

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

)	
)	
)	
Brendan LaBatte)	COMPLAINT
Plaintiff)	
)	
)	CIV:
)	1:24-cv-1014
Vs.)	
)	
Karen Gangle, Prosecutor for the)	
SWO; Gary Gaikowski, Chief of Police)	
for SWO; Hon Ruth Burns, Hon.)	
Michael Swallow,)	
Judges for SWO Tribal Court;)	
All in Their Official Capacity)	
Defendants)	
)	
)	

I. PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief against agents of the Sisseton-Wahpeton Oyate (herein after “SWO”) for enforcing an unconstitutional policy and law that allows the Tribe concurrent jurisdiction with the State of South Dakota in Roberts County to prosecute SWO members on fee land. In violation of the United States Constitution and the Indian Civil Rights Act.
2. The SWO, as a matter of law and policy actively assert criminal jurisdiction over tribal members who allegedly commit crimes on fee land within the now terminated Lake Traverse Reservation
3. Brendan LaBatte (Herein after LaBatte) is an adult tribal member who has been charged with DUI an offense that occurred, if at all, on fee land in the city of Sisseton.

4. LaBatte has also been prosecuted by the state of South Dakota for similar conduct.
Namely reckless driving.
5. At issue in this case are two cases from the highest court for the SWO. The first, SWST v. Vernon Cloud, CR-01-01-03 decided by the Northern Plains Inter-Tribal Court of Appeals. (See attached Exhibit 1) The second case in Cloud's progeny is SWO v. Lohnes, CR-15-316-056. that was decided by the SWO Supreme Court in January, 2016. In Lohnes, the Supreme Court specifically held that, “Long held precedent has given the Sisseton-Wahpeton Oyate jurisdiction to prosecute crimes committed by tribal members on fee land within the exterior boundaries of the former Lake Traverse Indian Reservation.” Lohnes, page 1. (See attached Exhibit 2)¹
6. Karen Gangle (Herein after Gangle) is the Chief Prosecutor for the SWO and determines what charges to bring through her office as prosecutor. Gangle has chosen to charge LaBatte for an offense that occurred on fee land.²
7. Gary Gaikowski (Herein after Gaikowski) is the Chief of Police for SWO and as such actively enforces warrants and arrests of SWO members who commit crimes on fee lands. He is also in charge of their detention.
8. The Hon. Ruth Burns, Hon. Michael Swallow are all Judges for the SWO Tribal Court system. They, in tandem with Gangle and Gaikowski, act to enforce the law and policy of SWO of having concurrent jurisdiction on fee lands.

¹ The SWO also asserts criminal jurisdiction over tribal members by statute. See Tribal Code Chapter 20-02-02 available at www.swo.nsn.gov.

² The SWO is aware of the assertion of concurrent jurisdiction being asserted by Gangle against tribal members of SWO. The tribal government was so concerned that it issued Tribal Council Resolution No. SWO-19-094 to try to address the issue. The resolution itself is titled “Concurrent Prosecution Clarification”. (See attached Exhibit 3)

9. LaBatte's contention is that assertion of criminal jurisdiction on fee lands violate his rights under the 4th Amendment against unlawful search and seizure and the similar statutory provision found in the Indian Civil Rights Act 25 U.S.C. 1302(a)(2) & 25 U.S.C. 1302(a)(6) As well, the 14th Amendment of the United States Constitution and the applicable statutory provision of the Indian Civil Rights Act 24 U.S.C. 1302(a)(8)

II. JURISDICTION STATEMENT

10. Jurisdiction is appropriate in this court as the question of a tribe's criminal jurisdiction is a federal question 28 U.S.C. 1331.
11. Tribal exhaustion doctrine does not apply to this case as assertion of criminal jurisdiction over fee lands has been settled twice by SWO Supreme Courts.
12. This suit requests declaratory and injunctive relief against an agent of the SWO tribe and is not a suit for money damages and may proceed forth. *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1131 (8th Cir. 2019)

III. FACTUAL ALLEGATIONS

13. The SWO is a federally recognized American Indian Tribe located in northeast South Dakota and Southeast North Dakota.
14. In 1867 the bands of the great Sioux Nation the Sisseton band and the Wahpeton band entered a treaty with the United States of America. From these negotiations the 1867 Lake Traverse Treaty established the Lake Traverse Reservation for the good of tribal members. *DeCoteau v. Dist. County Court for Tenth Judicial Dist.*, 420 U.S. 425, 431 (1975)

15. In 1891 by an act of Congress the Lake Traverse Reservation was opened and all reservation lands that were not allotted to individual Indians were sold to non-Indian settlers. *DeCoteau*, at 434.
16. In the early 1970s the question as to the continued existence of the Lake Traverse Reservation after the Congressional Act of 1891 came to the forefront both at the State and Federal levels. *Id.* at 430-431.
17. Ultimately the question as to whether the Lake Traverse Reservation continued to exist after 1891 was answered by the United States Supreme Court in *DeCoteau v. Dist. County Court for Tenth Judicial Dist.*, 420 U.S. 425; 95 S. Ct. 1082. (1975) The court found that considering the 1891 Act of Congress the Lake Traverse Reservation was terminated. *DeCoteau*, 420 U.S. 425, 449. Thus, on non-allotted lands state courts have jurisdiction. *Id.* at 427-428.
18. On October 15, 2022 LaBatte was driving within the city limits of Sisseton on fee land. At that time Officer Megan Lively (Herein after Lively) was on patrol for Sisseton police department within the city of Sisseton.³
19. At approximately 5:56pm Lively noticed a Blue Durango that was swerving, and which swerved into Lively's lane head on. The vehicle quickly swerved and turned west into a yard, drove through two yards, almost hit another vehicle with the vehicle coming to a stop at 7th Ave E. Chestnut in Sisseton. LaBatte took off running from Lively and additional Law Enforcement were called.

³ See exhibit 4 for Officer Lively's full report.

20. LaBatte returned to the vehicle and Lively attempted to remove him from the vehicle.

LaBatte resisted and pushed Lively and ran away. LaBatte ran to Sisseton Housing and was able to make it to Unit 3 in Sisseton Housing.⁴

21. SWO tribal police arrived at Unit 3 in Housing and according to the SWO tribal complaint LaBatte resisted arrest from tribal law enforcement.⁵ LaBatte was arrested on tribal charges and detained at the Roberts County Detention Center on tribal charges including DUI.

22. LaBatte would later have to post a \$500.00 dollar bond to be released on the tribal charges.

23. LaBatte currently has an active arrest warrant from the SWO tribal court.

24. At no time does Officer Lively's report indicate that LaBatte drove on tribal lands let alone ever accuse him of DUI.

25. Because of the events that occurred on October 15, 2022 happened in Sisseton the state of South Dakota charged LaBatte in Roberts County, Fifth Judicial Circuit, in criminal file 54CRI22-649 with the following; 1 count of Simple Assault on Law Enforcement in violation of SDCL 22-18-1.05; 1 count of Resisting Arrest in violation of SDCL 22-11-4; 1 count Reckless Driving in violation of SDCL 32-24-1.

26. The SWO tribe through prosecutor Gangle charged LaBatte with count 1 DUI alleging that the incident occurred “..within the Lake Traverse Reservation,” on October 15, 2022 at 6 pm and one count of violating Chapter 24-10-07. (See attached tribal complaint Exhibit 5)

⁴ Sisseton Housing is considered a dependent Indian community and therefore “Indian Country” for purposes of prosecution. LaBatte ran to Sisseton Housing to avoid state law enforcement.

⁵ It is unclear as to what law the SWO tribe is saying that LaBatte violated as Count Two of their complaint is narrative in form and points to one section of the Tribal Code Chapter 24-10-07

27. Gangle has specifically chosen to charge the offense of DUI even though it didn't take place on trust or in Indian Country. If the DUI did occur at all the actions of LaBatte occurred on fee land in the city of Sisseton.⁶
28. LaBatte has plead guilty to the state charge of Simple Assault Against Law Enforcement in 54CRI22-649 in violation of SDCL 22-18-1.05 on February 8, 2023. (See attached Judgment of Conviction Exhibit 6)
29. LaBatte has entered not guilty pleas in SWO tribal court and has challenged jurisdiction to bring an action against him for facts arising out of conduct that occurred on fee land. (See Exhibit 7)
30. Sisseton-Wahpeton Sioux Tribe v. Vernon Cloud, CR-01-01-03 is erroneous from the very begging of the opinion and shows that the court fundamentally misunderstood the facts involved in the case. The court stated "Since time immemorial Indian tribes have had criminal jurisdiction over Indians *in Indian Country*. Cloud, at page 2. (Emphasis added) Although LaBate agrees that tribes have jurisdiction in "Indian Country" the issue before the court in Cloud was whether the tribe could assert criminal jurisdiction on fee lands within the exterior boundaries of the terminated Lake Traverse Reservation. This is the same question that is before this court.
31. According to Cloud the decision in DeCouteau left open the issue as to tribes having criminal jurisdiction over tribal members on fee land. Cloud, Page 4. The court in Cloud cited to the *DeCouteau* decision specifically,

"... We note however, that [18 U.S.C.] 1151(c) contemplates that isolated tracts of "Indian Country" may be scattered checkerboard fashion throughout over a territory otherwise under state jurisdiction. In such situation there will obviously arise many practical and legal conflicts

⁶ Note that Gangle puts in the complaint for jurisdictional grounds that it occurred "within the Lake Traverse Reservation"

between state and federal jurisdiction with regard to conduct and parties having mobility over the checkerboard territory. How these conflicts should be resolved is not before us. *DeCoutea* at 1085 FN3.

From this footnote the court in Cloud extrapolates that an invitation has been offered to the SWO to assert criminal jurisdiction over tribal members on fee lands. Cloud page 3-4.

32. The court further goes on in its reasoning to hold that *United State v. Wheeler*, 435 U.S.

313 (1978) stands for and supports, "...the Sisseton-Wahpeton Sioux Tribe necessarily has inherent sovereign authority over member activities..."⁷ Ultimately the court finds that exerting criminal jurisdiction over tribal members on fee lands "...is exercising its reserved Article X treaty authority as well as inherent sovereign powers within a defined geographic area." Cloud page 5.

33. The next time the court heard argument regarding the tribe's jurisdiction over tribal members on fee lands was in Sisseton-Wahpeton Oyate v. Sica Lohnes, NO. CR-15-316-056 which upheld the Cloud decision. "Lohnes asks us to overturn *Cloud*. We decline to do so." Lohnes at page 1. The court in Lohnes makes short discussion of the matter and quickly find that "...this Court therefore affirms the Sisseton-Wahpeton Oyate jurisdiction to prosecute crime committed by tribal members on fee land within the exterior boundaries of the former Lake Travers Indian Reservation as described in Article III of the treaty of 1867." It is clear therefore that the tribe believes it has an inherent right to assert criminal jurisdiction over LaBatte and other tribal members.

⁷ *United State v. Wheeler*, 435 U.S. 313 (1978) is about double jeopardy. It' decision is based upon the question regarding if a Navajo tribal court in its criminal prosecution of members is operating from an inherent authority or delegated federal authority. It was not about tribal jurisdiction outside of Indian Country.

34. The SWO tribe also does not have any retained treaty right to exercise criminal jurisdiction on fee lands located within the exterior boundaries of the no diminished Lake Traverse Reservation.

35. Gangle's assertion of tribal criminal jurisdiction beyond those held in trust or those deemed "Indian Country" is against well settled principles of American Indian law and contradicts the holding in *DeCoteau v. Dist. County Court for Tenth Judicial Dist.*, 420 U.S. 425; 95 S. Ct. 1082.

COUNT 1

LaBatte's Rights Under the Fourth Amendment to be Protected Against Unreasonable Search and Seizure Have Been Violated and the Indian Civil Rights Act 25 U.S.C. 1302(a)(2) & 25 U.S.C. 1302(a)(6)

1. Plaintiff reasserts all paragraphs above.
2. LaBatte was illegally seized and searched by tribal officials and prosecuted by Gangle without criminal jurisdiction in violation of LaBatte's rights under the 4th Amendment and the Indian Civil Rights Act 25 U.S.C. 1302(a)(2) & 25 U.S.C. 1302(a)(6)

COUNT 2

LaBatte's Rights Under the 14th Amendments, Equal Protection and Due Process Clause Have Been Violated and in Violation of the Indian Civil Rights Act 25 U.S.C. 1302(a)(8).

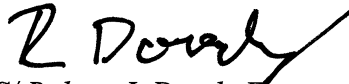
1. Plaintiff reasserts all paragraphs above.
2. Labatte's right to Equal Protection under the 14th Amendment have been violated by being prosecuted by Gangle without criminal jurisdiction and in violation of the Indian Civil Rights Act 25 U.S.C. 1302(a)(8)

PRAYER FOR RELIEF

Wherefore the plaintiff prays this court for the following relief;

- A. A declaratory judgment find that SWO does not have criminal jurisdiction over LaBatte and other tribal members on fee land within the exterior boundaries of the now terminated Lake Traverse Reservation.
- B. For an injunction against Gangle and the other named defendants so that they do not proceed against LaBatte or any other tribal members for any crimes he might have committed on fee land.

Dated this 11 day of July 2024


/s/ Robert J. Doody Esq.
Doody Law Office LLC
PO Box 307
Sisseton, SD 57262
Ph: 605.698.3060
robert@doodylawoffice.com

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p style="text-align: center;">Brendan LaBatte</p> <p>(b) County of Residence of First Listed Plaintiff <u>Roberts</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p style="text-align: center;">Robert J. Doody Esq. PO Box 307 Sisseton, SD 57262 Ph: 605-698-3060</p>	<p style="text-align: center;">DEFENDANTS</p> <p style="text-align: center;">Karen Gangle, Gary Gaikowski, Michael Swallow, Ruth</p> <p>County of Residence of First Listed Defendant <u>Marshall</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p> <p style="text-align: center;">None known</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)* [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p style="text-align: center;">PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p style="text-align: center;">PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p style="text-align: center;">LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p style="text-align: center;">IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p style="text-align: center;">SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
Federal Question Tribal Jurisdiction

Brief description of cause:
Lawsuit to enforce the Indian Civil Rights Act 28 USC 1331

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE July 11 2024 SIGNATURE OF ATTORNEY OF RECORD R Doody

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____