

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MANUEL CARPIO, *Appellant*.

No. 1 CA-CR 15-0635

FILED 6-22-2017

AMENDED PER ORDER FILED 6-26-2017

Appeal from the Superior Court in Maricopa County

No. CR2014-137941-002

The Honorable Danielle J. Viola, Judge

The Honorable John R. Ditsworth, Judge

VACATED IN PART; AFFIRMED IN PART

COUNSEL

Arizona Attorney General's Office, Phoenix

By Elizabeth B. N. Garcia

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Nicholaus Podsiadlik

Counsel for Appellant

STATE v. CARPIO
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Paul J. McMurdie joined.

J O N E S, Judge:

¶1 Manuel Carpio appeals his convictions and sentences for one count of disorderly conduct and one count of unlawful flight from a law enforcement vehicle. Carpio, a member of the Gila River Indian Community (the Community), argues the superior court did not have subject matter jurisdiction over the disorderly conduct offense because he committed it entirely within the Gila River Indian Reservation (the Reservation). He also argues the superior court did not have personal jurisdiction because he was removed from the Reservation in violation of tribal extradition procedures after he was pursued onto the Reservation following a “hot pursuit” that began in the City of Chandler (the City). For the following reasons, we vacate Carpio’s conviction and sentence for disorderly conduct and affirm his conviction and sentence for unlawful flight from a law enforcement vehicle.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In August 2014, while investigating an unrelated crime, a City police officer observed a vehicle driven by a man later identified as Carpio approaching him on the opposite side of a two-lane commercial driveway. The officer shone his spotlight at Carpio’s vehicle, activated his lights, and parked partially in Carpio’s lane. Carpio saw the law enforcement vehicle but did not stop; instead, he “made an evasive turn the other way and drove right past” the vehicle. The officer made a U-turn, activated the siren on his marked patrol vehicle behind Carpio’s vehicle and followed it through the City at approximately seventy miles per hour. The pursuit continued onto the Reservation. Carpio stopped at a “T” intersection on the Reservation and, when the officer was one or two car-lengths away, reversed direction

¹ We view the facts in the light most favorable to upholding the verdicts and resolve all reasonable inferences against the defendant. *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶ 2 (App. 2015) (citing *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

STATE v. CARPIO
Decision of the Court

and struck the patrol vehicle. After a second collision propelled Carpio's vehicle into a canal, he was taken into custody and removed from the Reservation by City police.

¶3 A Maricopa County grand jury indicted Carpio on one count of aggravated assault of a police officer, arising from the first collision on the Reservation, and one count of unlawful flight from a pursuing law enforcement vehicle. *See* Ariz. Rev. Stat. (A.R.S.) §§ 13-1204(A),² 28-622.01. Carpio moved to dismiss the charges, arguing the superior court lacked jurisdiction over his person and the offenses, but the court denied the motion. A jury acquitted Carpio of aggravated assault but convicted him of the lesser-included offense of disorderly conduct,³ as well as unlawful flight.

¶4 Carpio was sentenced as a dangerous, non-repetitive offender to concurrent, presumptive terms of one-and-a-half years' imprisonment and given credit for ninety days of presentence incarceration credit. Carpio timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

I. Disorderly Conduct

¶5 Carpio argues the superior court lacked subject matter jurisdiction to try him for disorderly conduct because that offense occurred entirely on the Reservation. The existence of subject matter jurisdiction presents a question of law, which we review *de novo*. *State v. Flores*, 218

² Absent material changes from the relevant date, we cite a statute's current version.

³ A person commits aggravated assault when he "[i]ntentionally plac[es] another person in reasonable apprehension of imminent physical injury" and "uses a deadly weapon or dangerous instrument," "know[s] or ha[s] reason to know that the victim is . . . [a] peace officer," or "the assault results from the execution of the peace officer's official duties." A.R.S. §§ 13-1203(A)(2), -1204(A)(2), (8)(a). A person commits the lesser-included offense of disorderly conduct, *see State v. Miranda*, 200 Ariz. 67, 68, ¶ 3 (2001) (citation omitted), if "with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person . . . [r]ecklessly handles . . . [a] dangerous instrument." A.R.S. § 13-2904(A)(6).

STATE v. CARPIO
Decision of the Court

Ariz. 407, 410, ¶ 6 (App. 2008) (citing *State v. Sorkhabi*, 202 Ariz. 450, 452, ¶ 5 (App. 2002), and *In re Marriage of Crawford*, 180 Ariz. 324, 326 (App. 1994)).

¶6 Native American tribes are sovereign nations and have the right to govern themselves. *Williams v. Lee*, 358 U.S. 217, 220, 223 (1959); *S. Unique, Ltd. v. Gila River Pima-Maricopa Indian Cmty.*, 138 Ariz. 378, 381-82 (App. 1983)). Thus, “[i]f [the] 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 [the] defendant for the offense.” *State v. Verdugo*, 183 Ariz. 135, 137 (App. 1995) (citing the Indian Country Crimes Act (ICCA), 18 U.S.C. §§ 1152-53). Rather, the federal court has exclusive jurisdiction over “[a]ny Indian who commits against the person or property of another Indian or other person . . . a felony assault under [18 U.S.C. § 113].” 18 U.S.C. § 1153(a); *see also* Ariz. Const. art. 20, ¶ 4 (disclaiming state jurisdiction over Indians and Indian land and recognizing that “the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States”); *State v. Robles*, 183 Ariz. 170, 174 (App. 1995) (noting the ICCA was “intended to bestow exclusive preemptive jurisdiction on the federal courts only when the crime occurs on a federal enclave and when no elements of the crime occur outside that enclave”); *State v. Lupe*, 181 Ariz. 211, 214 (App. 1994) (“Most matters dealing with Native American reservations are within the exclusive jurisdiction of the tribal or federal courts unless falling specifically within the state’s jurisdiction as directed or allowed by an act of Congress.”) (citing *State ex rel. Old Elk v. District Court*, 552 P.2d 1394, 1396 (Mont. 1976)).

¶7 The State concedes Carpio committed the acts giving rise to the aggravated assault charge and his subsequent conviction for disorderly conduct wholly within the territorial boundaries of the Reservation. Because the offense was committed by an Indian⁴ entirely on tribal land, the superior court lacked subject matter jurisdiction to try Carpio for the offense, and the judgment of guilt is void. *See State v. Cramer*, 192 Ariz. 150, 153, ¶ 16 (App. 1998) (citing *Martin v. Martin*, 182 Ariz. 11, 15 (App. 1994)).

⁴ The State suggests Carpio’s tribal membership remains at issue; we disagree. Carpio timely asserted his tribal affiliation in his motion to dismiss. The State then had the burden to come forward with affirmative evidence to establish otherwise. *See Verdugo*, 183 Ariz. at 138-39 (citations omitted). The State did not do so, and the issue is now resolved against the State.

STATE v. CARPIO
Decision of the Court

We therefore vacate Carpio's conviction and sentence for disorderly conduct.⁵

II. Unlawful Flight

¶8 Carpio also argues the superior court lacked jurisdiction over his person with respect to the unlawful flight offense because the City police removed him from the Reservation in violation of the Community's extradition procedures.⁶ Whether the court has personal jurisdiction presents a legal question subject to *de novo* review. *Hoag v. French*, 238 Ariz. 118, 122, ¶ 17 (App. 2015) (citing *Duckstein v. Wolf*, 230 Ariz. 227, 233, ¶ 19 (App. 2012)). We also review the interpretation and application of the relevant statutes and agreements *de novo*. *Id.* at 121, ¶ 10 (statutes) (citing *Obregon v. Indus. Comm'n*, 217 Ariz. 612, 614, ¶ 9 (App. 2008)); *State v. Burkett*, 179 Ariz. 109, 111 (App. 1993) (agreements) (citations omitted). In doing so, we look first to the plain meaning of the words contained therein. *See State v. Bon*, 236 Ariz. 249, 251, ¶ 6 (App. 2014) (quoting *State v. Hinden*, 224 Ariz. 508, 510, ¶ 9 (App. 2010)); *Great W. Bank v. LJC Dev., L.L.C.*, 238 Ariz. 470, 475, ¶ 9 (App. 2015) (citing *ELM Ret. Ctr., L.P. v. Callaway*, 226 Ariz. 287, 290-91, ¶ 15 (App. 2010)).

¶9 Notwithstanding Arizona's general disclaimer of jurisdiction over Indians, their land, and their general right to self-governance, *see supra* ¶ 6, Arizona state courts have jurisdiction over crimes committed, in whole or in part, within Arizona's territorial borders. A.R.S. § 13-108; *Verdugo*, 183 Ariz. at 137 (citing *State v. Vaughn*, 163 Ariz. 200, 203 (App. 1989)). Indeed, "[t]he State has a particularly strong policy interest in not allowing suspects to narrowly escape arrest and avoid this State's jurisdiction over offenses committed within this State by fleeing across the border to another jurisdiction." *Lupe*, 181 Ariz. at 214. Thus, if a person is arrested on the

⁵ Because we vacate Carpio's conviction and sentence for disorderly conduct, we need not address the propriety of his arrest for that charge.

⁶ The State argues Carpio waived his right to object to personal jurisdiction on appeal by failing to raise the issue below. Although Carpio titled his motion to dismiss as one for lack of subject matter jurisdiction, we are not bound by the labels, however erroneous, attached by the parties. *See Anderson v. Valley Union High Sch., Dist. No. 22*, 229 Ariz. 52, 55, ¶ 4 (App. 2012) (citing *State v. Brown*, 9 Ariz. App. 323, 326 (1969)). Having considered the substance of Carpio's motion to dismiss, it is apparent the jurisdictional issues raised therein are identical to those presented to this Court on appeal and have not been waived.

STATE v. CARPIO
Decision of the Court

reservation after a “hot pursuit” that began on state land, the superior court’s personal jurisdiction turns on whether the state’s actions in procuring the person of the defendant interfered with tribal sovereignty. *See id.* (citing *Village of Kake v. Egan*, 369 U.S. 60, 67-68 (1962)); *see also Begay v. Roberts*, 167 Ariz. 375, 378-79 (App. 1990) (“[T]he ultimate question is whether the exercise of state court jurisdiction in a given case will ‘frustrate federal policy or violate traditional notions of tribal sovereignty.’”) (quoting *Smith Plumbing Co. v. Aetna Cas. & Sur. Co.*, 149 Ariz. 524, 529 (1986)). If a tribe has not enacted laws requiring the state to follow extradition procedures in a hot pursuit situation, there is no interference with the tribe’s right to make and be ruled by its own laws or the tribe’s power to regulate its internal and social relations. *Lupe*, 181 Ariz. at 214 (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983), and citing *Montana v. United States*, 450 U.S. 544, 564 (1981)); *Arizona ex rel. Merrill v. Turtle*, 413 F.2d 683, 685-86 (9th Cir. 1969) (recognizing “[t]he essential and intimate relationship of control of the extradition process to the right of self-government”) (citation omitted). Such is the case here.

¶10 At the time of the alleged offenses, the City and Community were bound by a Mutual Aid Agreement executed in June 2011 (the 2011 Agreement). *See* A.R.S. § 13-3872 (authorizing two or more law enforcement agencies to enter into mutual aid agreements). The 2011 Agreement provided that City and Community officers would assist each other upon request. Additionally, the 2011 Agreement provides:

[City] officers . . . who enter onto the Reservation while engaged in the “HOT PURSUIT” of a fleeing suspect of an alleged offense that occurred within the Reservation may detain, but shall not remove a Native American from the Reservation. . . . Detained Native American individuals will be turned over to the responding officers of the Community.

Carpio argues the State ignored this agreement. However, by its plain terms, the 2011 Agreement applied only when the pursuit followed an offense that occurred “within the Reservation.”⁷

⁷ Carpio asserts the words “within the Reservation” in the 2011 Agreement were a mistake because a more recent version, enacted after Carpio’s arrest and after the 2011 Agreement had expired, changed that language to “within Chandler.” He provides no evidence to suggest the amendment was intended to correct a mistake, and, absent a clear

STATE v. CARPIO
Decision of the Court

¶11 Pursuant to A.R.S. § 28-622.01, “the essential elements of the crime of unlawful flight are: (1) the defendant, who was driving a motor vehicle, wil[l]fully fled or attempted to elude a pursuing official law enforcement vehicle, and (2) the law enforcement vehicle was appropriately marked showing it to be an official law enforcement vehicle.” *State v. Martinez*, 230 Ariz. 382, 384, ¶ 8 (App. 2012) (citing *State v. Fogarty*, 178 Ariz. 170, 171 (App. 1993)). The statute encompasses “any refusal to stop on command of an officer who is in a police car . . . because of the potential for personal danger inherent in vehicular pursuit.” *Fogarty*, 178 Ariz. at 171 (emphasis omitted).

¶12 The record indicates the City officer reported Carpio’s failure to stop at his direction several miles before the two vehicles entered the Reservation. At that point, the hot pursuit began because the officer had observed Carpio commit an unlawful flight and clearly identified Carpio’s behavior as a violation of A.R.S. § 28-622.01. Thus, when the City officer entered the Reservation, he was engaged in the hot pursuit of a suspect fleeing an offense that had occurred within the City. *See Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984) (identifying, as essential elements of a hot pursuit, the “immediate or continuous pursuit of the petitioner from the scene of a crime”). Because the alleged offense for which Carpio was being pursued did not occur “within the Reservation,” the 2011 Agreement does not apply.

¶13 Carpio also argues City police disregarded the extradition procedures outlined in the Gila River Indian Community Code (GRIC Code) in violation of state law. *See* A.R.S. § 13-3869(A) (“If this state seeks the extradition of an Indian from within the jurisdiction of an Indian tribe in this state, this state shall comply with any applicable requirements of tribal extradition law.”). The GRIC Code states, in relevant part:

Any person found within the boundaries of the Reservation who is wanted by authorities of a state of the United States . . . for a violation of state or tribal law committed outside the jurisdiction of the [tribal] court, and a warrant of arrest having been issued . . ., may be arrested and taken into custody by [GRIC] law enforcement personnel for prompt transfer to the

indication of that intent, we are reluctant to construe the words of an agreement to mean something other than what they plainly state. *See Estate of Nelson v. Rice*, 198 Ariz. 563, 566, ¶ 7 (App. 2000) (citing *Emmons v. Superior Court*, 192 Ariz. 509, 513 (App. 1998)); *see also IB Prop. Holdings, L.L.C. v. Rancho Del Mar Apartments L.P.*, 228 Ariz. 61, 66-67, ¶ 16 (App. 2011) (citations omitted).

STATE v. CARPIO
Decision of the Court

appropriate enforcement agency, subject to the procedures in Section 5.1603.B.

GRIC Code § 5.1603(A) (emphasis added). No arrest warrant issued here, and the extradition procedures of the GRIC Code do not apply.

¶14 Carpio does not identify any other authority requiring the City to follow a specific procedure to effectuate an arrest following a hot pursuit arising from an alleged offense that was completed on state land. Because neither the 2011 Agreement nor the general extradition procedures of the GRIC Code apply, Carpio has not met his burden of proving the State exceeded its authority by removing him from the Reservation. *See Verdugo*, 183 Ariz. at 138 (“[T]he burden to show facts that would establish the trial court’s lack of jurisdiction, because of exclusive federal jurisdiction under the Indian Country Crimes Act, is on defendant, not the state.”). Carpio’s arrest therefore did not interfere with tribal sovereignty, and the superior court properly exercised jurisdiction over Carpio with respect to the unlawful flight offense.

CONCLUSION

¶15 We vacate Carpio’s conviction and sentence for disorderly conduct and affirm his conviction and sentence for unlawful flight from a law enforcement vehicle.



AMY M. WOOD • Clerk of the Court
FILED: JT