

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Harold J. Olson,

Appellant,

No. 20170351

v.

North Dakota Dept. of Transportation,

Appellee.

Appeal from a September 2017 Judgment,
Mountrail County, N. Central Judicial District,
Honorable Richard L. Hagar
D. Ct. No. 31-2017-CV-~~00131~~ 00113

REPLY BRIEF OF
APPELLANT OLSON

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A county deputy arrested T. Mt. Indian Olson on the Ft. Berthold Reservation and the agency revoked his license. The state criminal charge was dismissed for lack of state jurisdiction. Olson contends the license sanction is invalid.

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SUMMARY OF ARGUMENT

[¶ 1] Federal law states that an Indian tribe has criminal jurisdiction over “all Indians.” 25 USC §1301. The Three Affiliated Tribes (Tribe) regulates traffic on the Reservation, with arrest authority over Turtle Mt. Indian Mr. Olson. Issue – Did the county deputy lack authority, under federal law, to arrest Olson on the Ft. Berthold Indian Reservation?

[¶ 2] Background. In May 2017 the tribal police did not know Olson was an Indian and the county deputy was called. The deputy arrested Olson and said he refused a breath test. A test can be done only after an arrest. N. D. C. C. 39-20-01 (3). An arrest without jurisdiction negates a license sanction. *Kroschel v. Levi*, 2015 ND 185, 866 N. W. 2d 109 (campus police lacked authority to arrest Kroschel outside campus).

[¶ 3] Civil case. The agency decision revoked Olson’s license. The decision said the deputy acted under a “police assist” law and did not dismiss for lack of jurisdiction. The district court affirmed.

A. Criminal case. In *State v. H. Olson*, No. 31-2017-CR-00121 the court dismissed for lack of jurisdiction (Olson arrested on Reservation).

Appendix at 12-13. Sum: The arrest was invalid under federal law and *State v. H. Olson*. And *Levi* requires the license sanction be vacated.

[¶ 4] The state’s main argument is that a Minnesota speeding case gives North Dakota jurisdiction. P. L. 280 granted Minnesota criminal jurisdiction, but this law does not apply in North Dakota.

ARGUMENT

1. 25 USC § 1301 vests arrest authority in the Tribe that bars state jurisdiction.

[¶ 5] Olson contends the state agency lacked subject matter jurisdiction. *Davis v. Director, NDDOT*, 467 NW 2d 420, 422 (1991) (state police lacked authority to test tribal member on Reservation). *Kroschel v. Levi, supra*.

[¶ 6] Two laws are at issue, along with other authority.

A. Tribe's authority. The powers of self-government mean and includes all governmental powers possessed by an Indian tribe ... to exercise **criminal jurisdiction over all Indians**. Indian Civil Rights Act, 25 USC § 1301 (2). (emphasis added).

B. State "police assist" law. A police officer ... has the power of a police officer ... when responding to requests from other law enforcement agencies or offices for aid and assistance. N.D.C.C. 48-08-20 (3).

[¶ 7] In 1953 Public Law 280, 18 USC 1162, authorized states to assume jurisdiction in Indian country. North Dakota declined to accept criminal jurisdiction but passed a state law that a tribe could vote to accept state jurisdiction in civil cases. In 1968 P. L. 280 was amended. North Dakota cannot unilaterally assume jurisdiction; tribal consent is required. *Three Aff. Tribes of the Ft. Berthold Reservation v. Wold Eng'g P.C.*, 476 U. S. 877, 883 (1986) (state disclaimer law ruled invalid).

[¶ 8] In 1991 Congress affirmed tribal authority to try other Indians, 25

USC § 1301. The TAT, through the tribal court, regulates traffic including other Indians such as Turtle Mt. Indian Olson. Olson contends § 1301 bars the county deputy from arresting him.

Agency position.

2. The state brief relies on a Minnesota case. The case is not helpful as North Dakota has different federal laws - history.

[¶ 9] The state relies on *State v. Davis*, 773 NW 2d 66 (MN 2009) to argue ND has *civil* jurisdiction. Brief pages 8-12. In *Davis*, a Chippewa Indian was stopped for speeding on a Reservation different than his own in Minnesota. The court noted Public Law 280 granted Minnesota jurisdiction over certain civil and criminal matters committed on Indian Reservations. 18 USC § 1162 (criminal). Next, the court ruled that the Minnesota court had civil jurisdiction. Here, the state brief argues that North Dakota has civil authority since Olson was stopped on the Ft. Berthold Reservation, or not on his “home” Reservation.

[¶ 10] **Reply. Issue – lack of arrest authority** (criminal jurisdiction). Olson’s appeal on Issue 1. Did the county deputy lack authority, under federal law, to arrest T. Mt. Indian Olson on the Fort Berthold Reservation? Opening Brief at ¶ 1. We rely on Issue 1 in this appeal. *Compare*, the state brief misstates the issue: ... whether Deputy Maloney’s otherwise lawful arrest ... is preempted by federal law because it infringes on tribal law regulating traffic on the Fort Berthold Indian Reservation. Brief at ¶23.

[¶ 11] Olson raised the deputy's lack of arrest authority on a *criminal charge* of driving under the influence. This is since an arrest must be valid before a license sanction arises. *See Kroschel v. Levi* (campus police lacked arrest authority for an arrest outside the NDSU campus, license sanction invalid). *Davis v. Dir.* (lack of test authority on Reservation).

A. Here, the county deputy lacked jurisdiction since arrest authority over Olson is vested in the Three Aff. Tribes. 25 USC § 1301. *See also*, 18 USC § 1162, North Dakota not granted criminal jurisdiction.

[¶ 12] Another reason why the deputy lacked authority is the criminal charge was dismissed. Order in *State v. Harold Olson*. Appendix 12-13. Since the arrest was defective for lack of state jurisdiction, *Levi* bars a license sanction. And the big civil speeding case, *Davis*, out of Minnesota does not control this appeal.

[¶ 13] When Congress enacts a federal law relating to Indians, this controls the extent of state jurisdiction in Indian country. *State by WSI, v JFK Raingutters*, 2007 ND 80, 733 N W 2d 248. An Indian defendant challenged state jurisdiction, saying the state could not collect fees over projects on the Reservation. The court noted 40 USC § 3172 made the workers compensation laws applicable on an Indian reservation. *Id.* at ¶ 18. Here, 25 USC § 1301 vests the Three Aff. Tribes with criminal jurisdiction over "all Indians." The Tribe has jurisdiction. The county deputy lacks authority to arrest Turtle Mt. Chippewa Olson.

3. The state brief argues a “police assist” law expands state jurisdiction. The cases cited are not on point.

[¶ 14] The state says the deputy had authority to cite Olson for refusing a test, on the Reservation. N.D.C.C. 48-08-20 (3). Brief pages 5-7. The state cites cases in which the arrests took place *within state jurisdiction*. For example, in *State v. Graven*, 530 NW 2d 328 (ND 1995) a city policeman followed a man on Interstate 90 by Casselton, ND. A highway patrolman told the city police to stop the car. The court upheld the arrest under Ch. 48-20. Reply: The cases cited are not helpful concerning an arrest in Indian country.

Conclusion

[¶ 15] The district court and agency decision should be reversed. A ruling should issue that the deputy lacked authority to arrest Turtle Mt. Indian Olson, on the Reservation, under federal law.

Dated January 2, 2018.

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Certificate of Service

[¶ 16] I certify that *Appellant's Reply Brief* was E-filed with the ND Supreme Court, and a copy was emailed to the NDDOT Agency on January 8, 2018 as noted below:

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