

NO. 62699-0-1

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

STATE OF WASHINGTON,

Respondent,

v.

MANUEL ABRAHAMSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENT OF ERROR

The trial court erred in denying Mr. Abrahamson's motion to dismiss the prosecution for lack of jurisdiction.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The State of Washington has retroceded jurisdiction to the Tulalip tribe for matters involving Indians on the Tulalip reservation. By statute, there are eight subject-matter exceptions to retrocession, including adoptions, domestic relations, and "operation of motor vehicles upon the public streets." Our supreme court has stated that "[c]riminal jurisdiction was not one of the eight categories of law in which the State assumed jurisdiction over all Indian country." Did the Snohomish County Superior Court lack jurisdiction over the prosecution against Mr. Abrahamson for eluding, DUI, and DWLS, where there is no dispute that Mr. Abrahamson is an Indian and the events in question took place exclusively on public streets within the Tulalip reservation?

C. STATEMENT OF THE CASE

Manuel Abrahamson was charged with attempting to elude a pursuing police vehicle,¹ driving while under the influence of

¹ RCW 46.61.024

intoxicating liquor,² and driving while license revoked in the first degree.³ CP 46, 86-87. The parties agreed, and the trial court found, that the incidents which formed the basis for these charges occurred solely on public streets and roads within the Tulalip Indian Reservation. CP 46-47. The parties further agreed, and the trial court found, that Mr. Abrahamson is a member of the Spokane Indian tribe. CP 47.

Mr. Abrahamson moved to dismiss all charges for lack of jurisdiction. CP 71-83. He argued that the State retroceded jurisdiction to the Tulalip tribe with the exception of eight categories, all of which are civil, not criminal. 8/8/08 RP 2-17 (citing RCW 37.12.010). He pointed out that he had already been convicted for this incident in the tribal court, and urged the court to dismiss the charges in state court. 8/8/08 RP 17. The prosecutor argued, and court concluded, that the eighth exception – “operation of motor vehicles upon the public streets, alleys, roads and highways” – conferred both civil and criminal jurisdiction. 8/8/08 RP 18-39; CP 47. The court therefore denied the motion to dismiss. CP 47.

Mr. Abrahamson was found guilty after a stipulated-facts bench trial, and reserved his right to appeal the jurisdictional issue.

² RCW 46.61.502

³ RCW 46.20.342(1)(a)

CP 49-53; 11/26/08 RP 4. He timely filed a notice of appeal. CP 23-40.

D. ARGUMENT

THE SUPERIOR COURT LACKED JURISDICTION
OVER THIS CASE BECAUSE WASHINGTON STATE
HAS RETROCEDED ALL CRIMINAL JURISDICTION
OVER INDIANS ON THE TULALIP RESERVATION.

a. With the exception of only eight subject-matter areas, the State does not have jurisdiction over Indians on the Tulalip reservation. In 1889, the federal government required that the several territories then seeking statehood disclaim any and all jurisdiction over Indian territory as a precondition to statehood. See Makan Indian Tribe v. State, 76 Wn.2d 485, 486, 457 P.2d 590 (1969). Washington responded by adopting an article in its Constitution to that effect. See id. at 487. In 1953, the United States Congress retreated from this position and enacted Public Law 83-280 (67 Stat. 588 (1953)), which authorized certain states to “remove any legal impediment to the assumption of civil and criminal jurisdiction ... by affirmative legislative action.” See id.

The Washington Legislature responded by enacting RCW 37.12.010. Laws of 1957, ch. 240, p. 941. As amended in 1963, the statute prohibits the State from assuming jurisdiction over

Indians on tribal lands, unless the tribe specifically asks the State to do so. RCW 37.12.010. Even for tribes that do not request State jurisdiction, the State retains jurisdiction over eight subject matter areas. Id.

The full text of the statute provides:

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

- (1) Compulsory school attendance;
- (2) Public assistance;
- (3) Domestic relations;
- (4) Mental illness;
- (5) Juvenile delinquency;
- (6) Adoption proceedings;
- (7) Dependent children; and
- (8) Operation of motor vehicles upon the public streets, alleys, roads and highways: PROVIDED FURTHER, That Indian tribes that petitioned for, were

granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if chapter 36, Laws of 1963 had not been enacted.

RCW 37.12.010.

The legislature also provided a mechanism for retrocession of jurisdiction to some tribes that had previously invoked the provisions of RCW 37.12.021, but subsequently decided they desired jurisdiction:

Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with 25 U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, and Tulalip tribes shall not exercise criminal or civil jurisdiction over non-Indians.

RCW 37.12.120. Another section of the statute explains its purpose:

It is the intent of the legislature to authorize a procedure for the retrocession, to the Quileute Tribe, Chehalis Tribe, Swinomish Tribe, Skokomish Tribe, Muckleshoot Tribe, Tulalip Tribes, and the Colville Confederated Tribes of Washington and the United States, of criminal jurisdiction over Indians for acts occurring on tribal lands or allotted lands within the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States.

RCW 37.12.100.

Although the Tulalip tribe originally invoked the provisions of RCW 37.12.021 to allow the State full civil and criminal jurisdiction, it subsequently requested, and was granted, retrocession of criminal jurisdiction pursuant to RCW 37.12.120. 65 Fed. Reg. 75,948.

b. The prosecution of crimes is not one of the eight exceptions to the State's retrocession of jurisdiction. The State may not exercise jurisdiction over tribes to which jurisdiction has retroceded except in the following areas: (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.

“Criminal jurisdiction was not one of the eight categories of law in which the State assumed jurisdiction over all Indian country.” State v. Cooper, 130 Wn.2d 770, 774, 928 P.2d 406 (1996).

“[S]tates generally lack authority to enforce their laws when their interests lie solely in on-reservation tribal member conduct.” State v. Cayenne, 165 Wn.2d 10, 14, 195 P.3d 521 (2008) (citing Nevada v. Hicks, 533 U.S. 353, 362, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001)). Tribes retain their power of self-governance, including “the power to prescribe and enforce internal criminal laws.” State v. Schmuck, 121 Wn.2d 373, 381, 850 P.2d 1332 (1993) (quoting United States v. Wheeler, 435 U.S. 313, 326, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978)). To support tribal self-governance, any ambiguity in a jurisdictional statute must be resolved in favor of Indians. Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, 439 U.S. 463, 484, 99 S.Ct. 740, 58 L.Ed.2d 740 (1979); Schmuck, 121 Wn.2d at 385, 396.

In this case, the State argued that the eight exceptions under RCW 37.12.010 confer not only civil jurisdiction, but also criminal jurisdiction. 8/8/08 RP 20. By the State’s logic, the “domestic

relations” exception means the State has jurisdiction not only over family law matters, but also over any criminal charge with a “domestic violence” designator. See RCW 37.12.010(3); RCW ch. 10.99. No court has so held. Nor has Mr. Abrahamson located any cases construing any of the first seven exceptions to create criminal jurisdiction. To construe the eighth exception differently would violate the doctrine of *noscitur a sociis* (“it is known from its associates”). See State v. Flores, 164 Wn.2d 1, 13, 186 P.3d 1038 (2008) (“In applying this principle to determine the meaning of a word in a series, a court should take into consideration the meaning naturally attaching to them from the context, and ... adopt the sense of the words which best harmonizes with the context”). The eighth exception, like the first seven, applies to civil jurisdiction. McCrea v. Denison, 76 Wn. App. 395, 885 P.2d 856 (1995) (state court has jurisdiction over tort action arising from car accident on reservation highways). But this Court should hold that, consistent with the first seven exceptions, the motor vehicle exception does not create criminal jurisdiction.

The Tulalip Tribe has a full court system and an extensive criminal code which includes all of the crimes for which Mr. Abrahamson was charged and convicted in state court. Tulalip

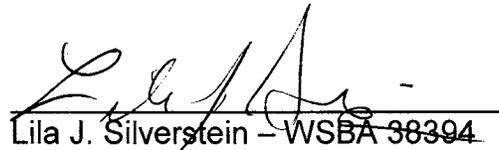
Code 3.13.1, 6. Indeed, Mr. Abrahamson had already been convicted in tribal court before the present action commenced. 8/8/08 RP 17. The tribal court's exercise of jurisdiction was proper; the state court's was not. This Court should reverse the order denying the motion to dismiss for lack of jurisdiction.

E. CONCLUSION

For the reasons set forth above, Mr. Abrahamson respectfully requests that this Court reverse his convictions and dismiss the prosecution for lack of jurisdiction.

DATED this 15th day of June, 2009.

Respectfully submitted,



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