



# United States v. Cooley Supreme Court of the United States

No. 19-1414. Decided June 1, 2021

## Tribal Police May Detain and Search Non-Indian Suspects

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Tribal officers now have the authority to detain and search non-tribal members on tribal land. The United States Supreme Court has just confirmed that a tribal officer with probable cause to detain a non-tribal member for a violation of state or federal law, also has the authority to search that individual.

### How we get here...

Officer Saylor of the Crow Police Department approached a truck parked on a public right-of-way within the Crow Reservation in the State of Montana. Saylor spoke to the driver, Joshua Cooley, and observed that Cooley appeared to be a non-native and had watery, bloodshot eyes. Saylor also noticed two semi-automatic rifles lying

on Cooley's front seat. Fearing violence, Saylor ordered Cooley out of the truck and conducted a pat-down search. Saylor also noticed a glass pipe and a plastic bag containing methamphetamine in the truck. Saylor seized those items and took Cooley to the Crow Police Department where federal and local officers questioned him.

A federal grand jury indicted Cooley on drug and gun offenses. Cooley brought a motion to suppress the drug evidence. The District Court granted the motion and dismissed the drug charge. The Ninth Circuit affirmed. According to the Ninth Circuit, a tribal officer only has the authority to stop and hold a non-Indian suspect for the amount of time reasonably necessary for a non-tribal officer to arrive on the scene and conduct a search. The court reasoned that when a tribal police officer finds an apparent violation of state or federal law, the officer must first try to determine whether the suspect is non-Indian and because Saylor failed to make that initial determination the search was unlawful.

### Holding

As a general proposition, the "inherent sovereign powers of an Indian tribe do not extend to the activities of non-members of the tribe." In *Montana v. United States*, 450 U.S. 544, (1981), the Court identified an exception to that general rule: A tribe retains inherent authority over the conduct of non-Indians on the reservation "when that conduct threatens or has some direct effect on ... the health or welfare of the tribe." Stating such exception "fits almost like a glove", the Supreme Court held in this case that a tribal police officer has authority to detain temporarily and to **search** non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law. The Court found



that denying the authority to search and detain deprives the tribes from the ability to protect themselves from ongoing threats.

The Supreme Court previously held, that when the “jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities.” Here, the Court extended the holding by confirming that since the tribal officer has the authority to transport a non-Indian suspect, he also retains the authority to search the individual prior to transport.

### **Takeaway**

The opinion, in this case, was unanimous. Tribal officers no longer need to wait until non-tribal officers arrive before the search of a suspect is conducted.

### **Stay Safe and Stay Informed!**

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