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CLERK OF SUPREME COURT  
STATE OF WASHINGTON

No. 80653-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

LORETTA ERIKSEN,

Petitioner.

CLERK  
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SUPERIOR COURT  
WHATCOM COUNTY  
WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR WHATCOM COUNTY

THE HONORABLE CHARLES SNYDER

APPELLANT'S OPENING BRIEF

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## I. Assignments of Error

The trial court erred in denying petitioner's motion to suppress and dismiss.

## II. Issues Pertaining to Assignment of Errors

Whether the doctrine of inherent tribal authority enunciated in the Washington Supreme Court decision of State v. Schmuck, 121 Wn2d 373, 850 P.2d 1332 (1993) extends to authorize tribal police to engage in fresh pursuit of motorists for traffic infractions after they leave the tribal reservation?

## II. Statement of the Case

This case is an unnatural outgrowth of the earlier decision of this court in State v. Schmuck, 121 Wn2d 373, 850 P.2d 1332 (1993). Schmuck allowed Indian Law Enforcement to stop motorists on state highways inside of Indian Reservations. Does Schmuck anticipate and authorize Indian Law Enforcement to pursue those who commit infractions and crimes on the reservation once they cross the boundary and are off the reservation?

This appeal arises from a conviction for DUI in the Whatcom County District Court. Ms. Eriksen was observed driving on the Slater road within the Lummi Reservation in Whatcom County.<sup>1</sup> A Lummi Tribal Officer pursued her in a marked police car and stopped her outside the boundaries of the Lummi Reservation. Ms. Eriksen was held at the scene and turned over to a Whatcom

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<sup>1</sup> The Slater Road forms the northern boundary of the Lummi Reservation adjoining Whatcom County. The state argued that the entire roadway was on the Lummi Reservation. Eriksen called Ty Whitcomb, who was a professional land surveyor for Whatcom County Public Works. Whitcomb testified that the mid line of the road marked the demarcation between the County and the Lummi Reservation. See Eriksen brief before the Superior Court, pages 9, 10.

County Deputy Sheriff. Full details of the facts are found in appellant's Statement of the Case in her brief before the Superior Court, pages 3-6.

Ms. Eriksen, a non member of the Lummi Tribe, challenged the legality of her stop and pursuit by the Lummi Tribal Officer. RCW 10.93.120 requires that law enforcement officers have the power to arrest under Washington law as a precondition for freshly pursuing outside of their own jurisdiction.<sup>2</sup> The parties agreed that the Lummi Tribal Officer was not cross-deputized by the Whatcom County Sheriff. Nor was there any mutual aid pact between the Lummi Tribe and the Whatcom County Sheriff or the Washington State Patrol or any other Washington Law Enforcement Agency. The Lummi Tribal Officer did not possess the authority under Washington Law to make an arrest.

The Whatcom County District Court upheld Ms. Eriksen's pursuit and stop and affirmed her conviction. Ms. Eriksen appealed to the Superior Court which affirmed her conviction holding that notwithstanding RCW 10.93.120, the Lummi Tribal Officer possessed "inherent authority" under the decision of State v. Schmuck, 121 Wn2d 373, 850 P.2d 1332 (1993) to pursue motorists off reservation who commit traffic infractions on public roads inside Indian Reservations.

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<sup>2</sup> RCW 10.93.120 provides as follows:

(1) Any peace officer who has authority under Washington law to make an arrest may proceed in fresh pursuit of a person (a) who is reasonably believed to have committed a violation of traffic or criminal laws, or (b) for whom such officer holds a warrant of arrest, and such peace officer shall have the authority to arrest and to hold such person in custody anywhere in the state.

(2) The term "fresh pursuit," as used in this chapter, includes, without limitation, fresh pursuit as defined by the common law. Fresh pursuit does not necessarily imply immediate pursuit, but pursuit without unreasonable delay.

#### **IV Summary of Argument**

This case presents both a legal and a political problem. The legal question presented is whether Indian Law Enforcement officers can pursue motorists off reservation for traffic infractions or other crimes. RCW 10.93.120 requires a law enforcement officer to have the power to arrest under Washington Law to be able to pursue a motorist outside of his/her jurisdiction. The Sheriff of Whatcom County can give tribal officers the power to arrest under Washington law by cross deputizing them, but he has not done so. The political problem is that for whatever reason, the leadership of the Lummi Tribe has failed to negotiate a deal with the Sheriff of Whatcom County whereby he would cross deputize Lummi Law Enforcement officers. This would provide Lummi Law Enforcement with the power to arrest and pursue offenders of the laws of the Lummi Nation and of the State of Washington. Or the Lummi Tribe could negotiate a Law Enforcement Assistance Pact with Ferndale, a town that abuts the reservation, which might permit Lummi Law Enforcement to pursue motorists into the Town of Ferndale. The political nature of the Office of the Sheriff is such that he is given great discretion in expanding police authority outside of his department by cross deputization and he has chosen to limit the capacity of Lummi Law Enforcement by not cross deputizing its police force.

Assertion of tribal authority over land outside the boundaries of the reservation falls within the category of the external relations, an aspect of sovereignty given up by the tribe when it signed a treaty with the United States government.

The reality is that the doctrine of inherent tribal authority does not empower tribal law enforcement officers to take action off reservation. And if it did, any such assertion of tribal authority would be preempted by RCW 10.93.120. Lummi tribal law enforcement can however acquire authority to engage in fresh pursuit through the political process by reaching agreement with the Sheriff and other law enforcement agencies.

### **V Argument**

In this case, the State is attempting to solve the political problem by legal fiat—declaring that the Supreme Court of Washington has already given the tribes authority to pursue off reservation, notwithstanding their non compliance with RCW 10.93.120. In the appeal before the Superior Court, the parties framed the issue for resolution to be whether the rule enunciated in State v. Schmuck extended to justify the Lummi Tribal Officer's detention of a non tribal member off the reservation; see State's Response Brief before the Superior Court (RALJ), page 1, and pages 6 -9.

This precise issue was responded to by Eriksen in her reply brief before the Superior Court; see argument B. State v. Schmuck does not support the proposition that the inherent authority of the Indian Tribe gives tribal law enforcement the right to fresh pursue off reservation. See appellant's reply brief before the Superior Court, pages 3-6.

The Superior Court adopted the argument advanced by the state, that the rule enunciated in State v. Schmuck extended to justify the Lummi Tribal Officer's detention of a non tribal member off the reservation. The Superior Court

concluded that the apprehension and detention of Eriksen was lawful as Lummi Officer McSwain had inherent authority as a tribal law enforcement officer to freshly pursue Eriksen off reservation, and to stop and detain her off reservation until state law enforcement could be summoned to the scene.

Schmuck holds that a tribal authority has inherent authority to stop non Indian DUI drivers "while on the reservation." The Superior Court relied on what it perceived to be a rationale of political necessity, namely that tribal police need to be able to pursue and stop drivers who have committed traffic infractions or crimes while driving on the reservation. The Superior Court derived this rationale from the following two paragraphs of Schmuck:

Potentially, DWI drivers would simply drive off or even refuse to stop if pulled over by a tribal officer with only a citizen's arrest capability.

We conclude an Indian tribal officer has inherent authority to stop and detain a non-Indian who has allegedly violated state and tribal law while on the reservation until he or she can be turned over to state authorities for charging and prosecution. We hold Tribal Officer Bailey, as a police officer employed by the Suquamish Indian Tribe, had authority to stop and detain Schmuck, who was allegedly driving while intoxicated on the Reservation, until he could be turned over to the Washington State Patrol for charging and prosecution.

Schmuck, 121 Wn2d at 392.

In so doing, the Superior Court adopted the argument of the County prosecutor.

Eriksen views this case from the perspective of the statute, which permits fresh pursuit by certain law enforcement officers outside of their jurisdiction to arrest for infractions and crimes, committed inside their jurisdiction. This statutory

grant of authority by the Washington legislature in RCW 10.93.120 requires that law enforcement officers have the power to arrest under Washington law as a precondition for freshly pursuing outside of their own jurisdiction. Washington clearly has authority to regulate the conditions of use of Washington roadways. Tribes do not have that power. Because Lummi Law Enforcement officers do not possess power to arrest under the statute, they cannot freshly pursue motorists on Washington roadways.

Eriksen sought direct review and filed a motion for discretionary review and also a Statement of Grounds for Direct Review memorandum. This court accepted review and requested a brief. The argument in the briefs before the Superior Court and this court relate solely to the Superior Court's construction of State v. Schmuck 121 Wn2d 373, 850 P.2d 1332 (1993) as if it recognized "inherent authority" of the tribe to pursue on state highways outside the reservation boundary. Eriksen will supplement her argument with a review of some of the United States Supreme Court cases in which the doctrine of inherent tribal authority has been interpreted and applied.

**A Summary Review of United States Supreme Court Cases applying the doctrine of the inherent authority of Indian Tribes**

The starting point is Oliphant v. Suquamish Indian Tribe, 435 US 191, 98 S. Ct. 1011, 55 L.Ed2d 209 (1978). In that case, the United States Supreme Court rejected the proposition that the Indian Tribe's well of inherent authority

authorized the tribe to prosecute non tribal members for criminal offenses committed on an Indian Reservation.

Oliphant established the legal principle that the Indian Tribes do not have jurisdiction over a non-tribal member for crimes committed on an Indian Reservation absent express authority from Congress.

The next United States Supreme Court case that involved a determination of the scope of tribal inherent authority is Montana v. United States, 450 U.S. 544, 67 L.2d 493, 101 S.Ct. 1245 (1981). The Supreme Court awarded ownership of the bed of the Big Horn River to the State of Montana in a contest with the Crow Nation. The other portion of this case was the Supreme Court's rejection of the Crow argument that the tribe should be permitted to regulate hunting and fishing by non tribal members on fee patent land inside the reservation.

The Supreme Court explained that tribes have inherent sovereign authority in matters involving relations among members of the tribe but not in external relations. The Crow Tribe was not permitted to regulate hunting and fishing by non members off the reservation because such regulation "bears no clear relationship to tribal self government or internal relations."

"The areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving the relations between an **Indian tribe and nonmembers of the tribe ....**

These limitations rest on the fact that the dependent status of Indian tribes within our territorial jurisdiction is necessarily inconsistent **with their freedom independently to determine their external relations**. But the powers of self-government, including the power to prescribe and enforce internal criminal laws,

are of a different type. They involve only the relations among members of a tribe. Thus, they are not such powers as would necessarily be lost by virtue of a tribe's dependent status." Ibid. (Emphasis added.)

Thus, in addition to the power to punish tribal offenders, the Indian tribes retain their inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. Id., at 322, n. 18, 98 S.Ct., at 1085, n. 18. But exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148, 93 S.Ct. 1267, 1270, 36 L.Ed.2d 114; Williams v. Lee, 358 U.S. 217, 219-220, 79 S.Ct. 269, 270, 3 L.Ed.2d 251; United States v. Kagama, 118 U.S. 375, 381-382, 6 S.Ct. 1109, 1112-1113, 30 L.Ed. 228; see McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 171, 93 S.Ct. 1257, 1261, 36 L.Ed.2d 129. Since regulation of hunting and fishing by nonmembers of a tribe on lands no longer owned by the tribe bears no clear relationship to tribal self-government or internal relations, the general principles of retained inherent sovereignty did not authorize the Crow Tribe to adopt Resolution No. 74-05. 450 US at 564.

The next United States Supreme Court case that involved a determination of the scope of a tribe's inherent authority was Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 492 U.S. 408, 106 L.Ed2d 343, 109 S.Ct. 2994 (1989). The particulars of land ownership on the reservation in question played a significant part in the court's assessment of the claim of inherent authority raised by the Indian Tribe. The Yakima reservation was divided into two parts: a closed area, which is so named because it has been closed to the general public and an open area, which is not so restricted. In this context, the Tribes' zoning ordinances applied on their face to all lands within the reservation owned by Indians as well as non-Indians. The County asserted its

zoning authority over all lands within its boundaries, except for Indian Trust lands.

One litigant was Brendale who owned land in the closed area. The other litigant was Wilkinson, whose land was in the open area. Both filed applications with the Yakima County to develop their fee patent land. The County issued the permits, which allowed development in a manner prohibited by the Tribal Zoning Ordinance. The Tribe appealed the County's issuance of the permits and argued that the decision was invalid because it was inconsistent with the Yakima Tribal Zoning Code. The Yakimas also filed a suit in federal court seeking a declaration from the court that the Yakimas had exclusive authority over all of the real property located within its borders including fee patent land owned by non-Indians.

The United States Supreme Court ruled that the Yakimas had authority to block Brendale's development of his property. Because Brendale's real property was located in the closed area, which involved vast tracts of undeveloped land, which the Yakimas considered of special character essential to the integrity of the Tribe, it was necessary for the tribe's zoning ordinance to be exclusive. The closed area had a miniscule non-Indian population spread over a large tract of land of very rural character.

On the other hand, the Supreme Court ruled that the tribe had no authority over Wilkinson's property and rejected the tribe's claim of exclusive power to zone in this open area of the reservation, which was heavily developed by non-Indian owners who comprised about 80% of the population. Because the open

area of the Yakima Indian Reservation was in fact integrated into the normal county development, the Supreme Court reasoned that the County ordinances should prevail there.

The next United States Supreme Court case that involved a determination of the scope of the tribe's inherent authority was Strate v. A-1 Contractors 520 U.S. 438, 137 L.Ed2d 661, 117 S.Ct. 1404 (1997). This case was the outgrowth of a two vehicle collision, which took place on a public road inside an Indian Reservation. Neither driver was an Indian. A truck driven by Stockert was owned by A-1 Contractors, a non-Indian business located outside of the reservation. Gisela Fredericks, a non-Indian, but the widow of a tribal member, drove the other vehicle. Ms. Fredericks, while not a tribal member, had five children who are tribal members.

When Fredericks sued A-1 in tribal court, A-1 successfully sued in federal court and obtained an injunction prohibiting the tort lawsuit from going forward against Stockert and A-1 in tribal court. The United States appeared in Strate as amicus curiae and argued that the tribe had jurisdiction over the automobile accident civil claim. The Supreme Court affirmed the District Court injunction and in so doing rejected the argument based upon the inherent authority of tribe, that the tribal court had civil jurisdiction over non-tribal members for automobile accidents taking place on highways inside the Indian Reservation. Strate v. A-1 Contractors held that the tribes do not have civil jurisdiction over non-tribal members for negligence in the operation of motor vehicles on public roads inside of Indian Reservations. Strate was an analogue to Oliphant and extended the

Oliphant holding to eliminate tribal court jurisdiction over non-tribal members for negligent acts committed on state highways inside of Indian reservations.

The losing argument in support of the tribe's claim of civil jurisdiction in Strate was based upon the second exception to the general rule expressed in Montana v. United States 450 U.S. 544, 67 L.2d 493, 101 S.Ct. 1245 (1981). This exception provides a grant of Indian jurisdiction over a non Indian when the dispute concerns conduct that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." 450 US at 566. But this exception pertains to the exercise of civil authority over the conduct of non Indians on fee patent lands within the reservation. The specific interest claimed by the tribe was identical to the interest raised by the state in this case. "Undoubtedly, those who drive carelessly on a public highway running through the reservation endanger all in the vicinity and surely jeopardize the safety of tribal members." Strate at 520 US at 548.<sup>3</sup> Since Strate rejected the tribe's attempt to exercise control over the use of a public roadway inside its borders without Congressional permission, it forecloses, from Eriksen's view, any claim by an Indian tribe to be able to pursue outside of its borders as a matter of inherent authority.

The next United States Supreme Court case that involved a determination of the scope of the tribe's inherent authority was Atkinson Trading Company v. Shirley 532 US 645, 149 L. Ed2d 889, 121 S.Ct. 1825 (2001). In this case, the

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<sup>3</sup> Eriksen notes that this same factual argument underpins the Indian necessity argument here- which is that tribal police must be able to pursue off reservation or otherwise offenders will act with impunity and avoid responsibility by fleeing the reservation.

Supreme Court rejected the attempt of the Navajo Tribe to tax non-tribal member customers of a hotel located on non-Indian fee land located inside the reservation.

The next United States Supreme Court that involved a determination of the scope of the tribe's inherent authority was Nevada v. Hicks, 533 US 353, 150 L.Ed2d 398, 121 S.Ct. 2304 (2001). In this case, the United States Supreme Court held that tribes did not have authority to adjudicate tort claims arising from state officials' execution of a search warrant on reservation lands for evidence of off reservation crime. Hicks, a tribal member, sued state officials in tribal court for execution of a search warrant on his property. His argument failed because tribal authority to regulate state officers in executing process related to off reservation violations of state criminal laws is not essential to tribal self-government or internal relations. The facts of the instant case are similar. No matter how practical, effective or convenient it may be for tribal officers to pursue and stop traffic offenders when they leave the reservation on a state highway, tribal self government and internal relations among tribal members are not at stake.

The most recent decision of the United States Supreme Court applying the doctrine of inherent tribal authority is the Plains Commerce Bank v. Long Family Land and Cattle Company, 2008 WL 2511728 decided June 25, 2008. In this case, the Supreme Court vacated the judgment of the Cheyenne River Sioux Indian Tribal Court awarding \$750,000 on a discrimination claim. The facts were as follows. Long Family Land and Cattle Company was a family owned South

Dakota Corporation run by Ronnie and Lila Long. Ronnie and Lila were enrolled members of the Cheyenne River Sioux Indian Tribe. The father of Ronnie and Lila, Kenneth, was not a member of the Cheyenne River Sioux Indian Tribe. Kenneth owned 2230 acres inside the Cheyenne River Sioux Indian Reservation in fee. Kenneth mortgaged the land to the Plains Commerce Bank. The Plains Bank had no ties with the tribe except for business dealings with its members.

At the time of Kenneth's death in 1995, Kenneth and the Long Company owed the bank \$750,000. After Kenneth's death, the bank and Kenneth Long's estate negotiated the repayment of the loan. Two agreements were reached. First, Long's estate deeded the property to the bank in lieu of foreclosure. In return, the bank agreed to cancel some of the debt and agreed to make additional operating loans. The bank leased the Long Family Land and Cattle Company the 2300 acres for a two-year period with an option to purchase the land at the end of the term for \$468,000. The Long Company was unable to exercise the purchase option and the bank sold portions of the 2300 acres to others, non-tribal members, on terms more favorable than originally offered by the bank to the Long Company.

The Longs and the Long Company commenced suit in the tribal court against the bank to prevent their eviction and to reverse the sale of the land. They also brought a variety of claims including a discrimination claim. This claim alleged that the bank sold the property to non-tribal members on more favorable terms than to the Longs. The bank asserted in response that the tribal court lacked jurisdiction. The tribal court ruled it had jurisdiction and the jury awarded

the Longs \$750,000. After litigating and losing this lack of jurisdiction claim with the tribal court, the bank filed suit in the federal court seeking a declaration that the tribal court lacked jurisdiction over this discrimination claim.

The federal district court affirmed the judgment of the tribal court holding that the bank's consensual dealing with the Long Company brought it within the ambit of the first consensual exception of Montana v. United States. The Eight Circuit affirmed. The United States Supreme Court reversed.

The essence of the opinion by Chief Justice Roberts is that there is no tribal jurisdiction over the sale of fee land owned by non-Indians inside of Indian Reservations. The discrimination claim and the judgment flowing therefrom derived from the circumstances surrounding the sale of the property- the allegation that the bank offered the same land to non tribal members on better terms. In response to this assertion the court noted the following:

Nor can regulation of fee land sales be justified by the tribe's interests in protecting internal relations and self-government. Any direct harm to its political integrity that the tribe sustains as a result of fee land sale is sustained at the point the land passes from Indian to non-Indian hands. It is at that point the tribe and its members lose the ability to use the land for their purposes. Once the land has been sold in fee simple to non-Indians and passed beyond the tribe's immediate control, the mere resale of that land works no additional intrusion on tribal relations or self-government. Resale, by itself, causes no additional damage.<sup>4</sup>

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<sup>4</sup> 2008 WL 2511728 is the only citation available at the time of the preparation of this brief.

Thus, inherent tribal authority over non members relating to fee land inside an Indian reservation did not reach the sale of fee land or the circumstances under which the land was sold. As the court stated,

Montana provides that, in certain circumstances, tribes may exercise authority over the conduct of nonmembers, even if that conduct takes place on non-Indian fee land. But conduct taking place on the land and the sale of the land are two very different things. The Cheyenne River Sioux Tribe lost the authority to restrain the sale of fee simple parcels inside their borders when the land was sold as part of the 1908 Allotment Act. Nothing in Montana gives it back.

Plains Commerce Bank v. Long Family Land and Cattle Company is another example of the failure of an Indian tribe under its inherent authority to acquire jurisdiction over non members for conduct, which relates to actions involving real estate, even when it is inside of the tribe's reservation.

## **V. CONCLUSION**

In all of the cases beginning with Montana v. United States, the United States Supreme Court found that tribal inherent sovereignty was not a sufficient basis for the tribe to regulate non-tribal members in a variety of situations. In this case, the State has not shown that it is essential for the integrity of the Lummi Tribe to be able to pursue off reservation. The Superior Court's attempt to devise a practical solution, " a reasonable level of ability for the tribal officers to detain off reservation," Oral Opinion at 10, does not provide the clarity necessary for an issue involving territorial sovereignty. Here the State of Washington has paramount right to control actions by tribal agents on state roadways and to

restrict the same. The solution to the practical problem that troubled the trial court needs to be reached by agreement between the Sheriff and the tribe.

Of all of the cases in which inherent tribal authority has collided with a competing authority, only in Brendale did the Indian claim prevail. In that case, the equities weighed heavily in support of deferring to the Indian claim because the closed area of the reservation was virtually unchanged since the time of the inception of the tribe and this setting was challenged by an extreme minority of persons and the county zoning scheme. So in that limited circumstance to preserve the capacity of the Yakimas to control this large undeveloped tract, the court nullified the claim of the competing jurisdiction.

All of the other cases clearly prohibit any act by the tribe to assert criminal jurisdiction over a non Indian as well as civil jurisdiction in cases where a non Indian is involved in a traffic accident on a public road on an Indian reservation. The conclusion to be drawn is that the tribe cannot under any interpretation operate to undermine authority of state to control its own territory.

The legal basis used to advance tribal authority is the exception to the general rule set down in Montana v. United States. This exception relates to the tribes assertion of civil jurisdiction through zoning over fee patent land inside Indian Reservation owned by non tribal members. No federal case purports to vest a tribe with the inherent authority to assert its sovereign powers outside of the territorial limits of its reservation.

This same policy concerned reflected in State v. Schmuck, when this court stated that "Allowing a known drunk driver to get back into his or her car, careen

off down the road, and possibly kill or injure Indians or non-Indians would certainly be detrimental to the interests and welfare of the Tribe.” 121 Wn2d at 391. But here in this case, we are dealing with a tribal law enforcement officer’s pursuit of a driver who crossed the centerline on a road right on the external boundary of the reservation. The principle advanced here by the prosecution is the unlimited and unfettered right of Indian law enforcement to pursue any motorist off reservation who commits a traffic infraction on a road inside an Indian reservation. It is insightful to recognize the following statement of the Supreme Court of the dimension of the second exception of Montana as to the limits of inherent tribal authority under this exception. The Supreme Court speaking through Justice Roberts said the following:

The second exception authorizes the tribe to exercise civil jurisdiction when non-Indians’ “conduct” menaces the “political integrity, the economic security, or the health or welfare of the tribe.” Montana, 450 U.S., at 566, 101 S.Ct. 1245. The conduct must do more than injure the tribe, it must “imperil the subsistence” of the tribal community. *Ibid.* One commentator has noted that “th[e] elevated threshold for application of the second Montana exception suggests that tribal power must be necessary to avert catastrophic consequences.” Cohen § 4.02[3][c], at 232, n. 220.

The State presented the decision of Settler v. Lameer 507 F2d 231 (9<sup>th</sup> Cir. 1974) in support of its expansive reading of Schmuck. This was a case where tribal members were arrested by tribal police off reservation at an accustomed place of fishing recognized by treaty right. Settler approved of a grant of tribal authority to arrest tribal members who were violating tribal fishing regulations taking place off reservation at the tribe’s usual and accustomed place of fishing. There the federal court endorsed the enforcement of the tribe’s fishing

code against its own members, without which there would have been no method for the tribe to protect the fishing resource granted by treaty. The definitive difference between Settler and the instant case is that here we have a non tribal member whose interests are compromised and the area in question, unlike the usual and accustomed fishing grounds of the Yakima nation dealt with in Settler, are the public roads of Whatcom County, which have no nexus to the Lummi Tribe.

Had the Yakima fishing regulatory personnel attempted to act against non tribal members in this off reservation site, Montana v. United States and Strate v. A-1 Contractors 520 U.S. 438, 137 L.Ed2d 661, 117 S.Ct. 1404 (1997) sends a clear command of no authority for such action.

In the final analysis, the inherent authority doctrine applied by the United States Supreme Court makes clear that the doctrine can never extend Indian sovereignty outside of its territorial location, particularly against non tribal members. In addition to the fact that the inherent authority doctrine is inadequate to provide authority to freshly pursue off reservation, the state's interest in regulating its own highways is paramount and would override any colorable claim of tribal authority. The legislature of Washington has clearly spoken as to who has authority to pursue motor vehicles for traffic and criminal offenses on Washington roadways. The actions of Lummi Law Enforcement in pursuit were in violation of Washington law and thus unlawful.

Petitioner requests that this court so declare and reverse the decision of the Superior Court.

Dated this <sup>17th</sup> day of July, 2008



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Attorney for Appellant Loretta Eriksen