

IN THE SUPREME COURT OF IOWA

STATE OF IOWA)	
PLAINTIFF-APPELLEE)	APPELLANT'S REPLY
)	BRIEF (FINAL FORM)
VS.)	
)	NO. 20-0409
CHRISTOPHER CUNGTION, JR)	
DEFENDANT-APPELLANT)	

APPEAL FROM THE DISTRICT COURT, TAMA COUNTY, THE
HONORABLE MITCHELL TURNER (DENIAL OF MOTION TO
DISMISS) AND THE HONORABLE FAE HOOVER-GRINDE
(ADJUDICATION OF GUILT AND SENTENCING), DISTRICT COURT
JUDGES

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Reply Argument

1. ***Tyndall v. Gunter*, 840 F.2d 617 (8th Cir. 1988) is materially distinguishable from the present case.**

Argument:

The state cites *Tyndall v. Gunter*, 840 F.2d 617 (8th Cir. 1988) for the proposition that “[j]urisdiction over pending cases . . . continues whether retrocession occurs before or after judgment.” (state’s proof brief at p.33). That proposition was true in *Tyndall*, but there are material differences between *Tyndall* and the present case that make the proposition not applicable in the present case.

The issue in *Tyndall* was whether Nebraska’s retrocession to the United States of jurisdiction over criminal offenses committed by or against Indians on Omaha and Winnebago reservations in Nebraska meant that the defendant was denied his right to due process when the district court entered a judgment of conviction after the retrocession of jurisdiction for a crime that he committed prior to the retrocession. *Tyndall*, 840 F.2d at 618. To address this issue, *Tyndall* stated that the affect of Nebraska’s retrocession of jurisdiction on cases pending at the time of the retrocession was a matter of state law. *Id.* *Tyndall* then recognized that the Nebraska Supreme Court had held in *State v. Goham*, 216 N.W.2d 869, 872 (Neb. 1974) that Nebraska’s

retrocession of jurisdiction did not deprive Nebraska of jurisdiction over cases pending at the time of the retrocession. *Tyndall*, 840 F.2d at 618. As a result, *Tyndall* stated that *Goham* controlled its decision and held that the conviction did not violate due process because the district court had jurisdiction at the time it convicted the defendant. *Id.*

So, to understand the holding in *Tyndall* it is necessary to understand the reasoning and holding in *State v. Goham*. In *Goham*, the Nebraska Supreme Court, following its rules of construction, said that it would interpret Nebraska's retrocession statute to "construe it in accordance with [legislative] intent" and "to avoid a construction which leads to absurd, unjust, or unconscionable results." *Goham*, 216 N.W.2d at 871. *Goham* then noted that the federal act, 18 U.S.C.A. § 1162, that gave Nebraska jurisdiction to prosecute crimes by or against Indians on the reservations had been interpreted as making Nebraska's jurisdiction to prosecute such crimes exclusive. *Id.* Because of the exclusive jurisdiction Nebraska had to prosecute such crimes, *Goham* then reasoned that interpreting Nebraska's statute of retrocession of jurisdiction to deprive Nebraska of jurisdiction over cases pending at the time of the retrocession "would permit [the defendant] and others similarly situated to go free. It would enable them to exploit their crimes with complete impunity." *Id.* This would be the case

because “[a]ny attempt to apply federal law to punish [the defendant] for his crimes would be clearly ex post facto and in violation of the federal Constitution.” *Id.* Therefore, the main reason supporting *Goham*’s holding was avoiding an interpretation of the retrocession statute that would create the absurd and unjust situation where neither the state nor the federal government had jurisdiction to prosecute cases that were pending at the time of retrocession. Hence, the limited principle from *Tyndall* and *Goham* is that an interpretation of a retrocession statute should not deprive a state of jurisdiction over cases pending at the time of retrocession if the federal government did not have jurisdiction to prosecute the crimes prior to the retrocession.

The present case is therefore distinguishable from *Goham* and *Tyndall* because the federal government’s jurisdictional grant to Iowa in Act of June 30, 1948, ch. 759, 62 Stat. 1161 for prosecution of crimes on the Meskwaki settlement involving Indians expressly maintained the federal government’s jurisdiction to prosecute violations of federal law involving Indians on the Meskwaki reservation. The statute states, in relevant part, as follows:

Jurisdiction is hereby conferred on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation in that State to the same extent as its courts have jurisdiction generally over offenses committed within said State outside of any Indian reservation: *Provided, however,* That nothing herein contained shall deprive the courts of the United States of

jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

Act of June 30, 1948, ch. 759, 62 Stat. 1161 (emphasis in original)

Therefore, at the time Cungtion committed the crimes for which the district court granted him a deferred judgment, the federal government could have prosecuted (and still could prosecute) him for the same behavior that resulted in the crime for which the district court revoked the deferred judgment. *See* 18 U.S.C.A. §1152 (“the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country”); 18 U.S.C.A. § 113 (assault); 18 U.S.C.A. § 3282(a) (five year statute of limitation for non-capital offenses); *Gamble v. U.S.*, 139 S. Ct. 1960, 1980 (2019) (holding that the Double Jeopardy clause in the Fifth Amendment to the US constitution did not prevent prosecutions from the state and federal government for the same offense). Despite having jurisdiction to prosecute Cungtion for his criminal act(s), the federal government has not prosecuted him. *See* Confidential App. at p.38 (noting that the “investigation . . . is pending review by the US Attorney’s Office). Hence, the present case is distinguishable from *Tyndall* and *Goham* because the United States had, and has, jurisdiction to prosecute

Cungtion for the crime over which the state no longer has jurisdiction. Thus, *Tyndall* and *Goham* are not persuasive authorities for how this court should interpret Iowa Code 1.15A and how that statute affects the state's jurisdiction to enter a judgment of conviction against defendants in cases that were pending on 12-11-2018 when the United State accepted Iowa's retrocession of jurisdiction.

2. The analysis in *Hannan v. State*, 732 N.W.2d 45 (Iowa 2007) for determining whether a statute applies retroactively is the appropriate analysis to use in the present case.

Argument:

At pages 27-28 of its proof brief, the state argues that the analysis in *Hannan v. State*, 732 N.W.2d 45 (Iowa 2007) does not apply to the present case since Pub. L. No. 115-301¹ was a substantive, not procedural, statute. "Substantive law creates, defines and regulates rights. Procedural law, on the other hand, is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective." *Baldwin v. City of Waterloo*, 372 N.W.2d 486, 491 (Iowa 1985) (internal citations and quotations omitted). A "jurisdiction-conferring or jurisdiction-stripping statute usually takes away no substantive right but simply changes the tribunal that is to hear the case. If that is truly all the statute does, no

¹ Cungtion's proof brief mistakenly referred to this statute as Pub. L. No. 1215-301.

retroactivity problem arises because the change in the law does not 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." *Hamdan v. Rumsfeld*, 548 U.S. 557, 577 (2006) (internal citations and quotations omitted). Pub. L. No. 115-301 is a jurisdiction-stripping statute that simply changes the tribunal to hear cases like *Cungtion's* from courts of the state of Iowa to courts of the United States. Therefore, even if the *Hannan* test does not apply to substantive statutes, that point is irrelevant since Pub. L. No. 115-301 is not a substantive statute.

Additionally, it does not appear that the *Hannan* test only applies to procedural statutes. *Cungtion* acknowledges that a "statute that relates to a substantive right is ordinarily applied prospectively only", *Iowa Beta Chapter of Phi Delta Theta Fraternity v. State*, 763 N.W.2d 250, 266 (Iowa 2009), and that the statute *Hannan* analyzed was procedural in nature. But, the ordinary rule that a substantive statute only applies prospectively gives way when legislative intent is clear that the statute applies retrospectively, *Baldwin*, 372 N.W.2d at 491, and the way to determine legislative intent is to apply the three-part analysis from *Hannan*, *Hannan*, 732 N.W.2d at 51. Therefore, even if Pub. L. No. 115-301 is a substantive statute, the court must apply the *Hannan* analysis to determine whether it applies

retrospectively. As argued in Cungtion's proof brief, that test requires the conclusion that the statute applies to Cungtion's case.

Statement of Costs

Cungtion's attorney incurred no costs in printing or duplicating necessary copies of this brief.

Certificate of Service

I certify that on 3-22-2021, I will mail a copy of this brief to Christopher Lee Cungtion, Jr at c/o Tama County Jail, 100 N Main St, Toledo IA 52342. /s/ *Peter Stiefel*

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 1,748 words.
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced type face using Microsoft Word in 14 point Times New Roman text.

/s/ *Peter Stiefel*