
IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Rudy Stanko
v.
Oglala Souix Tribe, et al

17-3176

APPELLANT'S FIRST BRIEF

On appeal from the District of South Dakota, Viken presiding,
No. 5:17-cv-05008-JLV

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United States Court of Appeals
for the Eighth Circuit
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SUMMARY OF THE CASE

This is an appeal of a District Court order granting dismissal of a civil rights lawsuit pursuant to Fed. R. Civ. Pr. 12(b)(6). The civil rights lawsuit involved claims that various agents and officers of the Oglala Sioux Tribe in South Dakota falsely arrested and wrongly imprisoned the plaintiff, ordered the plaintiff to strip naked at gunpoint, and then robbed the plaintiff during the plaintiff's incarceration in an Indian jail.

The Plaintiff/Appellant hereby appeals the dismissal of his case, and asks for 20 minutes of oral argument to further argue and inform the Court of Appeals regarding the issues in this appeal.

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JURISDICTIONAL STATEMENT

I. Statement concerning the District Court's jurisdiction.

This action, filed by Stanko on January 24, 2017 against the Oglala Sioux Tribe, et al, alleged violations of federal civil and constitutional rights, pursuant to federal statutes, 42 U.S.C. §§ 1981-1985, as well as the common law.

The District Court had jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

II. Statement concerning appellate jurisdiction.

The notice of appeal in this case was timely filed on October 2, 2017. Jurisdiction is conferred on the United States Court of Appeals for the Eighth Circuit by 28 U.S. Code § 1291 and Federal Rule of Appellate Procedure 4(b).

III. This appeal is from a final order or judgment that disposes of all parties' claims.

STATEMENT OF THE ISSUES WITH MOST APPOSITE CASES

QUESTION PRESENTED

Whether the District Court below properly dismissed Stanko's complaint.

Most Apposite Cases

Regarding the when a district court should grant a dismissal under Rule 12(b)(6):

Neitzke v. Williams, 490 U.S. 319, 327 (1989).

STANDARD OF REVIEW

Whether a complaint states a cause of action is reviewed *de novo*. See, e.g., *Packard v. Darveau*, 759 F.3d 897, 900 (8th Cir. 2014). A civil complaint need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Federal Rule of Civil Procedure 8(a)(2). *Demien Constr. Co. v. O'Fallon Fire Prot. Dist.*, 812 F.3d 654 (8th Cir. 2016).

"Issues of tribal sovereign immunity are reviewed de novo." *Burlington N. & Santa Fe Ry. v. Vaughn*, 509 F.3d 1085, 1091 (9th Cir.2007).

STATEMENT OF THE CASE

On September 22, 2016, Rudy Stanko ("Stanko") was stopped by Oglala Sioux Tribal Officer Jesse Red Wine for speeding. Officer Red Wine claimed there were two OST arrest warrants outstanding. (Addendum at 4). Mr. Stanko informed Officer Red Wine that the tribal court had no jurisdiction over him and he refused to waive jurisdiction by appearing in tribal court. Id. Officer Red Wine did not arrest Mr. Stanko, who drove away. Id.

On October 28, 2016, OST Tribal Court Judge John Hussman imposed a fine and court costs against Mr. Stanko and issued an arrest warrant for Mr. Stanko but with a credit of $100 per day for each day of incarceration. Id.

On January 21, 2017, Mr. Stanko was arrested by OST Tribal Officer Charles Hunter "1/2 mile north of National Grassland boundary near the White River on US/BIA Highway 27 and taken to the Kyle Police Department jail." Id.

Officer Hunter advised Mr. Stanko that the officer had been ordered by "Tatewin Means, his counselor, to arrest people of White descent." Addendum at 5. Officer Hunter returned the service as stating he took [Stanko] before the Oglala Sioux Tribal Court, but Hunter instead took Stanko to an Indian jail on January 21, 2017." Id.

While Stanko was in the Tribal Jail, Officers Ms. Garnette, Ms. Rodriquez and Mr. Hunter told Mr. Stanko they "would not take . . . cash as bail money, and

insisted on a money order." Id. Officer Hunter pulled a gun, pointed it at Stanko and told Stanko "to put his hands on the wall and strip naked." Id. While in that position, Officer Hunter kicked Stanko in the thigh several times, injuring Stanko. Id. Officers Garnette and Rodriquez assisted Officer Hunter in assaulting Mr. Stanko. Id.

The three officers then stole $700 from Stanko's wallet. Id. The three officers placed Mr. Stanko in jail and kept him in isolation until his release. Id.

On January 24, 2017, Plaintiff Rudy Stanko ("Stanko") filed a ten-count complaint against the defendants (Docket 1). Defendants Oglala Sioux Tribe ("OST" or the "Tribe"), Vannessa Rodriguez, Charles Hunter, Jodie Garnette, Tatewin Means, and John Hussman (jointly the "Individual Tribal Defendants").

The Defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction or, in the alternative, pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. (Addendum at 12).

The District Court granted the Defendants' motion to dismiss on Sept. 20, 2017. Id.

Stanko now appeals.

SUMMARY OF THE ARGUMENT

The District Court's order, if it were to become prevailing law, would create and enshrine a dark hole in America where people associated with a local government are able to rob, steal, beat, cage and abuse people without consequence or accountability.

The District Court's order dismissed Stanko's claims by reconceptualizing Stanko's complaint as merely a complaint citing 28 U.S.C. §§ 1331, 1343 and 2680 and 42 U.S.C. § 1983 as the bases for the court's jurisdiction. (Docket 1 at pp. 1-3). But Stanko's complaint, by its own terms in its first sentence, stated: "This is a common law complaint and a complaint pursuant to 42 USC § 1983."

Having misconstrued Stanko's complaint, the District Court then pronounced that the Oglala Sioux Tribe and every individual defendant accused in Stanko's complaint are protected by sovereign immunity. As the precedents and authorities laid out below illustrate, the District Court's depiction of sovereign immunity is much broader than the doctrine has ever been recognized.

ARGUMENT

Chief Justice John Marshall, in *Marbury v. Madison*, pronounced that:

> The very essence of civil liberty certainly consists of the right of every individual to claim protection of the laws, wherever he receives an injury, one of the first duties of government is to afford that protection. . . .
>
> [I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded . . . . [E]very right, when withheld, must have a remedy, and every injury its proper redress.
>
> The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

5 U.S. 137, 163 (1803).

"The governments and courts of both the Nation and the several States are not strange or foreign to each other in the broad sense of the word, but are all courts of a common country, all within the orbit of their lawful authority being charged with the duty to safeguard and enforce the right of every citizen without reference to the particular exercise of governmental power form which the right may have arisen, if only the authority to enforce such right comes generally within the scope of the jurisdiction conferred by the government creating them." *Howlett v Rose*, 496 U.S. 356, 368 (1990).

"There has to be a forum where the dispute can be settled." *Dry Creek Lodge V Arapahoe and Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980). (F)ederal courts have jurisdiction to hear a suit against an Indian tribe under 25 USC § 1302,

so long as three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. *Walton v Tesuque Pueblo*. 443 F.3d 1274 (10th Cir. 2006). Here, all three circumstances are present.

In dismissing Stanko's complaint, the District Court laid out a well-worn string of precedents uphold the principle that tribes have sovereign immunity in some contexts. "[I]n enacting § 1983, Congress did not intend to override well-established immunities or defenses under the common law." *Will v. Michigan Department of State Police*, 491 U.S. 58, 66 (1989). "It is well established that Indian tribes possess sovereign immunity from suit that existed at common law." *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244 (8th Cir. 1995) (referencing *Rosebud Sioux Tribe v. A & P Steel, Inc*., 874 F.2d 550, 552 (8th Cir. 1989)). Order p. 7-8.

The District Court was quick to pronounce that Indian police officers are not state officers in or acting under color of state law. But Stanko invoked the jurisdiction of the common law in addition to §1983. Under the "JURISDICTION" section of Stanko's complaint, Stanko laid out "COMMON LAW: Article 111, § 2 of the United States Constitution: "The judicial Power shall extend to all Cases, In (common) Law..." The Supreme Court, in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, held that there is an

implied constitutional cause of action for damages for a fourth amendment violation against federal officials, since "where legal rights have been invaded . . . federal courts may use any available remedy to make good the wrong done." 403 U.S. 388, 396 (1971) (quoting Bell v. Hood, 327 U.S. 678, 684 (1946)); see also Bivens, 403 U.S. at 410 (Harlan, J., concurring).

Thus it is simply not true that Stanko can be falsely arrested, beaten, tortured and robbed by unaccountable tribal authorities acting under color of law without any remedy. Tribal defendants sued in their individual capacities for money damages are not entitled to sovereign immunity, even though they are sued for actions taken in the course of their official duties. See Maxwell v. County of San Diego, 708 F.3d 1075, 1089 (9th Cir.2013) (holding that two paramedics employed by a tribe who provided grossly negligent care to a shooting victim were not entitled to tribal sovereign immunity from a state tort action brought against them in their individual capacities).

Thus the question is not one of sovereign immunity, but instead concerns whether Stanko has stated a valid cause of action. And the question whether defendants were acting in their official capacities under color of state or under color of tribal law is wholly irrelevant to the tribal sovereign immunity analysis. *Pistor v. Garcia*, 791 F.3d 1104 (9th Cir. 2015).

CONCLUSION

The law is therefore clearly settled that agents of an Indian tribe cannot beat, steal, falsely arrest, brutalize and otherwise deprive passing Americans of their rights without being accountable in court. Accordingly, Appellant prays for an order reversing the judgment of the District Court and remanding this action for further proceedings.

RESPECTFULLY SUBMITTED,

/s/ Roger I. Roots

Counsel for the Appellant.

CERTIFICATE OF WORD COUNT AND FORMATTING COMPLIACE

The Document above contains 2,154 words. It was drafted using Microsoft Word, with Times New Roman font, size 14 font.

/s/ Roger I. Roots Dated Feb. 5, 2018

CERTIFICATE OF ELECTRONIC SERVICE

I certify that the brief above was submitted and uploaded to this Court's electronic filing system, thereby serving all parties to this case.

/s/ Roger I. Roots Dated Feb. 5, 2018