

STATE OF MINNESOTA  
IN SUPREME COURT

A18-0545

Court of Appeals

Thissen, J.

State of Minnesota,

Respondent,

vs.

Filed: January 15, 2020  
Office of Appellate Courts

Randy Lee Thompson,

Appellant.

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Keith Ellison, Attorney General, Saint Paul, Minnesota; and

David L. Hanson, Beltrami County Attorney, Bemidji, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Saint Paul, Minnesota; and

Kate M. Baxter-Kauf, Special Assistant State Public Defender, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota, for appellant.

S Y L L A B U S

When, on the Red Lake Reservation, a non-Indian violates a Minnesota law under circumstances where the non-Indian is subject to the State of Minnesota's criminal jurisdiction, Red Lake Band police officers are authorized to detain and expel the non-Indian from the Reservation.

Affirmed.

## OPINION

THISSEN, Justice.

Appellant Randy Lee Thompson challenges his conviction for first-degree driving while impaired. *See* Minn. Stat. § 169A.24, subd. 1(2), subd. 2 (2018). Thompson argues that he was unlawfully arrested by a Red Lake Band police officer and that all evidence obtained as a result of that unlawful arrest should be suppressed. The district court denied Thompson’s motion to suppress. It reasoned that because Red Lake is a sovereign nation, the State has no authority to grant or deny enforcement power to Red Lake officers.

The court of appeals affirmed the district court, holding that tribal officers have the authority to detain and eject individuals from the Red Lake Reservation. Because we hold that Officer Patrick Bendel of the Red Lake Police Department acted within his lawful authority when he detained Thompson and transported him to Beltrami County law enforcement, we affirm.

## FACTS

On August 16, 2017, Thompson drove to the Red Lake Indian Health Service Hospital in Red Lake to pick up his brother. Officer Bendel was present when Thompson arrived at the hospital. Officer Bendel observed Thompson drive into the hospital parking lot, park, and exit his car. Officer Bendel observed that Thompson’s “eyes were watery and bloodshot” and that “he was slurring his words.”

Officer Bendel approached and asked Thompson if he had been drinking. Thompson admitted that he had had “a couple beers.” Officer Bendel asked Thompson if he was willing to take a preliminary breath test. Thompson consented to the test. The test

showed an alcohol concentration of 0.121. Officer Bendel then asked Thompson if he was willing to perform field sobriety tests so Officer Bendel could “gauge his level of impairment.” Thompson agreed. Officer Bendel administered the Horizontal Gaze Nystagmus Test, the One Leg Stand Test, and the Walk and Turn Test. Thompson failed all three.

Officer Bendel then informed Thompson “that he was being detained for suspicion of Driving Under the Influence of Alcohol.” Officer Bendel handcuffed Thompson, read him his *Miranda* rights, and secured him in the back seat of the patrol car. Officer Bendel then notified Red Lake dispatch that he had detained Thompson and asked that dispatch contact the Beltrami County Sheriff’s Department to arrange a transfer of custody at the county line. Deputy Sheriff Jeff Roberts contacted Officer Bendel, stating that he would meet Officer Bendel at the reservation-county line to take custody of Thompson.

When Deputy Roberts arrived at the reservation-county line, he put his handcuffs on Thompson and placed Thompson in his squad car. He observed that Thompson had “bloodshot watery eyes.” Deputy Roberts then transported Thompson to the Beltrami County jail. While in the car, Thompson made “a spontaneous utterance . . . that he had had two beers” and that “he had driven in to pick his brother up.” Upon arriving at the jail, Deputy Roberts read Thompson the Minnesota Implied Consent Advisory. Thompson said that he understood the statements and that he did not wish to speak to an attorney. He agreed to provide another breath sample and his alcohol concentration was reported as 0.11, above the legal limit. Deputy Roberts read Thompson his *Miranda* rights and Thompson declined to provide a statement. Thompson was jailed on charges of first-

degree driving while impaired, *see* Minn. Stat. § 169A.24, subd. 1 (2018), and gross misdemeanor driving after cancellation as inimical to public safety, *see* Minn. Stat. § 171.24, subd. 5 (2018).

In the district court, Thompson moved to suppress all evidence obtained following what he characterized as Officer Bendel’s unlawful arrest. He argued that Officer Bendel was not a “peace officer” as defined in Minn. Stat. § 169A.03, subd. 18 (2018), and therefore could not legally arrest Thompson for driving while impaired. In response, the State argued that, because the State of Minnesota does not have jurisdiction over the Red Lake Reservation, the State can neither grant nor deny authority to Red Lake officers, nor can it dictate how Red Lake makes or enforces the law. The district court denied Thompson’s motion to suppress. It reasoned that Red Lake is a sovereign nation and therefore governs and polices itself. The district court concluded that the State did not have the power to grant or deny law enforcement authority to Red Lake police officers.

To obtain appellate review of the pretrial suppression ruling, Thompson and the State stipulated to the prosecution’s case. *See* Minn. R. Crim. P. 26.01, subd. 4. Thompson waived his right to a jury trial and agreed that his right to appeal would be limited to the district court’s suppression ruling. Both parties agreed that the pretrial ruling would be dispositive of the case. The district court then found Thompson guilty of driving while impaired and sentenced him to 60 months. Thompson appealed.

Following oral argument, the court of appeals requested supplemental briefing from the parties. Among other things, the court asked the parties to respond to the following question:

Does an Indian tribe or band have authority to expel a person who is not a member of that tribe or band and/or not a member of any Indian tribe from an Indian reservation? If so, does that authority empower a tribal police officer to detain a non-member suspected of driving while impaired on an Indian reservation and deliver him or her to a county deputy at the reservation border?

After receiving supplemental briefs from the parties addressing these questions, the court of appeals affirmed the district court's suppression ruling. *State v. Thompson*, 929 N.W.2d 21, 23–24 (Minn. App. 2019). The court concluded that Officer Bendel's actions were lawful because “[t]ribal law enforcement authorities have the power to restrain those who disturb public order on the reservation, and if necessary, to eject them.” *Id.* at 32 (quoting *Duro v. Reina*, 495 U.S. 676, 696–97 (1990), *superseded by statute on other grounds*, 25 U.S.C. § 1301 (2000), *as recognized in United States v. Lara*, 541 U.S. 193 (2004)). We granted Thompson's petition for review.

### ANALYSIS

On appeal of a district court's denial of a pretrial motion to suppress, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

Indian tribes “possess [the] traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands.” *Duro*, 495 U.S. at 696. Tribal law enforcement authorities therefore “have the power to restrain those who disturb public order on the reservation, and if necessary, to eject them. Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities.” *Id.* at 697; *see also State v. A-1*

*Contractors*, 520 U.S. 438, 456 n.11 (1997) (“We do not here question the authority of tribal police to patrol roads within a reservation . . . and to detain and turn over to state officers nonmembers stopped on the highway for conduct violating state law.”); *State v. Horseman*, 866 P.2d 1110, 1115–16 (Mont. 1993); *State v. Schmuck*, 850 P.2d 1332, 1339 (Wash. 1993); *Colyer v. State Dep’t of Transp.*, 203 P.3d 1104, 1110–11 (Wy. 2009).<sup>1</sup>

In addition, the United States Court of Appeals for the Eighth Circuit has reasoned that “[b]ecause the power of tribal authorities to exclude non-Indian law violators from the reservation would be meaningless if tribal police were not empowered to investigate such violations, tribal police must have such power.” *United States v. Terry*, 400 F.3d 575, 579–80 (8th Cir. 2005).

In this case, Officer Bendel detained and investigated Thompson and ejected him from the Red Lake Reservation pursuant to the tribal authority to detain and remove recognized by the Supreme Court and other federal courts.<sup>2</sup> Officer Bendel observed that

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<sup>1</sup> Thompson did not challenge the State’s jurisdiction to prosecute him for violating Minnesota’s law against driving while impaired on the Red Lake Reservation.

<sup>2</sup> Thompson contends that the State forfeited its detention and removal argument by failing to raise it before the district court and in its initial brief to the court of appeals. We may consider arguments not addressed by the district court “when the interests of justice require their consideration and addressing them would not work an unfair surprise on a party.” *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). We have considered arguments under this exception in cases where, among other things, “all parties have briefed the issues,” *Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn. 1982), and where “[t]he parties agree[d] on the relevant facts and only dispute[d] . . . an issue of law,” *Johnson v. State*, 673 N.W.2d 144, 148 (Minn. 2004). In the district court, the State argued generally that Red Lake has jurisdiction over its detainment procedures. Further, the State briefed its detention and removal argument before the court of appeals—in supplemental briefing—and before this court. The supplemental briefing was initially done at the request of the court of appeals because both Thompson and the State raised jurisdictional issues at

Thompson seemed intoxicated. He conducted a preliminary breath test and field sobriety tests with Thompson’s consent.<sup>3</sup> And he contacted the Beltrami County Sheriff—the proper law enforcement authority—to arrange for a deputy sheriff to pick up Thompson at the reservation-county line.<sup>4</sup> Officer Bendel was acting within his proper authority to detain and transport Thompson. Thompson’s detention was therefore lawful.

Thompson argues that this case is controlled by our decision in *State v. Hester*, 796 N.W.2d 328 (Minn. 2011). We disagree. In *Hester*, a driver was convicted of criminal test refusal for refusing to submit to sobriety testing requested by a Lower Sioux police officer. *Id.* at 330. We held that a person commits criminal test refusal in violation of Minn. Stat. § 169A.20, subd. 2 (2010), only by refusing a request to take a blood, breath, or urine test when that request is made by a “peace officer,” as defined in Minn. Stat. § 169A.03, subd. 18. *Hester*, 796 N.W.2d at 336. A request by a peace officer is an element of the crime. Because we concluded that the Lower Sioux officer was not a peace officer as defined by statute, we held that the State had not proven an element of the crime and, accordingly, *Hester* could not be convicted of criminal test refusal. *Id.*

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oral argument that had not been addressed in their respective briefs. And both parties had the opportunity to respond to the court of appeals’ questions. Moreover, the facts here are undisputed. Under these circumstances, we conclude that we can address the State’s detention and removal argument.

<sup>3</sup> Thompson consented to the tests and does not argue that these procedures violated his rights under the Fourth Amendment to the United States Constitution or Article I, Section 10, of the Minnesota Constitution.

<sup>4</sup> Thompson does not argue that Deputy Roberts lacked probable cause to arrest him.

This case is different. Proving Officer Bendel's status as a peace officer under Minnesota law is not necessary to establish that Thompson violated state law by driving while impaired; it is not an element of the crime of driving while impaired.

Thompson nonetheless argues that the fact that Officer Bendel is not a "peace officer" as defined in Minnesota's statute prohibiting driving while impaired, Minn. Stat. § 169A.03, subd. 18, means that Thompson's arrest was unlawful because Officer Bendel had no authority under Minnesota law to detain or arrest Thompson. The fundamental flaw in Thompson's argument is that Officer Bendel did not need to be authorized under Minnesota law to detain or arrest Thompson to remove him from the reservation and transport him to Beltrami County law enforcement. Officer Bendel was acting in accordance with his detain-and-remove authority. Therefore, Thompson's argument fails.

### **CONCLUSION**

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.