STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0910

State of Minnesota,
Respondent,

vs.

Linda Jane St. Clair,
Appellant.

Filed October 29, 2012
Affirmed
Kirk, Judge

Becker County District Court
File No. 03-CR-11-2812

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael Fritz, Becker County Attorney, Kevin M. Miller, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Daniel S. El-Dweek, Regional Native Public Defense Corporation, White Earth, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Rodenberg, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

On appeal from her conviction of a driver's-license-restriction violation, appellant argues that because Minn. Stat. § 171.09, subd. 1(g) (2010), is civil/regulatory, Minnesota lacks subject-matter jurisdiction in this case. We affirm.

FACTS

In December 2011, a state trooper observed a vehicle traveling at 65 miles per hour in an area on the White Earth Indian Reservation where the speed limit was 55 miles per hour. The trooper initiated a traffic stop and identified the driver of the vehicle as appellant Linda Jane St. Clair. The trooper noticed that appellant's driver's license had an ignition-interlock restriction and asked her if an ignition-interlock device was installed in the vehicle she was driving. Appellant explained that the vehicle belonged to her husband and did not have an ignition-interlock device. The trooper cited appellant for violating her restricted license by driving a vehicle without an ignition-interlock device. *See* Minn. Stat. § 171.09, subd. 1(g). Appellant has six prior driving-while-impaired (DWI) convictions.

Appellant moved to dismiss the charge, arguing that the district court lacked subject-matter jurisdiction because she is an enrolled member of an Indian tribe and the offense occurred on her reservation. The district court denied the motion, determining that the state has subject-matter jurisdiction because a violation of Minn. Stat. § 171.09, subd. 1(g), is criminal/prohibitory.

The parties signed a stipulation in which appellant waived her trial rights and agreed that the district court could consider the law enforcement reports and her White Earth Reservation enrollment card. Based on the stipulated evidence, the district court determined that the state had proven beyond a reasonable doubt that appellant was guilty of violating Minn. Stat. § 171.09, subd. 1(g). This appeal follows.

D E C I S I O N

Appellant, who is a member of the White Earth Chippewa Tribe, argues that the district court erred by determining that the state has subject-matter jurisdiction to enforce Minn. Stat. § 171.09, subd. 1(g), against her. This court reviews subject-matter jurisdiction issues de novo. *State v. Davis*, 773 N.W.2d 66, 68 (Minn. 2009).

Traditionally, Indian tribes have "retain[ed] attributes of sovereignty over both their members and their territory." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087 (1987) (quotation omitted). This "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." *Id.* (quotation omitted). In Public Law 280, Congress provided Minnesota with broad criminal and limited civil jurisdiction over Indian reservations in the state, except for the Red Lake Reservation. *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997); *see* 18 U.S.C. § 1162(a) (2010); 28 U.S.C. § 1360(a) (2010). "The purpose of this grant was to combat the problem of lawlessness on certain reservations and the lack of adequate tribal law enforcement." *Stone*, 572 N.W.2d at 729 (citing *Bryan v. Itasca County*, 426 U.S. 373, 379, 96 S. Ct. 2102, 2106 (1976)).

A state may enforce a state law on an Indian reservation under Public Law 280 if the law is criminal in nature. *Cabazon*, 480 U.S. at 208, 107 S. Ct. at 1088. There is no bright-line rule to determine whether a state law is criminal, but the *Cabazon* court applied the following test:

> [I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy.

Id. at 209-10, 107 S. Ct. at 1088-89.

Minnesota has adopted a two-step approach to applying the *Cabazon* test. *Stone*, 572 N.W.2d at 730. First, we must determine which conduct is the focus of the analysis and, second, apply the analysis to the focused-on conduct. *Id.*

1. The proper focus of the analysis is the narrow conduct.

We first determine which conduct is the focus of the analysis. *Id.* "The broad conduct will be the focus of the test *unless* the narrow conduct presents substantially different or heightened public policy concerns. If this is the case, the narrow conduct must be analyzed apart from the broad conduct." *Id.* Public policy means "public *criminal* policy," which "goes beyond merely promoting the public welfare" and "seeks to protect society from serious breaches in the social fabric which threaten grave harm to persons or property." *Id.*

"The general public policy behind the state's traffic and driving laws is to protect the safety of persons and property on the roadways."[1] *Id.* In *Stone*, the supreme court considered whether several traffic and driving-related laws, including failure to provide proof of insurance, driving with expired registration, driving without a license, driving with an expired license, driving without a seatbelt, and failure to have a child in a child restraint seat were criminal/prohibitory or civil/regulatory. *Id.* at 727-28. The supreme court concluded that the broad conduct of driving should be analyzed because none of the laws at issue "raise[] policy concerns which are substantially different or heightened from the general public policy behind the driving laws." *Id.* at 731. But the supreme court noted that certain traffic laws could raise heightened public-policy concerns, including the statute prohibiting drinking and driving, because its "violation creates a greater risk of direct injury to persons and property on the roadways." *Id.*

Minnesota appellate courts have not addressed whether the law at issue in this matter, Minn. Stat. § 171.09, subd. 1(g), is criminal/prohibitive or civil/regulatory. But the Minnesota Supreme Court has analyzed other driving offenses since *Stone*. In *State v. Busse*, the supreme court considered whether the state had subject-matter jurisdiction to enforce the charge of driving after cancellation as inimical to public safety against a member of an Indian tribe who was driving on his own reservation. 644 N.W.2d 79, 80-81 (Minn. 2002). Busse's driver's license had been cancelled as a result of four separate driving-under-the-influence offenses. *Id.* at 80. The supreme court determined that

[1] While the broad conduct here could be considered to be driving in violation of a DWI-based license revocation or cancellation, we follow supreme court precedent and consider the broad conduct to be the state's traffic and driving laws in general.

courts are not prohibited from considering the underlying basis for a license revocation or cancellation in order to determine if the offense implicates heightened public-policy concerns. *Id.* at 84. After considering the underlying basis, the supreme court concluded that "the offense of driving after cancellation as inimical to public safety presents substantially different or heightened public policy concerns." *Id.* at 88. Thus, the focus of the *Cabazon* analysis was the narrow conduct of driving after cancellation as inimical to public safety. *Id.* The supreme court concluded that this conduct was generally prohibited and, therefore, the law was criminal/prohibitory. *Id.*

In *State v. Losh*, the supreme court considered whether driving after revocation of a driver's license, when the underlying basis for the revocation was DWI, is criminal/prohibitory. 755 N.W.2d 736, 742 (Minn. 2008). The supreme court reaffirmed its conclusion in *Busse* that, in defining the proper focus, courts may consider the underlying basis for the driver's license revocation and whether the specific offense implicates substantially different or heightened public-policy concerns. *Id.* at 743. The supreme court applied the first step of the *Stone* process and determined that a driver's license revocation based on the underlying conduct of DWI "is part of a larger, overall strategy of the legislature to protect the public from individuals who, due to their drug and alcohol use, pose a safety threat to others when driving on Minnesota roads." *Id.* at 744. As a result, the supreme court concluded that "the narrow conduct of driving after revocation, as a result of driving while impaired, raises substantially different or heightened public policy concerns as compared to the traffic and driving laws in general." *Id.* Applying the second step of the *Stone* process, the supreme court concluded that the

narrow conduct at issue was generally prohibited and, thus, that it was criminal/prohibitory. *Id.* at 745.

Here, appellant argues that Minn. Stat. § 171.09, subd. 1(g), is a civil/regulatory law. She asserts that, under the first step of the *Stone* test, the broad conduct of driving should be analyzed because "the general public policy of driving laws and the policy of the ignition interlock system are identical." In response, the state contends that the narrow conduct of violating the ignition-interlock statute should be analyzed because it presents substantially different or heightened public-policy concerns compared to the broad conduct of driving.

Applying the *Stone* test, we first determine whether a violation of an ignition-interlock restriction under Minn. Stat. § 171.09, subd. 1(g), raises substantially different or heightened public-policy concerns than the general conduct of driving. This statute is distinguishable from the statutes at issue in *Stone*, *Busse*, and *Losh*. The statute provides that "[i]t is a misdemeanor for a person who holds a restricted license issued under section 171.306 to drive, operate, or be in physical control of any motor vehicle that is not equipped with a functioning ignition interlock device certified by the commissioner." Minn. Stat. § 171.09, subd. 1(g). Under section 171.306, an individual whose driver's license has been revoked, cancelled, or denied may participate in the ignition-interlock-device program if she meets certain requirements. Minn. Stat. § 171.306, subd. 1(c) (2010). The ignition-interlock-device program allows an individual to obtain a restricted driver's license if she installs equipment on her vehicle "that is designed to measure breath alcohol concentration and to prevent a motor vehicle's ignition from being started

by a person whose breath alcohol concentration measures 0.02 or higher." *Id.*, subds. 1(b), 4(a)(1) (2010).

As the supreme court determined in *Losh* and *Busse*, it is permissible to consider the underlying basis of the sanction in order to determine whether heightened public-policy concerns are presented. *Losh*, 755 N.W.2d at 743; *Busse*, 644 N.W.2d at 84. In both of those cases, the underlying basis for the cancellation or revocation involved driving under the influence of alcohol, which, as the supreme court observed in *Stone*, raises heightened public-policy concerns. *Losh*, 755 N.W.2d at 738; *Busse*, 644 N.W.2d at 80; *Stone*, 572 N.W.2d at 730. Similarly, the underlying basis of appellant's restriction is that her driver's license was revoked, cancelled, or denied due to six DWI convictions. *See* Minn. Stat. § 171.306, subd. 1(c). But unlike the appellants in *Losh* and *Busse*, appellant was issued a restricted license after her license was revoked that allowed her to continue to drive a vehicle with an ignition-interlock device installed in it. *See id.*, subd. 4 (2010). The offense at issue in this case raises similar public-policy concerns because it is part of the legislature's broad strategy to ensure public safety on Minnesota roads. *See Losh*, 755 N.W.2d at 744. Because an ignition-interlock violation raises heightened public-policy concerns as compared to traffic and driving laws in general, under the first step of the *Stone* test, the proper focus is the narrow conduct of violating the ignition-interlock program.

2. Minn. Stat. § 171.09, subd. 1(g), is a criminal/prohibitory law.

We next apply the *Cabazon* analysis to the focused-on conduct to determine whether the law is civil/regulatory or criminal/prohibitory. *Stone*, 572 N.W.2d at 730. A

law is civil/regulatory if the conduct is generally permitted, subject to exceptions, and it is criminal/prohibitory if the conduct is generally prohibited. *Id.*

Unlike driving in general, driving in violation of a restricted license by driving a vehicle without an ignition-interlock device is conduct that is generally prohibited. *See* Minn. Stat. § 171.306, subd. 4(b). The law provides only one narrow exception, which allows an employee to drive an employer-owned vehicle in certain circumstances. *Id.*

Appellant asserts that *Losh* "suggests that the result in that case might have been different if Losh had possessed a limited license." Citing Minn. Stat. § 171.30 (2006), the supreme court in *Losh* noted that "Minnesota law does set forth a procedure for a driver with a revoked license to apply for a limited license that would allow him or her to drive to certain places during specified hours of the day."[2] *Losh*, 755 N.W.2d at 745. The supreme court determined that, while the statute could be considered to have an exception, such an exception did not apply because Losh did not have a limited license and the possible exception "is limited in nature." *Id.*

A "limited license" under section 171.30 is distinguishable from a "restricted license." *See* Minn. Stat. § 171.306, subd. 4. While an individual who complies with specific requirements may receive a limited license to drive to certain locations, an individual with a restricted license may only drive a vehicle that is equipped with an

[2] Minn. Stat. § 171.30 (2006) provides that an individual whose license has been suspended or revoked may receive a limited license that allows him or her to drive in certain circumstances, such as to attend chemical-dependency treatment or postsecondary education. But, "[t]he commissioner shall issue a limited license to a person only when the person complies with the waiting period and conditions specified in this part, part 7409.3600, and Minnesota Statutes, section 171.30." Minn. R. 7503.1800, subp. 2 (2006).

ignition-interlock device, except for one narrow exception. *See id.*, subd. 4(b). Notwithstanding this narrow exception, we conclude that the conduct at issue here is generally prohibited. Thus, the statute is criminal/prohibitive.

Accordingly, we conclude that the district court did not err by determining that the state has subject-matter jurisdiction to enforce Minn. Stat. § 171.09, subd. 1(g), against appellant.

Affirmed.