

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0100**

State of Minnesota,
Respondent,

vs.

Raymond Joseph Bellcourt,
Appellant.

**Filed December 16, 2019
Affirmed
Johnson, Judge
Dissenting, John Smith, Judge***

Becker County District Court
File No. 03-CR-18-265

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian W. McDonald, Becker County Attorney, Kristal E. Kadrie, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and John Smith, Judge.

S Y L L A B U S

A state-licensed peace officer employed by a federally recognized Indian tribe is authorized to seize and arrest a person outside the boundaries of the tribe's reservation for an offense that occurred outside the boundaries of the reservation if the officer is within

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

the course and scope of employment, as provided by section 629.40, subdivision 3, of the Minnesota Statutes.

O P I N I O N

JOHNSON, Judge

While driving on a county highway in rural Becker County, Raymond Joseph Bellcourt failed to stop for a school bus with an extended stop-signal arm and flashing lights while the bus driver was dropping off schoolchildren. Minutes later, Bellcourt was seized in Becker County by a police officer employed by the White Earth Band of Ojibwe. The tribal police officer cited Bellcourt for the offense of failure to stop for a school bus with an extended stop-signal arm and flashing lights. Bellcourt later moved to suppress an admission he made during the seizure on the ground that the tribal police officer did not have authority to seize him outside the boundaries of the White Earth reservation for an offense that occurred outside the reservation. The district court denied the motion. We conclude that the tribal police officer's seizure of Bellcourt is valid because the tribal police officer is a state-licensed peace officer and was acting in the course and scope of his employment. Therefore, we affirm.

F A C T S

In the late afternoon of January 19, 2018, two school buses were northbound on county highway 21 in rural Becker County, dropping off schoolchildren near their homes. The first school bus stopped on the highway to allow four schoolchildren to disembark. The second school bus stopped behind the first. The driver of the first school bus extended the stop-signal arm on the left side of the bus and activated the bus's flashing lights. As

two children were in front of the first school bus and two other children were stepping off, a pickup truck with an attached snowplow passed on the right shoulder at a high rate of speed and knocked over a mailbox. The driver of the pickup stopped briefly and spoke with the driver of the first school bus before leaving the scene and continuing to drive northward.

The Becker County sheriff's department received a call about the incident with a description of the pickup and its license-plate number. The caller reported that the pickup was heading north on county highway 21 toward the White Earth reservation. The Becker County dispatcher relayed the report to a sheriff's deputy, who went to the location of the incident. The Becker County dispatcher also contacted the dispatcher of the White Earth police department to request assistance in searching for the pickup and its driver. The White Earth dispatcher communicated the request to White Earth tribal police officers.

At that time, Officer Bryan Byrne of the White Earth police department was on duty and on patrol on the White Earth reservation, driving south on highway 21. He later testified that, when he heard the dispatcher's report, he was approximately three to four miles from the location of the incident. He decided to take the call and to "keep [his] eyes open" for the pickup. He continued driving south on highway 21 until he reached the small community of Richwood, which he described as being "right at the south line of the reservation" and "actually right on the line," although he also testified that county highway 21 "dips down and . . . catches [county highway] 34 right by the store and then it comes back up onto the reservation." Officer Byrne further testified that he "was going to circle around [county highway] 34 after I checked the store." The parties agree that Richwood

and the intersection of county highway 21 and county highway 34 are not on the White Earth reservation.¹

Officer Byrne drove through the parking lot of the Richwood Store and saw a pickup truck with an attached snowplow. He parked his squad car next to the pickup. He talked to the driver of the pickup and asked about the reported incident concerning the school bus. The driver, Bellcourt, showed Officer Byrne his driver's license, admitted that he had not stopped for the school bus's stop-signal arm and flashing lights, and explained that his brakes had failed. Officer Byrne issued Bellcourt a citation for three misdemeanor offenses, including failure to stop for a school bus with an extended stop-signal arm and flashing lights, in violation of Minn. Stat. § 169.444, subd. 1 (2016).

A Becker County sheriff's deputy later interviewed the two school bus drivers. The driver of the first school bus stated that, when Bellcourt passed on the right shoulder, two children had stepped off the first school bus and were standing in front of it, and one child was standing on the ground next to the open door. The driver of the second school bus stated that he was stopped approximately 250 feet behind the first school bus, with his four-way lights activated, when he saw the pickup approaching in his rear-view mirror. He

¹The parties' agreement is confirmed by the state department of transportation's online roadmap and another commonly used online map, which collectively indicate that Richwood is a very short distance south of the reservation boundary, perhaps no more than 1,000 feet. See Minnesota State Highway Map (2019-2020), https://www.dot.state.mn.us/statemap/2019/Frontside_2019_2020.pdf (last visited Dec. 9, 2019); <https://www.google.com/maps/place/Richwood,+MN+56501> (last visited Dec. 9, 2019). At Richwood, county highway 34 runs east from county highway 21 and then turns north and enters the White Earth reservation.

stated that the pickup passed the second school bus on the left side before swerving to the right and passing the first school bus along the right shoulder.

The following month, the state filed a complaint in which it charged Bellcourt with the gross-misdemeanor offense of failure to stop for a school bus with an extended stop-signal arm and flashing lights by passing on the right-hand side, in violation of Minn. Stat. § 169.444, subd. 2(b)(1), and the gross-misdemeanor offense of failure to stop for a school bus with an extended stop-signal arm and flashing lights by passing while a child is outside the bus, in violation of Minn. Stat. § 169.444, subd. 2(b)(2).

In April 2018, Bellcourt moved to suppress the statements he made to Officer Byrne in the parking lot of the Richwood Store, including his admission that he did not stop, and to dismiss the complaint. The district court conducted an omnibus hearing in May 2018. The state presented the testimony of Officer Byrne. He testified that he is licensed by the State of Minnesota as a peace officer, that he has been employed by the White Earth police department for approximately one and one-half years, and that he has 17 years of prior law-enforcement experience. When asked whether there are “circumstances where you go off the reservation to assist other officers,” he answered in the affirmative and provided an example of a recent incident in which he provided assistance directing traffic in Becker County during a response to a shooting. Officer Byrne also testified about his response to the report concerning Bellcourt, as described above.

The state also introduced five exhibits without objection: two surveillance video-recordings created by cameras inside the school bus; audio-recorded statements of the two school bus drivers; a video-recording of Officer Byrne’s interactions with Bellcourt in

Richwood that was created by Officer Byrne's body-worn camera; police reports; and an eight-page agreement between Becker County and the White Earth Reservation, entitled "Cooperative Law Enforcement Agreement" and dated October 29, 2004.

The cooperative agreement states in its preamble that it is entered into "pursuant to the provisions of Minnesota Statute Sections 626.93, Subd. 4 and 471.59." The first section of the agreement states that its purpose is to:

- a. Coordinate, define, and regulate the provision of law enforcement services and to provide for mutual aid and cooperation between the Reservation and the County relating to enforcement of the laws of the State of Minnesota, and laws of the White Earth Reservation, on that portion of the White Earth Reservation that lies within Becker County.
- b. Establish a process by which the Reservation and the County will work together cooperatively to enhance public safety efforts on the White Earth Reservation.
- c. Preserve the parties' respective jurisdictions on the White Earth Reservation so that neither the Reservation nor the County is conceding any claim to jurisdiction by entering into this cooperative agreement.

The second section of the agreement provides, "The White Earth Reservation is authorized, pursuant and subject to Minnesota Statute Section 626.93, to enforce the criminal laws of the State of Minnesota within that portion of the White Earth Reservation that lies within Becker County," so long as specified conditions are satisfied.

After the hearing, Bellcourt filed a memorandum of law in which he argued that Officer Byrne did not have authority to seize him outside the White Earth reservation for an offense that occurred off the reservation. In response, the state argued that Officer Byrne was authorized by statute to seize Bellcourt. In June 2018, the district court filed an order

denying Bellcourt's motion, reasoning that Officer Byrne is a licensed peace officer and was within the course and scope of his employment when he seized and cited Bellcourt, as permitted by section 629.40, subdivision 3, of the Minnesota Statutes.

At a pre-trial hearing in September 2018, Bellcourt's attorney informed the district court that the parties had agreed that the pre-trial ruling is dispositive of the case and that the case would be tried to the district court pursuant to a stipulation. *See* Minn. R. Crim. P. 26.01, subd. 4. At trial in October 2018, Bellcourt waived his right to a jury trial and stipulated to a summary of the state's evidence. Three days later, the district court filed an order in which it found Bellcourt guilty of both charges. The district court imposed an agreed-upon sentence of 365 days in jail on the first count but stayed execution of the sentence and placed Bellcourt on probation for two years. Pursuant to the parties' agreement, the district court dismissed the second count. Bellcourt appeals.

ISSUE

Was the White Earth tribal police officer, who is a state-licensed peace officer, authorized to seize and cite Bellcourt outside the boundaries of the White Earth reservation for an offense that was committed outside the boundaries of the reservation?

ANALYSIS

Bellcourt argues that the district court erred by denying his motion to suppress evidence. His argument has two parts. First, Bellcourt argues that Officer Byrne was not authorized by the cooperative agreement between the White Earth Band and Becker County to seize and cite anyone outside the boundaries of the reservation. Second, Bellcourt argues that Officer Byrne was not authorized by statute to seize and cite him

outside the boundaries of the reservation. At oral argument, Bellcourt's appellate attorney clarified that Bellcourt is relying solely on state law and is not relying on federal Indian law. The state argues primarily that Officer Byrne, as a state-licensed peace officer, was authorized by section 629.40 of the Minnesota Statutes to seize and cite Bellcourt outside the boundaries of the reservation. Neither party questions the district court's finding that Bellcourt was seized by Officer Byrne.

We begin by considering Bellcourt's second argument, which challenges the district court's reasoning and corresponds to the state's primary argument for affirmance.

A.

In Minnesota, peace officers are licensed by the Minnesota Board of Peace Officer Standards and Training. Minn. Stat. §§ 626.841, .845, subd. 1(3) (2018). A police officer employed by a federally recognized Indian tribe may be licensed as a peace officer. Minn. Stat. § 626.84, subd. 1(c)(1) (2018).

A state-licensed peace officer is authorized by statute, in certain circumstances, to make an arrest within the state but outside the geographic area of his or her appointing authority. Minn. Stat. § 629.40 (2018). The district court cited the following statutory provision as the legal basis of Officer Byrne's authorization to seize Bellcourt:

When a person licensed under section 626.84, subdivision 1, in obedience to the order of a court or *in the course and scope of employment* or in fresh pursuit as provided in subdivision 2, is outside of the person's jurisdiction, the person is serving in the regular line of duty as fully as though the service was within the person's jurisdiction.

Id., subd. 3 (emphasis added). The district court relied on the above-highlighted language concerning a peace officer who is outside his or her jurisdiction but “in the course and scope of employment.”

The meaning of “in the course and scope of employment,” as that phrase is used in section 629.40, subdivision 3, is illustrated by a series of opinions of the Minnesota appellate courts. In *State v. Tilleskjaer*, 491 N.W.2d 893 (Minn. 1992), a police officer employed by the City of Litchfield followed a car within the city limits and later saw the car weaving within its lane. *Id.* at 894. The officer stopped the car and arrested the driver for driving while impaired. *Id.* At a suppression hearing, the officer testified that he could not remember whether the car was inside or outside the city limits when it was weaving. *Id.* The district court suppressed the evidence of the stop. *Id.* On appeal, the supreme court applied the course-and-scope clause of section 629.40, subdivision 3. *Id.* The supreme court’s reasoning is confined to a single sentence: “We hold that the statute, which is without ambiguity, clearly gave the officer all the authority he needed to act as he did.” *Id.* Seven years later, this court applied *Tilleskjaer* in a case with substantially similar facts. *See Lorenzen v. Commissioner of Pub. Safety*, 594 N.W.2d 552, 553-55 (Minn. App. 1999).

In *State v. Bunde*, 556 N.W.2d 917 (Minn. App. 1996), this court considered two consolidated cases. In each case, a police officer employed by the City of Janesville stopped a car outside the city limits. *Id.* at 918-19. In one of the consolidated cases, the officer followed a speeding car from within the city limits to a location approximately three miles beyond the city limits, where he saw another car turn without signaling and weave within its lane. *Id.* at 919. The officer stopped the second car and arrested the driver,

Francis, for driving while impaired. *Id.* On appeal, we determined that the stop was valid, reasoning as follows: “On this record, we hold that [the officer], although outside his municipality when he arrested Francis, was nonetheless—under *Tilleskjaer*—in the course and scope of his employment and with authority to arrest.” *Id.* We reached that conclusion based on the premise that on-duty police officers may “operate free from the limitations of their city borders when the policing mission itself commences within the city—regardless of where they first observe a defendant.” *Id.*

In the other consolidated case, the officer was patrolling approximately three miles beyond the city limits, where he saw a car run a stop sign. *Id.* In the process of following that car, the officer saw another car parked along the side of the road with the driver lying back in the driver’s seat. *Id.* The officer arrested the person in the second car, Bunde, for driving while impaired. *Id.* at 919-20. On appeal, we noted that “[t]he record does not indicate why [the officer] was patrolling outside Janesville . . . , but the State’s affidavits show that Janesville officers regularly patrol outside the city.” *Id.* at 920. We determined that the stop was valid, reasoning as follows: “We feel bound by *Tilleskjaer* to read the statute as requiring a holding that [the officer] acted lawfully in the course and scope of his employment when he arrested Bunde, even though he was outside his municipality at the time—and even though . . . his mission also commenced outside that jurisdiction.” *Id.*

In *State v. Meyer*, 641 N.W.2d 324 (Minn. App. 2002), *review denied* (Minn. May 14, 2002), a police officer employed by the City of Madison Lake routinely drove to Mankato to pick up records from the county’s law-enforcement center. *Id.* at 325. On one such occasion, when the officer was in uniform and driving a marked squad car, he saw a

speeding vehicle outside the city limits of Madison Lake. *Id.* at 325-26. The officer stopped the vehicle approximately three miles outside Madison Lake and arrested the driver for driving while impaired. *Id.* at 326. On appeal, Meyer argued that the course-and-scope clause should be limited to situations in which an officer “is performing ‘a core law enforcement activity,’” such as “activities related directly to the investigation of crime and the apprehension of criminals,” but not if an officer is “engaged in a ‘purely ministerial task.’” *Id.* at 326, 327. We rejected the argument, reasoning that “various administrative and ministerial acts are essential and valid components of law enforcement efforts,” that the officer was “acting in furtherance of his employer’s interests,” and that the officer was “acting within the course and scope of his employment” at all relevant times. *Id.* at 327-28.

In *Yoraway v. Commissioner of Public Safety*, 669 N.W.2d 622 (Minn. App. 2003), a police officer employed by the City of Chaska was on patrol within the city limits when he heard a dispatch concerning a reckless driver in the city of Chanhassen. *Id.* at 624-25. The officer drove east until he saw the car described in the dispatch and stopped it outside the Chaska city limits. *Id.* at 625. On appeal, the driver argued that the officer was not authorized to “make an investigatory stop of a motor vehicle when both the alleged illegal driving and the stop occur outside the officer’s territorial jurisdiction unless the officer is in fresh pursuit of the offending driver.” *Id.* We rejected the argument, reasoning that patrolling police officers typically engage in “the investigation of citizen complaints and the enforcement of traffic laws,” that the officer “responded to an official dispatch requesting the investigation of a complaint that an identified vehicle was being operated recklessly,” and that the officer’s “response was quintessentially what police officers do in

furtherance of their employment duties.” *Id.* at 626. We also stated that the statutory authority to arrest includes the authority to make a “stop necessary to effect the arrest.” *Id.*

B.

Before applying this body of caselaw to the facts of this case, we must consider Bellcourt’s contention that all of the above-discussed opinions are distinguishable and, thus, inapplicable. Bellcourt contends that this case is meaningfully different from the prior cases because there is a cooperative agreement between the White Earth Band and Becker County, which, Bellcourt asserts, exclusively defines the course and scope of Officer Byrne’s employment as a White Earth tribal police officer. Specifically, Bellcourt contends that, because the cooperative agreement does not expressly authorize White Earth tribal police officers to enforce state law in those parts of Becker County that are outside the boundaries of the reservation, the course and scope of Officer Byrne’s employment must be limited to the geographic area of the White Earth reservation. In response, the state contends that the cooperative agreement provides for concurrent jurisdiction on the White Earth reservation but has no effect on Officer Byrne’s statutory authority to enforce the state’s criminal laws off the reservation.

The language of the cooperative agreement does not support Bellcourt’s argument. The stated purposes of the cooperative agreement relate to law-enforcement services “on that portion of the White Earth Reservation that lies within Becker County” and to public safety “on the White Earth Reservation.” The contractual provision implementing those purposes provides that White Earth tribal police officers are “authorized, pursuant and subject to Minnesota Statute Section 626.93, to enforce the criminal laws of the State of

Minnesota *within that portion of the White Earth Reservation that lies within Becker County.*” (Emphasis added.) In essence, the cooperative agreement confers some law-enforcement authority on White Earth tribal police officers when they are *on* the White Earth reservation. But no provision of the cooperative agreement refers to law-enforcement services or public safety in those parts of Becker County that are *off* the White Earth reservation. The cooperative agreement simply is not concerned with whether White Earth tribal police officers may or may not engage in any law-enforcement services outside the boundaries of the White Earth reservation. Thus, the cooperative agreement does not limit the course and scope of Officer Byrne’s employment to the geographic area of the White Earth reservation.

This interpretation of the cooperative agreement is reinforced by the agreement’s reference to section 626.93 of the Minnesota Statutes, which is captioned “Law Enforcement Authority; Tribal Peace Officers.” Section 626.93 co-exists with the federal law that defines the relationships between Indian tribes and states. *See State v. Manypenny*, 682 N.W.2d 143, 148-49 (Minn. 2004). A federal statute commonly known as Public Law 280 generally “grants the state criminal jurisdiction over ‘offenses committed by or against Indians . . . to the same extent that [the state] has jurisdiction over offenses committed elsewhere within the state.’” *State v. Davis*, 773 N.W.2d 66, 68-69 (Minn. 2009) (quoting Pub. L. No. 83-280, 67 Stat. 588, 588 (codified as amended at 18 U.S.C. § 1162(a))). In light of Public Law 280, the state may, in certain circumstances, prosecute a member of the White Earth Band for a criminal offense committed on the White Earth reservation. *See State v. Busse*, 644 N.W.2d 79, 82-88 (Minn. 2002) (concluding that state had

jurisdiction under Public Law 280 to prosecute White Earth member for offense of driving after cancellation as inimical to public safety); *cf. State v. Stone*, 572 N.W.2d 725, 728-31 (Minn. 1997) (concluding that state did not have jurisdiction under Public Law 280 to prosecute White Earth members for driving-related offenses that are “civil/regulatory,” not “criminal/prohibitory”). In addition, the state may, in certain circumstances, assert jurisdiction over criminal offenses committed on the White Earth reservation even if jurisdiction is not expressly authorized by Public Law 280. *See State v. R.M.H.*, 617 N.W.2d 55, 60-65 (Minn. 2000) (concluding that prosecution of non-member Indian for speeding and unlicensed driving on the White Earth reservation was not in conflict with federal and tribal interests recognized by federal law). This body of caselaw allows a state law-enforcement agency, such as the Becker County sheriff’s department, to enforce some Minnesota criminal laws on the White Earth reservation.

Against this backdrop, section 626.93 of the Minnesota Statutes was enacted in 1999. *See* 1999 Minn. Laws ch. 175, § 2, at 954-55. The statute authorizes certain tribes and counties to enter into cooperative agreements “to coordinate, define, and regulate the provision of law enforcement services and to provide for mutual aid and cooperation.” Minn. Stat. § 626.93, subd. 4 (2018).² If a tribe and a county enter into such a cooperative

²Concurrent jurisdiction on some Indian reservations is governed by statutes that are specifically limited to particular tribes. *See* Minn. Stat. § 626.93, subd. 7 (Supp. 2019) (Prairie Island Indian Community); Minn. Stat. § 626.90 (2018) (Mille Lacs Band of Chippewa Indians); Minn. Stat. § 626.91 (2018) (Lower Sioux Indian Community); Minn. Stat. § 626.92 (2018) (Fond du Lac Band of Lake Superior Chippewa). The state has no law-enforcement authority on the Red Lake reservation due to an express exception in Public Law 280. *See* 18 U.S.C. § 1162(a) (2018). Thus, section 626.93 applies to the six other Indian bands with reservations in Minnesota: the Bois Forte Band of Chippewa, the

agreement and if other requirements are met, “the tribe shall have *concurrent jurisdictional authority* under this section with the local county sheriff *within the geographical boundaries of the tribe’s reservation* to enforce state criminal law.” *Id.*, subd. 3 (emphasis added). In essence, section 626.93 allows a county to share with an Indian tribe the county’s authority to enforce state criminal laws *on* the tribe’s reservation, thereby establishing concurrent jurisdiction *on* the tribe’s reservation. That the cooperative agreement in this case expressly refers to section 626.93 indicates that the agreement was intended to fulfill that statutory purpose by providing for concurrent law-enforcement jurisdiction *on* the White Earth reservation. But section 626.93 does not contain any provision allowing a tribe and a county to agree to establish concurrent law-enforcement jurisdiction *off* the tribe’s reservation. Section 626.93 simply is not concerned with the enforcement of state criminal laws *outside* the boundaries of Indian reservations. Accordingly, it is only natural that the cooperative agreement in this case does not speak to the question whether a White Earth tribal police officer may enforce state criminal laws outside the boundaries of the White Earth reservation. Even without such a provision, the cooperative agreement serves the purposes of section 626.93 by authorizing White Earth tribal police officers to enforce state criminal laws on the White Earth reservation. The absence of a provision expressly allowing a White Earth tribal police officer to enforce state criminal laws outside the boundaries of the White Earth reservation does not indicate

Grand Portage Indian community, the Leech Lake Band of Ojibwe, the Shakopee Mdewakanton Sioux Community, the Upper Sioux Community, and the White Earth Band of Ojibwe. See Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 84 Fed. Reg. 1200, 1200-05 (Feb. 1, 2019).

that the tribe and the county intended to forbid a White Earth tribal police officer from doing so.

Thus, the cooperative agreement between the White Earth Band and Becker County does not preclude a determination that Officer Byrne was in the course and scope of his employment when he seized and cited Bellcourt outside the boundaries of the White Earth reservation.³

C.

Having determined that the cooperative agreement between the White Earth Band and Becker County does not limit or alter the course-and-scope-of-employment analysis, we proceed to apply the above-described caselaw to the facts of this case.

In its order denying Bellcourt's motion to suppress, the district court noted that the Becker County dispatcher contacted the White Earth dispatcher to request assistance. The district court also noted that Officer Byrne was on duty as a White Earth tribal police officer

³The dissenting opinion asserts that the caselaw interpreting the course-and-scope clause of section 629.40, subdivision 3, is distinguishable on the ground that the officer in each of those cases was employed by a municipality. *Infra* at 3. The dissenting opinion further asserts, "Federal Indian tribes are quasi-sovereign bodies possessing all the powers of an independent nation, except those ceded by treaty, withdrawn by Congress, or otherwise incompatible with their domestic dependent status." *Infra* at 3-4. But the dissenting opinion cites no legal authority that precludes the application of the course-and-scope clause of section 629.40, subdivision 3. By statute, a police officer employed by a federally recognized Indian tribe may be licensed by the state as a peace officer, see Minn. Stat. § 626.84, subd. 1(c)(2), and the course-and-scope clause applies to all state-licensed peace officers, without exception, see Minn. Stat. § 629.40, subd. 1. Under state law, there is no reason why a White Earth tribal police officer should have less authority outside his or her jurisdiction than, for example, a police officer employed by the City of Chaska. See *Yoraway*, 669 N.W.2d at 624-26. As stated above, Bellcourt has not invoked federal law concerning the relationships between Indian tribes and states.

when he received the call from the White Earth dispatcher and decided to respond to it. The district court then stated, “Clearly, he was working within the ‘course and scope of employment’ at the time.” Bellcourt does not challenge any of the district court’s underlying findings of fact. Rather, he challenges the district court’s application of the law to undisputed facts. Accordingly, we apply a *de novo* standard of review. See *Yoraway*, 669 N.W.2d at 625; *Bunde*, 556 N.W.2d at 918.

As an initial matter, we note that the caselaw is quite permissive with respect to licensed police officers who seize or arrest persons outside their jurisdictions. In each of the opinions described above, the appellate court concluded that the officer’s seizure or arrest was in the course and scope of the officer’s employment. *Tilleskjaer*, 491 N.W.2d at 894; *Yoraway*, 669 N.W.2d at 626; *Meyer*, 641 N.W.2d at 328; *Lorenzen*, 594 N.W.2d at 554-55; *Bunde*, 556 N.W.2d at 919-20.

We also note Officer Byrne’s testimony that, during his employment as a White Earth tribal police officer, he occasionally has provided assistance to Becker County law-enforcement officers outside the boundaries of the White Earth reservation. That testimony about Officer Byrne’s past practice indicates that the course and scope of his employment is not necessarily limited to the geographic area of the White Earth reservation.⁴

⁴Our analysis necessarily is based on the record of the suppression hearing in this case. Officer Byrne was the sole witness concerning the nature of his duties and where he performs them. The evidentiary record does not include any documentary evidence of the official policies or procedures of the White Earth Band, which is not a party to this case and has not otherwise made an appearance in the case. We are not at liberty to either disregard or add to the evidentiary record created by the parties at the suppression hearing. See Minn. R. Crim. P. 28.02, subd. 8.

The particular circumstances of this case support the district court's conclusion that Officer Byrne was in the course and scope of his employment when he seized and cited Bellcourt. Officer Byrne was on patrol on the White Earth reservation when he received a call for assistance from the White Earth dispatcher. In that way, the facts of this case resemble the facts of *Bunde*, in which the officer's "policing mission" originated within his employer's jurisdiction. *See* 556 N.W.2d at 919. In addition, the facts of this case are quite similar to the facts of *Yoraway*, in which the officer was within his employer's jurisdiction when he received a dispatch requesting assistance outside that jurisdiction. *See* 669 N.W.2d at 624-25. In *Yoraway*, this court reasoned that patrolling police officers typically engage in "the investigation of citizen complaints and the enforcement of traffic laws," that the officer in that case "responded to an official dispatch requesting the investigation of a complaint that an identified vehicle was being operated recklessly," and that the officer's "response was quintessentially what police officers do in furtherance of their employment duties." *Id.* at 626. The same may be said of Officer Byrne's actions in this case.

Furthermore, even though Officer Byrne was outside the White Earth reservation when he seized and cited Bellcourt, he intended to be outside the reservation only briefly before returning to the reservation. He testified that he intended to turn from county highway 21 onto county highway 34 at Richwood and then drive back onto the reservation. He also testified that he is not aware of any backroad that would have allowed him to drive to the same part of county highway 34 without leaving the reservation.

Thus, the district court properly determined that Officer Byrne was in the course and scope of his employment when he seized and cited Bellcourt. Accordingly, the evidence gathered by Officer Byrne during the seizure is admissible.

D.

Before concluding, we address Bellcourt's argument that the district court erred on the ground that the cooperative agreement between the White Earth Band and Becker County does not expressly authorize Officer Byrne to seize and cite a person outside the boundaries of the White Earth reservation for an offense committed off the reservation. We have concluded that Officer Byrne's seizure of Bellcourt is independently authorized by section 629.40, subdivision 3, and that the cooperative agreement does not determine the course and scope of Officer Byrne's employment. In light of those conclusions, it is immaterial whether the seizure is or is not expressly authorized by the cooperative agreement. Thus, we need not consider Bellcourt's first argument.

We also note that Bellcourt filed a *pro se* supplemental brief in which he argues that the existence of the White Earth police force is unconstitutional under the Minnesota Chippewa Tribe constitution. A similar argument was made in *State v. Manypenny*, 662 N.W.2d 183 (Minn. App. 2003), *aff'd*, 682 N.W.2d 143 (Minn. 2004). The appellant in that case argued that "the tribe's creation of a law enforcement agency was an *ultra vires* act, done without the tribal members' consent through a tribal constitutional amendment or a constitutional convention." *Manypenny*, 662 N.W.2d at 189. We declined to consider that issue in *Manypenny* on the ground that "Minnesota state courts should [not] intervene in a matter of internal tribal governance" in light of "the absence of any developed and

articulated argument with cited authority supporting appellant's argument.” *Id.* (citing *Bryan v. Itsaca County*, 426 U.S. 373, 388, 96 S. Ct. 2102, 2110-11 (1976)). For the same reason, we decline to consider the argument in this case.

D E C I S I O N

The district court did not err by denying Bellcourt's motion to suppress evidence.

Affirmed.

SMITH, JOHN, Judge (dissenting)

I respectfully dissent. Laws provide guidelines for the behavior of society for our protection and safety. Cross a line and a law is broken. Fail to stop at a sign and you are in violation of the law. Much like the boundaries in sports activities, if you cross the boundary, you are in violation of the rules and out-of-bounds.

Jurisdiction has clear boundaries as well. If there is no jurisdiction, there is no authority to act. The defined jurisdictional authority of a tribal police officer ends at the boundaries of the reservation unless some other authority is granted by agreement with the state government.

The majority concludes that a tribal police officer has the authority to seize and cite a person outside the tribe's reservation for conduct occurring outside the reservation, even if that tribal police officer is otherwise subject to a cooperative agreement with the county that does not contemplate such cross-jurisdictional authority. Because I believe this interpretation disregards the plain language of the cooperative agreement at issue, I disagree.

If a tribe and a local governmental unit wish to share law enforcement resources, “and to provide mutual aid and cooperation,” they must enter into a cooperative agreement under Minnesota Statute section 471.59. *See* Minn. Stat. § 626.93, subd. 4 (2018). Cooperative agreements allow governmental units to “jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised.” Minn. Stat. § 471.59, subd. 1 (Supp. 2019). If such an agreement authorizes the exercise of police

powers by an officer of one governmental unit within the jurisdiction of another governmental unit, “an officer acting pursuant to that agreement has the full and complete authority of a peace officer” appointed by both governmental units. *Id.*, subd. 12.

Enforcement of state criminal law is traditionally within the jurisdiction of local county law enforcement, both within the reservation and outside its boundaries.¹ In drafting the cooperative agreement at issue, Becker County and the White Earth band agreed to extend that authority to White Earth law enforcement “within that portion of the White Earth Reservation that lies within Becker County.” The agreement expressly limits its reach to the four corners of the White Earth reservation—specifically, to the enforcement of state and tribal laws on the reservation, the enhancement of “public safety efforts” within the reservation, and the preservation of “the parties’ respective jurisdictions” on the reservation.

The majority concludes that this language has no effect on Officer Byrne’s authority to enforce the state’s criminal laws outside of the reservation, reasoning that the agreement is silent on issues of law enforcement “in those parts of Becker County that are *off* the White Earth reservation,” and thus does not address “whether White Earth tribal police officers may or may not engage in any law-enforcement services outside the boundaries of the White Earth reservation.” To support this interpretation, the majority finds meaning in the agreement’s reference to section 626.93, which they contend contains language with the exclusive effect of allowing counties to share their authority to enforce state criminal

¹ As the majority correctly points out, the county has extended authority to enforce state criminal laws within reservation boundaries under federal law. 18 U.S.C. § 1162(a) (2018); *State v. Stone*, 572 N.W.2d 725, 728-31 (Minn. 1997).

law within the reservation with the tribes themselves. 18 U.S.C. § 1162(a); Minn. Stat. § 626.93, subd. 3.

Yet, even if the majority is right about the legislature’s intent for subdivision 3, the cooperative agreement also directly quotes subdivision 4 by providing for “mutual aid and cooperation” between the county and the tribe, then consciously limiting that aid to the enforcement of laws on the portion of the reservation “that lies within Becker County.” Thus, while the cooperative agreement at issue allows White Earth tribal police officers to exercise the Becker County sheriff’s police powers within the reservation’s boundaries, it does *not* authorize the Becker County sheriff to enforce tribal laws within the reservation’s boundaries, nor does it authorize White Earth tribal police officers to enforce state or tribal laws outside the reservation’s boundaries.

The majority concludes that Officer Byrne acted within the course and scope of his employment as a police officer, highlighting a number of factually similar cases for support. *See, e.g., State v. Tilleskjaer*, 491 N.W.2d 893 (Minn. 1992); *Yoraway v. Comm’r of Pub. Safety*, 669 N.W.2d 622 (Minn. App. 2003); *State v. Meyer*, 641 N.W.2d 324 (Minn. App. 2002), *review denied* (Minn. May 14, 2002); *Lorenzen v. Comm’r of Pub. Safety*, 594 N.W.2d 552 (Minn. App. 1999); *State v. Bunde*, 556 N.W.2d 917 (Minn. App. 1996). But these cases all involve municipalities and are therefore distinguishable from the case before us. This is a case involving tribal law enforcement. Federal Indian tribes are quasi-sovereign bodies possessing all the powers of an independent nation, except those ceded by treaty, withdrawn by Congress, or otherwise incompatible with their domestic dependent status. *See United States v. Wheeler*, 435 U.S. 313, 323, 98 S. Ct. 1079, 1086

(1978). As a White Earth tribal police officer, Officer Byrne is essentially a state-licensed officer of a foreign jurisdiction, subject to a separate set of law enforcement requirements, and to a binding cooperative agreement. Minn. Stat. § 626.93, subd. 4. As stated above, this cooperative agreement dictates the terms of any mutual law-enforcement efforts between Becker County and the White Earth band. Thus, because the record is clear about the limitations of Officer Byrne’s cross-jurisdictional law-enforcement authority, I find it unnecessary to look to his testimony about prior cooperative police activity in Becker County for guidance.

The majority’s interpretation would make any written agreement between the parties unnecessary because licensed peace officers could always act within the scope of their duties without regard to jurisdictional boundaries. The contracting parties control the scope of the agreement. Had the tribe and the county wished to engage in a higher level of police cooperation, they could have written the cooperative agreement to reflect that goal. Instead, the agreement is clear: once Officer Byrne exits the boundaries of the White Earth reservation, he loses the authority to enforce state criminal laws. Officer Byrne could still make an arrest in Becker County under the fresh-pursuit exception or pursuant to a court order, *see* Minn. Stat. § 629.40, subds. 2-3 (2018), but he does not act within the “course and scope” of his employment as White Earth police officer by consciously disregarding his employer’s cooperative agreement and exiting his jurisdiction to cite a driver for an offense committed outside of the reservation. Because the cooperative agreement at issue does not provide for such cross-jurisdictional authority, I would reverse Bellcourt’s conviction.

John P. Smith