STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1517

State of Minnesota,
Respondent,

vs.

Arthur Dale Greene,
Appellant.

Filed July 14, 2009
Affirmed
Lansing, Judge

Aitkin County District Court
File No. 01-T5-06-005019

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

James Ratz, Aitkin County Attorney, Benjamin M. Smith, Assistant County Attorney, 217 Second Street Northwest, Aitkin, MN 56431 (for respondent state)

Chris Allery, Cody Nelson, Anishinabe Legal Services, 411 First Street, P.O. Box 157, Cass Lake, MN 56633 (for appellant Greene)

Frank Bibeau, Leech Lake Band of Ojibwe, 6530 Highway 2 Northwest, Cass Lake, MN 56633 (for amicus curiae Leech Lake Band of Ojibwe)

Considered and decided by Shumaker, Presiding Judge; Lansing, Judge; and Willis, Judge.*

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

LANSING, Judge

The district court denied Arthur Greene's pretrial motion to dismiss for lack of jurisdiction and, on stipulated facts, found him guilty of the misdemeanor driving offense of failure to produce proof of motor-vehicle insurance. Greene, an enrolled member of the Minnesota Chippewa Tribe, appeals the jurisdiction determination. Because we conclude that Greene was subject to the state's jurisdiction for violation of the civil/regulatory statute where he was stopped on State Highway 65, we affirm.

F A C T S

An Aitkin County Deputy Sheriff stopped Arthur Greene for failing to signal a turn onto Highway 65 in East Lake, Minnesota. The stop occurred one-eighth to one-quarter mile south of the intersection of County Road 13 and State Highway 65. The deputy asked Greene for proof of motor-vehicle insurance, and Greene was unable to provide it. Greene was cited for the misdemeanor violation of failure to provide proof of insurance.

At a pretrial hearing on the charge, Greene asserted that the State of Minnesota did not have jurisdiction to prosecute him for the offense because he is an enrolled member of the Minnesota Chippewa Tribe, and the traffic stop occurred in federally established

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

Indian Country. Greene contended that the section of Highway 65 on which he was stopped is a right-of-way through a dependent Indian community and, therefore, qualifies as "Indian Country" as defined by 18 U.S.C. § 1151 (b) (2006). The state disputed that the location of the stop is Indian Country.

Following oral argument and the submission of memoranda, the district court denied Greene's motion to dismiss for lack of jurisdiction. The district court found that the location of the stop, on State Highway 65, was on a right-of-way that is not within the statutory definition of "Indian Country," whether or not the surrounding area is a dependent Indian community.

On stipulated facts, the district court found Greene guilty of failing to provide proof of insurance. Greene appeals the district court's exercise of subject-matter jurisdiction.

D E C I S I O N

A state's authority to exercise jurisdiction over issues relating to Indians is governed by federal law. *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997). Except in two tribal lands that are not relevant to this litigation, Minnesota has broad criminal/prohibitory jurisdiction but limited civil/regulatory jurisdiction in Indian Country. *Id*; *see also* 18 U.S.C. § 1162 (2006) (defining state jurisdiction over Indians or Indian Country). Thus, an offense generally does not come within Minnesota's jurisdiction if it is a civil/regulatory offense committed within Indian Country. *State v. Jones*, 729 N.W.2d 1, 5 (Minn. 2007), *cert. denied* 128 S. Ct. 879 (2008). Neither Greene nor the state disputes that failure to provide proof of insurance is an offense that

is properly classified as civil/regulatory. *See Stone*, 572 N.W.2d at 731 (classifying failure to provide proof of insurance as civil/regulatory offense).

The issue that forms the primary dispute in this appeal is whether the section of Highway 65 on which Greene was driving is within Indian Country. If it is outside Indian Country, the state has jurisdiction over the civil/regulatory offense; if it is within Indian Country, the state does not. "Indian Country" is defined by 18 U.S.C. § 1151 (2006) to include three categories of land:

> (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
>
> (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
>
> (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Greene does not contend that the section of Highway 65 on which he was driving is an Indian reservation as defined in § 1151(a) or an Indian allotment as defined in § 1151(c). Consequently, the jurisdictional issue turns on whether the section of Highway 65 meets the § 1151(b) definition of "dependent Indian communit[y]."

The term "dependent Indian communit[y]," as used in 18 U.S.C. § 1151(b), was interpreted for purposes of both civil and criminal jurisdiction in *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 118 S. Ct. 948 (1998). To be a dependent Indian community, the land must be "set aside by the Federal Government for the use of the Indians as Indian land . . . [and it] must be under federal superintendence." *Id*. at 527,

118 S. Ct. at 953. In support of his argument that he was within a dependent Indian community, Greene relies, not on *Venetie*, but on an earlier Eighth Circuit case, *United States v. South Dakota*, 665 F.2d 837 (8th Cir. 1981), *cert. denied* 459 U.S. 823 (1982). In *South Dakota*, the court applied a broader definition of "dependent Indian communit[y]" to conclude that a low-income housing project located within the city of Sisseton met the definition. *Id.* at 843. But the multi-factored broader definition used in *South Dakota* was specifically rejected in *Venetie*. 522 U.S. at 531 n.7, 118 S. Ct. at 955 n.7. Furthermore, Greene has established only that the land abutting one side of the relevant section of Highway 65 belongs to the Mille Lacs Band of Ojibwe; the land on the other side is privately owned by an individual owner. Significantly, the record fails to establish that the land surrounding the area in which Greene was driving on Highway 65 is either a federal set-aside for Indian use or under federal superintendence.

Even if Greene could clear the proof hurdles on set-aside and superintendence, he is still blocked by § 1151(b)'s failure to provide for rights-of-way that run through a dependent Indian community. The district court specifically identified Highway 65 as a right-of-way, and neither the state nor Greene challenges this identification. Although § 1151(a) includes rights-of-way that run through an Indian reservation and § 1151(c) includes rights-of-way that run through an Indian allotment, § 1151(b) is silent on rights-of-way that run through dependent Indian communities. We, therefore, turn to the text of § 1151 to determine whether its language incorporates a right-of-way running through dependent Indian communities.

"When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2008); *see also Carcieri v. Salazar*, 129 S. Ct. 1058, 1063-64 (2009) (stating that court must apply statutory text "according to its terms" if plain and unambiguous). Phrases in a statute are not to be read in isolation, but must be considered in context with the statute as a whole. *United States v. Morton*, 467 U.S. 822, 828, 104 S. Ct. 2769, 2773 (1984); *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005). When "Congress includes particular language in one section of a statute but omits it in another section of the same Act," courts generally presume that Congress did so intentionally. *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 300 (1983); *see also Wallace v. Comm'r of Taxation*, 289 Minn. 220, 230, 184 N.W.2d 588, 594 (1971) (stating that "courts cannot supply that which the legislature purposely omits or inadvertently overlooks").

Reading § 1151's three clauses together, we perceive no ambiguity about whether § 1151 incorporates rights-of-way running through dependent Indian communities. It is plain that § 1151(a) expressly includes rights-of-way through reservations as Indian Country. Likewise, § 1151(c) expressly includes rights-of-way that run through allotments. Significantly, § 1151(b) defines "dependent Indian communities" without reference to rights-of-way. Because Congress expressly stated that rights-of-way are included as Indian Country in § 1151(a) and (c) but did not insert a similar provision in § 1151(b), we can only conclude that Congress did not intend rights-of-way running through dependent Indian communities to be included in Indian Country. *See Wallace,*

289 Minn. at 230, 184 N.W.2d at 594 (stating that courts cannot add what legislature omitted).

Relying on *Montana v. Blackfeet Tribe of Indians*, Greene argues that any ambiguity in § 1151 should be liberally construed in favor of an interpretation that would benefit Indians' interests. 471 U.S. 759, 766, 105 S. Ct. 2399, 2403 (1985). We do not disagree with this general rule, but the rule applies only to the resolution of ambiguities, and § 1151 is not ambiguous. The Supreme Court has cautioned that resolving ambiguities in favor of Indians cannot be "a license to disregard clear expressions of . . . congressional intent." *Rice v. Rehner,* 463 U.S. 713, 732-33, 103 S. Ct. 3291, 3303 (1983). A plain reading of § 1151 evidences a clear intent to exclude rights-of-way in dependent Indian communities from the definition of "Indian Country."

As an alternative argument, Greene contends that the Minnesota Chippewa Tribe's treaty-based usufructuary rights bar prosecution for his offense. For Indians, a usufructuary right is a "right, privilege, or immunity . . . with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof." 18 U.S.C. § 1162(b) (2006).

Greene imposes a broad meaning on these rights when he argues, by analogy, that they should encompass the everyday employment activities that Indians pursue to subsist and provide for themselves. We find little support for this sweeping extension and decline to adopt it. Greene was not "hunting, trapping, or fishing" when he was stopped by the deputy sheriff. Neither was he traveling in pursuit of hunting, trapping, or fishing. Even if he had been, his use of modern transportation is not thereby freed from regulation. *See United States v. Gotchnik*, 222 F.3d 506, 510 (8th Cir. 2000) (stating that

usufructuary rights encompass use of modern hunting and fishing gear, but not "modern modes of transportation to reach desired hunting and fishing areas"). In short, the state statute requiring proof of insurance for motor vehicles is not "control, licensing, or regulation" of hunting, trapping, or fishing, and prosecuting Greene for failure to provide proof of motor-vehicle insurance while driving on Highway 65 does not violate the Minnesota Chippewa Tribe's usufructuary rights.

Finally, Greene challenges the continued validity of the Minnesota Supreme Court's opinion in *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000). *R.M.H.* addresses jurisdiction over Indians when they are on the reservation of a tribe other than their own. *Id.* at 59. *R.M.H.* would not affect the prosecution of Greene for failure to provide proof of insurance while driving on Highway 65, and we do not address that part of Greene's argument.

Affirmed.