

NO. 87376-3

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SUPREME COURT OF THE  
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT,

v.

MICHAEL ALLEN CLARK, PETITIONER.

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Appeal from the Superior Court of Okanogan County  
The Honorable Jack Burchard

No. 10-1-00005-2  
Court of Appeals # 29508-7-III, 167 Wn. App. 667 (2012)

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SUPPLEMENTAL BRIEF OF RESPONDENT

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## **I. ISSUE PRESENTED**

1. Where a state court has jurisdiction over an on-reservation violation of state law committed on fee title land, may it issue a valid search warrant for trust property located within the boundary of a reservation?

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

With respect to the issue accepted for review, the relevant facts are not contested. The statement of the case presented by both the Petitioner and in brief of the Colville Confederated Tribes provide an adequate outline of the procedural and substantive facts relevant to the issue presented. Pursuant to RAP 10.3(b) the Respondent shall not set forth an additional facts section. The Respondent shall refer to specific areas of the record.

## **III. ARGUMENT**

This case involves the proper interpretation and application of the United States Supreme Court decision in *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001). Specifically this Court must determine if a state court, having jurisdiction over an on-reservation violation of state law committed on fee title land,

may issue a valid search warrant for trust property located within the exterior boundaries of the reservation.

The facts relevant to this issue are uncontested. The Petitioner, Michael Clark, is a tribal member of the Colville Confederated Tribes. RP 42, CP 48. The crime Mr. Clark was convicted of, theft in the first degree, was committed on and owned in fee by a non-tribal corporation (not "trust" land). RP 29-30, CP 49. The search warrant was issued for property sited on trust land within the boundaries of the Colville Indian reservation and Mr. Clark was residing on the property when the warrant was executed. RP 27, CP 48.

**A. THE STATE HAS JURISDICTION OVER THE CRIME COMMITTED**

Mr. Clark has not challenged state court jurisdiction over the crime either before the trial court or the Court of Appeals. However, Mr. Grant does cite to *State v. Matthews*, 133 Idaho 300, 314, 986 P.2d 323 (1999), for the proposition that a "...state court may not issue a warrant to search an area within Indian country where the state **does not** have jurisdiction over the crime." (emphasis added). To be clear, the state has jurisdiction over the crime in this case.

Criminal jurisdiction in Indian Country was initially limited to crimes committed by non-Indians against non-Indians, or "victimless offenses". *E. g., New York ex rel. Ray v. Martin*, 326 U.S. 496, 66 S. Ct. 307, 90 L. Ed. 261 (1946); *Washington v. Lindsey* 133 Wash. 140, 233 P. 327 (1925) (violation of state prohibition laws). The state also generally had jurisdiction to try Indian offenders for crimes committed outside reservation boundaries. *E.g. State ex rel. Best v. Superior Court for Okanogan County*, 107 Wash. 238, 181 P. 688 (1919); *State v. Williams*, 13 Wash. 335, 43 P. 15 (1895). But if the crime was by or against an Indian within the reservation, tribal jurisdiction or that expressly conferred on other courts by Congress remained exclusive. *Williams v. Lee*, 358 U.S. 217, 220, 79 S. Ct. 269, 3 L. Ed. 2d 251 (1959).

In 1953 Congress enacted Public Law 280, which delegated to the state power to impose state laws, both civil and criminal, within the reservations. The criminal provision appears in 18 U.S.C. § 1162. Public Law 280 was enacted by Congress to deal with the lawlessness on some reservations, to reduce the economic burdens associated with federal jurisdiction on reservations, and to respond to a perceived hiatus in law enforcement protections

available to tribal Indians. *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 498, 99 S. Ct. 740, 760, 58 L. Ed. 2d 740 (1979); *Bryan v. Itasca County*, 426 U.S. 373, 379, 96 S. Ct. 2102, 2106, 48 L. Ed. 2d 710 (1953).

The Washington Legislature initially reacted to Public Law 280 by obligating this state to assume civil and criminal jurisdiction over Indians and Indian territory, reservations, country and lands within the state if and when the tribe or its governing body adopted a resolution asking the state to do so. Laws 1957, chapter 240. A total of ten tribes asked the state to assume full criminal jurisdiction over their reservations. The United States, however, accepted retrocessions by the state of its criminal and civil jurisdiction over some of these tribes and their reservations.

In 1963, the Washington Legislature obligated the state 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, 83<sup>rd</sup> 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.

The effect of RCW 37.12.010 was to assume civil and criminal jurisdiction over Indians and Indian territory within the state. But, except in eight listed subject matter areas, jurisdiction would not extend to Indians on trust or restricted lands unless the affected Indian tribe requested it, *State v. Flett*, 40 Wn. App. 277, 281, 699 P.2d 774 (1985). The Supreme Court upheld the constitutionality of this partial assumption of jurisdiction under Public Law 280. *Washington v. Confederated Bands and Tribes of the Yakima*

*Indian Nation*, 439 U.S. 463, 498, 99 S. Ct. 740, 760, 58 L. Ed. 2d 740 (1979).

If a tribe has not requested or consented to the assumption of state jurisdiction, the title status or the property where the offense was committed determines state authority to prosecute. If the property is tribal or allotted land within the reservation and is either held in trust by the United States or subject to a restriction against alienation imposed by the United States, the Washington courts do not have jurisdiction. "Tribal lands" for the purpose of applying state jurisdiction has been generally defined in *Someday v. Rhay*, 67 Wn.2d 180, 184, 406 P.2d 931 (1965) as "lands within the boundaries of an Indian reservation held in trust by the federal government for the Indian tribe as a community. . ." "[A]llotted land" (which is commonly known as "individual trust land") is:

"grazing and agricultural lands within a reservation, which are apportioned and distributed in severalty to tribal members, title to the allotted lands being held in trust and subject to restrictions against alienation for varying periods of time."

*Somday*, 67 Wn.2d at 184. Resolution of the jurisdictional issues usually requires a determination of whether the alleged offense occurred on fee or nonfee land. *Flett*, 40 Wn. App. at 283.

Put conversely, state jurisdiction generally applies to all crimes committed by Indians upon fee simple property.

*State v. Boyd*, 109 Wn. App. 244, 34 P.3d 912 (2001), examined circumstances similar to this case, a crime arising within an established Indian reservation, but on lands that do not meet all of the statutory criteria prescribed by RCW 37.12.010. The Court of appeals concluded that the State's jurisdiction over Indian crimes within an established Indian reservation is not limited unless the land on which a crime occurs is also one of the types described by the terms of the statute. *Boyd*, 109 Wn. App at 252.

In *Boyd*, Indian defendants attacked campers at a campground within the Colville Indian Reservation, but on land that had been condemned by the Federal Bureau of Reclamation as part of the Grand Coulee Dam Project. *Id.* at 246-47. The trial court found that although the lands were within a reservation boundary (the first element of the jurisdictional exception in RCW 37.12.010), they were not either tribal lands or an allotted land parcel held by an individual Indian, and they were not held in trust or subject to any restriction on alienation (the second and third elements of the jurisdictional limitation in RCW 37.12.010). *Id.* at 248. The Court of Appeals affirmed the convictions, concluding that the State has

asserted jurisdiction over the criminal actions of an Indian within an established reservation unless the land on which the crime occurred also satisfies the second and third elements set forth in RCW 37.12.010. *Id.* at 252.

In this case, as in *Flett* and *Boyd*, it is an undisputed fact that the crime occurred on fee land. Therefore the state has jurisdiction.

**B. THE DECISION OF THE COURT OF APPEALS IS AN APPROPRIATE APPLICATION OF THE SUPREME COURT'S RULING IN *HICKS*.**

The United States Supreme Court resolved the question of whether a state court issued search warrant for trust property located within the boundary of a reservation is valid. In *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001), a plurality of the Court recognized that an Indian reservation is ordinarily considered part of the territory of the state and that states have criminal jurisdiction over crimes committed off reservation. *Hicks*, 121 S. Ct. at 2311-12. This jurisdiction, the Court holds, allows states to execute process (*i.e.* search warrants and arrest warrants) related to off-reservation violations of state laws on tribal lands. *Hicks*, 121 S. Ct. at 2313.

This rule should also apply to process related to on-reservation violations of state laws that occur on lands subject to state court

jurisdiction under RCW 37.12.010. See *Hicks*, 121 S. Ct. at 2312-13. The reason for the rule is simple: "[T]he reservation of state authority to serve process is necessary to 'prevent [such areas] from becoming an asylum for fugitives from justice.'" *Hicks*, 121 S. Ct. at 2312, quoting *Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 533, 5 S. Ct. 995, 29 L. Ed. 264 (1885). The Court also noted that State's interest in execution of process is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government. *Hicks*, 121 S. Ct. at 2313.

In response to *Hicks*, Mr. Clark again relies on *United States v. Baker*, 894 F.2d 1144 (10<sup>th</sup> Cir. 1990) and *State v. Matthews*, 133 Idaho 300, 314, 986 P.2d 323 (1999). However, as noted by the Court of Appeals, this case is neither *Baker* nor *Matthews* and the petition makes no serious attempt to address the issues noted by the lower court.

There is a strong public interest in the investigation of crime and apprehension of criminals. Search warrants are a fundamental, powerful and effective tool in the investigation of criminal activity. As noted by the Court in *Hicks*, the State has a considerable interest in execution of process. It is logical and appropriate that a

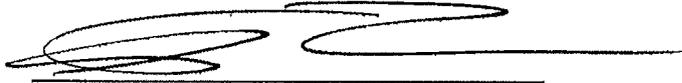
court having jurisdiction over the underlying crime be able to issue process in furtherance of the administration of justice.

#### **IV. CONCLUSION**

Based on the preceding argument the State respectfully requests this Court affirm the decision of the Court of Appeals that the search warrant was valid.

Dated this 3<sup>rd</sup> day of November, 2011

Respectfully Submitted by:

A handwritten signature in black ink, appearing to read 'STEPHEN BOZARTH', with a horizontal line drawn underneath it.

STEPHEN BOZARTH, WSBA #29931  
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Okanogan County, Washington

## PROOF OF SERVICE

I, Shauna Field, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters state herein.

On the 8th day of October, 2012, I deposited in the mails of the United States of America, postage prepaid, a copy of the document to which this proof of service is attached in an envelope addressed to:

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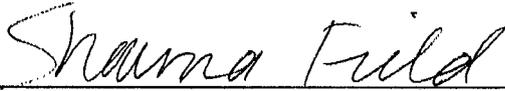
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On the 8th day of October, 2012, I also emailed a copy of  
the document to which this proof of service is attached to  
Supreme@courts.wa.gov.

I declare under the penalty of perjury of the laws of the State  
of Washington that the foregoing is true and correct.

Signed this 8th day of October, 2012, at Okanogan,  
Washington.

  
Shauna Field, Legal Secretary

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Please see the attached for filing the "Supplemental Brief of Respondent" per Deputy Prosecuting Attorney Stephen Bozarth (WSBA #29931, 509-422-7280 ext 7282, [sbozarth@co.okanogan.wa.us](mailto:sbozarth@co.okanogan.wa.us)) in regards to the following case:

**Michael Allen Clark**  
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Thank you,

Shauna Field

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