

NO. 62699-0-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

MANUEL S. ABRAHAMSON,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUE**

Does RCW 37.12.010 grant the State jurisdiction over crimes involving the operation of motor vehicles on public streets located on tribal lands?

## **II. STATEMENT OF THE CASE**

On May 4, 2007, the defendant, Manuel Abrahamson, was being sought by police who wished to arrest him on warrants. Police saw him driving on Marine View Drive. Snohomish County Sheriff's Det. McMurry and a Tulalip Tribal Police officer pursued him. The defendant drove at a high speed on 27<sup>th</sup> Ave. N.E. At the end of a dead end road, he drove through a chain link fence onto private property. When Det. McMurry tried to block him, the defendant drove his vehicle into Det. McMurry's van. 1 CP 84-85.

The defendant drove back onto 27<sup>th</sup> and then onto Marine View Drive, with the Tulalip officer in pursuit. The defendant was driving at approximately 75 mph in a 25 mph zone. As he approached 14<sup>th</sup> Ave. N.E., his path was blocked by a fire truck. An oncoming van blocked the center turn line. The defendant attempted to pass these vehicles by going into the opposite lane of travel. In doing so, he collided with the van. 1 CP 85.

The chase lasted about 2.3 miles. A blood alcohol test showed that the defendant had an alcohol level of .09mg/100 ml. His driver's license was in a revoked status. 1 CP 85.

The defendant was charged with attempting to elude a police vehicle, driving while under the influence, and first degree driving while license revoked. 1 CP 86-87. He moved to dismiss these charges for lack of jurisdiction. In support of this motion, he offered documents showing that he is an enrolled member of the Spokane Indian Tribe. The crimes were committed within the Tulalip Indian Reservation. No evidence was offered as to the ownership of the land on which the crimes occurred. 1 CP 71-83.

The court denied the motion to dismiss. 1 CP 46-48. The defendant was then convicted at a stipulated trial. 1 CP 49-53. The court sentenced him to a total of 29 months' confinement, with credit for any time served pursuant to a Tribal Court conviction. 1 CP 15.

### **III. ARGUMENT**

#### **A. RCW 37.12.080 GRANTS THE STATE CRIMINAL JURISDICTION OVER OPERATION OF MOTOR VEHICLES ON PUBLIC STREETS, EVEN IF THOSE STREETS ARE LOCATED ON TRIBAL LANDS WITHIN INDIAN RESERVATIONS.**

This case involves application of RCW 37.12.010:

The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

- (1) Compulsory school attendance;
- (2) Public assistance;
- (3) Domestic relations;
- (4) Mental illness;
- (5) Juvenile delinquency;
- (6) Adoption proceedings;
- (7) Dependent children; and
- (8) Operation of motor vehicles upon the public streets, alleys, roads and highways. . .

RCW 37.12.010 is a valid exercise of Congressionally-granted authority. Washington v Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 99 S Ct. 740, 58 L. Ed. 2d 740 (1979). The sole issue in this case involves interpretation of that statute.

The structure of RCW 37.12.010 is complicated. It consists of a general rule, an exception, and exceptions to the exception. This becomes clearer when some of the verbiage is pared away:

**[A] [General Rule]**

The state of Washington ... assume[s] criminal and civil jurisdiction over Indians and Indian territory ... within this state ...

**[B] [Exception]**

but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation ...

**[C] [Exceptions to the Exception]**

except for the following:

...

(8) Operation of motor vehicles upon the public streets. . .

The defendant in this case was charged with attempting to elude a pursuing police vehicle, driving while intoxicated, and driving while license revoked. 1 CP 86-87. All of these crimes involve "operation of motor vehicles upon the public streets." Under clause [C], the crimes fall within an exception to the exception. As a result, the exception in clause [B] does not apply. Therefore the general rule in clause [A] applies: the State has "*criminal* and civil jurisdiction." There is no ambiguity in this assumption of criminal

jurisdiction. An unambiguous state is not subject to judicial construction. State v. Watson, 146 Wn.2d 947, 955, 51 P.3d 66 (2002).

The defendant nevertheless contends that the statutory reference to “operation of a motor vehicle” is limited to civil regulation of such operation. He seeks application of the doctrine of *noscitur a sociis*. (This Latin phrase means “it is known by its associates.” Black’s Law Dictionary at 1087 (8<sup>th</sup> ed. 2004).) Under this doctrine, the meaning of a word may be indicated or controlled by reference to associated words. State v. Flores, 164 Wn.2d 1, 185 P.3d 1038 (2008). He argues that since the other seven areas listed in RCW 37.12.010 purportedly involve civil matters, “operation of a motor vehicle” should be limited to civil matters. This argument is wrong for several reasons.

First, the argument ignores the language of the statute. RCW 37.12.010 expressly grants the State “*criminal* and civil jurisdiction.” Rules of statutory construction are only used if a statute is ambiguous. Carillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). Since RCW 37.12.010 is not ambiguous, there is no basis for applying such rules. The defendant essentially wants to rewrite RCW 37.12.010(8) so as to cover only “civil

**proceedings** involving operation of motor vehicles.” The court should not add to or subtract from the language of a statute unless imperatively required to make it rational. State v. Taylor, 97 Wn.2d 724, 649 P.2d 633 (1982).

Second, the defendant’s argument fails to consider another statute that addresses the same subject matter:

The provisions of this title relating to the operation of vehicles shall be applicable and uniform upon all persons operating vehicles upon the public highways of this state, except as otherwise specified.

RCW 46.08.030.

Under this statute, criminal provisions of the motor vehicle code apply to “all persons operating vehicles upon the public highways of this state.” That includes Indians driving on public highways within reservations. Statutes on the same subject matter should be harmonized when possible. US West Communications, Inc. v. Wash. Utilities & Transportation Comm’n, 134 Wn.2d 74, 118, 949 P.2d 1337 (1997). This court should not adopt a construction of RCW 37.12.010 that conflicts with RCW 46.08.030.

Third, the defendant’s argument ignores the history of RCW 37.12.010. That statute was originally enacted in 1963. Laws of 1963, ch. 36, § 1. At that time, *all* traffic offenses were criminal in

nature. Traffic offenses were not decriminalized until 1979. Laws of 1979, 1<sup>st</sup> ex. sess., ch. 136, § 2. If RCW 37.12.010 does not apply to criminal traffic offenses, than that statute abolished *any* enforcement of traffic laws against Indians on tribal land until 16 years later.

In addition to all of these problems, the defendant's argument is based on an erroneous premise. It is not true that the other areas of State jurisdiction specified in RCW 37.12.010 involve civil matters. One of the areas is "juvenile delinquency." This term is equivalent to "juvenile offenses." RCW 13.40.240. Two of the other areas are "public assistance" and "domestic relations." The statutes on both of these subjects include criminal provisions. See, e.g., RCW 74.08.331 (public assistance fraud), 26.50.110 (violation of protection order). Another area is "compulsory school attendance." Court orders requiring school attendance are enforceable via criminal contempt proceedings. See In re J.L., 140 Wn. App. 438, 166 P.3d 776 (2007). The classifications in RCW 37.12.010 are based on the area regulated, not the means (civil or criminal) used to regulate them.

In support of his claim that criminal jurisdiction is excluded, the defendant cites State v. Cooper, 130 Wn.2d 770, 928 P.2d 406

(1996). That case involved the prosecution of an Indian for child molestation. The court held that state jurisdiction existed because the crime occurred outside the boundaries of any Indian reservation. Id. at 781.

In analyzing the case, the court said that “[c]riminal jurisdiction was not one of the eight categories of law in which the State assumed jurisdiction over all Indian country.” Id. at 774. This statement must be considered in context. The crime of child molestation does not relate to any of the eight areas listed in RCW 37.12.010. “Criminal jurisdiction,” as such, is not an area of state jurisdiction. Accordingly, the mere fact that an Indian is charged with a crime does not confer state jurisdiction. Cooper did not involve a situation in which the charged crime falls within one of the eight areas.

This court addressed such a situation in State v. Pink, 144 Wn. App. 945, 952, 185 P.3d 634 (2008). The defendant there was a member of the Quinault Indian Tribe. He was a passenger in a vehicle that was stopped on a public highway within the Quinault Indian Reservation. During an ensuing search, police found a rifle in his possession. He was then charged with unlawful possession of a firearm.

Based on evidence about the ownership of the land on which the highway was built, this court determined that it constituted “tribal land.” Id. at 953-54 ¶ 24. The court recognized that “the exception of RCW 37.12.010(8) ... gives the State jurisdiction over crimes concerning the operation of motor vehicles.” Id. at 956 ¶ 30. Since, however, the defendant’s firearms violation did not involve operation of a motor vehicle, the exception did not apply. As a result, the State lacked jurisdiction over that offense. Id. ¶ 30. Pink thus recognizes that the State retains jurisdiction over crimes involving operation of motor vehicles, even if those crimes are committed by an Indian on tribal land within a reservation.

Streets and highways on Indian reservations are used by many people, both Indian and non-Indian. If a driver is intoxicated, or if he recklessly attempts to elude police, that conduct threatens everyone else on the street. The enforcement of the laws against such conduct should not depend on the happenstance of whether the driver is an Indian. Nor it should depend on the ordinances and policies that each individual Indian tribe has chosen to adopt for its self-government. As set out RCW 46.08.030, Washington has a long-established policy of uniform application of traffic laws, as set out in RCW 46.08.030. RCW 37.12.010(8) implements that policy.

That statute should not be interpreted in a way that defeats this uniform application.

**B. TO DEFEAT STATE JURISDICTION, THE DEFENDANT MUST INTRODUCE EVIDENCE THAT THE CRIME OCCURRED ON TRUST LAND OR TRIBAL LAND.**

If this court nonetheless decides that RCW 37.12.010(8) does not apply to criminal traffic laws, a further issue must be resolved. To defeat State jurisdiction, it is not sufficient that the crime was committed by an Indian within the boundaries of an Indian reservation. The State has jurisdiction over any property that is not “trust land” or “allotted land.” “Trust land” is land that is owned by the federal government in trust for the tribe. “Allotted land” is land that is owned by an individual tribal member in trust for the tribe, subject to restrictions against alienation. Pink, 144 Wn. at 952 ¶ 21.

The State’s initial burden of proving jurisdiction is satisfied by proof that the crime occurred within the State of Washington. To defeat jurisdiction, the defendant must present evidence that the land is “trust land” or “allotted land.” If he does, the State must then prove jurisdiction beyond a reasonable doubt. State v. L.J.M., 129 Wn.2d 386, 394-96; 918 P.2d 898 (1996); State v. Boyd, 109 Wn.

App. 244, 251, 34 P.3d 912 (2001), review denied, 146 Wn.2d 1012, 51 P.3d 86 (2002).

In the present case, the defendant failed to present any evidence concerning the ownership of the land where the crime occurred. See 1 CP 71-83. Ordinarily, this would defeat his contention that the State failed to prove jurisdiction. L.J.M., 129 Wn.2d at 395-96. The State did not, however, raise this issue in the trial court. The State's argument was based solely on the provision in RCW 37.12.010 relating to operation of motor vehicles. 1 CP 56-60. The trial court's decision was based on this statutory provision. 1 CP 46-47.

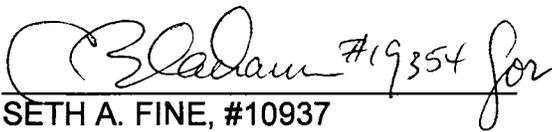
A court's decision can be affirmed on a ground that was not presented to or considered by that court. This is only true, however, if the record is sufficiently developed to fairly consider that ground. State v. Lakotiy, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2009 WL 2581671 ¶ 10 (2009). Here, no record was developed concerning the ownership of the property. Consequently, this court should limit review to the ground relied on by the trial court. If that ground is held erroneous, the case should be remanded for a determination of the land ownership.

**IV. CONCLUSION**

The judgment and sentence should be affirmed.

Respectfully submitted on September 8, 2009.

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