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STATE OF WASHINGTON
Case No. 87376-3

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APPEAL FROM THE WASHINGTON STATE COURT OF APPEALS,
DIVISION THREE
Case No. 29508-7

STATE OF WASHINGTON,
Respondent,
v.
MICHAEL ALLEN CLARK,
Petitioner.

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AMICUS CURIAE BRIEF OF THE COLVILLE CONFEDERATED
TRIBES IN SUPPORT OF PETITION FOR REVIEW

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Colville Confederated Tribes (“CCT”), proposed *amicus curiae* in this matter, incorporates the statement of interest in CCT’s concurrently filed Motion for Leave to File *Amicus Curiae* Briefs.

STATEMENT OF THE CASE

Petitioner Michael Clark, an enrolled member of CCT, was convicted of first degree theft following the Omak Police Department’s investigation of a reported burglary within the Colville Reservation. *State v. Clark*, 167 Wn. App. 667, 274 P.3d 1058, 1059-60 (2012). The conviction was based on evidence obtained during a search of petitioner’s trailer, which is located on Indian trust land within the Colville Reservation. *Id.* Omak police conducted the search pursuant to a warrant issued by an Okanogan County judge. *Id.* at 1059. Omak police did not attempt to obtain a warrant from the Colville Tribal Court or federal court to search petitioner’s trailer, and did not request involvement of CCT Police or federal agents in executing the warrant. *Id.* at 1059-60.

At trial, petitioner sought to suppress the evidence obtained pursuant to the search warrant because the state court lacked jurisdiction to issue a warrant for the search of Indian trust land within the Reservation. CP 80-83. The Superior Court denied the motion, CP 48-50, and Clark was convicted of theft in the first degree, RP 455-56. Division

III of the Court of Appeals affirmed the conviction, finding that *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001), “is dispositive of [petitioner’s] argument that state officials lacked authority to serve the search warrant on reservation trust land . . .” and thus “[t]he trial court correctly denied the motion to suppress.” 274 P.3d at 1061.

Petitioner filed a petition for discretionary review on May 11, 2012.

ARGUMENT

CCT submits this brief in support of the request for Supreme Court review of the Court of Appeals’ decision. RAP 13.4(b)(1)-(4).

I. THIS CASE PRESENTS AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THE SUPREME COURT [RAP 13.4(B)(4)].

This case presents questions regarding the authority of state law enforcement officers to execute a search warrant issued by a state court on Indian trust land within the Colville Reservation without the consent or involvement of CCT or any attempt to comply with provisions of Colville Tribal Code governing the issuance of search warrants. The Court of Appeals’ holding—that Omak police officers may exercise such authority—departs from this Court’s precedent, is contrary to the Legislature’s voluntary retrocession of nearly all state criminal jurisdiction on Indian trust land within the Reservation, encourages state incursions into tribal sovereignty, and undermines well-established public policies of

promoting tribal self-government. *See* RCW 37.12.100-140 (voluntary retrocession); *State v. Schmuck*, 121 Wn.2d 373, 850 P.2d 1332 (1993) (recognizing “Congress’ well-established policy of promoting tribal self-government.”); *see also Nat’l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 856-57, 105 S. Ct 2477, 85 L. Ed. 2d 818 (1985).

The effects of the decision below are not limited to CCT. There are 29 federally recognized Indian tribes within the boundaries of Washington. Like CCT, many of these tribes have reservations where some portion of the land is wholly or partially outside of state jurisdiction (through Washington’s voluntary retrocession or otherwise). The Court of Appeals decision, if upheld, gives license to state law enforcement to circumvent tribal search warrant procedures, thereby intruding on tribal sovereignty throughout the state. This is contrary to the Legislature’s intent in voluntarily retroceding jurisdiction and presents an issue of substantial public interest that should be decided by this Court.

II. THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT AND OTHER DECISIONS OF THE COURT OF APPEALS [RAP 13.4(B)(1)-(2)].

Review is warranted because the decision below conflicts with decisions of this Court and the Court of Appeals regarding state jurisdiction over Indians within Indian country. In *Powell v. Farris*, 94

Wn.2d 782, 784, 620 P.2d 525 (1980), this Court recognized that it is “axiomatic that state power over Indians on a reservation is limited to the power granted by Congress in [P.L. 280].” *See also Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 754, 958 P.2d 260 (1998) (“federal preemption of Indian affairs prevents states from applying state law to tribal Indians on Indian reservations, without an express grant of authority from Congress”) (emphasis added); *State v. Pink*, 144 Wn. App. 945, 185 P.3d 634 (2008). Furthermore, where state assertions of jurisdiction within Indian country implicate both state and tribal interests, the Court has applied the “infringement test” articulated in *Williams v. Lee*, 358 U.S. 217, 79 S. Ct. 269, 3 L. Ed. 2d 251 (1959), to determine the limits of state authority. *Powell*, 94 Wn.2d at 786. The infringement test looks to “whether the state action infringe[s] on the right of reservation Indians to make their own laws and be ruled by them.” *Id.* (quoting *Williams*, 358 U.S. at 220); *see also Maxa v. Yakima Petroleum Inc.*, 83 Wn. App. 763, 924 P.2d 372 (1996) (“the essential question is whether state assumption of jurisdiction would interfere with reservation self-government”) (citing *Williams*, 358 U.S. at 220). However, in at least one case, this Court has suggested a different analysis. *State v. Cayenne*, 165 Wn.2d 10, 13, 195 P.3d 521 (2008) (affirming sentencing condition applicable to tribal member “on and off reservation”).

In this case, the Court of Appeals' reliance on dicta from *Hicks* rather than this Court's rule in *Powell* to find state jurisdiction over Indian trust land within the Colville Reservation demonstrates confusion over applicable precedent in Washington courts. See *Clark*, 274 P.2d at 1061. The Court of Appeals failed to conduct a P.L. 280 analysis and apply the infringement test, and instead misinterpreted *Hicks* to find broad state authority in Indian country, despite the state's voluntary retrocession.

This expansive reading of *Hicks* is incorrect. *Hicks* is part of a series of U.S. Supreme Court decisions following *Montana v. United States*, 450 U.S. 544, 101 S. Ct. 1245, 67 L. Ed. 2d 493 (1981), all of which involved tribal assertions of authority over non-members. E.g., *Hicks*, 533 U.S. at 355 (“This case presents the question whether a tribal court may assert jurisdiction over civil claims against state officials who entered tribal land to execute a search warrant . . .”). The instant case raises a wholly different jurisdictional issue—the state's authority over tribal members while on Indian trust land within the Reservation.¹

Other decisions from the Court of Appeals and from other jurisdictions indicate that the *Montana* line of cases, including *Hicks*,

¹ *Hicks* is inapposite for these reasons, but it should be noted that, unlike here, the Nevada game warden obtained a tribal court search warrant and executed it in conjunction with tribal police. *Hicks*, 533 U.S. at 356.

should not be extended to govern exercises of state authority over Indians. *See, e.g., Young v. Duenas*, 164 Wn. App. 343, 350-51, 262 P.3d 527 (2011) (“[I]t is not the Puyallup tribe attempting to assert any regulatory authority over a nonmember, but instead . . . a nonmember, attempting to sue the tribe in a civil suit in state court.”); *Cordova v. Holwegner*, 93 Wn. App. 955, 967, 971 P.2d 531 (1999) (explaining the difference between the infringement test and the *Montana* analysis); *South Dakota v. Cummings*, 679 N.W.2d 484, 487 (S.D. 2004) (*Hicks* does not apply when the state attempts to extend its jurisdiction into the boundaries of the tribe’s reservation); *Hinkle v. Abeita*, No. 30,577 (N.M. Ct. App. May 10, 2012) (Appendix A) (reaffirming court’s reliance on *Williams* infringement test and rejecting *Montana* analysis).

The instant case thus presents an opportunity for the Court to provide clear instruction on the complex issue of jurisdiction in Indian country. *See, e.g., State v. Jim*, 173 Wn.2d 672, 273 P.3d 434 (2012) (applying P.L. 280 to treaty fishing site). If the Court agrees that *Powell* is controlling, it should reverse Division III because there is no federal law granting the state authority to execute search warrants on Indian trust land within the Colville Reservation. Specifically, although P.L. 280²

² Codified at 18 U.S.C. § 1162; 25 U.S.C. §§ 1321, 1323, 1324.

authorized the state to assume criminal and civil jurisdiction over Indians in Indian country, Washington retroceded that jurisdiction on the Colville Reservation to the federal government over twenty years ago. Other than eight delineated areas in RCW 37.12.010, which are not applicable here,³ Washington's P.L. 280 jurisdiction "shall not apply to Indians when on their tribal [trust] lands . . . within an established Indian reservation" *Jim*, 173 Wn.2d at 679 (quoting RCW 37.12.010).⁴

According to *Powell*, in the absence of state jurisdiction under P.L. 280, the court must examine whether exercise of state jurisdiction "infringe[s] on the right of reservation Indians to make their own laws and be ruled by them." 94 Wn.2d at 786 (quoting *Williams*, 358 U.S. at 220); see also *Sycuan Band of Mission Indians v. Roache*, 788 F. Supp. 1498, 1508 (S.D. Cal. 1992) ("a judicial officer's writ cannot run outside of the officer's jurisdiction."). In applying the infringement test, courts have generally found that execution of search warrants and other state

³ Had the Legislature sought to retain state authority over legal process such as the execution of search warrants, it could have done so by enumerating such jurisdiction in RCW 37.12.010.

⁴ Pursuant to RCW 37.12.021, CCT authorized the state to assume federal criminal jurisdiction within the Colville Reservation in 1965. See *State v. Hoffman*, 116 Wn.2d 51, 804 P.2d 577 (1991). However, Washington voluntarily retroceded that jurisdiction to the federal government in 1987. RCW 37.12.100-140. Accordingly, the state currently has no jurisdiction on trust lands within the Colville Reservation outside of the eight enumerated areas in RCW 37.12.010, and the lower court's decision to the contrary is in direct conflict with the Legislature's intent.

court process in Indian country are outside a state's P.L. 280 jurisdiction and impermissibly infringe on tribal self-government when the tribe has its own procedures in place for the execution of such process.

For example, in *Idaho v. Mathews*, 133 Idaho 300, 986 P.2d 323 (1999), the Idaho Supreme Court considered a question essentially identical to the issue here – whether “a state court may issue a warrant to search within Indian country without tribal court approval where the state court has jurisdiction over the underlying crime” *Id.* at 335. First, the court determined that under P.L. 280 the state “did not assume jurisdiction over . . . the execution of state court search warrants within Indian country.” *Id.* at 334. However, since the crime at issue was subject to the state's jurisdiction (because it had occurred outside of the reservation), the court went on to examine “whether the execution of the . . . search warrant within the Nez Perce Indian Reservation either unlawfully infringed on the right or reservation Indians to make their own laws and be ruled by them, or is preempted by federal law.” *Id.* at 336. The *Mathews* court noted that state officers had attempted to work with tribal officers to obtain a warrant, but that tribal law “did not establish a requirement or a procedure governing the execution of state court issued warrants authorizing searches within Indian country.” *Id.* at 336-37. The court ultimately determined that, tribal sovereignty was not infringed by the

execution of the state search warrant “where the state possesses jurisdiction over the underlying crime and where tribal law does not provide a procedure for executing the warrant within Indian country.” *Id.* at 337 (emphasis added); *see also Arizona ex rel Merrill v. Turtle*, 413 F.2d 683, 686 (9th Cir. 1969) (decision based on tribe’s enactment of “procedures for Indian extradition”).

Unlike in *Mathews*, Colville Tribal law permits state law enforcement to obtain a Tribal Court warrant to search petitioner’s property. See Colville Code §§ 1-1-102 (mandating cooperation with state agencies) (Appendix B), 2-1-35 (issuance of tribal search warrants) (Appendix C). Accordingly, the Court of Appeals’ failure to apply the infringement test and examine P.L. 280 conflicts with *Powell* and other decisions of the Court of Appeals, and this Court should grant review.

III. THIS CASE INVOLVES A SIGNIFICANT QUESTION OF LAW UNDER THE WASHINGTON STATE CONSTITUTION AND UNITED STATES CONSTITUTION [RAP 13.4(B)(3)].

Washington courts have determined that execution of a search warrant issued without authorization violates Article 1, Section 7, of the Washington State Constitution. For example, in *City of Seattle v. McGready*, 123 Wn.2d 260, 868 P.2d 134 (1994), the Court instructed:

Const. art. 1, § 7 demands the existence of a valid warrant. . . . One absolutely necessary component of a valid warrant is that it be issued by a magistrate with the legal authority to issue it. Where a

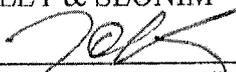
warrant is issued by a magistrate without the authority to do so, it has no more validity than a warrant signed by a private citizen, and can no more serve as the authority of law necessary to satisfy the requirements of Const. art. 1, § 7.

Id. at 272 (citations omitted); *see also State v. Lansden*, 144 Wn.2d 654, 663-64, 30 P.3d 483 (2001). Execution of a warrant issued without legal authority also violates the Fourth Amendment to the U.S. Constitution. *See, e.g., U.S. v. Scott*, 260 F.3d 512, 513-15 (6th Cir. 2001); *U.S. v. Peltier*, 344 F. Supp. 2d 539, 547 (E.D. Mich. 2004). As in *McGready* and *Scott*, the warrant at issue in this case was issued by a state court judge without jurisdiction to issue the warrant because the location of the search was on Indian trust land within the Colville Reservation and thus outside of jurisdiction assumed by the state pursuant to P.L. 280.

CONCLUSION

For the reasons stated above, CCT respectfully requests that the Court grant the petition for review in the above-captioned case.

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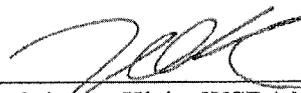
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CERTIFICATE

I certify that, on July 9, 2012, I mailed a copy of the foregoing
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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: May 10, 2012

Docket No. 30,577

CLOYD G. HINKLE,

Plaintiff-Appellant,

v.

DOROTHY M. ABEITA,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Valerie A. Mackie Huling, District Judge

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OPINION

HANISEE, Judge.

{1} In this appeal, we are asked to reconsider whether our state courts have subject matter jurisdiction over tort claims filed against Indian defendants for conduct occurring on state highways within Indian country. Although binding precedent holds that our state courts do not have jurisdiction over such matters, *see Hartley v. Baca*, 97 N.M. 441, 442-43, 640 P.2d 941, 942-43 (Ct. App. 1981), we revisit the issue to determine whether evolving federal Indian Law jurisprudence and recent precedent from our own Supreme Court now require

a different result. We hold that those developments do not alter our analysis in *Hartley*, and we hereby affirm the district court’s decision to dismiss for lack of subject matter jurisdiction.

I. BACKGROUND

{2} Cloyd Hinkle, a non-Indian, and Dorothy Abeita, an enrolled member of Isleta Pueblo, were involved in a motor vehicle accident within the exterior boundaries of Isleta Pueblo at the intersection of a state highway and a tribal road. For purposes of this appeal, the parties stipulate that the accident occurred on State Highway 314—a public state right-of-way—at a location which they also agree qualifies as Indian country. Hinkle maintains that as he sought to pass Abeita’s slower-moving car while driving his motorcycle on State Highway 314, Abeita abruptly turned left toward a tribal road without signaling, causing Hinkle to “lay his bike down” and collide with her car. Hinkle filed suit in Bernalillo County District Court, claiming that Abeita’s negligent driving caused injury to him and damage to his motorcycle. Abeita filed a motion for summary judgment based primarily on this Court’s decision in *Hartley*, asserting that the district court lacked subject matter jurisdiction because she was a member of Isleta Pueblo and the accident occurred within the exterior boundaries of the Pueblo. After briefing and a hearing on the motion, the district court agreed with Abeita that it lacked subject matter jurisdiction pursuant to the *Hartley* analysis and dismissed Hinkle’s complaint. We now consider Hinkle’s appeal from the district court’s determination in light of the evolved body of federal Indian Law since our decision in *Hartley*, and our Supreme Court’s recent decision in *Garcia v. Gutierrez*, 2009-NMSC-044, 147 N.M. 105, 217 P.3d 591.

II. STANDARD OF REVIEW

{3} The lone issue to be resolved is the propriety of the district court’s order granting Abeita’s motion for summary judgment and dismissing Hinkle’s complaint for lack of subject matter jurisdiction. “In reviewing an appeal from an order granting or denying a motion to dismiss for lack of jurisdiction, the determination of whether jurisdiction exists is a question of law which an appellate court reviews de novo.” *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶¶ 6, 7, 132 N.M. 207, 46 P.3d 668 (determining that New Mexico courts lacked subject matter jurisdiction over a tort action brought by a non-Indian against an Indian tribe). Likewise, “[a]n appeal from the grant of a motion for summary judgment presents a question of law and is reviewed de novo.” *Cable v. Wells Fargo Bank N.M., N.A.*, 2010-NMSC-017, ¶ 9, 148 N.M. 127, 231 P.3d 108 (internal quotation marks and citation omitted).

III. DISCUSSION

{4} Over thirty years ago in *Hartley*, this Court resolved the exact legal issue raised in this case on nearly identical facts. 97 N.M. at 442, 640 P.2d at 942. Then, a non-Indian motorcyclist filed a personal injury action in state court against a pueblo-member motorist.

Id. The underlying accident also occurred on a state highway within the exterior boundaries of an Indian pueblo. *Id.* And as in the case at bar, the district court in *Hartley* dismissed for lack of subject matter jurisdiction. *Id.* This Court affirmed that dismissal based on the “infringement test” established in *Williams v. Lee*, 358 U.S. 217, 220 (1959), which it cited as follows: The question of whether states have subject matter jurisdiction, absent governing acts of Congress, “has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.” *Hartley*, 97 N.M. at 443, 640 P.2d at 943 (internal quotation marks and citation omitted). The infringement test was established in recognition of the fact that the states generally do not have power to regulate the property or conduct of tribes or tribal members within Indian country because Indian tribes and pueblos retain aspects of the inherent sovereignty they possessed prior to becoming subject to the authority of the federal government. *See generally* Felix S. Cohen, *Cohen’s Handbook of Federal Indian Law* § 6.03 (Nell Jessup Newton ed. 2005).

{5} In *Hartley*, this Court enumerated the criteria relevant to the infringement test: “(1) whether the parties are Indians or non-Indians; (2) whether the cause of action arose within the Indian reservation; and (3) the nature of the interest to be protected.” 97 N.M. at 443, 640 P.2d at 943 (citing *Chino v. Chino*, 90 N.M. 203, 206, 561 P.2d 476, 479 (1977)). Upon considering the *Williams* criteria, this Court concluded that state jurisdiction over the civil tort claim “would run afoul of the infringement test,” because (1) “[the defendant] was an Indian,” (2) “the accident occurred on State Road 30 within the exterior boundaries of the Santa Clara Pueblo,” and (3) “the nature of the interest to be protected [was] the right of [the member defendant] to be heard in the Santa Clara Tribal Court under its tribal laws.” *Hartley*, 97 N.M. at 443, 640 P.2d at 943 (internal quotation marks omitted).

{6} Hinkle concedes in his briefing to our Court that *Hartley* stands as binding precedent over these facts—and if it remains good law would compel our state courts to dismiss his and other factually similar actions for lack of jurisdiction. Nonetheless, he argues that since this Court decided *Hartley* in 1981, federal precedent—beginning with *Montana v. United States*, 450 U.S. 544 (1981)—has fundamentally altered the analysis used in *Hartley* and applied stricter limitations to the reach of tribal jurisdiction. Accordingly, Hinkle urges us to reconsider our holding in *Hartley* and utilize the *Montana* rule—in place of the infringement test—to now allow state court jurisdiction over his claim against Abeita. While we disagree with the legal conclusions that Hinkle would have us adopt, we accept the opportunity to explain the impact of *Montana* and its progeny on our own state-court jurisdictional analysis. In doing so, we reaffirm both our reliance on the infringement test articulated over half a century ago in *Williams*, as well as our “venerable tradition of defer[ence]” to tribal sovereignty, *State v. Harrison*, 2010-NMSC-038, ¶ 27, 148 N.M. 500, 238 P.3d 869, particularly where the exercise of that sovereignty concerns tribal authority over the conduct of its own members in Indian country. *See Found. Reserve Ins. Co. v. Garcia*, 105 N.M. 514, 516, 734 P.2d 754, 756 (1987) (“Exclusive tribal jurisdiction exists . . . when an Indian is being sued by a non-Indian over an occurrence or transaction arising in Indian country . . .”).

{7} Hinkle initially suggests that this Court overlooked or was unaware of *Montana* when it decided *Hartley* because *Montana* was very recent precedent at the time and was not referenced within the *Hartley* opinion. As a matter of chronology, the United States Supreme Court decided *Montana* three months prior to this Court's opinion in *Hartley*. We do not read the dispositional proximity, or this Court's silence on the topic, as meaning anything more than that this Court viewed the *Montana* analysis as distinct from that needed to resolve the state jurisdictional issue in *Hartley*. *Montana* itself cautions that it addresses only a "[narrow] regulatory issue:" Did the Crow Tribe have "the power . . . to regulate non-Indian fishing and hunting on reservation land owned in fee by nonmembers of the Tribe"? 450 U.S. at 557. That issue was raised in the context of tribal, not state jurisdiction. Furthermore, nearly six years after *Montana* became law, our New Mexico Supreme Court expressed its approval of *Hartley*'s outcome and analysis. *Found. Reserve*, 105 N.M. at 515, 734 P.2d at 755 ("The Court of Appeals [in *Hartley*], applying the infringement test, properly affirmed the district court's dismissal of the action for lack of subject matter jurisdiction.").

{8} Although we reject the assumption that this Court was oblivious of *Montana* when it applied the infringement test in *Hartley*, or that our New Mexico Supreme Court mistakenly ignored *Montana* when it later approved that analysis in *Foundation Reserve*, we nevertheless agree that *Hartley* now warrants review. Though *Montana* did not itself announce a rule necessary for our courts to address in *Hartley* or *Foundation Reserve*, subsequent cases expanding the *Montana* rule certainly have done so. First in 1997, the United States Supreme Court in *Strate v. A-1 Contractors*, 520 U.S. 438, 443, 459 (1997), extended the *Montana* rule to prohibit tribal court jurisdiction over a case arising from a motor vehicle accident involving two nonmembers on a highway within the boundaries of an Indian reservation. And it did so again in *Nevada v. Hicks*, 533 U.S. 353 (2001), when the Court further expanded the *Montana* rule to forbid a civil lawsuit in tribal court brought by a tribal member against state police officers who executed a search warrant on reservation land. *Id.* at 358-60, 364-65. Other cases as well have continued the trend to curtail the exercise of tribal authority over nonmembers. *See, e.g., Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 647 (2001) (barring a tribe's regulatory authority to impose taxes upon non-Indian activity occurring on non-Indian fee land within a reservation). Moreover, our own New Mexico Supreme Court's recent decision in *Garcia*, when read broadly, invites the argument that the *Montana* analysis is now relevant to the determination of state court jurisdiction. 2009-NMSC-044, ¶¶ 27-34 (discussing the *Montana* line of cases within its determination of state court jurisdiction over a child-custody dispute between a member and nonmember pursuant to the Uniform Child-Custody Jurisdiction Enforcement Act (UCCJEA)).

{9} We thus address Hinkle's argument that the *Montana* rule, as it has evolved in the course of federal jurisprudence, should supplant the test articulated in *Williams* and applied in *Hartley*. Adoption of that rule here, Hinkle suggests, would allow our state courts to assert subject matter jurisdiction over accidents occurring on state and federal public highways without consideration of tribal boundaries. Hinkle further maintains that the assertion of state jurisdiction in such circumstances would be publicly beneficial in that it

would ensure a consistent venue for accidents on public rights-of-way throughout New Mexico. After consideration of each of the *Montana*-born cases, however, we disagree with Hinkle’s analysis for the following reasons: (1) the *Montana* cases were carefully drafted to determine the parameters of *tribal* court jurisdiction, not *state* court jurisdiction, and are therefore legally distinguishable; (2) the common principle among cases that apply the *Montana* rule—that a given tribe exceeded its sovereign powers by exerting jurisdiction over “unconsenting” *nonmembers* of the tribe—is inapplicable to actions filed by nonmembers against tribal members; (3) our courts, as well as federal and state courts across the Country, have continued to rely on *Williams* to determine state court jurisdiction despite the availability of the *Montana* rule; and (4) as a matter of policy, “the courts of this state have adopted greater protection for tribal sovereignty as a matter of state law.” *Harrison*, 2010-NMSC-038, ¶ 27.

The *Montana* Line of Cases Is Limited to Determining Tribal Court Jurisdiction

{10} Although the *Montana*-derived jurisprudence expansively bars tribal authority over various types of nonmember conduct within tribal boundaries, it is nearly unanimous in its exclusion of that analysis to state court jurisdiction. In fact, the United States Supreme Court in *Montana* and the cases that followed was careful to limit its holdings to the narrow question of tribal court jurisdiction, and has been largely silent as to the separate question of state court jurisdiction. *See, e.g., Montana*, 450 U.S. at 557 (addressing the narrow issue of whether the *Tribe’s power* includes the ability to regulate non-Indian recreational activities “on reservation land owned in fee by nonmembers of the Tribe.”); *Strate*, 520 U.S. at 442 (“This case concerns the adjudicatory authority of *tribal courts* over personal injury actions against defendants who are not tribal members.” (emphasis added)); *Atkinson Trading Co.*, 532 U.S. at 647 (“The question with which we are presented is whether [*Montana’s*] general rule applies to *tribal* attempts to tax nonmember activity occurring on non-Indian fee land.” (emphasis added)); *Hicks*, 533 U.S. at 358 n.2 (“Our holding in this case is limited to the question of *tribal-court jurisdiction* over state officers enforcing state law.” (emphasis added)); *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 320 (2008) (“The question presented is whether the *Tribal Court* had jurisdiction to adjudicate a discrimination claim concerning the non-Indian bank’s sale of fee land it owned.” (emphasis added)). Based on the expressly focused holdings in those cases, as well as their collective silence as to any inquiry of alternative jurisdiction, we conclude each is distinguishable from the related but distinct question at bar—state court jurisdiction. We thus decline to extend the *Montana* rule to determinations of the propriety of state court jurisdiction absent a clear directive from the United States Supreme Court or our New Mexico Supreme Court.

{11} Indeed, our decision to narrowly apply the *Montana* rule to only those questions of *tribal* jurisdictional authority enjoys broad support among leading Indian law treatises, as well as courts across the nation. *Cohen’s, supra*, § 6.03[2][c], at 536-37 (stating that the analysis for tribal court jurisdiction is distinct from the analysis for state court jurisdiction); *Winer v. Penny Enters., Inc.*, 674 N.W.2d 9, 15-16 (N.D. 2004) (“[A]ll of the cases relied

upon by [the plaintiff] which have applied the *Strate* analysis have involved situations testing tribal court jurisdiction over non-Indian defendants where the conduct occurred on a right-of-way. We have not found any case wherein the *Strate* analysis has been used to determine whether a state court has jurisdiction over a tort action brought against an Indian arising on a right-of-way within the exterior boundaries of a reservation.” (citations omitted)); *State v. Cummings*, 679 N.W.2d 484, 487-88 (S.D. 2004) (refusing to apply the *Hicks* analysis to determine state jurisdiction in Indian land because “[b]y its own terms,” *Hicks* constrained its analysis to “[w]hether a tribal court may assert jurisdiction over civil claims” (emphasis partially omitted)); *Cossey v. Cherokee Nation Enters., LLC*, 212 P.3d 447, 467 n.1 (Okla. 2009) (determining that the *Montana* “cases are inapplicable” to the jurisdictional propriety of a state tort action brought by a nonmember casino patron against a tribe “because they concern a tribe’s or a tribal court’s authority over non-Indians,” and “[t]he question in this matter is whether the state district court has acquired civil adjudicatory authority.”); *but see Zempel v. Liberty*, 143 P.3d 123, 130-34 (Mont. 2006) (determining the Montana district court had subject matter jurisdiction over a tort claim by a nonmember against a tribal member by first applying the *Montana* rule to ascertain tribal jurisdiction).

{12} Our own Court has even limited *Strate*’s application to its express terms in other contexts. *See Williams v. Bd. of Cnty. Comm’rs of San Juan Cnty.*, 1998-NMCA-090, ¶ 17, 125 N.M. 445, 963 P.2d 522 (dismissing the argument, in a case involving a suit of the Navajo Nation in state court, that *Strate* governed the jurisdictional inquiry by stating: “we disagree . . . that the holding in *Strate v. A-1 Contractors* dictates [our conclusion.] *Strate* addressed tribal court jurisdiction [and its decision] was independent of case law holding that Indian nations may not be sued in state courts.”); *Halwood v. Cowboy Auto Sales, Inc.*, 1997-NMCA-098, ¶ 15, 124 N.M. 77, 946 P.2d 1088 (declining to apply *Strate* in determining whether a tribal court had jurisdiction to award punitive damages against a non-Indian company because *Strate* expressed no opinion on whether tribal courts lack jurisdiction over nonmember conduct on member-owned reservation land).

{13} We do recognize, as Hinkle argues, that our New Mexico Supreme Court in *Garcia* has recently discussed the principles undergirding the *Montana* line of cases within its determination of state court jurisdiction. 2009-NMSC-044, ¶ 32 (“Although our case addresses state jurisdiction, not tribal jurisdiction, the *Montana* cases nonetheless show that it is not enough merely to conclude that a certain plot of land is, or is not, ‘Indian country.’”). But we view the Court’s discussion of *Montana* in deciding *Garcia* as consistent with the inherent limitation of the *Montana* rule. There, our New Mexico Supreme Court faced a perplexing child custody dispute between an Indian parent and a non-Indian parent, involving parallel claims filed in both tribal and state court. *Id.* ¶ 2. The central issue concerned the application of the UCCJEA, which has been adopted in some form by all fifty states, and which both defines state jurisdiction over child custody matters and requires the State of New Mexico to treat tribes as a co-equal state. *Id.* ¶¶ 13, 15. While the Court discussed the *Montana* cases at length, it did so only to “answer the narrow question [of] whether the fee land can be considered part of the Pojoaque Pueblo solely for the purpose[] of [ascertaining] the UCCJEA’s ‘home-state’ jurisdiction.” *Id.* ¶ 33. Tellingly,

it did not utilize *Montana* or its progeny in concluding that state jurisdiction was proper on *Garcia*'s facts. And ultimately, our Supreme Court in *Garcia* expressly reaffirmed "appl[ication of] the infringement test to determine whether the exercise of state authority will compromise the tribal sovereignty recognized in *Williams*." *Id.* ¶47. And while *Garcia* notes that "the *Montana* line of cases subsequently narrowed *Williams*, particularly where the issue is tribal authority over non-Indians," it does not encroach upon *Williams* or its seminal methodology to identify restrictions on state jurisdictional reach. *Id.* The Court simply applied the long-standing infringement analysis under the unique facts presented, incorporated the added nuances of UCCJEA application and jurisdictionally concurrent litigation involving minor children, and determined that state court jurisdiction under those circumstances would not impermissibly infringe upon tribal authority under *Williams*. We therefore do not read *Garcia* as importing the *Montana* rule into determinations of state court jurisdiction or as supplanting the infringement test.

The Montana Rule Applies Only When the Unconsenting Party Is a Nonmember

{14} Even were we to attempt to import the *Montana* analysis in resolving the question of state jurisdiction in the manner Hinkle suggests, it would not be to his benefit because the result in each of the *Montana* cases turned on the key fact that the "unconsenting part[ies]" to tribal authority were *all* nonmembers. *Hicks*, 533 U.S. at 382 (Souter, J., concurring) ("It is the membership status of the unconsenting party, not the status of real property, that counts as the primary jurisdictional fact."); *Smith v. Salish Kootenai College*, 434 F.3d 1127, 1131 (9th Cir. 2006) ("The Court has repeatedly demonstrated its concern that tribal courts not require 'defendants who are not tribal members' to 'defend [themselves against ordinary claims] in an unfamiliar court.'" (quoting *Strate*, 520 U.S. at 442, 459) (alteration in original) (emphasis added)); *Montana*, 450 U.S. at 564 (barring tribal authority over conduct of "nonmembers of a tribe on lands no longer owned by the tribe"); *Atkinson Trading Co.*, 532 U.S. at 647, 659 (determining no tribal jurisdiction exists over civil-rights claim by Indian against *non-Indian defendants*); *Plains Commerce Bank*, 554 U.S. at 330-41 (holding that a tribal court lacked subject matter jurisdiction over a suit by an Indian plaintiff *against a non-Indian defendant* for conduct involving the sale of fee land within Indian country). The principle concern in each of those cases was Indian jurisdiction over the conduct of unconsenting nonmembers. Here, the conduct sought to be regulated is that of an unconsenting tribal member. And if fidelity to the construct of separate sovereigns—state or tribal—is to be maintained in a manner that is congruent, the same concern must be articulated when an action involves the application of state court jurisdiction to an unconsenting tribal member.

{15} Furthermore, were this case to be filed in tribal court, Abeita—the tribal member—and not Hinkle, would be called to answer for her conduct. Hinkle's presence in tribal court can be secured only by his own volition, which would then exclude his status as an unconsenting party to the suit. These facts are not rendered legally meaningless simply because the jurisdiction available to Hinkle does not include his preference for state court. *See Williams*, 358 U.S. at 218 (recognizing that nonmember plaintiffs can be made to file

their claims in tribal court when the state's exercise of jurisdiction would impinge tribal sovereignty). Similarly, tribal member plaintiffs sacrifice their status as unconsenting parties in state court by electing to proceed away from their preferred tribal court based upon its absence of jurisdiction over the nonmember defendant. *Cf. Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g*, 467 U.S. 138, 148 (1984) (recognizing that Indian plaintiffs may elect to file their claims in state courts against non-Indian defendants for causes of action arising in Indian country when tribal courts lack jurisdiction). Thus, under the *Montana* analysis, this action would survive jurisdictional scrutiny if filed in tribal court by Hinkle because the conduct to be regulated is that of a tribal member.

{16} Indeed, it is well settled that where the conduct to be regulated is that of a tribal member on non-Indian fee land within the tribe's exterior boundaries, tribal authority is near its apogee—being eclipsed only when such conduct occurs on tribal-owned land within those boundaries. *See Cohen's, supra*, § 7.02[1][a], at 599 (recognizing that tribal courts have exclusive jurisdiction over civil matters where both parties are Indian because those actions are “first and foremost a matter of internal tribal law.”); William C. Canby, Jr., *American Indian Law in a Nutshell* 224-26 (4th ed. 2004) (stating that when a non-Indian plaintiff sues an Indian defendant for conduct arising in Indian country, the tribe also has exclusive jurisdiction); *Montana*, 450 U.S. at 564 (recognizing the tribes' inherent power over actions “involv[ing] only the relations among members of a tribe” (internal quotation marks and citation omitted)); *Strate*, 520 U.S. at 459 (“Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members” (alterations in original) (internal quotation marks and citation omitted)); *Tempest Recovery Servs., Inc. v. Belone*, 2003-NMSC-019, ¶ 14, 134 N.M. 133, 74 P.3d 67 (“Exclusive tribal jurisdiction exists where an action involves a proprietary interest in Indian land; or when an Indian sues another Indian on a claim for relief recognized only by tribal custom and law; or when an Indian is being sued by a non-Indian over an occurrence or transaction arising in Indian country.” (quoting *Found. Reserve*, 105 N.M. at 516, 734 P.2d at 756) (internal quotation marks omitted)). Therefore, we cannot accept the conclusion Hinkle draws—that the tribal court would not have jurisdiction over Hinkle's action were it to have been filed in tribal court—because it is based on a misunderstanding of the *Montana* cases as applied to these facts.

{17} Hinkle argues that “[f]rom these cases, we can extrapolate a general trend in favor of subject matter jurisdiction in state court, and against tribal court, where the cause of action involves activities of a non-tribal member on fee land within the exterior boundaries of tribal land.” Implicit in this argument is the assumption that (1) we should supplant our reliance on the infringement test with the *Montana* analysis in determining state court jurisdiction; and (2) when gaps in tribal court jurisdiction exist, state court jurisdiction must necessarily fill the void. We disagree with both implications and reject Hinkle's argument.

{18} First, we refuse to supplant the infringement test with the *Montana* analysis, not only because we determine that the *Montana* rule is inapplicable to questions of state jurisdiction,

as well as to actions filed against tribal members based upon their conduct within Indian country, but because our New Mexico courts, alongside courts nationwide, have continued to rely on *Williams* since the publication of *Montana* and its progeny. *Garcia*, 2009-NMSC-044, ¶ 47 (“[W]e continue to apply the infringement test to determine whether the exercise of state authority will compromise the tribal sovereignty recognized in *Williams*.”); *Tempest Recovery Servs., Inc.*, 2003-NMSC-019, ¶ 14 (“We have adopted the ‘infringement test’ developed from *Williams*, the seminal Supreme Court case addressing a state court’s jurisdiction over causes of action involving Indian matters.”); *Found. Reserve*, 105 N.M. at 515, 734 P.2d at 755 (“The test for determining whether a state court has jurisdiction over causes of action involving Indian matters is set forth in *Williams*.”); Robert L. Lucero, Jr., *State v. Romero: The Legacy of Pueblo Land Grants and The Contours of Jurisdiction in Indian Country*, 37 N.M. L. Rev. 671, 684 (2007) (“Th[e] ‘infringement’ test from *Williams* has become the standard for determining whether a state exercise of adjudicatory civil jurisdiction is permissible.”); *Winer*, 674 N.W.2d at 16 (“If *Strate* signals a drastic departure from the state court jurisdictional principles enunciated in *Williams v. Lee* and its progeny, it is well hidden in the *Strate* decision.”).

{19} Second, we do not agree that where tribal court jurisdiction has been denounced, our state courts must necessarily assume jurisdiction.

It would be a mistake to assume . . . that every situation in which tribal jurisdiction is lacking warrants a finding of state authority. . . . [W]hen there is no tribal jurisdiction under . . . *Montana*, it is possible that application of the [infringement] test may preclude state authority, resulting in a jurisdictional vacuum. If this proves to be the situation, Congress could fix the problem by enacting legislation that extends federal jurisdiction over such matters, delegates responsibility to the states, or assigns jurisdiction to the tribes.

Cohen’s, supra, § 6.03[2][c], at 536-57. Nor should our courts engage in determining tribal court jurisdiction. *Garcia*, 2009-NMSC-044, ¶ 62 (“It is not for us as a state court to say whether the Pojoaque Pueblo, subject to the plenary power of Congress, has jurisdiction.”); *accord Astorga v. Wing*, 118 P.3d 1103, 1106 (Ariz. Ct. App. 2005) (stating that, unlike federal courts, state courts do not have authority to review a tribal court’s exercise of jurisdiction over nonmembers). In sum, the balance between state and tribal causes of action is not a jurisdictional see-saw, rising and falling in balanced harmony. Rather, determinations of jurisdictional propriety derive from larger notions of shared autonomy, co-existent sovereignty, and the sometimes overlapping boundaries of governmental authority—both geographic and with respect to tribal membership and property ownership. *Cf. Garcia*, 2009-NMSC-044, ¶¶ 3, 27, 35 (recognizing the possibility of non-exclusive concurrent state and tribal jurisdiction, exclusive state jurisdiction, and exclusive tribal jurisdiction, depending on the circumstances); *see Black’s Law Dictionary* 727-28 (9th ed. 2009) (defining “jurisdiction” as “[a] geographic area within which political or judicial authority may be exercised”). As our Supreme Court has recently noted, it is Congress’s role

to adjust the fulcrum between state and tribal jurisdiction where neither side can rise to assume jurisdiction as a result of the application of either *Montana* or *Williams*. See *Garcia*, 2009-NMSC-044, ¶ 1 (“There are occasions, and this is one, when this Court can give no definitive answer to the increasingly complex jurisdictional disputes between state and tribal courts. Given its plenary authority over Indian matters, Congress could provide such answers, but it has not.”).

Our Courts Offer Greater Protection for Tribal Sovereignty Under State Law

{20} Finally, we refuse to read the *Montana* line of cases as a repudiation of tribal sovereignty. See *Hicks*, 533 U.S. at 371 (“Self-government and *internal* relations are not directly at issue here, since the issue is whether the Tribes’ law will apply, not to their own members, but to a narrow category of outsiders.”). Rather, we read those cases as recognizing, as a matter of federal law, the necessary limits of tribal authority in light of the tribes’ status as dependent nations. *Montana*, 450 U.S. at 564 (“[I]n addition to the power to punish tribal offenders, the Indian tribes retain their inherent power[s] 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”). With very specific and narrow exceptions, tribes have not historically exercised authority beyond their geographic boundaries or over the conduct of nonmembers of the tribe. *Hicks*, 533 U.S. at 382 (stating that “[l]imiting tribal-court civil jurisdiction [over nonmember defendants] not only applies the animating principle behind our precedents, but fits with historical assumptions about tribal authority” and tracing the history back through the early nineteenth century as support). In contrast to that historical limit, inherent tribal authority has consistently been recognized as including the ability to regulate the conduct of tribal members, especially when the conduct occurs within tribal boundaries. *Montana*, 450 U.S. at 563 (“Indian tribes are ‘unique aggregations possessing attributes of sovereignty over both their members and their territory’” (citation omitted)); *Doe v. Santa Clara Pueblo*, 2007-NMSC-008, ¶ 18, 141 N.M. 269, 154 P.3d 1644 (“[A]s a general proposition of Indian law[,] derived from the sovereign status of Indian tribes, tribal courts have exclusive jurisdiction over claims arising on tribal lands against tribes, tribal members, or tribal entities.”).

{21} Applying tribal law to the tortious conduct of tribal members within tribal boundaries has been held to fall under the categories of tribal self-government and internal relations. *Smith*, 434 F.3d at 1140-41 (“The Tribes’ system of tort is an important means by which the Tribes regulate the domestic and commercial relations of its members. Tort liability has historically been a means for compensating injured parties and punishing guilty parties for their willful or negligent acts. . . . The Tribes have a strong interest in regulating the conduct of their members; it is part of what it means to be a tribal member. The Tribes plainly have an interest in compensating persons injured by their own”).

{22} Simply because our United States Supreme Court has fortified the limitations of *tribal* reach over *nonmember* conduct on tribal land by virtue of the *Montana* cases, there

does not exist a corresponding decrease of the inherent aspects of tribal sovereignty, such as jurisdictional authority over tribal members in Indian country. Nor did the *Montana* cases diminish our State's great respect and ongoing deference to the Indian tribes and pueblos situated within New Mexico. As our Supreme Court recently recognized, "New Mexico has a unique and venerable tradition of deferring to a tribal government's exercise of the sovereign power vested in them." *Harrison*, 2010-NMSC-038, ¶ 27 (alteration, internal quotation marks, and citation omitted). We therefore reiterate our reliance on the longstanding infringement test to determine whether state court jurisdiction impinges on tribal sovereignty, even in cases where the *Montana* analysis commands the absence of tribal court jurisdiction. We adhere to this formality not only because we cannot discern any clear signal in federal Indian Law to the contrary, but because "the courts of this state have adopted greater protection for tribal sovereignty as a matter of state law." *Harrison*, 2010-NMSC-038, ¶ 27.

IV. CONCLUSION

{23} Today, we reaffirm our analysis and conclusion in *Hartley*, our reliance on the *Williams* infringement test to determine state court jurisdiction over matters arising in Indian country, as well as our State's venerable respect for tribal sovereignty. Accordingly, we affirm the district court's "Order Granting Defendant's Motion for Summary Judgment" on the grounds that the district court was without subject matter jurisdiction.

{24} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

RODERICK T. KENNEDY, Judge

APPENDIX B

1-1-71 Concurrent Jurisdiction

The jurisdiction invoked by this Code over any person, cause of action or subject shall be exclusive and shall preempt any jurisdiction of the United States, any state, or any political subdivision thereof; except in those instances in which federal law provides otherwise. This Code does not recognize, grant or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

APPOINTMENT AND REMOVAL OF JUDGES

1-1-100 Chief Judge and Associate Judges, Bonding

The Tribal Court shall consist of one Chief Judge whose duties shall be regular and permanent and at least two Associate Judges who may be called into service when the occasion arises. Among other duties assigned by the Business Council and this Chapter, Associate Judges shall preside over court proceedings as assigned by the Chief Judge, sign court documents, complete case dispositions' monitor court officer conduct to maintain respect due to the Court and abide by the Tribes' Judicial Code of Conduct.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-653)

1-1-101 Appointment, Compensation and Term

Each judge shall be appointed by the Council and shall be compensated on a basis to be determined by the Council. Each judge appointed by the Council shall hold office for a period of four years, unless sooner

removed for cause as provided in this subchapter or by reason of the abolition of the office, but shall be eligible for reappointment.

1-1-102 Judicial Cooperation

All judges and personnel of the Tribal Court shall cooperate with all branches of the BIA, with all federal, state, county and municipal agencies, when such cooperation is consistent with this Code, but shall ever bear in mind that their primary responsibility is to the people of the Tribes.

1-1-103 Removal of Judges

During tenure in office, a judge may be suspended, dismissed or removed for cause by a vote of the Council. Copies of a written statement setting forth the facts and the reasons for such proposed action must be delivered to the judge and to members of the Council at least ten (10) days before the meeting of the Council before which he is to appear. A hearing shall then be held by the Council wherein the accused judge shall be given an adequate opportunity to answer any and all charges. Causes judged sufficient for removal shall include, by way of example and not limitation:

- (a) Excessive use of intoxicants,
- (b) Immoral behavior,
- (c) Conviction of any offense other than minor traffic violations,
- (d) Use of official position for personal gain,
- (e) Desertion of office, or
- (f) Failure to perform duties.

The decision of the Council shall be final. Action taken under or interpretation of this section shall be consistent with Amendment X of the Constitution and By-laws of the Colville Confederated Tribes.

(September 2010 version of Ch. 1-1)

APPENDIX C

limitation is extended by a period equal to the length of time from the filing to the setting aside or dismissal without prejudice.

(Amended 12/15/11, Certified 12/21/11, Resolution 2011-898)
(Amended 8/17/89, Resolution 1989-610)

2-1-32 Warrants to Apprehend

Every judge of the Court shall have the authority to issue warrants to apprehend, the warrants to issue upon a showing of probable cause only after a written complaint shall have been filed bearing the signature of the complaining witness. Service of warrants shall be made by an officer. No warrant to apprehend shall be valid unless it shall bear the signature of a judge of the Court.

2-1-33 Arrests

No police officer shall arrest any person for any offense defined by this Code or by federal law, except when the offense shall occur in the presence of the arresting officer or he shall have probable cause to believe that the person arrested has committed an offense, or he shall have a warrant commanding him to apprehend the person.

2-1-34 Hot Pursuit

Any police officer who observes any person inside the Reservation committing an offense defined by this Code or by federal law or who has probable cause to believe that the person has committed an offense, may pursue and capture the person or seize and impound the property in his possession if he attempts to flee the Reservation.

2-1-35 Search Warrants

Every judge of the Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court. However, no warrant of search and seizure shall be issued except upon a presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation and charging the commission of an offense against the Tribes. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and seized and bears the signature of a judge of competent jurisdiction. Service of warrants of search and seizure shall be made by an officer.

2-1-36 Search Without Warrant

An officer may search or seize property without a warrant in circumstances under which warrantless searches are permitted by federal criminal law.

2-1-37 Crime Involving Domestic Violence

(a) The provisions in Chapter 5-5 shall be used in cases involving domestic violence. To the extent that procedural and other relevant provisions in other parts of the Code are not inconsistent with the provisions of Chapter 5-5 those other procedures and provisions shall apply.

(b) To invoke the provisions of Chapter 5-5, the charging document shall expressly state that the charge is being brought under that Chapter as well as under Chapter 3-1.

(Amended 6/3/04, Resolution 2004-385)

CITATIONS

2-1-70 Citation in Lieu of Detention

Whenever a person is arrested for a violation of this Code, the arresting officer, or any other officer, may serve upon the arrested person a citation and notice to appear in Court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:

(a) Whether the person has identified himself satisfactorily;

OFFICE RECEPTIONIST, CLERK

To: Joshua Osborne-Klein
Cc: Brian Gruber; Timothy Woolsey
Subject: RE: Filings in State v. Clark, No. 87376-3

Rec. 7-10-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Joshua Osborne-Klein [<mailto:joshok@zcvbs.com>]
Sent: Monday, July 09, 2012 5:02 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Brian Gruber; Timothy Woolsey
Subject: Filings in State v. Clark, No. 87376-3

Dear Court Clerk,

Please accept the attached documents for filing in *State v. Clark*, No. 87376-3. These documents are being submitted on behalf of the Colville Confederated Tribes.

The attached documents are: (1) Colville Confederated Tribes' Motion for Leave to File Amicus Curiae Briefs, and (2) Brief of Colville Confederated Tribes in Support of Petition for Review.

Sincerely,

Joshua Osborne-Klein, WSBA # 36736
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