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Supreme Court No. 90906-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Howard Shale,

Appellant.

Jefferson County Superior Court Cause No. 12-1-00194-0

The Honorable Judge Keith Harper

**Appellant's Response to Brief of Amicus
Curiae Attorney General's Office**

Skylar T. Brett
Jodi R. Backlund
Manek R. Mistry
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

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STATEMENT OF FACTS

Although Howard Shale resided “in the Queets Village (Quinault Indian Reservation, Jefferson County, Washington)” and properly registered with the Quinault sex offender registry, he was charged in state court with failure to register. CP 1, 4, 40. A tribal police officer went to the Queets Village at the request of the Jefferson County Sheriff’s Department. CP 40. Mr. Shale’s neighbors in the Queets Village told a tribal officer that he’d “been living in the Queets Village for approximately one year.” CP 40. A county sheriff’s deputy also visited Mr. Shale’s residence and reconfirmed that “his physical address is 211 2nd Avenue #10, Forks WA 98331 (Queets).” CP 40, 45.

Mr. Shale challenged the state court’s jurisdiction. CP 3. At the hearing, the court and both parties understood that Mr. Shale resided on the reservation. CP 3-7, 9, 13-15; RP 3-13. The trial court’s memorandum opinion assumed that the alleged crime took place on the Quinault reservation. CP 16. The state never claimed or argued at the hearing (or on appeal) that Mr. Shale lived anywhere but on the reservation. RP 3-13; *See* Brief of Respondent, Supplemental Brief of Respondent.

After the Court of Appeals certified the case to the Supreme Court, the Office of the Attorney General filed an amicus curiae brief. For the first time, Amicus asserts Mr. Shale did not reside on the Quinault

reservation. Brief of Amicus Curiae Attorney General, pp. 2-3. Amicus also argues that the state has the authority to require sex offender registration of nonmember Indians residing on the Quinault reservation. Finally, Amicus claims that state courts have jurisdiction to adjudicate a nonmember Indian's failure to register an address on the Quinault reservation, based on its interpretation of Washington's jurisdiction assumption statute. Brief of Amicus Curiae Attorney General, pp. 4-11.

ARGUMENT

Summary of Argument:

- (1) SORNA limits when a state can acquire authority to require sex offender registration on Indian reservations. SORNA's comprehensive scheme gives the Quinault Nation exclusive authority to require registration and prosecute noncompliance. Amicus Curiae fails to apply the correct preemption analysis specific to the Indian law context.

- (2) The Quinault Nation has inherent authority over both member and nonmember Indians who commit crimes on the Quinault reservation. The Washington legislature has not assumed criminal jurisdiction over either member or nonmember Indians on the Quinault reservation. Amicus fails to properly analyze the jurisdiction assumption statute.

- (3) Mr. Shale resided on the Quinault reservation at the time of his offense. Amicus Curiae misunderstands the record, and asks this court to resolve the case on incorrect "facts" raised for the first time. The Supreme Court should decline this request.

I. THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) PREEMPTS STATE JURISDICTION OVER INDIAN SEX OFFENDERS IN INDIAN COUNTRY, UNDER THE SPECIAL PREEMPTION ANALYSIS SPECIFIC TO INDIAN LAW.

- A. SORNA limits the circumstances under which a state can acquire authority over sex offender registration on an Indian reservation. None of those circumstances are present in Mr. Shale's case.

Congress has created a comprehensive scheme regulating tribal and state authority over sex offender registration in Indian Country. 42 U.S.C. 16927 *et seq.* By prosecuting Mr. Shale, the state has attempted to exert authority inconsistent with that granted by the Sex Offender Registration and Notification Act (SORNA).

SORNA grants tribes the first opportunity to assume exclusive jurisdiction over sex offender registration within their territory. As the following table shows, the state only acquires authority if the tribe declines jurisdiction or fails to properly implement its authority. 42 USC 16927(a).

The tribe has exclusive authority over registration within its borders unless:	The state has not acquired authority over the Quinault reservation because:
1. The tribe is in one of the six mandatory PL 280 states. 42 USC 16927(a)(2)(A).	Washington is not a mandatory PL 280 state. 18 U.S.C. 1162(a).
2. The tribe fails to assume the authority granted by SORNA. 42 USC 16927(a)(2)(B).	The Quinault tribe timely elected to create a tribal registry. ¹
3. The tribe rescinds a previous election to create a tribal sex offender registry. 42 USC 16927(a)(2)(B).	The Quinault tribe has not rescinded its timely election to create a tribal registry. ²
4. The tribe fails to substantially implement SORNA's requirements. 42 USC 16927(a)(2)(C).	The Attorney General has declared that the Quinault Tribe successfully implemented a registry that complies with SORNA. ³
5. The tribe enters a cooperative agreement with the state to share authority. 42 USC 16927(b).	The Quinault tribe has not entered a cooperative agreement with Washington state.

¹ See Quinault Tribal Code §§ 12.11.101 – 12.11.703; see also Department of Justice, *Tribal Resolutions under the Adam Walsh Child Protection and Safety Act of 2003*. Available at: http://www.smart.gov/pdfs/tribal_govt_elections.pdf.

² *SORNA Substantial Implementation Review: Quinault Indian Nation*, February 2013. Available at: <http://ojp.gov/smart/pdfs/sorna/QuinaultIndianNation.pdf>.

³ *SORNA Substantial Implementation Review: Quinault Indian Nation*, February 2013. Available at: <http://ojp.gov/smart/pdfs/sorna/QuinaultIndianNation.pdf>.

The federal statute carefully details when a state can acquire authority over sex offender registration in Indian Country. 42 USC 16927. As outlined above, none of the circumstances allowing state authority has occurred in the case of the Quinault reservation.

B. Federal law preempts any state authority over Indian sex offenders residing on the Quinault reservation. The state may only acquire jurisdiction in a manner consistent with SORNA.

Congress has plenary authority over regulation of and governmental interaction with Indian tribes. U.S. Const. art. VI, cl. 2, art. I, § 3, cl. 8; *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 481, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976); *Bryan v. Itasca Cnty., Minnesota*, 426 U.S. 373, 376, n. 2, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976).

State authority in Indian Country is preempted by federal law whenever state jurisdiction “interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.”⁴ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987) *superseded on other grounds as recognized by*

⁴ An additional restriction exists as well, separate from federal preemption. State exercise of authority in Indian Country is foreclosed if it would infringe on “the right of reservation Indians to make their own laws and be ruled by them.” *Bracker*, 448 U.S. at 142.

Michigan v. Bay Mills Indian Cmty., 134 S.Ct. 2024, 188 L.Ed.2d 1071 (2014). The state’s interest is at its highest when the state can point to off-reservation effects that require state intervention on a reservation. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 336, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983).

Where congress has enacted a detailed regulatory scheme “and where [the federal scheme]’s general thrust will be impaired by incompatible state action, that state action, without more, may be ruled pre-empted by federal law.” *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 885, 106 S.Ct. 2305, 90 L.Ed.2d 881 (1986). The inquiry must focus on traditional notions of Indian sovereignty and the “congressional goal of Indian self-government.” *Id.*

When state action in Indian Country is preempted by federal law in favor of tribal jurisdiction, the state may not exercise such authority over any person on the reservation. This is so whether the person is Indian or non-Indian, member or nonmember.⁵ *See e.g. Cabazon*, 480 US 202 (federal law preempts application of state gambling laws to non-Indians at on-reservation casinos); *Mescalero Apache Tribe*, 462 U.S. at 333 (federal

⁵ Accordingly, Amicus’s claim that “courts uniformly treat nonmember Indians the same as non-Indians for purposes of state civil/regulatory authority” is irrelevant. Brief of Amicus, p. 13. Additionally, Amicus’s argument relies heavily on authority addressing state taxation authority, which has been carved out as a separate area of the law and is not directly applicable to Mr. Shale’s case. *See* Brief of Amicus, p. 13 n. 6.

law preempts application of state hunting and fishing regulations to non-Indians on reservation); *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 838, 102 S.Ct. 3394, 3398, 73 L.Ed.2d 1174 (1982) (federal law preempts state from taxing non-Indian corporation contracting with tribe to build an on-reservation school); *Cent. Mach. Co. v. Arizona State Tax Comm'n*, 448 U.S. 160, 165, 100 S.Ct. 2592, 65 L.Ed.2d 684 (1980) (federal law preempts state taxation of non-Indian business located off-reservation when it sells farm equipment to tribal enterprise); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S.Ct. 2578, 65 L.Ed.2d 665 (1980) (federal law preempts state taxation of non-Indian logging company doing business with tribe).

As outlined above, SORNA grants tribes the first opportunity to assume jurisdiction over sex offender registration within their territory. Jurisdiction shifts to the state only if the tribe chooses not to enact its authority or fails to do so effectively. 42 U.S.C 16927(a). Federal law recognizes a tribe's interest in exercising its authority to the exclusion of state action in the same area. Indeed, if the state could simply ignore SORNA and assume jurisdiction over sex offender registration on Indian reservations, the federal division of authority would be meaningless.

SORNA preempts state authority over sex offender registration in Indian country where the tribe has complied with the Act. *Cabazon*, 480

US 202; *Mescalero Apache Tribe*, 462 U.S. at 333; *Three Affiliated Tribes*, 476 U.S. at 885. The federal scheme’s “general thrust” would be impaired if the state were permitted to ignore SORNA and assume authority even when a tribe has complied with all of the statute’s requirements. *Three Affiliated Tribes*, 476 U.S. at 885.

The state has no interest in duplicating the sex offender registration functions already carried out by the Tribe on the Quinault reservation.⁶ The purpose of state sex offender registration requirements is to assist law enforcement by tracking the whereabouts of convicted sex offenders. RCW 9A.44.130; *State v. Ward*, 123 Wn.2d 488, 493, 869 P.2d 1062 (1994).

State law enforcement officers have easy access to the registration information of sex offenders living on the Quinault reservation and registered with the Tribe.⁷ Accordingly, the state can carry out its function of protecting public safety by relying on the Quinault tribal sex offender registry. Indeed, amicus does not point to any off-reservation interest justifying state authority against the dictates of the comprehensive federal

⁶ Similarly, the state has no interest or authority in requiring registration by sex offenders who reside just across the border in Idaho or Oregon unless they also work or study in Washington.

⁷ See <http://www.nsopw.gov/en/Search> (permitting any internet user to search for sex offenders registered with any state, territory, or Indian tribe. Users may search by name, zip code, address, or address radius); See also <http://www.nsopw.gov/en/Registry/allregistries> (permitting users to search by tribe, including the Quinault Indian Nation).

statutory scheme. *See* Brief of Amicus *generally*. There is no off-reservation state interest sufficient to undo the preemptive effect of SORNA's comprehensive scheme. *Mescalero Apache*, 462 US at 336.

SORNA preempts state jurisdiction over sex offender registration on the Quinault reservation. Under federal law, only the Tribe has the authority to require sex offenders on the reservation to register, and only the Tribe (or the federal government) may prosecute those who violate the Tribe's registration requirements. Accordingly, Mr. Shale's conviction must be reversed and the charge dismissed with prejudice.

C. Amicus improperly applies standard federal preemption analysis instead of the special rules for preemption of state action in Indian Country.

Special preemption rules apply when considering federal, tribal, and state authority over Indian reservations. *Ramah Navajo Sch. Bd.*, 458 U.S. at 838. Federal law is more likely to preempt state authority in the Indian law context than in other contexts. *Id.* Traditional preemption analysis is inadequate when assessing whether federal law preempts state action in Indian Country:

'The unique historical origins of tribal sovereignty' and the federal commitment to tribal self-sufficiency and self-determination make it 'treacherous to import ... notions of preemption that are properly applied to other contexts.'

Mescalero Apache Tribe, 462 U.S. at 333 (quoting *Bracker*, 448 U.S. at 145); See also *Ramah Navajo Sch. Bd.*, 458 U.S. at 838. Indian Country preemption is not limited to situations in which congress has explicitly expressed intent to preempt state action. See e.g. *Mescalero Apache*, 462 US at 334; *Ramah Navajo Sch. Bd.*, 458 U.S. at 838.

Still, amicus relies exclusively on cases dealing with traditional preemption analysis. Brief of Amicus, pp. 14-15. Amicus notes that SORNA does not contain an explicit statement of preemption. Brief of Amicus, p. 14. As outlined above, such a statement is not necessary to the preemption analysis in Indian Country. *Mescalero Apache*, 462 U.S. at 334; *Ramah Navajo Sch. Bd.*, 458 US at 838.

Amicus does not address the relevant Indian Country preemption analysis. Brief of Amicus, pp. 14-15. Amicus Curiae's reliance on traditional preemption doctrines invalidates its conclusions.⁸

⁸ Amicus also points out that SORNA permits tribes to enter cooperative agreements with states in creating sex offender registration schemes on reservations.⁸ Brief of Amicus, pp. 14-15 (citing 42 U.S.C. 16927(b)). But amicus points to no evidence that the Quinault Tribe has entered into such an agreement.

Indeed, the availability of such agreements undermines the state's argument. 42 U.S.C. 16927(b) provides another avenue through which the state could validly assume sex offender registration authority. This further supports a finding of preemption because it shows the pervasiveness of the federal scheme.

The provision regarding cooperative agreements further clarifies that, under SORNA, it is a tribe's decision whether to cede authority over sex offender registration to the state. By creating its own tribal registry and deciding not to enter into a cooperative agreement with the state, the Quinault Tribe has expressed its intent to retain that authority for itself.

The state's purported exercise of authority in this case, wholly outside the bounds of SORNA, cannot stand. State authority is preempted by federal law, which reserves to the Quinault Tribe the authority to register sex offenders who live on the reservation. *Cabazon*, 480 US 202; *Mescalero Apache Tribe*, 462 U.S. at 333. The Tribe has elected to undertake responsibility for registration under SORNA. The state therefore lacks authority to prosecute Mr. Shale for failure to register. His conviction must be reversed and the charge dismissed with prejudice.

II. WASHINGTON'S JURISDICTION ASSUMPTION STATUTE DOES NOT EXTEND STATE JURISDICTION TO CRIMES COMMITTED BY INDIANS IN INDIAN COUNTRY.

- A. RCW 37.12.010's exemption applies to both member and nonmember Indians who commit crimes on the Quinault reservation.

Any ambiguities in statutes granting state jurisdiction over Indian Country must be construed in favor of tribal sovereignty. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, 105 S.Ct. 2399, 85 L.Ed.2d 753 (1985). Washington's jurisdiction assumption statute is ambiguous. It does not specify whether its exemption applies to both member and nonmember Indians who commit crimes on "their tribal or allotted lands." RCW 37.12.010.

As outlined at length in Mr. Shale's other briefing, RCW 37.12.010 derives its authority from federal law and must be read to

comport with federal statutes. *See State v. Jim*, 173 Wn.2d 672, 678, 273 P.3d 434 (2012). Federal law recognizes that member and nonmember Indians are identical for purposes of criminal jurisdiction in Indian Country. 25 U.S.C. 1301; *United States v. Lara*, 541 U.S. 193, 197-198, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004). Accordingly, RCW 37.12.020's exemption from state jurisdiction must be construed to apply to Indians who are members of any federally-recognized tribe.

Indeed, Amicus Curiae's narrow interpretation of the statute (and specifically of the word "their") would lead to absurd results, given the history of the Quinault reservation. In the nineteenth and early twentieth centuries, the federal government and numerous tribes signed treaties relocating entire populations of Indians who were not Quinault tribal members to the Quinault reservation. *Confederated Tribes of Chehalis Indian Reservation v. State of Wash.*, 96 F.3d 334, 338-39 (9th Cir. 1996). A narrow reading of the word "their" would diminish tribal authority significantly by granting the state nonconsensual criminal jurisdiction over many of the Indians assigned to the reservation. Such a state exercise of jurisdiction would impose significantly on the Tribe's sovereignty.

Amicus's lengthy historical summary does not address the only question relating to RCW 37.12.010 raised here: whether the statute's exemption for "Indians on their tribal or allotted lands" applies to

nonmember Indians on the Quinault reservation.⁹ Contrary to the position taken by the prosecution and by Amicus, the exemption does apply to both member and nonmember Indians who commit crimes on the reservation.

A tribe's inherent authority includes criminal jurisdiction over nonmember and member Indians alike. *Lara*, 541 U.S. at 199. This inherent authority was recognized by Congress in the so-called "*Duro* fix."¹⁰ *Id.*; H.R. 102-261, pp. 3-4 (1991); 13 U.S.C. 1301(2).

Indeed, the legislative history of the *Duro* fix indicates that Congress understood states to lack criminal jurisdiction over nonmember Indians. *See* H.R. Rep. No. 102-261, at 5 (1991) ("[A] state cannot exercise jurisdiction over crimes committed by non-tribal member Indians on trust lands and a tribal government would also be precluded from exercising jurisdiction as a result of the Court's ruling in *Duro v. Reina*."). Congress enacted the *Duro* fix to remedy this jurisdictional void by

⁹ Mr. Shale agrees that RCW 37.12.010 applies to the Quinault reservation...The attorney general's lengthy disquisition on the history of the applicability of PL 280 on the Quinault reservation is therefore unhelpful. Brief of Amicus, pp. 4-10. The six pages taken up with this history boils down to the conclusion that RCW 37.12.010 (as amended in 1963) applies on the Quinault reservation.⁹ Brief of Amicus, pp. 9-10. Since Mr. Shale does not contest this conclusion, the historical analysis does nothing to advance the attorney general's argument.

¹⁰ Amicus notes that the *Duro* fix did not explicitly amend PL 280. Brief of Amicus, p. 11. But PL 280 is silent regarding any differentiation between member and nonmember Indians.¹⁰ *See* 18 USC 1162, 25 U.S.C. 1321-1326, 28 U.S.C. 1360. Accordingly, there was no relevant provision of PL 280 to amend.

recognizing that criminal jurisdiction over nonmember Indians lay with the tribe, not the state. *Id.*

Amicus argues that the *Duro* fix is inapposite and claims that the state has concurrent criminal jurisdiction over nonmember Indians on the Quinault reservation. Brief of Amicus, pp. 10-12. But a state does not have concurrent jurisdiction with a tribe unless explicitly granted by statute. *See e.g. State ex rel. Adams v. Superior Court of Okanogan Cnty., Juvenile Court Session*, 57 Wn.2d 181, 186, 356 P.2d 985 (1960).

Amicus is unable to point to any relevant authority granting the state concurrent criminal jurisdiction with tribal court over nonmember Indians on a reservation.¹¹ Amicus can be presumed to have found no such authority after diligent search. *State, Dep't of Ecology v. Wahkiakum Cnty.*, --- Wn. App. ---, 337 P.3d 364, 367 n. 3 (2014).

B. Amicus erroneously cites numerous sources that do not support its argument.

The authority upon which amicus relies does not support its sweeping claims. Amicus incorrectly argues that there was “wide agreement” that state PL 280 jurisdiction was concurrent with tribal court jurisdiction prior to the *Duro* fix. Brief of Amicus, p. 11 (*citing State v.*

¹¹The authority upon which Amicus relies does not support its position, as outlined in the following section.

Schmuck, 121 Wn.2d 373, 394-96, 850 P.2d 1332 (1993); *Cordova v. Holwegner*, 93 Wn. App. 955, 965, 971 P.2d 531 (1999); Conf. of W. Att'ys Gen., *American Indian Law Deskbook* sec. 4:6 at 255 (2014); Vanessa J. Jimenez & Soo C. Song, *Concurrent Tribal and State Jurisdiction under Public Law 280*, 47 Am. U. L. Rev 1627 (1998); H.R. Rep. No. 102-261, at 5 (1991)).

This is simply not true. None of the authority cited by amicus supports this conclusion. *Schmuck* addresses a tribal police officer's inherent authority to stop a non-Indian driver on the reservation and turn him/her over to state officers. *Schmuck*, 121 Wn.2d 373. That case does not address either nonmember Indians or the authority to prosecute such a person for a crime. *Id. Holwegner* merely holds that state court has jurisdiction over a civil negligence action involving non-Indians arising on a reservation. *Holwegner*, 93 Wn. App. 955. The portion of the *American Indian Law Deskbook* upon which amicus relies, likewise addresses a tribe's civil adjudicatory jurisdiction. Conf. of W. Att'ys Gen., *American Indian Law Deskbook*, sec. 4:6, at 255 (2014). The law review article cited by Amicus, similarly, focuses on civil adjudicatory jurisdiction and mentions nonmember Indians only to note that the law is unclear regarding the state's authority in that realm. Jimenez, 47 Am. U. L. Rev. at 1707 n. 127. Finally, the house report Amicus cites explicitly provides that

a state *would not* have criminal jurisdiction in Mr. Shale's case. H.R. Rep. No. 102-261, at 5 (1991) ("In states where criminal misdemeanor jurisdiction has been assumed only for fee or nontrust Indian lands, a state cannot exercise jurisdiction over crimes committed by non-tribal member Indians on trust lands and a tribal government would also be precluded from exercising jurisdiction as a result of the Court's ruling in *Duro v. Reina*"). Amicus does not point to any authority supporting its contention that states had concurrent criminal jurisdiction over nonmember Indians on tribal land before the *Duro* fix. Brief of Amicus, p. 11.

Amicus also claims that courts in Washington and other states have explicitly rejected the argument that the *Duro* fix recognizes that criminal jurisdiction over nonmember Indians lies with the tribe, to the exclusion of the state. Brief of Amicus, pp. 11-12 (*citing State v. Losh*, 755 N.W.2d 736 (Minn. 2008); *State v. Comenout*, 173 Wn.2d 235, 267 P.3d 355 (2011) *cert. denied*, 132 S.Ct. 2402 (U.S. 2012); *State v. Abrahamson*, 157 Wn. App. 672, 238 P.3d 533 (2010); *Bercier v. Kiga*, 127 Wn. App. 809, 820, 103 P.3d 232 (2004); *State v. Davis*, 773 N.W.2d 66, 70-72 (Minn. 2009); *LaRock v. Wis. Dep't of Revenue*, 241 Wis. 2d.87, 102-04, 621 N.W.2d 907 (2001).

Again, amicus misstates the import of the authority upon which it relies. *Losh* is a Minnesota case. Minnesota is a mandatory PL 280

jurisdiction, with full criminal jurisdiction over all Indians on reservations. *Losh*, 755 N.W.2d at 740. Accordingly, the state court had jurisdiction whether the accused was a tribal member or not. *Id.* at 741-46. *Comenout*, which addresses the state’s jurisdiction over off-reservation activity, is likewise inapposite. *Comenout*, 173 Wn.2d at 239. *Abrahamson* addresses the state’s jurisdiction on public roads in a reservation, where the state has authority regardless of tribal membership. *Abrahamson*, 157 Wn. App. at 683. *Bercier*, *Davis*, and *LaRock* all address civil – not criminal – jurisdiction upon which the *Duro* fix had no effect. *Bercier*, 127 Wn. App. at 820; *Davis*, 773 N.W.2d at 69; *LaRock*, 241 Wis.2d 87.

Amicus fails to point to any authority supporting its contention that the state has criminal jurisdiction over nonmember Indians who commit crimes on the Quinault reservation. Accordingly, Mr. Shale’s conviction must be reversed and the case dismissed.

III. GIVEN THE UNDISPUTED EVIDENCE PROVING THAT MR. SHALE RESIDED WITHIN THE QUINAULT RESERVATION, THE SUPREME COURT SHOULD NOT CONSIDER ERRONEOUS AND UNSUPPORTED FACTUAL ASSERTIONS MADE FOR THE FIRST TIME BY AMICUS.

The Supreme Court does not ordinarily consider points raised for the first time by amicus curiae. *See e.g. State v. Eriksen*, 172 Wn.2d 506, 515 n. 6, 259 P.3d 1079 (2011) (“We need not address issues raised only by amici”); *Long v. Odell*, 60 Wn.2d 151, 154, 372 P.2d 548 (1962) (“It is

further well established that appellate courts will not enter into the discussion of points raised only by amici curiae”).

In this case, both parties agreed that Mr. Shale resided on the Quinault reservation. RP 3-13. In its ruling on the jurisdictional issue, the trial court assumed that Mr. Shale resided on the reservation. CP 16. The stipulated record upon which Mr. Shale’s conviction is based establishes that his physical address was within the reservation, in Queets Village. CP 39-45. All residences in Queets list Forks as the city in their mailing addresses.¹²

For the first time before this court, Amicus argues – incorrectly— that the offense took place off reservation. Brief of Amicus Curiae Attorney General, pp. 2-4. This misapprehension stems from a basic misunderstanding of the geography of the Peninsula, and a failure to appreciate the difference between mailing addresses and physical addresses.

This court should not consider the erroneous factual contentions raised by amicus. *Eriksen*, 172 Wn.2d at 515 n. 6; *Long*, 60 Wn.2d at 154. The misunderstanding demonstrated by amicus should not interfere with

¹² See USPS web site (<https://tools.usps.com/go/ZipLookupResultsAction!input.action?resultMode=2&companyName=&address1=&address2=&city=&state=Select&urbanCode=&postalCode=98331&zip=>, (accessed on January 13, 2015).

the court's resolution of an important and complicated jurisdictional problem. *Eriksen*, 172 Wn.2d at 515 n. 6.

Furthermore, the Supreme Court may take judicial notice of "facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy and verifiable certainty." *CLEAN v. State*, 130 Wn.2d 782, 809, 928 P.2d 1054 (1996), *as amended* (Jan. 13, 1997). Even if the record presented a legitimate factual dispute, it can easily be resolved. This court should resort to "easily accessible sources of indisputable accuracy and verifiable certainty," and take judicial notice that Mr. Shale's physical address in Queets Village is within the bounds of the Quinault reservation.

CONCLUSION

For the reasons set forth above and in Mr. Shale's other briefing, the state had neither civil jurisdiction to require him to register as a sex offender while living on the Quinault reservation nor criminal jurisdiction to charge him when he failed to do so. Mr. Shale's conviction must be reversed.

Respectfully submitted on January 29, 2015,

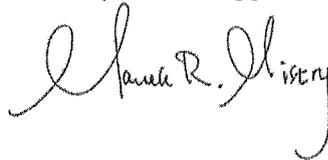
BACKLUND AND MISTRY



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Response, postage prepaid, to:

Howard Shale
211 2nd Ave, #10
Forks, WA 98331

With the permission of the recipient(s), I delivered an electronic version of the brief to:

Jefferson County Prosecuting Attorney
prosecutors@co.jefferson.wa.us

Pam Loginsky
pamloginsky@waprosecutors.org

Amicus WA Attorney General
Jay Geek
JayG@atg.wa.gov

Frona Woods
FronaW@atg.wa.gov

I filed the Response electronically with the Supreme Court.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on January 29, 2015.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

OFFICE RECEPTIONIST, CLERK

To: Backlund & Mistry; prosecutors@co.jefferson.wa.us; pamloginsky@waprosecutors.org;
JayG@atg.wa.gov; FrondaW@atg.wa.gov
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Attached is Appellant's Reponse to OAG Amicus.
Thank you.

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Backlund & Mistry
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870