

IN THE COURT OF APPEALS  
STATE OF ARIZONA DIVISION ONE

STATE OF ARIZONA	)	
	)	
Appellee,	)	1 CA-CR 13-0096
	)	
	)	
V.	)	MOHAVE COUNTY
	)	
<b>David Chad Mahone,</b>	)	Superior Court
	)	No. CR 2012-00345
Appellant.	)	
	)	
	)	
	)	

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APPELLANT'S OPENING BRIEF

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## **ISSUE PRESENTED**

- 1. Did the state lack subject matter jurisdiction to prosecute a Native American for an offense which occurred on reservation land?**

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## **STATEMENT OF THE CASE**

The state charged Appellant, David Chad Mahone, with two counts Aggravated Driving A Vehicle While Under the Influence of Intoxicating Liquor, each a class 4 felony. (R.O.A. at 02).

Count I alleged that on or about February 26, 2012, in the vicinity of Highway 66 Milepost 96 Peach Springs, Mohave County, Arizona, the defendant drove a motor vehicle while under the influence of intoxicating liquor while his license was suspended or revoked, all in violation of A.R.S. 28-1383(A)(1), 28-1381.

Count II alleged that on or about February 26, 2012, in the vicinity of Highway 66 Milepost 96 Peach Springs, Mohave County, Arizona, the defendant drove a motor vehicle with a blood alcohol content of .15% or more while his license was suspended or revoked, all in violation of A.R.S. 28-1383(A)(1), 28-1382(A).

### **Motion to Dismiss**

Appellant filed a motion to dismiss for lack of subject matter jurisdiction. (R.O.A. at 16, 18). The court held an evidentiary hearing and the arresting officer testified. (R.T. 8/21/12).

Haulapai Police Officer Aaron Campa was working on patrol on February 26, 2012. (R.T. 8/21/12 at 6). Around 7:11 p.m. he received a call

that a vehicle belonging to Mary Jane Walema was observed traveling westbound on State Route 66 toward Kingman and nearly collided with another vehicle on the highway. (Id. at 8). In this area, on route 66, Tribal jurisdiction encompasses a very short stretch from milepost 85 to 86.5, which is the town of Valentine, Arizona, and then starts again at milepost 96 to 112. (Id. at 8). The vehicle was seen near milepost 95 in Truxton so he parked his car waiting for it. (Id. at 10). Truxton was off the reservation. (Id. at 15). The reservation begins at milepost 96. (Id. at 15). He observed it make a wide turn over the fog line onto Route 66 driving eastbound toward Peach Springs at milepost 95. (Id. at 12). He began following it and asked dispatch to run the Arizona license plate to determine if it was registered to Mary Walema. (Id. at 14). The plate had partially matched the number given to him earlier. (Id. at 15). Dispatch advised that it was registered to Mary Walema but the registration had been canceled. (Id. at 17). He then initiated a traffic stop and activated his lights at milepost 95.8 prior to the sign indicating the Hualapai reservation. (Id. at 17). He actually came to a stop at 96.3 on the reservation. (Id. at 19). He contacted the driver, who was identified as Appellant, David Mahone. (Id. at 20). Mahone is a member of the Hualapi Indian Tribe, and lived in Peach Springs. (Id. at 21).

The officer observed that Mahone had bloodshot water eyes. He admitted the he had consumed three alcoholic beverages at the Gas-N-Grub in Truxton, which is on state land. (Id. at 21, 30). After field sobriety tests and a portable breath test, Mahone was placed under arrest for Driving Under the Influence. (Id. at 22). Dispatch advised that his driver's license was suspended or revoked. (Id. at 22). The driving took place off reservation, but the stop and arrest took place on the reservation. He transported him to the Mohave County Jail for an intoxilyzer test to maintain state jurisdiction. (Id. at 22). However, a criminal complaint was also filed in Haulapai tribal court accusing Mahone of the same D.U.I. offense, but later dismissed. (Id. at 25). If a trial member commits a misdemeanor on tribal land he is subject to tribal jurisdiction. (Id. at 37). He was stopped for driving due to a canceled registration, but not investigated for DUI after he was stopped on reservation land. (Id. at 38).

Thus, it was undisputed that the tribal officer decided to pull the vehicle over on state land for cancelled registration, activated his lights on Milepost 95.8 on state land, but that the stop ultimately took place after they crossed onto reservation land. Further, that Appellant was not fleeing onto reservation land. Also, that the subsequent DUI investigation took place on reservation land, although he was taken after arrest to Mohave County Jail



for submitting to the intoxilyzer. Further, that Appellant was a member of the Hualapai Indian Tribe.

Appellant argued that the officer initiated a traffic stop in Arizona for cancelled registration, but the stop did not occur until they were on reservation land. Further, that the entire DUI investigation took place on reservation land, and because Appellant was a native American, and was arrested for a general crime of DUI on the reservation, that the tribe had exclusive jurisdiction. (Id. at 38-51).

The court found that the element of driving was committed on state land between Milepost 95 and 96, as well as after that on reservation land, and therefore the tribe and state had concurrent jurisdiction, and the state had subject matter jurisdiction to prosecute. Further, that the indictment charged in the vicinity of Milepost 96 which included 95.8 or state land, or that it could be amended as a technical defect regardless. (Id. at 51).

### **Motion to Suppress**

After the court denied the motion to dismiss, Appellant filed a motion to suppress. (R.O.A. at 22, 23). The court held a hearing, and the parties agreed to submit the matter based upon the same evidence presented at the hearing on the motion to suppress. (R.T. 10/17/12). The court found that since the officer was a tribal officer, he had authority to investigate and

arrest the defendant on the reservation, and that he had the ability to gather evidence on tribal land for an offense under state jurisdiction, and denied the motion. (Id. at 6).

### **Stipulation to Waive Jury Trial**

On January 3, 2013, the parties filed a “Stipulated Agreement” to waive a jury trial pursuant to Rule 18.1(b), Arizona Rules of Criminal Procedure, and submit the matter to the court for a bench trial based upon documents. (R.O.A. at 28). Pursuant to the agreement Appellant’s prison exposure was capped at 2.5 years with probation available. Id. Appellant waived his right to a jury trial in court. (R.T. 1/3/13 at 12).

### **Summary of documentary evidence presented:**

The following evidence was presented in support of the verdict at bench trial. Evidence will be reviewed in the light most favorable to sustaining the verdict. *See State v. Tamplin*, 195 Ariz. 246, 986 P.2d 914 (App.1999).

Attached to the stipulation was a “Hualapai Law Enforcement Detail Incident Report.” The report included a police narrative where Hualapai Tribal Officer Campa described the traffic stop of Mr. Mahone which occurred on February 26, 2012, consistent with his testimony at the evidentiary hearing which is summarized herein.

According to the officer, he smelled a strong odor of alcohol when the driver, Mr. Mahone, rolled down his window. Mahone had admitted drinking three alcoholic beverages. The officer observed signs and symptoms of intoxication during HGN and field sobriety tests, and Mahone registered a .17 on a portable breath test. The officer placed him under arrest, and took him to the Mohave County Jail. There he registered a .200 and a .204 % BAC on the intoxilyzer 8000. He was booked into the Mohave County Jail. Mr. Mahone admitted to driving only a short distance, after taking the wheel from the owner who was more intoxicated.

Certified Arizona Department of Motor Vehicle records showed that his driver's license had been suspended, but that he had permission to apply for reinstatement. However, he had not completed the steps for reinstatement, so his license remained suspended at the time of the stop.

### **Verdict**

After review of all documents, the Honorable Derek Carlisle found that the state had proven each count beyond a reasonable doubt. (R.T. 1/3/13 at 14).

### **Sentencing**

The court sentenced Appellant to ten years probation on each count to run concurrently, beginning upon release from prison, and imposed a six

month prison sentence, 250 hours community restitution, and mandatory fines including 750.00 plus 83% surcharge, a DUI abatement fee of 250.00, two 1500.00 assessments, and probation fees. (R.T. 1/31/13; R.O.A. at 32).

Appellant filed a timely notice of appeal on January 31, 2013. (R.O.A. at 37). This Court has jurisdiction under Arizona Constitution Article VI, Section 9, and A.R.S. 12-120.21(A)(1), 13-4031, and 13-4033(A).

## **ARGUMENT**

### **I. The state lacked subject matter jurisdiction to prosecute a Native American for an offense that occurred on reservation land. The motion to dismiss should have been granted.**

#### **A. Standard of Review**

Whether the court has jurisdiction is an issue of law and is reviewed *de novo*. *State v. Flores*, 218 Ariz. 407, 409-10, ¶ 6, 188 P.3d 706, 708-09 (App. 2008).

#### **B. Law and Argument**

In Arizona, the general rule is that the state has subject matter jurisdiction to prosecute crimes committed within its territorial borders. *State v. Vaughn*, 163 Ariz. 200, 202-03, 786 P.2d 1051, 1053-54 (App. 1989).

A.R.S. 13-108 provides:

A. This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which such person is legally accountable if:

1. Conduct constituting any element of the offense or a result of such conduct occurs within this state. . . .

*See also* A.R.S. 13-109(A) ("criminal prosecutions shall be tried in the county in which conduct constituting any element of the offense or a result of such conduct occurred, unless otherwise provided by law").

As an exception to that general rule, however, the Indian Country Crimes Act preempts state court jurisdiction over a criminal prosecution when a criminal offense involving an Indian occurs on Indian land. 18 U.S.C. 1152, 1153 (1988). If defendant or the victim is an Indian and the crime was committed within Indian country, as defined by federal statute, then the state superior court has no subject matter jurisdiction to try defendant for the offense. *Id.* *See also State v. Sorhabi*, 202 Ariz. 450, 452, 46 P.3d 1071, 1073 (App. 2002); *State v. Verdugo*, 183 Ariz. 135, 137, 901 P.2d 1165, 1167 (App. 1995) ("If defendant or the victim is an Indian and the crime was committed within Indian country, . . . then the state superior court has no subject matter jurisdiction to try defendant for the offense."). *See c.f. United States v. Wheeler*, 435 U.S. 313, 332 (1978).

Here, the State of Arizona lacks subject matter jurisdiction to prosecute. Appellant is a member of the Hualpai Indian Tribe. The stop occurred on the reservation. The entire DUI investigation occurred on the reservation up until the time of arrest. The arrest occurred on tribal land. The officer did not stop the defendant for bad driving on state lands. Rather, the officer stopped the vehicle for driving a vehicle on state land with a cancelled registration, not the crime of DUI which was investigated and charged on the reservation.

Finally, the question here is not whether the state should be able to prosecute a defendant who fled to reservation land. In *State v. Lupe*, 181 Ariz. 211, 889 P.2d 4 (1994), the court held that an arrest of a tribal member made on the reservation for an offense which occurred on state land, after a close pursuit that began on state land, does not interfere with tribal sovereignty where no extradition agreement exists. But as the trial court found here, the offense was a crime committed on state land from which the defendant did flee onto reservation land to avoid capture. Rather, the question here is whether or not the offense occurred so entirely on reservation land so that state court prosecution would interfere with tribal sovereignty. Since it occurred on reservation land, the conviction should be reversed for lack of jurisdiction.

## **RELIEF REQUESTED**

For all of the foregoing reasons, it is respectfully requested that the conviction be reversed and ordered dismissed for lack of jurisdiction.

Respectfully submitted,

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