

STATE V. CHARLIE

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DELVIN CHARLIE,
Defendant-Appellant.

No. 32,504

COURT OF APPEALS OF NEW MEXICO

December 4, 2013

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean, Jr.,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, Jacqueline R. Medina, Assistant
Attorney General, Albuquerque, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, B. Douglas Wood III, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, J. MILES
HANISEE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} This appeal raises the threshold question of whether a member of the Navajo Nation may be temporarily transported outside of the Navajo Nation by a cross-

commissioned state law enforcement officer to conduct DWI testing without violating the Navajo Nation's tribal sovereignty or extradition procedures. The parties agree that a cross-commission agreement existed between the State of New Mexico and the Navajo Nation at the time of the investigation. However, in the proceedings below, neither of the parties introduced the cross-commission agreement into evidence. As a result, the district court did not have the opportunity to review the cross-commission agreement in order to assess the legal effect of the agreement itself on the scope of authority of cross-commissioned officers. Such a legal determination is essential. Because the cross-commission agreement may contain information necessary for an informed and reasoned legal analysis under the circumstances of this case, we reverse and remand to allow the district court to consider the terms of the cross-commission agreement in effect at the time of the investigation to decide as a matter of law how that agreement affects Officer Gonzales's scope of authority under the facts of this case and for any further proceedings consistent with this Opinion.

BACKGROUND

{2} The parties do not dispute the basic facts of this case. Officer Paul Gonzales, a cross-commissioned state police officer, stopped Defendant Delvin Charlie, a member of the Navajo Tribe, on Navajo Nation land, after observing Defendant turn his car around in an apparent attempt to evade a sobriety checkpoint that Officer Gonzales was working. During the stop, Officer Gonzales had Defendant undergo standardized field sobriety tests, which Officer Gonzales believed Defendant could not satisfactorily perform. Officer Gonzales placed Defendant under arrest then transported Defendant off the reservation to the New Mexico State Police office in Farmington, New Mexico, for chemical testing. There was no dispute that "there was no [certified] breath testing machine located on the [r]eservation." After taking a breath alcohol content test at the New Mexico State Police office, Defendant was transported back to the detention center in Shiprock, New Mexico, where he was booked on tribal charges. Officer Gonzales subsequently drafted a criminal summons and complaint in San Juan County Magistrate Court for prosecution of the state charges, which was mailed to Defendant and filed two days after the incident. Officer Gonzales has testified that the state charges were based on Defendant's admission that he was coming from the Motel 6 in Farmington when he was stopped.

{3} In the magistrate court prosecution that followed, Defendant filed a motion to dismiss for lack of jurisdiction, contending that Officer Gonzales "failed to follow the Navajo extradition procedure thus[] challenging the Navajo Nation's right to make and enforce laws for Navajo citizens on Navajo land." Defendant subsequently entered a conditional guilty plea in magistrate court, reserving his right to appeal on the issue of jurisdiction. On appeal to the district court, Defendant again filed a motion to dismiss, or in the alternative, to suppress the alcohol breath test results. Defendant contended that, because Defendant "was illegally removed from the [r]eservation, this either invalidates the arrest, meaning the case should be dismissed[,] or should result in the suppression of the alcohol breath test results." The State countered that (1) Officer Gonzales was cross-commissioned to investigate state and tribal crimes; (2) Officer Gonzales was

“specifically authorized or permitted to administer an off-reservation [b]reath [a]lcohol [t]est by Tribal Police” and was entitled to rely upon representations tribal authorities made to him; (3) there was no extradition because Defendant was transported back to the Shiprock Detention Center for booking after being temporarily removed from the Navajo Nation for chemical testing; and (4) absent a showing that Officer Gonzales exceeded his authority or infringed on Navajo policies, there was no legal basis to invalidate Defendant’s arrest or to suppress evidence. After a hearing, the district court denied Defendant’s motion. Defendant appeals that order.

DISCUSSION

Standard of Review

{4} When the relevant facts as to the issue of jurisdiction are not in dispute, a challenge to the magistrate court’s jurisdiction is reviewed de novo. *State v. Nysus*, 2001-NMCA-023, ¶ 3, 130 N.M. 431, 25 P.3d 270. In addition, “[t]he authority of state officers to investigate off-reservation crimes in Indian country is a question of law, which we review de novo.” *State v. Harrison*, 2010-NMSC-038, ¶ 9, 148 N.M. 500, 238 P.3d 869.

{5} Our Supreme Court has stated that “[w]hen a crime occurs both inside and outside of Indian country, state courts acquire concurrent jurisdiction with tribal and federal courts.” *Id.* ¶ 13. However, although “the state has jurisdiction over off-reservation crimes committed by Indians[,] . . . a state officer’s investigative authority in Indian country necessarily is limited by tribal sovereignty; i.e., the right of reservation Indians to make their own laws and be ruled by them.” *Id.* ¶ 20 (internal quotation marks and citation omitted).

{6} None of our cases deal with the scope of authority of a cross-commissioned officer as a matter of law, or with the ability of a cross-commissioned officer to remove an Indian defendant from Indian land as part of an investigation for violations of either state or tribal law. As a general matter, however, “[m]ost courts that have addressed a state officer’s authority to conduct criminal investigations in Indian country also have found that a determination of whether such an exercise of state authority infringes on tribal sovereignty turns on the existence of a governing tribal procedure.” *Id.* ¶ 23 (internal quotation marks and citation omitted). Where “there is a Navajo tribal procedure for dealing with the suspect[, f]ailure to follow that procedure violates tribal sovereignty.” *City of Farmington v. Benally*, 1995-NMCA-019, ¶ 8, 119 N.M. 496, 892 P.2d 629. This is because a state’s exercise of this choice “challenges the [t]ribe’s right to make and enforce laws for Navajo citizens on Navajo land, which goes to the heart of the right of self-government.” *Id.* ¶ 5. Moreover, due to the unique nature of tribal sovereignty, we have held that when state authorities choose not to follow a governing tribal procedure, the state court is deprived of jurisdiction to hear the case. *See id.* ¶¶ 2-3, 14 (holding that when a Navajo tribal member was pursued from state land into Navajo land, arrested, and removed to the state for state prosecution, and county law

enforcement officers did not follow the relevant Navajo extradition treaties, the state court never acquired jurisdiction).

{7} We have noted that intergovernmental agreements to facilitate cooperation between law enforcement officers are available and that they can help facilitate, for example, extradition between governments. *Id.* ¶ 9 n.1. To this end, both the State of New Mexico and the Navajo Nation have enacted legislation that permits their agencies that have and maintain peace officers to enter into agreements with one another with respect to law enforcement. See NMSA 1978, §§ 29-8-1 to -3 (1971); Navajo Nation Code Ann. tit. 17, § 102 (1977). “Cross-commission agreements are consistent with this [s]tate’s venerable tradition of cooperation and comity between state and tribal governments[.]” *Harrison*, 2010-NMSC-038, ¶ 29.

{8} In this case, neither party denies the importance of the fact that Officer Gonzales was cross-commissioned. Nor do the parties refute that the cross-commission agreement serves as a governing tribal procedure whose terms dictate the scope of the authority of cross-commissioned officers dealing with Navajo defendants on Navajo land and who are also suspected of committing crimes on state land.

{9} Although the parties argue about what the cross-commission agreement allowed Officer Gonzales to do under the facts of the case, neither party introduced the agreement itself into evidence or discussed the agreement’s specific terms. Rather, the only evidence that the parties presented and the district court heard on this issue was Officer Gonzales’s testimony regarding his understanding of the scope of his authority as a cross-commissioned officer and an affidavit from a lieutenant with the Navajo Tribal Police purportedly authorizing the practice of removing Navajo defendants from the Navajo Nation for chemical testing. Specifically, Officer Gonzales testified that he had received training by the Navajo Nation’s criminal prosecutor in Shiprock and that during that training he was told he could take Navajo Nation tribal members off the Navajo Nation to conduct breath alcohol tests because there was no means of conducting chemical testing in the Navajo Nation. Similarly, the tribal officer’s affidavit stated that “[d]ue to frequent unavailability” of breath alcohol content testing equipment on the Navajo Nation, “cross-commission[ed] New Mexico law enforcement officers conducting DWI investigations were permitted to transport Navajo residents off [the Navajo Nation] for the purpose of administering [b]reath [a]lcohol tests.” Based on this evidence, the district court concluded that “Officer Gonzales was authorized by the Navajo Tribe to remove Navajo tribal members from the [r]eservation land for the purpose of breath alcohol content testing” and that “Officer Gonzales did not intrude upon the sovereignty of the Navajo [Nation].” On this reasoning, the district court denied Defendant’s motion to dismiss or, in the alternative, to suppress.

{10} Insofar as Officer Gonzales’s testimony and the affidavit from the tribal officer was the only evidence presented below about the cross-commission agreement, the district court was unable to conduct a reasoned, legal analysis of the agreement’s terms and effects. Instead, the district court appears to have viewed the scope of the cross-

commissioned officer's authority as a factual determination, which could permissibly be established by witness testimony or lay interpretation. This was improper.

{11} As we previously noted, “[t]he authority of state officers to investigate off-reservation crimes in Indian country is a question of law[.]” *Id.* ¶ 9. Moreover, we have held that the Legislature intended that mutual aid agreements be written and witness testimony is insufficient in this context. *Cf. State v. Branham*, 2004-NMCA-131, ¶¶ 4, 7, 16, 136 N.M. 579, 102 P.3d 646 (refusing to allow “a verbal agreement between the BIA and/or the Mescalero tribal police and the New Mexico state police, and a lack of objection to such an agreement on the part of the Mescalero tribal leaders, [to be] legally sufficient to confer upon the New Mexico state police the authority to enforce tribal traffic ordinances on tribal land[.]” even when testimony about the agreement came from the chief of police for the Mescalero Tribe). In addition, we have refused to accept that a tribe implicitly waived its sovereignty based on the fact that tribal officials had acquiesced to state officers’ conduct. *State v. Yazzie*, 1989-NMCA-056, ¶ 6, 108 N.M. 677, 777 P.2d 916 (“Inasmuch as the state contends the officers notified the tribe of their activities, and the tribe acquiesced in those activities, the state has provided no authority to establish that the tribal prosecutor was empowered to waive the applicable extradition procedures.”).

{12} Accordingly, finding an implicit waiver of tribal sovereignty based on witness testimony interpreting the powers of a cross-commissioned officer is inappropriate, even when some of that testimony comes in the form of an affidavit from a tribal officer. Defendant’s motion should not have been denied based on the proffered testimony and affidavit, but rather, the district court should have considered the legal significance of the cross-commission agreement itself with regard to the authority that agreement conferred on Officer Gonzales under the facts of this case. Therefore, on remand, the district court must consider the written agreement itself and engage in a reasoned legal analysis about its meaning. *Cf. Rivera v. Am. Gen. Fin. Servs., Inc.*, 2011-NMSC-033, ¶ 27, 150 N.M. 398, 259 P.3d 803 (classifying contract interpretation as a matter of law). Because we conclude that resolution of this threshold issue is necessary in the analysis of the case as a whole and may be dispositive, we do not reach Defendant’s remaining arguments.

CONCLUSION

{13} We reverse and remand to the district court to conduct an analysis of how the cross-commission agreement between the State and the Navajo Nation in effect at the time of the investigation affects the scope of Officer Gonzales’s authority under the facts of this case and for any further proceedings consistent with this Opinion.

{14} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

J. MILES HANISEE, Judge