

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff/Appellant,

Supreme Court No. 19-0177

vs.

JESSICA RAE STANTON,

Defendant/Appellee.

ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR TAMA COUNTY
THE HONORABLE RICHARD VANDER MEY, MAGISTRATE

APPELLEE'S FINAL BRIEF

John G. Daufeldt
DAUFELDT LAW FIRM, P.L.C.
1896 P Ave; P.O. Box 70
Conroy, IA 52220
P: 319-430-6778
F: 319-662-4292
E: jdaufeldt@daufeldtlawfirm.com

CERTIFICATE OF SERVICE AND FILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Supreme Court of Iowa using the EDMS system on June 11th, 2019.

I certify that all participants in this case are registered EDMS users and that service will be accomplished by the Appellate EDMS system.

I further certify, that I have provided a copy of this filing to the Appellee herein on June 11, 2019.

___/s/ John G. Daufeldt_____

TABLE OF CONTENTS

Certificate of Filing and Service. 2

Table of Contents. 3

Table of Authorities. 4

Statement of the Issues Presented for Review. 5

Routing Statement. 6

Statement of the Case. 6

Statement of the Relevant Facts. 6

Argument. 8

 I. **BECAUSE PUBLIC LAW 301 ABOLISHED PUBLIC LAW 846 AND
 THE STATE OF IOWA HAS NOT SUBSEQUENTLY EXERCISED ITS
 DISRECTIONARY JURISDICTION PURSUANT TO CHAPTER 110
 ACTS OF GENERAL ASSEMBLY 1896, THE MAGISTRATE’S
 ORDER SHOULD BE UPHELD.** 7

Conclusion. 13

Request for Non-oral Submission. 13

Certificate of Compliance. 13

TABLE OF AUTHORITIES

CASES:

Federal:

Negosot v. Samuels, 507 U.S. 99, 104 (1993).13

Fox v. Licklider, 576 F. 2d 145, 149 (8th Cir. 1978).12, 13

State:

In re M.W., 894 N.W.2d 526, 532 (Iowa 2017).8

Nextera Energy Res. L.L.C. v. Iowa Util. Bd., 815 N.W.2d 30, 38
(Iowa 2012)

State v. Coleman, 907 N.W.2d 124, 134 (Iowa 2018). 8

Vance v. Iowa District Court for Floyd County, 907 N.W.2d 473, 479
(Iowa 2018).8

State v. Lasley, 705 N.W.2d 481, 483 (Iowa 2005).13

State v. Youngbear, 229 N.W.2d 728, 730 (Iowa 1975).13

STATUTES:

Federal:

Act of June 30, 1948, ch. 759, 62 Stat. 1161. 9

Act of Dec. 11, 2018, Pub. L. No. 115-301, 132 Stat.
4395 (2018). 9

State:

1896 Iowa Act p. 114, ch. 110
(26th Regular General Assembly).9,10

I.C. § 1.15A. 11

RULES:

I.R.App.P. 6.1101(2)(d).6

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. BECAUSE PUBLIC LAW 301 ABOLISHED PUBLIC LAW 846 AND THE STATE OF IOWA HAS NOT SUBSEQUENTLY EXERCISED ITS DISRECTIONARY JURISDICTION PURSUANT TO CHAPTER 110 ACTS OF GENERAL ASSEMBLY 1896, THE MAGISTRATE’S ORDER SHOULD BE UPHELD.8

(1) Preservation of Error.8

(2) Standard of Review. 8

(3) Argument. 8

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court, because it involves a “fundamental and urgent issue. . . of broad public importance requiring prompt [and] ultimate determination by the supreme court.

I.R.App.P. 6.1101(2)(d).

STATEMENT OF THE CASE

This appeal presents the question of who (and to what extent) does either the State of Iowa (the “State”), the Mesquaki Tribe (the “Tribe”) or the Federal Government (the “U.S.”) have criminal jurisdiction over crimes committed on the Mesquaki settlement in light of Iowa Code section 1.15A, which became effective on December 11, 2018.

STATEMENT OF RELEVANT FACTS

On December 31, 2018, Ms. Stanton was physically present on the Tribal land located at 1504 305th Street, Tama, Iowa, commonly known as the Meskwaki Bingo Casino Hotel (specifically, the “Casino” and collectively, “Tribal Land”¹. Amended App. 5-9. During her presence at the Casino, Ms. Stanton was cited, by an officer of the Tribal Police (“Tribal Police”), for

¹ The Appellee does not dispute that the alleged crimes occurred in or on “Indian Country.”

three separate offenses. Id. Those offenses were: (1) possession of drug paraphernalia; (2) violation of no contact order; and (3) trespass, first offense (the “Charges”). Id. Ms. Stanton’s Charges were hand written on a standard form which had the heading of “Iowa Police Citation and Complaint - Meskwaki Nation Police Dept.” Id. Despite the lack of any indication of whether Ms. Stanton was or was not a member of the Tribe or an “Indian”, she was nevertheless taken into custody by Tribal Police.

On January 1, 2019, Ms. Stanton appeared in Tama County Magistrate Court regarding the Charges. Amended App. 10. At that time, the Magistrate dismissed the Charges for lack of jurisdiction, and on January 2, 2019, he filed a written Order to Dismiss (the “Order”). Id. It is undisputed that neither the Tribe, the State, nor Ms. Stanton filed a Notice of Appeal to the District Court pursuant to Iowa Rules of Criminal Procedure 2.73.

Despite failing to seek appellate review through the District Court, the State, through the Attorney General’s Office (the “A.G.”), filed for Discretionary Review on January 30, 2019 (the “Application for Discretionary Review”). Ms. Stanton was not properly noticed of the Application for Discretionary Review nor did she have counsel advising her

of her rights; and consequently, she did not file any response to the State's request. On March 7, 2019, this Court granted the State's Application for Discretionary Review commencing this appellate case.

ARGUMENT

I. **BECAUSE PUBLIC LAW 301 ABOLISHED PUBLIC LAW 846 AND THE STATE OF IOWA HAS NOT SUBSEQUENTLY EXERCISED ITS DISRECTIONARY JURISDICTION PURSUANT TO CHAPTER 110 ACTS OF GENERAL ASSEMBLY 1896, THE MAGISTRATE'S ORDER SHOULD BE UPHELD.**

(1) **Preservation of Error**: Error was not preserved by the State as it failed to file a Notice of Appeal to the District Court pursuant to Iowa Rules of Criminal Procedure 2.73 and the relevant Iowa Supreme Court opinions, holding that a party cannot "by-pass" the appeal process in simple misdemeanor cases by failing to seek appellate review via the district court. In re M.W., 894 N.W.2d 526, 532 (Iowa 2017); Vance v. Iowa District Court for Floyd County, 907 N.W.2d 473, 479 (Iowa 2018) (citing and quoting In re M.W.).

(2) **Standard of Review**: The standard of review for appeals concerning statutory interpretation is reviewed for correction of errors at law. State v. Coleman, 907 N.W.2d 124, 134 (Iowa 2018).

A. **A Brief Review of the Relevant Legislation.**

The relevant legislation in Iowa regarding the Tribe and jurisdiction commenced in 1896 with the passage by the Iowa General Assembly of Chapter 110. See 1896 Iowa Act p. 114, ch. 110 (26th Regular General Assembly) (the “1896 Act”). The 1896 Act tendered to the U.S. **exclusive and sole jurisdiction** over the Tribe contingent on the United States accepting the tender. Id. In addition, the State reserved several discretionary rights, including the option that its courts may “exercis[e] jurisdiction of crimes against the laws of Iowa committed [on the lands owned by Indians] either by said Indians or others” Id.². The U.S. accepted this tender on June 10, 1896. Act of June 10, 1896, ch. 398, 29 Stat. 321 (the “1896 Acceptance”). Therefore, at that specific point in time, the U.S. had exclusive jurisdiction.

Although the State reserved this discretionary right to criminal jurisdiction (subject to the U.S.’s exclusivity) it is historically noted that the State did not, in fact, exercise it. Attorney General’s Report to Governor Cummins, entitled: the “Legal Status of Musquakies” (the “1905 AG Report

² The key passage in the 1896 Act: “Sec. 3. Nothing contained in this act shall be so construed as to prevent on any of the [Tribal] land referred to in this act. . . , or to prevent such courts [of this state] from exercising jurisdiction of crimes against the laws of Iowa committed thereon either by said Indians or others. . . .”

to Governor)”. Amended App. 11-12. The 1905 AG Report to Governor provides an accounting on the significant state of affairs on Tribal Land, and specifically notes this discretionary right to enforce jurisdiction pursuant to the 1896 Act. Id. It more importantly underscores the fact that despite the State’s reserved discretion to assert jurisdiction, according to the AG in 1905, “[t]his has never been carried out.” Id. Despite the discretion, the State was simply not utilizing the reserved right to assert criminal jurisdiction on Tribal Land.

Motivated by the ongoing “hands-off” approach by the State regarding jurisdiction over the Tribe, in 1948, the United States’ Congress enacted legislation specifically establishing State criminal jurisdiction over the Tribe. See Act of June 30, 1948, ch. 759, 62 Stat. 1161 (“Public Law 846”). The House Committee Report for PL 301 supports this assertion that Public Law 846 was enacted due to the State’s unwillingness to utilize its discretionary jurisdiction, as it is expressly indicated that “up until that time [1948] the Tribe had largely policed itself.” H.R. Rep. 115-279, at 3 (2017), WL 3741411. Therefore, if the State had been exercising its right to impose its jurisdiction through the 1896 Act, then Public Law 846 would not be necessary.

With the enactment of Public Law 846 the jurisdictional landscape remained unchanged until 2016 with the enactment of Iowa Code section 1.15A. Section 1.15A is entitled, “Criminal Jurisdiction – Sac and Fox Indian settlement”, states in whole:

“[n]otwithstanding any other provision of law to the contrary, the state of Iowa tenders to the United States any and all criminal jurisdiction which the state of Iowa has over criminal offenses committed by or against Indians on the Sac and Fox Indian settlement in Tama, Iowa, and that as soon as the United States accepts and assumes such criminal jurisdiction previously conferred to the state of Iowa or reserved by the state of Iowa, all criminal jurisdiction on the part of the state of Iowa over criminal offenses committed by or against Indians on the Sac and Fox Indian settlement in Tama, Iowa, **shall cease.**”

(emphasis added). To become effective section 1.15A required a triggering event by the U.S., which occurred when Public Law 301 was enacted invoking the transfer of criminal jurisdiction to the United States. See Act of Dec. 11, 2018, Pub. L. No. 115-301, 132 Stat. 4395 (2018). More importantly, Public Law 301 repealed Public Law 846.

Therefore, on December 11, 2018, the legislation in effect regarding criminal jurisdiction by the State over individuals on Tribal land was solely the 1896 Act and its reserved discretionary right to exercise jurisdiction. See Fox v. Licklider, 576 F. 2d 145, 149 (8th Cir. 1978), indicating that based

on the plain language of the 1896 Act, that “[t]he state of Iowa has the right to **exercise** its police powers for the protection of its own citizen”

(emphasis added).

B. The State Has Not Exercised Its Reserved Discretionary Right to Jurisdiction Over Crimes on Tribal Land Since the Repealing of Public Law 846 on December 11, 2018 and the Magistrate’s Order Should Be Affirmed.

In common usage “to exercise” has inherently meant doing something affirmatively. This Court has defined “exercise,” in the context of a legislative grant of power, as the “discharge of an official function or professional occupation.” Nextera Energy Res. L.L.C. v. Iowa Util. Bd., 815 N.W.2d 30, 38 (Iowa 2012) (approving of *Websters Third New International Dictionary* definition at 982). Therefore, by the plain reading of the 1896 Act, the State was required to take some actions in the furtherance of discharging its official functions in asserting its jurisdiction over Ms. Stanton and the Charges. It did nothing of the sort.

From the beginning of the matter to her appearance in Magistrate Court, Ms. Stanton’s interactions with a governing body was solely with the Tribe. Amended App. 5-9. It was the Tribe who investigated and cited her. Id. The citation documentation showing the Charges clearly indicates

across the top of the citations, that it is the Tribe, through its Tribal Police, who is citing her. Id. It was the Tribe who detained and arrested her. Id. Conversely, the State has shown no interest nor interaction with Ms. Stanton at all. The State failed to even appear at the Initial Appearance to prosecute the Charges for the Tribe. Amended App. 10. The only governing body Ms. Stanton came in contact with was the Tribe.

Contrast the lack of involvement of the State in Ms. Stanton's matter, with those in other relevant cases where the state is actively involved. In Negosot v. Samuels, 507 U.S. 99, 104 (1993), the State of Kansas prosecuted the petitioner as an act of asserting jurisdiction. In Fox v. Licklider, 576 F. 2d at 147, the State of Iowa arrested and initiated criminal action against a tribal member. In State v. Lasley, 705 N.W.2d 481, 483 (Iowa 2005), the State of Iowa through the Tama County Sheriff's department issued the citation at issue. In State v. Youngbear, 229 N.W.2d 728, 730 (Iowa 1975), the State investigated and charged the defendant.

The complete lack of interest by the State cannot be construed as exercising its right to have its courts assume jurisdiction over Ms. Stanton nor the alleged crimes occurring at the Casino. One would expect that if

the State was interested in exercising jurisdiction it would have indicated in some way its intent to do so. It did not.

CONCLUSION

Because the State did not assert in any way its jurisdiction over Ms. Stanton, the Magistrate's Order should be affirmed pursuant to the plain and express language of the 1896 Act.

ORAL ARGUMENT

The Appellee does request oral arguments in this appeal.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of I.R. App. P. 6.903(1)(g)(1) or (2) because it contains 3,265 words, excluding the parts of the brief exempted by I.R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of I.R. App. P. 6.903(1) and the type-style requirement of I.R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Calibri 14 point font.

___/s/ John G. Daufeldt_____

Dated this 11th day of June, 2018.

____/s/ John G. Daufeldt_____

John G. Daufeldt ISBA #18046
DAUFELDT LAW FIRM, P.L.C.
1896 P Ave., P.O. Box 70
Conroy, Iowa 52220
Tel. (319) 662-4282
Fax (319) 887-0944
Cell: (319) 430-6778.
Email: jdaufeldt@daufeldtlawfirm.com
ATTORNEY FOR APPELLANT