

SUPREME COURT OF OREGON

State v. Kurtz, 350 Or. 65

249 P.3d 1271 (2011) · No. S058346; CA A132184; CC 05FE0031 · Decided March 25, 2011

SUMMARY

The Oregon Supreme Court held that tribal police officers authorized to enforce Oregon law qualify as "police officers" and "peace officers" under Oregon statutes governing fleeing or attempting to elude and resisting arrest. The court reversed the Court of Appeals and affirmed the defendant's convictions. The decision focused on statutory text, ordinary meaning, legislative context, and the role of Warm Springs tribal police in Oregon's public safety system.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	De Muniz, C.J.; De Muniz, Chief Justice; Durham, Justice; Balmer, Justice; Kistler, Justice; Walters, Justice; Linder, Justice
JURISDICTION	Oregon
DECIDED	March 25, 2011
DOCKET	S058346; CA A132184; CC 05FE0031
DISPOSITION	reversed
PROCEDURAL POSTURE	The State petitioned for review of the Oregon Court of Appeals' reversal of defendant's convictions for fleeing or attempting to elude a police officer and resisting arrest. The Oregon Supreme Court reversed the Court of Appeals and affirmed the circuit court judgment.
STANDARD OF REVIEW	Statutory interpretation reviewed for legal error; the court considered statutory text, context, and relevant legislative history to determine legislative intent.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Oregon
PARTIES	State of Oregon v. Thomas Everett Kurtz

TOPICS

- statutory interpretation
- legislative intent
- ejusdem generis
- tribal sovereignty
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a Warm Springs tribal police officer is a "police officer" under ORS 801.395 for purposes of the crime of fleeing or attempting to elude a police officer under ORS 811.540.
2. Whether a Warm Springs tribal police officer is a "peace officer" under ORS 161.015(4) for purposes of the crime of resisting arrest under ORS 162.315.
3. Whether the statutory terms "police officer" and "peace officer" are limited to officers employed by or designated by an Oregon state or local governmental entity.

HOLDINGS

1. A tribal police officer authorized to enforce Oregon law falls within the statutory term "police officer" in ORS 801.395 and therefore may be the officer involved in a prosecution for fleeing or attempting to elude under ORS 811.540.
2. A tribal police officer authorized to enforce Oregon law is a person "designated by law" as a peace officer under ORS 161.015(4) and therefore may be the peace officer involved in a prosecution for resisting arrest under ORS 162.315.
3. The statutory terms "police officer" and "peace officer" are not limited to officers employed by or designated by an Oregon state or local governmental entity.

KEY QUOTATIONS

"Rather, "police officer," according to its ordinary meaning, embraces a professional law enforcement officer entrusted by government with the maintenance of public peace and order, the enforcement of laws, and the prevention and detection of crime." (249 P.3d at 1278)

"Because the legislature intended to include a tribal police officer as a "police officer" for purposes of the enforcement of the state traffic and criminal laws at issue in this case, we conclude that a tribal police officer therefore is "designated by law" as a "peace officer" under ORS 161.015(4)." (249 P.3d at 1280)

FACTUAL BACKGROUND

Warm Springs Tribal Police Officer Joseph Davino observed defendant commit a traffic violation on the Warm Springs Indian Reservation and activated his patrol car's lights and later siren. Defendant continued across the reservation boundary before stopping in Jefferson County, where Davino detained him and placed him under arrest. Defendant resisted arrest and was subdued with assistance from other tribal officers. Davino was a full-time, commissioned Warm Springs tribal police officer, was in uniform and driving a marked patrol vehicle, and was authorized to enforce Oregon law, although he had not been deputized by the Jefferson County Sheriff.

PROCEDURAL HISTORY

Defendant was charged in Jefferson County Circuit Court after he failed to stop for a Warm Springs tribal police officer and later resisted arrest. The trial court denied defendant's motions for judgment of acquittal and found

him guilty on both charges. The Court of Appeals reversed, holding that a tribal police officer was not a statutory police officer or peace officer. The Oregon Supreme Court allowed review, reversed the Court of Appeals, and affirmed the trial court.

DISPOSITION

reversed

CASES CITED

- State v. Kurtz, 233 Or. App. 573, 228 P.3d 583 (2010)
- State v. Gaines, 346 Or. 160, 172, 206 P.3d 1042 (2009)
- State v. Briney, 345 Or. 505, 511, 200 P.3d 550 (2008)
- Bellikka v. Green, 306 Or. 630, 634, 636, 762 P.2d 997 (1988)
- Lewis v. CIGNA Ins. Co., 339 Or. 342, 351, 121 P.3d 1128 (2005)
- Vannatta v. Keisling, 324 Or. 514, 533, 931 P.2d 770 (1997)
- Schmidt v. Mt. Angel Abbey, 347 Or. 389, 404-05, 223 P.3d 399 (2009)
- Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 212, 98 S. Ct. 1011, 55 L. Ed. 2d 209 (1978)
- Solem v. Bartlett, 465 U.S. 463, 465 n. 2, 104 S. Ct. 1161, 79 L. Ed. 2d 443 (1984)
- White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980)
- Strate v. A-1 Contractors, 520 U.S. 438, 456 n. 11, 117 S. Ct. 1404, 137 L. Ed. 2d 661 (1997)
- Ortiz-Barraza v. United States, 512 F.2d 1176, 1179-80 (9th Cir. 1975)