendix at 4.

## **2. The county deputy’s arrest of Olson infringes on tribal law that regulates traffic on the Reservation.**

[¶ 17] For years tribal laws have regulated traffic. Now, for health and safety reasons the Tribe must regulate the heavy oil related traffic. The county and tribal police cooperate due to the heavy volume of oil traffic.

[¶ 18] Infringement test. A state court lacks jurisdiction when a suit against an Indian person infringes on tribal authority. *Winer v. Penny*



*Enterprises, Inc.*, 2004 ND 21, 674 N.W. 2d 9 (tort suit over on Res. wreck), citing *Williams v. Lee*, 358 U. S. 217 (1959). In *Williams* a non-Indian sued in state court against a tribal member over a debt arising on the Reservation. The USSC ruled that the state court jurisdiction would “undermine the authority of tribal court over Reservation affairs and hence would infringe on the right of Indians to govern themselves.” *Id.* at 223.

[¶ 19] In this case, tribal authority stems from inherent sovereignty and from federal law. 25 USC 1301 vests arrest authority in the Tribe over Mr. Olson, who worked on the Reservation. The present ND action against Olson infringes on tribal authority, contrary to *Williams v. Lee*.

#### **Conclusion**

[¶ 20] *U. S. v. Lara* bars state jurisdiction since the Three Affiliated Tribes has arrest authority over other Indians such as T. Mt. Indian Olson. The court should reverse the district court judgment that upheld the agency’s revocation of Olson’s driving privileges.

Dated November 11, 2017.

*/s/ Vance Gillette*

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**Certificate of Service**

[¶ 1] I certify that *Appellant's Brief* and *Appendix* were filed with the ND Supreme Court, email [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov) and a copy was emailed to the agency's attorney noted below:

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