

ST. REGIS MOHAWK TRIBAL COURT

IN AND FOR THE ST. REGIS MOHAWK TRIBE

St. Regis Mohawk Tribe)	
)	
Plaintiff,)	Case No.: 09-TRF-00053
)	
vs.)	
)	
Mr. Louie J. Jackson)	
)	
Defendant.)	

DECISION AND ORDER

Pursuant to the St. Regis Mohawk Vehicle and Traffic Ordinance, passed on May 30, 2000, and the companion Tribal Council Resolution numbered TCR 2001-25, a hearing was conducted with respect to the above referenced matter.

For the reasons specified below, the Court hereby dismisses six (6) of the seven (7) summons issued to Mr. Jackson, but affirms the summons violation of unregistered vehicle (summons # 10482) and accordingly sets a fine in the amount of \$300.00 with a surcharge in the amount of \$30.00, for a total of **\$330.00**.

Procedurally, Mr. Jackson received seven (7) summonses on October 14, 2009 due to his purported operation of a motor vehicle during the early morning hours of September 22 of 2009. The summonses received by Mr. Jackson were returnable to Tribal Traffic Court on November 2, 2009. Mr. Jackson appeared on this date and advised the Court that he was not guilty of the violations indicated in the summonses. A notice of hearing was then issued by Tribal Court, and on January 11, 2010 a hearing was conducted with respect to the seven summonses received by Mr. Jackson.

At the hearing the SRMT PD officer who issued the summonses testified that on or about 2 AM of September 22nd, 2009 he observed a blue Ford ‘dually’ pickup go by the SRMT PD station at a high rate of speed, whereupon he commenced a pursuit of the vehicle. This commenced at the SRMT PD station easterly unto NYS Route 37, and then northerly unto the St. Regis Road, all on the St. Regis Mohawk Indian Reservation. During this pursuit, the SRMT PD Officer indicated that speeds exceeded the posted speed limits, and may have been near 70 mph

or, and up to, 100 mph. During this pursuit the Officer testified that he was able to observe the registered plates of the vehicle and indicated that it read "18 ACTION". Eventually the vehicle pursued by the Officer entered into the Village of St. Regis whereby the officers ceased their pursuit. It was not until October 14, 2009, some 22 calendar days later, that the same officer again encountered the vehicle that he pursued on September 22, 2009. It appears that during this second encounter the officer did not observe any 'moving' traffic violations, but based upon the prior encounter the officer had 22 days ago, he stopped the vehicle and issued the summonses associated with this action.

At the hearing Mr. Jackson made two basic presentations to the Court, the first being that it was not him operating the vehicle on September 22nd, and that his vehicle could not reach the speeds alleged by the officer. Upon stipulation between Mr. Jackson and Counsel for the St. Regis Mohawk Tribe, Mr. Jackson was permitted to submit further proofs post-hearing to the Court with respect to the capabilities of the Truck to reach the speeds alleged by the Officer. We will look at these arguments, and shall first consider the latter.

Whether Mr. Jackson's vehicle is capable of reaching the speeds alleged by the officer is only pertinent to the fact of whether or not said vehicle exceeded the posted speed limit.¹ In the instant case, this would be in excess of 35 mph. In both instances the officer was able to clearly articulate that the vehicle was well in excess of those posted speed limits, and may have been between 70 mph to 100mph, which clearly is in excess of the posted 35mph. As Counsel for the St. Regis Mohawk Tribe quite correctly pointed out, even if the vehicle was incapable of reaching some of the speeds alleged by the officer (100 mph), the speeds that the vehicle did reach were in-excess of the posted speed limit. Even in light of Mr. Jackson's proofs, the speed was within the vehicles capabilities (85 mph). Therefore, the speed of the vehicle was not as relevant to the instant case as Mr. Jackson would hope. The far more difficult issue is that with respect to operation, or in more particular, operation on September 22nd, 2009.

Counsel for the St. Regis Mohawk Tribe has asked the Court in closing statements to hold the owner of the vehicle responsible for the operation of the vehicle, although it is not known with any certainty who was operating the vehicle on September 22nd 2009. Yet, it is clearly established as to who was operating the vehicle on October 14th 2009.

The argument presented by Counsel for the SRMT sounds very similar to that of a '*strict liability*'² argument, often found in American Tort jurisprudence. In that the owner of the vehicle is held strictly liable for any damages caused by that vehicle. Under the SRMT Civil Code numbered TCR 2008-19 passed March 27, 2008, the Court is free to accept laws from outside jurisdictions if called to do so to resolve a matter before it. In the instant case, the Court does not wish to use such authority in the present case.

¹ In a related argument, Mr. Jackson alluded to the issue that if his truck could not reach the speeds alleged, then the Officer was not being truthful, for reasons herein stated, the Court rejects this argument.

² . Strict liability, sometimes called absolute liability, is the legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent. (West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. Retrieved January 26, 2010, from <http://legal-dictionary.thefreedictionary.com/Strict+Liability>

First, just as the St. Regis Mohawk Tribal Civil Code permits the Court, or parties may ask the Court to, use and/or borrow another jurisdictions laws, it is just as clear under the same law that when there is a SRMT law or ordinance in place they should control, and actions commenced under Tribal law can be limited as to when they are commenced.³ In the instant matter, there is clearly a SRMT Law in place and the Vehicle and Traffic ordinance therefore controls actions commenced under that law, and we are thereby limited to what that law provides.

Next, a fair reading of the SRMT V&T ordinance clearly shows that the term ‘operator’ contains no special definition, and the ordinance indicates that there is no terms requiring any special definitions.⁴ As such, the Court is of the opinion that the term ‘operator’ must be given its ordinary meaning, and that operator is the person found to be in operation of the vehicle when the violations under the ordinance occurs, and when summonses are issued.

Finally, most problematic with respect to the instant case, and what we are asked to do, are other principles recognized in other jurisprudence. First would be that of ‘remoteness.’⁵ In the instant case it is without a doubt that the officer witnessed a vehicle operated in a manner that not only was in violation of the SRMT V&T ordinance, but very clearly in a manner that posed a very real and direct threat to the health and safety of members and residents of the St. Regis Mohawk Indian Reservation. Therefore, the sovereign interests of the SRMT are at their highest. The problem is that there is nothing to identify who the operator may have been, and that the only identification of the driver occurred some 22 days after the incident. This identification is too remote from the date in which the vehicle was observed to be in violation of the SRMT V&T ordinance. Similarly, just as a strict liability theory could be applied to this case, other jurisprudence would also show that the owner is generally not the only party that may be held liable for the damages stemming from a vehicle they own. Most often the operator is also held liable, and in those instances where the owner is not the operator, both are held liable under the theories of vicarious or joint and several liability.⁶ In the instant case, the identification of the

³ Principles of New York State law for resolving private civil disputes are not automatically applied in Mohawk Courts. Principles of New York State law for resolving private civil disputes may be applied in Mohawk Courts for the purpose of resolving a private civil dispute over which the Mohawk Court has jurisdiction if (but only if) the Mohawk Court finds: (i) there is no other controlling principle of Mohawk law; (ii) application of the New York State law is consistent with principles of Tribal sovereignty, self-government, and self-determination; and (iii) application of the New York State law is in the overall interest of justice and fairness to the parties. St. Regis Mohawk Tribal Civil Code, TCR 2008-19, § V. (B).

⁴ Vehicle and Traffic Ordinance, SRMT TCR 2001-25, § Definitions: “There are no words or phrases in this Act that require further elaboration than what is provided for in this act.”

⁵ Remoteness: “far removed in space, time, or relation”. (Remoteness. (2010). In *Merriam-Webster Online Dictionary*. Retrieved January 26, 2010, from <http://www.merriam-webster.com/dictionary/REMOTENESS>).

⁶ Vicarious Liability- When one person is liable for the negligent actions of another person, even though the first person was not directly responsible for the injury. Joint and Several Liability is a form of liability that is used in civil cases where two or more people are found liable for damages. The winning plaintiff in such a case may collect the entire judgment from any one of the parties or from any and all of the parties in various amounts until the judgment is paid in full. (West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. Retrieved January 26, 2010, from <http://legal-dictionary.thefreedictionary.com/joint+and+several+liability>).

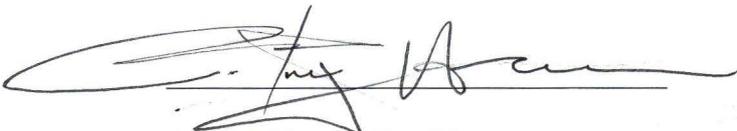
operator on September 22, 2009 was never clearly ascertained. The facts in another case may be able to show the operator and owner as the same person, or different owner and a different operator, but in the instant case it does not and is too remote (22 days) for the Court to find the owner and operator the same on that date and under the facts presented.

Furthermore, it is clear that the SRMT has authority to legislate any changes that they may desire to hold owners strictly liable for their vehicles, even if they are not the operator of said vehicle. This would be particularly true in those instances where their vehicles are being operated in manner, as here, which poses a risk to health and safety of the residents and members of the SRMT.⁷

This does not relieve Mr. Jackson from all of the summonses issued though. When subsequently stopped on October 14th 2009 it is clear that Mr. Jackson was in the same vehicle observed by Officer Thompson, and that Mr. Jackson was operating that vehicle. Most noteworthy was that the vehicle was not registered at this time, as it apparently was not on September 22nd as well. Of greatest concern to the Court is that a vehicle which clearly was being operated in excessive speeds on the SRMIR, did not have any registration, and therefore, may have had questionable insurance coverage. Again, a vehicle that in its' operation was posing the greatest risk to the health and safety of members and residents of the SRMIR. At the hearing, Mr. Jackson acknowledged that this was his vehicle, although 'he did not own it anymore', he did have ownership during the relevant periods discussed herein. Therefore, it is clear that not only can the SRMT require that some form of registration of the vehicle be maintained, but in the current contest it is clear that the residents and members of the SRMIR require it also.

Based upon those factors, the Court does affirm the Summons numbered 10482, and hereby assesses a fine and surcharge in the amounts of **\$300.00 + \$30**, and dismisses the other 6 summonses issued to Mr. Jackson.

Entered by my hand on this the 27th day of September 2010



Peter J. Herne, Chief Judge,
St. Regis Mohawk Tribal Court

SEAL

A copy of this decision and order shall be provided to Mr. Jackson, Officer DaCota Thompson, and Mr. Dale White, General Counsel for the SRMT.

⁷ (see, *Montana v. United States*, 450 U.S. 544, 565 (1981) The Supreme Court acknowledge that tribes maintain inherent power to exercise civil authority over the conduct within the reservation "when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe" (*Id.* at 566).