



October 2, 2009

## GENERAL MEMORANDUM 09-120

### Supreme Court of Washington Rules that Tribal Police Have Authority to Continue Pursuit of a Suspected Drunk Driver Who Leaves the Reservation

The Supreme Court of the State of Washington, calling it a case of first impression, has ruled unanimously that tribal officers who are pursuing a suspected drunk driver on the Reservation have inherent authority and state statutory authority to continue "fresh pursuit" of said driver beyond the Reservation, to stop her while still off the Reservation, and upon discovering that she is a non-Indian, detain her until police with jurisdiction to arrest arrive. *State v. Eriksen*, Sep. 17, 2009.

In this case, an officer of the Lummi Nation Police Department (LNPD) was patrolling the Reservation when he saw a vehicle driving toward him which was being operated in an unsafe and erratic manner. The officer began to follow the suspect vehicle but soon after he began pursuit, the vehicle left the Reservation and pulled into a gas station off the Reservation. The officer followed. The officer, while questioning the driver, Loretta Eriksen (who had attempted to switch seats with her passenger as the officer was arriving), noticed she appeared intoxicated. The officer determined neither person was a tribal member and called the Whatcom County Sheriff's office, which was the standard procedure for all stops involving persons who are not tribal members. The officer explained to Eriksen that she was being detained, but not arrested, until a County Sheriff's deputy arrived, who would then determine whether to arrest her. Eriksen was handcuffed and placed in the back of the officer's car to await the Sheriff's deputy, who arrested Eriksen for driving under the influence (DUI).

Eriksen was convicted by the state trial court of DUI, which reasoned that the Lummi Nation's inherent sovereign power authorized tribal police to continue pursuing offenders who drive off the Reservation. That court concluded that the Washington State policy authorizing its officers to cross jurisdictional lines when in fresh pursuit was consistent with this inherent tribal power; thus the tribal officer could lawfully pursue a suspect vehicle beyond Reservation boundaries. Eriksen took her case to the State Supreme Court seeking to suppress the evidence collected from what she argued was an unlawful pursuit and arrest.

The Washington Supreme Court readily found that the tribal officer had authority to stop non-Indians who violate the law on the Reservation, and to detain them until they can be turned over to state authorities (noting previous decisions by itself and the 9th

Circuit). It also noted that under the Treaty of Point Elliot (1855), the Tribe obligated itself to turn over to U.S. government authorities anyone who violates U.S. law. In considering whether this inherent authority also included continuing a "fresh pursuit" of a suspect who fled beyond the Reservation, the court noted state cases holding that the fresh pursuit doctrine is a necessary means of enforcing traffic laws. It then held that it followed that the fresh pursuit doctrine must apply to tribes because the doctrine is a necessary means of "actualizing the tribe's inherent power to enforce its internal laws." The court went on to look at *Strate v. A-I Contractors*, 520 U.S. 438 (1997) and *Montana v. United States*, 450 U.S. 544 (1981) and concluded that pursuing those who break traffic laws on the Reservation bears a "clear relationship to tribal self-government or internal relations" and therefore satisfies the *Montana* test for when a tribe has jurisdiction over a non-Indian.

The court said that not allowing "fresh pursuit" off the Reservation of offenders by tribal police would render the tribe's traffic code meaningless and threaten its health and welfare. Similarly, the court declared that requiring the tribal officer to release Eriksen once he determined she was non-Indian would be "absurd." The court cited a variety of authorities on this matter, including the Lummi Tribal Court, which had upheld the authority of a Whatcom County Sheriff's deputy to pursue a tribal member onto the Reservation.

The court further held that in addition to the Tribe's inherent authority to enforce its laws, a Washington state statute (the Washington Mutual Aid Peace Officers Powers Act of 1985) also grants tribal police departments the power to continue pursuit beyond their jurisdiction "in response to an emergency involving an immediate threat to human life or property" or when in "fresh pursuit." RCW 10.93.070(2) & (6). The court found that the Tribe could be considered a "general authority Washington law enforcement agency" within the meaning of the statute because a tribe is a political entity, and thus arguably a "political subdivision" under RCW 10.93.020(3). Stating that the statute was ambiguous, the court applied the Indian Canon of Construction to resolve in the Tribe's favor any ambiguities in the statute, which led to a finding that the Tribe was a "general Washington law enforcement agency" within the meaning of the State Act.

This case, favorable to tribal sovereignty, may be compared to the *Bressi* case, also favorable to tribal sovereignty, which held that tribal police could set up checkpoints on state highways passing through the Reservation and stop both Indians and non-Indians. See our General Memorandum 09-110, August 21, 2009.

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Please direct any inquiries to:  
Charlie Hobbs ([chobbs@hobbsstrauss.com](mailto:chobbs@hobbsstrauss.com))  
Tonya Davis ([tdavis@hobbsstrauss.com](mailto:tdavis@hobbsstrauss.com))