

U.S. Supreme Court: Tribal Police Authority on Right-of-Way Roadways

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In [United States v. Cooley](#) the Supreme Court will decide whether tribal police have the authority to temporarily detain and search a non-Indian on a public right-of-way within a reservation based on a potential violation of state or federal law.

The Ninth Circuit held the tribal officer has no such authority unless a legal violation is “obvious” or “apparent.” If it isn’t, any evidence obtained in the search must not be used against the defendant.

A tribal highway safety officer passed a truck stopped on a United States highway located on an Indian reservation. Thinking the driver needed assistance the officer knocked on the window. He noticed Joshua Cooley had “watery, bloodshot eyes.” Cooley told the officer he was in the area to buy a car from a man whose name he wasn’t sure of. One of the names he gave the officer was of a local drug dealer. Cooley initially wouldn’t give the officer his driver’s license. When the officer returned after trying to run Cooley’s license, Cooley had a loaded pistol near his right hand. The officer ordered Cooley out of his vehicle, searched it, and found methamphetamine.

Though the officer never asked, Cooley is non-native. Cooley argued the officer was acting outside of the scope of his jurisdiction when he seized Cooley in violation of the Indian Civil Rights Act (ICRA), and the evidence obtained should be suppressed. The Ninth Circuit agreed.

According to a three-judge, Ninth Circuit panel, while a tribal officer may stop someone suspected of violating tribal law on a public right-of-way, the officer's initial inquiry must be limited to whether the person is an Indian. If during this limited interaction, "it is apparent that a state or federal law has been violated, the [tribal] officer may detain the non-Indian for a reasonable time in order to turn him or her over to state or federal authorities."

According to the Ninth Circuit, its precedent made "clear that the power to detain non-Indians on public rights-of-way for 'obvious' or 'apparent' violations of state or federal law does not allow officers to search a known non-Indian for the purpose of finding evidence of a crime." When the officer searched Cooley, it wasn't "obvious" he had committed a crime.

The Ninth Circuit held the evidence obtained in violation of the IRCA should be suppressed as is it under the Fourth Amendment. The Ninth Circuit reasoned the IRCA's prohibition against unreasonable searches and seizures is nearly identical to the Fourth Amendment.

Several judges dissented from the Ninth Circuit's decision not to rehear the case. These judges claim the Ninth Circuit panel have the law totally wrong. "For more than 40 years, we have held that, when a non-Indian is reasonably suspected of violating state or federal law anywhere within the boundaries of an Indian reservation (including state or federal highways traversing the reservation), tribal police officers have the authority to conduct on-the-spot investigations of the sort authorized under *Terry v. Ohio*, 392 U.S. 1 (1968)."

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