**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-0036**

State of Minnesota,
Respondent,

vs.

David Michael Davis,
Appellant.

**Filed July 15, 2008**
**Affirmed; motions granted**
**Toussaint, Chief Judge**

Mille Lacs County District Court
File No. CR-05-3441

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Janice S. Kolb, Mille Lacs County Attorney, Tara C. Ferguson Lopez, Assistant County Attorney, Courthouse Square, 525 Second Street Southeast, Milaca, MN 56353 (for respondent)

Frank W. Bibeau, Anishinabe Legal Services, 411 First Street, P.O. Box 157, Cass Lake, MN 56633 (for appellant)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Johnson, Judge.

## U N P U B L I S H E D  O P I N I O N

**TOUSSAINT,** Chief Judge

Appellant David Michael Davis, a member of the Minnesota Chippewa Tribe enrolled at Leech Lake Reservation, moved to dismiss misdemeanor charges of speeding and of failure to provide proof of insurance for lack of subject-matter jurisdiction. The district court denied his motion. Appellant then waived his right to a jury trial and proceeded under *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court found appellant guilty. Because the state has subject-matter jurisdiction to prosecute a member of the Minnesota Chippewa Tribe enrolled at Leech Lake Reservation for any traffic offense not committed on Leech Lake Reservation, we affirm. We also grant both parties' motions to strike.

## FACTS

On December 3, 2005, a Mille Lacs tribal police officer observed a vehicle "traveling at a high rate of speed" on Highway 169 in Mille Lacs County. The officer "activated [his] radar which indicated the vehicle was traveling 60 mph in a 45 mph speed zone." The officer stopped the speeding vehicle. Its driver, who was identified as appellant, informed the officer that he did not need insurance because he was Native American. The officer arrested appellant for failure to provide proof of insurance.

Appellant moved to dismiss the charges for lack of subject-matter jurisdiction. He submitted an affidavit stating that he is a "member of the Minnesota Chippewa Tribe,

enrolled at Leech Lake Reservation, tribal enrollment number '407C0039312'."[1]

The state requested an "evidentiary" hearing to consider appellant's claim that it lacked subject-matter jurisdiction. But no witnesses were sworn, and no evidence was presented. The district court asked the parties to submit memoranda on the sole issue of whether *State v. R.M.H.*, 617 N.W.2d 55 (Minn. 2000), remains good law in light of *United States v. Lara*, 541 U.S. 193, 124 S. Ct. 1628 (2004).

The district court subsequently ruled that *R.M.H.* remains good law and that the state has authority to "prosecute non-member American Indians who violate traffic laws when the violations take place on tribal land" and denied appellant's motion to dismiss for lack of subject-matter jurisdiction.

**D E C I S I O N**

Issues of subject-matter jurisdiction are questions of law and are reviewed de novo. *R.M.H.*, 617 N.W.2d at 58. "State jurisdiction over Indians is governed by federal statutes or case law." *Id.*; *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997).

Case law provides that speeding and failure to provide proof of insurance are civil/regulatory offenses. *R.M.H.*, 617 N.W. 2d at 60 (speeding); *Stone*, 572 N.W.2d at 728 (failure to provide proof of insurance). The state does not have jurisdiction over civil/regulatory offenses committed by enrolled members of an Indian tribe on their "home" reservation. *State v. Johnson*, 598 N.W.2d 680, 683 (Minn. 1999).

[1] Appellant also asserted that the offense occurred on a tribal road, but the parties later stipulated that it occurred on Highway 169.

But appellant is enrolled at Leech Lake Reservation, and his offenses occurred on either Mille Lacs Reservation or the exterior boundaries of that reservation.[2] The state has jurisdiction over civil/regulatory traffic offenses committed on a reservation by a Native American who is not an enrolled member of the governing tribe of that reservation or a "nonmember" Native American. *R.M.H.*,617 N.W.2d at 57, 65 (concluding that state had jurisdiction over speeding and driving without license on Minnesota state highway within boundaries of reservation of White Earth Band of Chippewa Indians by enrolled member of Wisconsin Indian tribe). Thus, *R.M.H.* defeats appellant's lack-of-jurisdiction argument.

Appellant argues that *R.M.H.* is not good law because it does not address *United States v. Lara*, 541 U.S. 193, 124 S. Ct. 1628 (2004). That argument is properly addressed by the supreme court, not this court. *See Terault v. Palmer*, 413 N.W.2d 281, 286 (Minn. App. 1987) ("task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987); *see also State v. Losh*, 739 N.W.2d 730 (Minn. App. 2007) (affirming, on different grounds, district court's decision applying *R.M.H.* to conclude that state had jurisdiction over member of Mille Lacs Band charged with driving after revocation on Leech Lake Reservation), *review granted* (Minn. Dec. 19, 2007). Here, the district court correctly applied *R.M.H.* to conclude that the state has jurisdiction over appellant's offenses.

[2] *See County of Mille Lacs v. Benjamin*, 262 F. Supp. 2d 990 (D. Minn. 2003) (discussing history of dispute regarding legal status of boundaries of Mille Lacs Reservation), *aff'd in part & rev'd in part*, 361 F.3d 460 (8th Cir. 2004).

Appellant also argues that, because he is a member of one Minnesota Chippewa Tribe band and his offenses occurred on the reservation of another Minnesota Chippewa Tribe band, he is not a "nonmember" Native American within the meaning of *R.M.H.*, 617 N.W.2d at 65. But the operative facts are that the state has jurisdiction over appellant's offenses everywhere except on the reservation where he is enrolled, and his offenses did not occur on that reservation. Appellant provides no tribal or other authority to support his view that enrollment in one Minnesota Chippewa Tribe band equates to enrollment in all Minnesota Chippewa Tribe bands. The district court correctly decided that appellant is a "nonmember" Native American on the reservation where his offenses were committed; therefore, the state has jurisdiction over those offenses.

Finally, both parties made motions to strike. The state moves to strike two issues from appellant's brief, arguing that these issues were not raised before the district court and are outside our scope of review. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (this court does not generally address matters not presented to and considered by district court). Appellant moves to strike portions of the state's appendix that are not part of the district court record. *See* Minn. R. Civ. App. P. 110.01 (record on appeal composed of papers filed in district court, exhibits, and transcript). Because two issues in appellant's brief are raised for the first time on appeal and because the challenged materials are not part of the record on appeal, we grant both motions to strike.

**Affirmed; motions to strike granted.**