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State v. George Appellant's Brief Dckt. 45196

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45196
 Plaintiff-Appellant,)
) Kootenai County Case No.
 v.) CR-2016-21089
)
 SHAULA MARIE GEORGE,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order granting Shaula Marie George's motion to dismiss, arguing that the district court erred when it disregarded binding precedent from the Idaho Court of Appeals.

Statement Of The Facts And Course Of The Proceedings

On September 6, 2016, Officer Calderon of the Coeur d'Alene Tribal Police, was called by probation and parole officers to assist in a contact with George at her residence on the Coeur d'Alene Reservation. (R., p.10.) At the residence, officers located several items of paraphernalia and crystalline substances that tested positive for methamphetamine. (R., p.11.) Officer Calderon placed George under arrest. (R., pp.8, 11.) At the time of the arrest, Officer Calderon believed that George was an enrolled member of the Coeur d'Alene Tribe. (R., p.8.) However, she later learned that George was not an enrolled member of the tribe and, therefore, recognized that she should instead be charged in the District Court for Kootenai County. (Id.)

With the case referred, the state charged George with separate counts of possession of a controlled substance for Oxycodone, methamphetamine, and heroin, and with possession of paraphernalia. (R., pp.52-53.) George filed a motion to dismiss, asserting that she was an Indian and the district court therefore lacked jurisdiction over her criminal charges. (R., pp.57-61.) Determining that George was an Indian and that it, therefore, lacked jurisdiction, the district court granted the motion. (R., pp.101-31, 134.) The state filed a timely notice of appeal. (R., pp.136-38.)

ISSUE

Did the district court err when, disregarding binding precedent from the Idaho Court of Appeals, it dismissed George's case based on the erroneous belief that it lacked jurisdiction?

ARGUMENT

The District Court Erred When, Disregarding Binding Precedent From The Idaho Court Of Appeals, It Dismissed George's Case For A Lack Of Jurisdiction

A. Introduction

George was charged in the district court with possession of controlled substances while on the Coeur d'Alene Reservation. (R., pp.8, 52-53.) George filed a motion to dismiss the charges, arguing that she was an Indian and not subject to state jurisdiction. (R., pp.57-61.) The state argued, in part, based on the precedents of the Idaho Court of Appeals, that George did not qualify as an Indian for purposes of federal criminal jurisdiction because she was not eligible to enroll as a member of the Coeur d'Alene Tribe. (R., pp.76-79.) The district court disregarded the binding precedents of the Court of Appeals and rejected the state's argument. (R., pp.126-30.) Concluding that it lacked jurisdiction, the district court dismissed the case. (R., pp.130-31.) Application of the correct legal standards and precedents, however, shows that the district court erred.

B. Standard Of Review

Whether a court has jurisdiction is a question of law, given free review. State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003).

C. The District Court Erred When It Disregarded Binding Precedent From The Idaho Court Of Appeals

As noted above, George challenged the district court's jurisdiction over her criminal offenses on the basis that she was an Indian and the alleged crimes were committed in Indian country. (R., pp.57-61.) There was no dispute that the crimes were committed on the Coeur d'Alene Indian Reservation; the only issue, therefore, was whether George was an Indian for

purposes of federal criminal jurisdiction. Without a statutory definition of “Indian” for purposes of criminal jurisdiction, the Idaho Court of Appeals adopted a two prong test in State v. Bonaparte, 114 Idaho 577, 759 P.2d 83 (Ct. App. 1988) (overruled on other grounds in State v. Larson, 158 Idaho 130, 344 P.3d 910 (Ct. App. 2015)), to answer the question. Under that test, the defendant must show that he or she has a significant percentage of Indian blood, *and* that he or she is recognized as an Indian either by the federal government or by some tribe or society of Indians. Id. at 579, 759 P.2d at 85. Applying that test, the Court of Appeals concluded that Bonaparte was not an Indian for purposes of federal criminal jurisdiction where he was not an enrolled member of a tribe and was not eligible to become an enrolled member. Id. at 579-80, 759 P.2d at 85-86; see also Lewis v. State, 137 Idaho 882, 885, 55 P.3d 875, 878 (Ct. App. 2002).

George’s case is factually indistinguishable from Bonaparte. As recognized by the district court, George is not an enrolled member of the Coeur d’Alene (or any other) Indian Tribe, and, because she has less than a quarter Indian blood, she is not eligible to become a member of that tribe. (R., p.104.) Under the Court of Appeals’ decision in Bonaparte, George is therefore not an Indian for purposes of federal criminal jurisdiction.

The district court recognized this precedent (see R., pp.117, 126-27), and then disregarded it in favor of nonbinding federal precedents, concluding that “[t]he Bonaparte Court’s analysis is short-sighted...” (R., p.127). This was error. As the Idaho Supreme Court has repeatedly recognized, “trial judges ... do not have the liberty to consciously disregard the principles of law articulated by the appellate courts of this state.” State v. Hanson, 152 Idaho 314, 325 n. 6, 271 P.3d 712, 723 n. 6 (2011). “[A]ll tribunals inferior to the Court of Appeals are obligated to abide by decisions issued by the Court of Appeals.” Id. (citing State v. Guzman,

122 Idaho 981, 986, 842 P.2d 660, 665 (1992)). By disregarding binding precedent from the Idaho Court of Appeals, the district court erred. On that basis alone, this case should be remanded for the district court to apply the correct legal standards to determine whether it has jurisdiction. Remand for that purpose, however, is not necessary because (as will be shown below) correct application of the law to the undisputed facts of this case shows that George is not an Indian for purposes of federal criminal jurisdiction and, therefore, the district court had jurisdiction over her criminal prosecution.

D. Because George Is Not An Indian For Purposes Of Federal Criminal Jurisdiction, The District Court Had Jurisdiction Over Her Criminal Prosecution

Applying the correct legal standards shows that George was not an Indian for purposes of federal criminal jurisdiction, and that the district court therefore had jurisdiction over her criminal prosecution. Title 18 of the United States Code, chapter 53, sets forth the laws governing Indian affairs. Under section 1152,

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

18 U.S.C. § 1152. The definition of “Indian country” includes “all land within the limits of any Indian reservation under the jurisdiction of the United States Government.” 18 U.S.C. § 1151(a). Notwithstanding the statute’s broad language, the United States Supreme Court significantly narrowed the reach of 18 U.S.C. § 1152 in United States v. McBratney, 104 U.S. 621 (1881), where it held that (absent treaty provisions to the contrary), the state had exclusive jurisdiction over crimes committed by non-Indians, even if in Indian country. See also United States v. Antelope, 430 U.S. 641, 643 n. 2 (1977); Draper v. United States, 164 U.S. 240 (1896).

The parties below agreed that George's crimes were committed in Indian country. The only question before the Court, therefore, is whether George is an Indian. As noted above, to show that she is an Indian, George was required to demonstrate (1) that she had a significant percentage of Indian blood, and (2) that she was recognized as an Indian either by the federal government or by some tribe or society of Indians. Lewis, 137 Idaho at 885, 55 P.3d at 878 (citations omitted).

As to the first prong, the state acknowledges that George has Indian ancestry. The information submitted by George below established that she has 14/64ths Indian blood. (See R., pp.64, 103.) Below, the state argued that this is not a significant portion of Indian blood. (R., pp.75-76.) The district court, however, disagreed with the state's conclusion and decided that 14/64ths was a significant portion of Indian blood. (R., pp.125-26.) It does not appear that an Idaho appellate court has previously decided what percentage of Indian blood is necessary to constitute a "significant portion." In Bonaparte, where the defendant possessed 15/64ths Indian blood, the Court of Appeals left the question open because the defendant's claim failed on the second prong where he was not recognized as an Indian by the tribe with which he claimed affiliation. Bonaparte, 114 Idaho at 579, 759 P.2d at 85. The same should be true in this case.

As to the second prong, "tribal enrollment is the most important indicium of recognition as an Indian." Lewis, 137 Idaho at 885, 55 P.3d at 878. George claims affiliation with the Coeur d'Alene Tribe. (See Tr., p.8, Ls.19-23; R., p.63.) The Coeur d'Alene Tribe has determined that, in order to be eligible for membership in that tribe, a person must have at least one quarter Indian heritage. (R., p.104.) George is only known to be 14/64ths Indian (R., pp.64, 103), which is less than 25 percent. George, therefore, does not meet the minimum qualifications to enroll as a member of the Coeur d'Alene Tribe.

“The Tribes have exclusive power to determine membership and eligibility for membership.” Doe v. Shoshone-Bannock Tribes, 159 Idaho 741, ___, 367 P.3d 136, 142-43 (2016). There is a qualitative difference between a person who could enroll as a member of a tribe, but simply has not, and a person who is not qualified, under the tribe’s rules, to be enrolled as a member of that tribe. As noted above, the Court of Appeals has specifically recognized that a defendant fails to satisfy the recognition prong of the test where, more than merely not enrolling with a tribe, that defendant is not even *eligible* to enroll with the tribe. See Bonaparte, 114 Idaho at 579-80, 759 P.2d at 85-86. Where the defendant cannot show recognition as an Indian, federal jurisdiction does not exist. Id.

George is not eligible to enroll as a member of the Coeur d’Alene Indian Tribe, with which she claims affiliation, and therefore cannot satisfy the recognition prong to claim status as an Indian for purposes of federal criminal jurisdiction. Because George is not an Indian, for purposes of federal criminal jurisdiction, the state maintains its exclusive jurisdiction over her criminal charges. The district court erred when it concluded that it lacked jurisdiction. The order of the district court dismissing this case for lack of jurisdiction should therefore be reversed and this case remanded for further proceedings.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order granting George's motion to dismiss and remand this case for further proceedings.

DATED this 20th day of October, 2017.



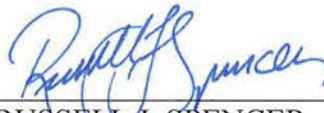
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of October, 2017, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
STATE APPELLATE PUBLIC DEFENDER

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RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd