IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-0401

STATE OF IOWA,
Plaintiff-Appellee,

vs.

HOLLIS JACY BEAR,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR TAMA COUNTY
THE HONORABLE PAUL D. MILLER (MOTION TO DISMISS) &
FAE E. HOOVER (TRIAL & SENTENCING), JUDGES

APPELLEE'S BRIEF

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ROUTING STATEMENT

The State submits this case can be resolved through the application of existing legal principles. Retention is unnecessary, and transfer would be appropriate. Iowa R. App. P. 6.1101(3)(a). Additionally, the State disagrees this case involves issues of broad public importance as the legal question raised would affect only a presumably small number of State prosecutions for crimes committed by or against "Indians"[1] that were then-pending when the United States Congress enacted the federal statute now at issue. That said, the State agrees this case presents a substantial issue of first impression as to the retroactivity of this federal statute, and retention may be appropriate. Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

Nature of the Case

On November 16, 2018, a trial information was filed charging Hollis Jacy Bear–an "Indian"—with crimes committed against another "Indian" on an "Indian settlement" in Tama County, Iowa.

[1] As previously explained by the Iowa Supreme Court, terms used in this brief such as "Indians," "non-Indians," and "Indian country" are used "only for purposes of consistency with the existing legal framework and nomenclature." *State v. Stanton*, 933 N.W.2d 244, 247 n.1 (Iowa 2019).

Trial Info.; Stipulation; App. 4–6, 39; *see* Minutes p.6; Conf. App. 9. The trial information charged Bear with sexual abuse in the third degree, domestic abuse assault causing bodily injury, and criminal mischief in the third degree, in violation of Iowa Code sections 709.4(1)(a), 708.2A(2)(b), and 716.5. Trial Info.; App. 4–6.

On December 11, 2018, the United States Congress enacted Public Law 115-301, which stripped the State of Iowa of criminal jurisdiction for crimes committed by or against "Indians" on the "Sac and Fox Indian Reservation." Act of Dec. 11, 2018, Pub. L. No. 115-301, 132 Stat. 4395 (2018). Following the enactment of Public Law 115-301, Bear moved to dismiss the trial information for want of subject matter jurisdiction. Mot. Dismiss; App. 11–21. The district court denied his motion. Order Denying Mot. Dismiss; App. 24–28.

Bear proceeded to a stipulated bench trial on the domestic abuse and criminal mischief charges, and the State dismissed the sexual abuse charge. Verdict Order; App. 40–43. The court found Bear guilty of the two charges and sentenced Bear to two consecutive sentences of jail for 365 days. Verdict Order; Sent. Order; App. 40–43, 46–48.

Bear now appeals arguing the district court erred in denying his motion to dismiss for want of subject matter jurisdiction. The State disagrees and submits the court was correct to deny his motion.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

The parties stipulated to the factual findings for the bench trial below. Stipulation; App. 39. Besides specific factual stipulations, the parties agreed to permit the trial court to consider the minutes of testimony as true "to the extent necessary to make findings of fact" relating to the domestic abuse and criminal mischief charges. Stipulation; App. 39.

The stipulation provides that on October 10, 2018, Bear was cohabitating on the "Meskwaki Indian settlement in Tama County, Iowa" with his girlfriend Rosie Youngbear. Stipulation; App. 39. The minutes of testimony indicate that among other actions, Bear grabbed Youngbear by the hair, threw her to the floor, punched and struck her multiple times, and smashed her head against the wall. *See* Minutes pp.1–4; Conf. App. 4–7. Youngbear received bodily injuries. *See*

Minutes pp.1–4; Conf. App. 4–7. The minutes of testimony also indicate Bear threw Youngbear's phone against the wall causing its screen to shatter. Minutes pp.1–4; Conf. App. 4–7. The phone was valued at more than $300 but less than $750. Stipulation; App. 39.

ARGUMENT

I. The State of Iowa's Right to Complete a Pending Prosecution for the Violation of Its Criminal Laws by an "Indian" on the "Sac and Fox Indian Reservation" was Not Retroactively Stripped.

Preservation of Error

The State does not contest error preservation. Bear moved to dismiss the prosecution for want of subject matter jurisdiction, and the district court denied her motion. *See* Mot. Dismiss; Order Denying Dismissal; App. 11–21, 24–28.

Standard of Review

"We review lower court rulings on questions of subject matter jurisdiction for correction of errors at law. To the extent resolution of the jurisdictional issue requires statutory interpretation, our review is also at law." *State v. Stanton*, 933 N.W.2d 244, 247 (Iowa 2019) (citing *State v. Lasley*, 705 N.W.2d 481, 485 (Iowa 2005)).

Merits

During the 70 years between 1948 and 2018, the State of Iowa had jurisdiction over violations of its criminal laws that occurred on "Indian country," even if those crimes were committed by or against "Indians." Act of June 30, 1948, ch. 759, 62 Stat. 1161 (1948); *see Stanton*, 933 N.W.2d at 249. On December 11, 2018, the President of the United States and the United States Congress enacted legislation that repealed the State's jurisdiction over crimes committed by or against "Indians" on the "Sac and Fox Indian Reservation."[2] Act of Dec. 11, 2018, Pub. L. No. 115-301, 132 Stat. 4395 (2018). The 2018 Act, Public Law 115-301, repealing such jurisdiction provides in full:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Act of June 30, 1948, entitled "An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation" (62 Stat. 1161, chapter 759) is repealed.

Id.

[2] This statutory change does not impact the State's jurisdiction over "crimes by non-Indians or to crimes that are victimless or have a non-Indian victim." *Stanton*, 933 N.W.2d at 251.

Before the enactment of Public Law 115-301, a trial information was filed on November 16, 2018, charging Bear—an "Indian"—with three violations of Iowa's criminal laws for crimes committed against an "Indian" on the reservation. Trial Info.; Mot. Dismiss at ¶¶ 2–3; App. 4–6, 11; *see* Minutes pp.1–6; Conf. App. 4–9; *see also Sac & Fox Tribe of Miss. in Iowa v. Licklider*, 576 F.2d 145, 148–50 (8th Cir. 1978); *State v. Youngbear*, 229 N.W.2d 728, 732 (Iowa 1975), *abrogated on other grounds by State v. Bear*, 452 N.W.2d 430, 432–33 (Iowa 1990). The trial information alleged that all three of the violations of Iowa's criminal law occurred on October 10, 2018. Trial Info.; App. 4–6. On November 29, 2018, Bear filed a written arraignment in which he pleaded not guilty, and a trial date was scheduled. Order Setting Trial; App. 8–10.

After Public Law 115-301 was enacted, Bear moved to dismiss the pending prosecution arguing the State lacked the jurisdiction to prosecute crimes committed by or against "Indians" on the reservation. Mot. Dismiss; App. 11–21. The district court disagreed and denied Bear's motion finding that Public Law 115-301 did not retroactively apply to pending prosecutions. Order Denying Mot. Dismiss; App. 24–28. Bear on appeal submits that the court erred

because, he argues, Public Law 115-301 is presumed to apply retroactively to all pending cases including his. The State disagrees with Bear's analysis and submits the district court was correct to find that Public Law 115-301 did not apply retroactively to Bear's then-pending prosecution.

Ordinarily, the question of whether a statute applies retroactively comes with the presumption it does not. As the United States Supreme Court has explained in *Landgraff v. USI Film Products*, "the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). Typically, to determine if a statute is retroactive in its application, a two-part inquiry is necessary:

> First, a court must determine if Congress has expressly prescribed the statute's intended reach. If Congress has prescribed the reach, "there is no need to resort to judicial default rules." Second, if Congress has not expressly stated that retroactivity applies, a court must examine whether the statute would have a retroactive effect; that is, "whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." If the statute would do any of these things, the presumption is that the

> statute does not govern, absent clear congressional intent otherwise.

In re ADC Telecomms., Inc. Sec. Litig., 409 F.3d 974, 976 (8th Cir. 2005) (internal citations omitted) (quoting *Landgraf*, 511 U.S. at 280).

Bear asserts that the two-part *Landgraff* inquiry is unnecessary because Public Law 115-301 is a jurisdiction-stripping statute and that such statutes do not possess the presumption against retroactivity. *See* Appellant's Br. pp.25–28. But Bear's rejection of the *Landgraff* inquiry based solely on the jurisdiction-stripping nature of Public Law 115-301 is erroneous.

The Iowa Supreme Court, in *State v. Macke*, recently addressed the question of retroactivity as it relates to jurisdiction-stripping statutes. 933 N.W.2d 226, 234 (Iowa 2019). In *Macke*, the Court recognized the presumption against retroactivity does not ordinarily apply to jurisdiction-stripping statutes. *Id.* However, the Court explained this general rule does not create a presumption for retroactive application either and that "jurisdiction-stripping provisions do not necessarily 'apply to cases pending at the time of their enactment.' " *Id.* (quoting *Hamden v. Rumsfeld*, 548 U.S. 557, 577 (2006)).

Relying on the United States Supreme Court's opinion in *Hamden v. Rumsfeld*, the Court recognized that normal rules of statutory construction may dictate that a statute was not intended to apply retroactively. *Id.* (citing *Hamden*, 548 U.S. at 557). Such an inquiry is encompassed in *Landgraff*'s recognition that congressional intent may control whether a law applies retroactively or not. *See In re ADC Telecomms., Inc. Sec. Litig.*, 409 F.3d at 976 (recognizing a court must consider express language prescribing the reach of a statute in addition to "clear congressional intent"). But more relevant to the present case, the Court additionally recognized that:

> the "presumption" that a jurisdiction-stripping statute applies to pending appeals "is more accurately viewed as the nonapplication of another presumption . . . against retroactivity—in certain limited circumstances" such as when "the change in the law does not 'impair rights a party possessed when he acted.' "

Id. (omission in original) (quoting *Hamden*, 548 U.S. at 576–77). This recognizes that the second prong of the *Landgraff* inquiry—that is, whether the statute affects the rights or obligations of the parties—may show that the presumption against retroactivity still applies even if a statute is jurisdiction stripping. Thus, the usual *Landgraff*

analysis is still relevant when evaluating whether a statute has retroactive application, and Bear is incorrect to disregard it.

As to the first step of the *Landgraff* inquiry, the parties agree that Congress did not specify whether Public Law 115-301 was retroactive or prospective. *See* Appellant's Br. p.29 (recognizing "Congress was completely silent"); *see also* Order Denying Mot. Dismiss p.3 ("The statute does not contain any express provision that it is intended to be retroactive."). Similarly, because there was only a single section of the Act, there are no other provisions to compare to discern what application Congress intended through inference or negative inference. *Cf. Hamden*, 548 U.S. at 578; *Macke*, 933 N.W.2d at 235. Because Congress was silent, this Court "must examine whether the statute would have a retroactive effect; that is, 'whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.' " *In re ADC Telecomms., Inc. Sec. Litig.*, 409 F.3d at 976 (quoting *Landgraf*, 511 U.S. at 280). As to this second inquiry, the parties are not in agreement.

Bear argues that because Public Law 115-301 is a jurisdiction-stripping statute, it does not affect the rights and obligations of the

parties and it only changes the tribunal to hear the case. *See* Appellant's Br. pp.26–28. Bear's conclusion relies on the United States Supreme Court's recognition that jurisdiction-stripping statutes "*usually* 'takes away no substantive right but simply changes the tribunal that is to hear the case.' " *Hamden*, 548 U.S. at 577 (emphasis added) (quoting *Hallowell v. Commons*, 511 U.S. 244, 274 (1916)). The State submits that Bear's presumption that the jurisdiction-stripping statute here falls into such usual category is mistaken because Public Law 115-301 does affect the rights and obligations of the parties and it does not merely change the tribunal to hear the case.

Before the enactment of Public Law 115-301, the State of Iowa possessed the right to prosecute violations of its criminal laws committed by or against "Indians" upon "Indian country." *See Stanton*, 933 N.W.2d at 249. Following the enactment, the State of Iowa has lost its right to do so, and its criminal laws have no effect on actions taken by or against "Indians" on the "Sac and Fox Indian Reservation." *See Stanton*, 933 N.W.2d at 249. This similarly means that "Indians" on the reservation—such as Bear—have lost any obligation to not violate the State's criminal laws as "Indians" are no

longer subject to the State's jurisdiction and our criminal laws no longer have application to any actions they might take while on the reservation. Accordingly, the rights and obligations of the parties have been changed by Public Law 115-301. *See* Order Denying Mot. Dismiss pp.3–4 ("Chiefly, it would impair the State's right to charge Defendant for the conduct alleged in this matter."); App. 26–27.

The State also notes that Public Law 115-301 does not merely change which tribunal can hear a case for the violation of the State's criminal laws. The Iowa Courts are the only tribunals in which the State can bring forth a prosecution for a violation of its criminal laws. *See State v. Liggins*, 524 N.W.2d 181, 184 (Iowa 1994) (discussing jurisdiction). Public Law 115-301 did not shift the forum, it eviscerated all state-criminal liability for actions committed by or against "Indians" on the reservation.

Because retroactive application of Public Law 115-301 would impair the State's right to complete prosecutions for violations of its criminal laws, the "the presumption *against* retroactivity applies." *Macke*, 933 N.W.2d at 235 (emphasis in original); *accord Landgraf*, 511 U.S. at 280. Only "clear congressional intent otherwise" can overcome this presumption, and here there is none. *See In re ADC*

Telecomms., Inc. Sec. Litig., 409 F.3d at 976. Bear has shown nothing that would overcome this presumption, and thus, the district court did not err by denying his motion to dismiss. This Court should reject Bear's argument on appeal and affirm his conviction.

The State further notes that the conclusion that Public Law 115-301 does not retroactively preclude Bear's prosecution is further supported by the general savings clause which provides that a repeal of a statute is presumed prospective if it affects certain obligations of a party:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

1 U.S.C. § 109. The purpose of the general savings clause is precisely for cases such as this where a defendant could otherwise escape their criminal liability based on the later repeal of a criminal statute before a conviction and sentence could be obtained:

> The purpose of the federal savings clause is "[t]o eliminate from the federal system the pitfalls of abatement." *United States v. Blue Sea Line*, 553 F.2d 445, 447 (5th Cir. 1977).

> The abatement doctrine potentially provides a "haven from prosecution" for those who violate a statute repealed after committing their offenses but prior to their convictions and sentences. *United States v. Snowden*, 677 F. Supp. 1108, 1110 (D. Kan. 1988) (quoting *United States v. Blue Sea Line*, supra, at 447). To counteract this effect, the savings clause insures that penalties accruing while a statute was in force may be prosecuted after its repeal, absent an express provision to the contrary in the repealing statute. *United States v. Brown*, 429 F.2d 566, 568 (5th Cir. 1970).

United States v. Schumann, 861 F.2d 1234, 1239 (11th Cir. 1988). Because Public Law 115-301 did not expressly provide that it should be applied retroactively, and because the Act extinguishes state-criminal liability and the corresponding penalties accrued for "Indians" on the reservation, the 1948 Public Law 846 granting the State jurisdiction "shall be treated as still remaining in force" for actions incurring such liability that occurred before the enactment date. 1 U.S.C. § 109. Thus, the continuation of Bear's prosecution was authorized under the federal general savings clause.

Bear argues that consideration of the general savings clause is "misplaced and not applicable" to the present case. Appellant's Br. pp.29–30. In concluding this, Bear relies on two rationales. The State submits that both rationales should be rejected.

First, Bear asserts that the savings clause cannot " 'justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enaction.' " Appellant's Br. p.29 (quoting *Great Northern Ry. Co. v. United States*, 208 U.S. 452, 465 (1908)). Although Bear is correct in his recitation of the law, his notation simply does not affect the present inquiry. As noted above, Congress was silent on the retroactive or prospective application of Public Law 115-301. Similarly, there are no necessary implications to be read into the Act's provisions and no negative inference can be gleaned given there was only one provision within the Act. In contrast, Bear has provided nothing to show that the will of Congress conflicts with applying the general savings clause here. Had it been the will of Congress to retroactively stop the State's prosecutions for past crimes committed by or against "Indians," Congress could have stated as much but it apparently declined to do so. Accordingly, Bear's concern is of no merit, and applying the general savings clause to Public Law 115-301 is appropriate.

Second, Bear argues Public Law 115-301 affected no "penalties, forfeitures, or liabilities," and instead it only affected "remedies or procedures." Appellant's Br. p.30. Thus, Bear argues, the general

savings clause has no application. Appellant's Br. p.30. The State submits Bear is mistaken. Public Law 115-301 directly affects criminal liability and accrued penalties for actions by or against "Indians" on the "Sac and Fox Indian Reservation." *See Brown*, 429 F.2d at 568 (recognizing the repeal of a criminal statute was subject to the general savings clause). The Act did not merely result in a change of procedures (such as a shifting of tribunals) for prosecuting the State's criminal laws, and this Court should reject Bear's assertion to the contrary. The general savings clause applies the repeal of the State's criminal jurisdiction in Public Law 115-301, and Bear's prosecution could continue.

Public Law 115-301 did not retroactively prevent Bear from being prosecuted for actions that occurred before its enactment. This Court should reject Bear's arguments and find the district court did not err by denying Bear's motion to dismiss the prosecution for want of subject matter jurisdiction.

CONCLUSION

This Court should affirm Hollis Jacy Bear's conviction and sentence.

REQUEST FOR NONORAL SUBMISSION

Oral submission is unnecessary.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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