

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

)	
)	
)	
Brendan LaBatte)	COMPLAINT
Plaintiff)	
)	CIV: 1:24-cv-01014
)	
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.³
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)

³ Although after the termination of the reservation in 1891 by Congress there have been no acts by Congress or the Department of Interior, Indian Affairs. It is a questionable case that the 1891 act of Congress terminated the reservation and any formal tribal government leaving behind only Trust lands.

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.⁴
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.

⁴ 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.⁵

21. SWO tribal police arrived at Unit 3 in Housing and according to the SWO tribal complaint LaBatte resisted arrest from tribal law enforcement.⁶ 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)

⁵ 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.

⁶ 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.⁷
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.⁸
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

⁷ Note that Gangle puts in the complaint for jurisdictional grounds that it occurred "within the Lake Traverse Reservation"

⁸ That is if the Sisseton-Wahpeton Oyate survived the termination of 1891.

situation there will obviously arise many practical and legal conflicts 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..."⁹ 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.

⁹ *United State v. Wheeler*, 435 U.S. 313 (1978) is about double jeopardy. It's 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.
36. Defendant Gangle has dismissed the prosecution of the DUI involved in this case due to "Prosecutorial discretion" after the filing of *LaBatte v. Gangle et al.* in an attempt to moot the case.

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 ____ day of _____ 2024

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