

Legal Update: United States v. Cooley

Description

United States v. Cooley, 593 U.S. ____ (2021)

On June 1, 2021, the United States Supreme Court (SCOTUS), in [United States v. Cooley](#), examined the scope of American Indian tribes' sovereign powers. In its first major opinion on the topic in decades, SCOTUS unanimously held that an Indian tribe's police officer has the authority to temporarily detain and search a non-Indian suspected of breaking federal or state law within reservations.

FACTS

The defendant, Joshua James Cooley, was arrested after a tribal police officer observed Cooley parked in his vehicle on the side of a road within the Crow Reservation in Montana with "watery, bloodshot eyes" and two firearms laying on the front seat. While waiting for tribal and county officers for assistance, the officer further observed a glass pipe and a plastic bag containing methamphetamine in plain view. During their exchange, the tribal officer assumed, based upon Cooley's appearance, that he did not belong to a Native American Tribe, but did not ask Cooley or verify this conclusion. Cooley was subsequently indicted by a federal grand jury on drug and gun offenses.

A motion to suppress the evidence was granted on the grounds that the tribal officer was acting outside the scope of his jurisdiction as a Crow Tribe law enforcement officer when he seized Cooley, in violation of the Indian Civil Rights Act of 1968 ("ICRA"). The Ninth Circuit Court of Appeals affirmed the district court's decision, finding that the tribal police officer lacked jurisdiction to detain Cooley, a non-Native person, without first making any attempt to determine whether he was a Native American. The government appealed to SCOTUS.

SCOTUS OPINION

In a unanimous decision, SCOTUS held that a tribal police officer has authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law.

Justice Breyer's opinion looks to the reach of the Court's decision in [Montana v. United States](#), which set out the general rule that tribes no longer retain inherent governmental powers over non-Indian conduct but identified two exceptions to that rule. The first allowed tribes to "regulate, through taxation, licensing, or other means, the activities of nonmembers who entered consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements." *Montana*, 450 U.S. at 565. The second exception, which Breyer found "fits the present case, almost like a glove[.]" allowed tribes to "retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation *when that conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the tribe.*" *Id.*, at 566 (emphasis added).

SCOTUS reversed the Ninth Circuit and remanded, noting that without the power to detain and search non-Indians in such circumstances it would make it “difficult for tribes to protect themselves against ongoing threats” such as “non-Indian drunk drivers, transporters of contraband, or other criminal offenders operating on roads within the boundaries of a tribal reservation.”

TAKEAWAY

In order to protect against a threat to the tribe’s health or welfare, tribal police have the authority to temporarily detain and search non-Indians suspected of violating federal or state law on tribal highways.



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