

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

File No. 00-1161-AR
HON. PHILIP E. RODGERS, JR.

JORGE LUIS ROMAN,

Defendant-Appellant.

Sara W. Brubaker (P39261)
Attorney for Plaintiff-Appellee

Joseph T. Hubbell (P41996)
Attorney for Defendant-Appellant

OPINION ON APPEAL
AFFIRMING THE DISTRICT COURT'S DENIAL OF
DEFENDANT-APPELLANT'S MOTION TO SUPPRESS

Introduction

This is an appeal by the Defendant from the District Court's denial of his motion to suppress evidence.

The facts of the case are these. While on duty on May 28, 2000, Grand Traverse Band Tribal Officer Corporal Joseph Soffredine observed a motor vehicle being driven by the Defendant-Appellant on tribal land. The motor vehicle was being driven erratically. Corporal Soffredine followed the vehicle. After crossing the northern border of the reservation and entering Leelanau County, Corporal Soffredine turned on his lights and stopped the Defendant-Appellant. The Defendant-Appellant was arrested for driving under the influence of intoxicants.

The Defendant-Appellant filed a motion to suppress any evidence obtained as a result of his unlawful stop and arrest. District Court Judge Michael Haley denied the motion. The Defendant filed this appeal.

STANDARD OF REVIEW

The Defendant-Appellant argues that his motion addresses constitutional and statutory construction issues and that the Court should review this matter de novo. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992). The Prosecuting Attorney, on the other hand, claims that the clearly erroneous standard applies. *People v Massey*, 215 Mich App 639; 546 NW2d 711 (1996); *People v Burrell*, 417 Mich 439; 339 NW2d 403 (1983).

The standard of review that is applicable in this case was set out in *People v Stevens*, 460 Mich 626, 630-631; 597 NW2d 53 (1999) where our Supreme Court said:

This Court reviews a trial court's ruling regarding a motion to suppress for clear error. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). However, in the present case, we review the application of a constitutional standard to uncontested facts. 'Application of constitutional standards by the trial court is not entitled to the same deference as factual findings.' *People v Nelson*, 443 Mich 626, 631, n 7; 505 NW2d 266 (1993). The application of the exclusionary rule to a violation of the 'knock-and-announce' component of the Fourth Amendment is a question of law. 'The standard of review is de novo with regard to questions of law.' *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

Additionally, we consider whether the evidence obtained after a violation of [a] statute must be excluded. Statutory interpretation is a question of law that this Court reviews de novo. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997).

See also, *People v Zahn*, 234 Mich App 438; 594 NW2d 120 (1999) where the Court of Appeals said:

To the extent a trial court's decision regarding a motion to suppress is based on an interpretation of the law, appellate review is de novo. *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998). Factual findings made in conjunction with a motion to suppress are reviewed for clear error. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). The deferential "clear error" standard is the appropriate standard of review for findings of fact because the trial court is usually in a superior position to assess the evidence. See *People v Mack*, 190 Mich App 7, 17; 475 NW2d 830 (1991).

I.

The issue presented here is whether Corporal Soffredine, a Grand Traverse Band Tribal Police Officer, violated the Deputization Agreement between the Grand Traverse Band of Ottawa

and Chippewa Indians and the Sheriff of Leelanau County (the "agreement") when he stopped and arrested the Defendant-Appellant. The determination of this questions rests upon the Court's interpretation of Section 3 of the agreement.¹

Section 3 provides in pertinent part as follows:

Section 3. Fresh Pursuit

- A. Any duly authorized Tribal law enforcement officer who:
1. Observes the commission of a misdemeanor, including traffic infractions and crimes and pursues the offender without unreasonable delay

* * *

shall be authorized to continue that pursuit across the boundaries of the primary area until the offender is apprehended, at which time the pursuing officer shall proceed as though the boundary had never been crossed and may issue such citations or effect such arrests as are dictated by the situation.

- B. As soon as it reasonably appears that the fresh pursuit of a suspect will require leaving the primary area, the Tribal officer shall make every attempt to promptly notify L.C.S.D. law enforcement authorities of the pursuit and to request their cooperation and assistance.

The Defendant-Appellant contends that Corporal Soffredine violated Section 3 of the agreement because he did not begin his pursuit until after he crossed the tribal boundary (he "admitted he did not turn on his lights to stop Mr. Roman's vehicle until after he had left the tribal property") and he did not promptly notify the Leelanau County Sheriff's Department that he had crossed into its jurisdiction ("it was not until after he stopped Mr. Roman did he notify Leelanau County Sheriff Department that he had stopped Mr. Roman.") (See, Defendant-Appellant's brief at p 2). The Defendant-Appellant argues that, because Corporal Soffredine violated the agreement, he did not have the power to act as a law enforcement officer outside the boundaries of the

¹The Defendant-Appellant refers to Section 5(c) of the cross deputization agreement. The Court requested and received a copy of the agreement from the Leelanau County Sheriff and cannot find a Section 5(c). The applicable section is Section 3. A copy of the agreement is attached to this Decision and Order.

reservation and could only act as a private citizen who did not have the authority to stop or arrest the Defendant-Appellant. MCL 764.16; MSA

In response, the prosecuting attorney contends that Corporal Soffredine acted lawfully and within the terms of the agreement when he stopped the Defendant-Appellant because he observed the Defendant-Appellant commit traffic infractions and suspected that he was operating under the influence of liquor within the boundaries of the reservation and he pursued the Defendant -Appellant without unreasonable delay across the boundary into Leelanau County. The prosecuting attorney argues that Corporal Soffredine effected the stop as soon as practicable and promptly notified the Leelanau County Sheriff's Department.

Whether the officer's conduct was lawful depends upon whether he "pursue[d] the [Defendant-Appellant] without unreasonable delay" and whether he "promptly" notified the Leelanau County Sheriff's Department of the entry into its jurisdiction. This determination hinges upon the meaning of the words "pursue," "without unreasonable delay" and "promptly." None of these words are defined in the agreement.

The word "pursue" is defined in *Webster's New Collegiate Dictionary* as synonymous with "follow." The word "prompt" is defined in *Webster's New Collegiate Dictionary* as meaning "being performed readily or immediately" or as being synonymous with "quick." The word "unreasonable" is defined as meaning "absurd" or as being synonymous with "irrational."

The Defendant-Appellant would have this Court find that Corporal Soffredine did not begin to pursue him until he crossed over the boundary into Leelanau County simply because the officer did not turn on his lights until after he crossed over the boundary. It is undisputed, however, that Corporal Soffredine observed the Defendant-Appellant driving erratically within the boundaries of the reservation. It is also undisputed that Corporal Soffredine began to follow the Defendant-Appellant within the boundaries of the reservation because he suspected that he was driving under the influence of intoxicants. These undisputed facts support a finding that Corporal Soffredine immediately followed the Defendant-Appellant or, in the words of the agreement, "pursue[d] the Defendant-Appellant] without unreasonable delay."

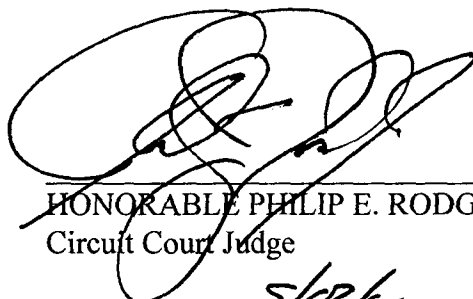
It is also undisputed that Corporal Soffredine did not stop the Defendant-Appellant within the boundaries of the reservation, but instead followed him across the boundary into Leelanau

County. He was, therefore, required by Section 3B of the agreement to promptly notify the Leelanau County Sheriff's Department. The Defendant-Appellant argues that the officer did not promptly notify the Sheriff's Department because he did not contact it until after he had made the traffic stop. Nothing in the record suggests there was any unreasonable delay. The officer testified that he stopped the Defendant-Appellant 2-3 tenths of a mile north of the boundary of the reservation and, after making the stop, contacted the Leelanau County Dispatch Center and notified the Sheriff's Department that he had stopped and arrested the Defendant-Appellant. Traveling at 55 miles per hour, the Defendant-Appellant followed by Corporal Soffredine would have traveled 80.666 feet per second. It would have taken only 19.6 seconds from the time they crossed the boundary line to reach the point where the officer stopped the Defendant-Appellant. Logically, no more than a minute or two would have passed between the time it "reasonably appear[ed]" that the pursuit would require leaving Tribal land and the time that the officer notified the Leelanau County Sheriff's Department. No matter how one looks at it, this is "readily," "immediately," and "quick."

Conclusion

The record supports finding that Corporal Soffredine lawfully stopped and arrested the Defendant-Appellant. Corporal Soffredine observed the Defendant-Appellant commit a misdemeanor within the boundaries of Tribal land. He pursued him across the boundary line into Leelanau County without unreasonable delay and promptly notified the Leelanau County Sheriff's Department that the pursuit had crossed over into its territory. Therefore, the decision of the District Court denying the Defendant-Appellant's motion to suppress is affirmed.

This Opinion resolves the last pending claim and closes the case.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____

5/03/01

DEPUTIZATION AGREEMENT
BETWEEN
THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
AND
THE SHERIFF OF LEELANAU COUNTY

PREAMBLE

This Agreement dated March 19, 1997, is between the Grand Traverse Band of Ottawa and Chippewa Indians, an Indian tribe organized pursuant to the federal Indian Reorganization Act, 25 U.S.C. §§ 461 et seq., (hereinafter the "Tribe") and the Sheriff of Leelanau County, a political official of the State of Michigan (hereinafter the "Sheriff").

The Tribe is authorized to enter agreements with the federal, state and local governments pursuant to Article IV, Section 1(n), of the Tribal Constitution.

The Sheriff is authorized by M.C.L.A. 51.70 and M.C.L.A. 51.73 to appoint special deputies "by an instrument in writing, to do particular acts."

INTENT

The Tribe and Sheriff each wish to ensure better law enforcement by providing for the deputization of the GTB Tribal Police officers under the powers granted the Sheriff under M.C.L. 51.70 and M.C.L. 51.73 and to empower the GTB Tribal Police officers with the authority to fulfill the duties and responsibilities of the above pursuant to the statutes of the State of Michigan.

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

Section 1. Definitions

As used in this Agreement:

"L.C.S.D." means Leelanau County Sheriff's Department.

"Tribe" means The Grand Traverse Band of Ottawa and Chippewa Indians.

"County" means Leelanau County.

"M.L.E.O.T.C." means Michigan Law Enforcement Officers Training Council.

"Qualified Officer" means M.L.E.O.T.C. Certified.

A TRUE COPY



**MICHELLE L. CROCKER
LEELANAU COUNTY CLERK
CLERK of CIRCUIT COURT
LELAND, MICHIGAN**

10-11-00

LEELANAU COUNTY SHERIFF'S DEPUTIZATION AGREEMENT

"Primary Area" means land within the area bound by Grand Traverse Bay on the east, Putnam Road on the north to Pobuda Road to N. Jacobson Road (Hwy. 633) on the west, and McKeese/Stallman Road on the south (see attached map).

Section 2.

Leelanau County Sheriff

- A. The GTB Tribal Police officers are hereby deputized by the Leelanau County Sheriff to make non-Indian criminal arrests in the primary area. The GTB Tribal Police officers are deputized to issue civil infractions on the state and county roadways described in the primary area subject to the following: 1) non-Indians shall be cited into state court, 2) Indians shall be cited into GTB Tribal Court, and 3) all civil infraction tickets issued by the GTB Tribal Police officers on Peshawbestown Road, Roubal Road, Ninatigo Drive, Kitigan Mikun, Ki-Dah-Keh Mikun and Beems-Kwa-Ma Mikun roads within the interior of the primary area shall be heard in GTB Tribal Court.
1. All civil infraction tickets issued by GTB Tribal Police officers on M-22 on the east, Putnam Road on the north to Pobuda Road to N. Jacobson Road (Hwy. 633) on the west, and McKeese/Stallman Road on the south to non-Indians shall be heard in state court.

Section 3.

Fresh Pursuit

- A. Any duly authorized Tribal law enforcement officer who:
1. Observes the commission of a misdemeanor, including traffic infractions and crimes and pursues the offender without unreasonable delay; or
 2. Observes the commission of a felony or has reasonable grounds to suspect a felony has been committed, and pursues the offender without unreasonable delay.
- shall be authorized to continue that pursuit across the boundaries of the primary area until the offender is apprehended, at which time the pursuing officer shall proceed as though the boundary had never been crossed and may issue such citations or effect such arrests as are dictated by the situation.
- B. As soon as it reasonably appears that the fresh pursuit of a suspect will require leaving the primary area, the Tribal officer shall make every attempt to promptly notify L.C.S.D. law enforcement authorities of the pursuit and to request their cooperation and assistance.

LEELANAU COUNTY SHERIFF'S DEPUTIZATION AGREEMENT

1. The fresh pursuit conducted under this Section shall conform with the policy and procedure of the Sheriff's Department regarding high speed pursuit.

Section 4.

Qualifications and Training

- A. All personnel furnished by the parties pursuant to this Agreement shall be full-time commissioned law enforcement officers, certified by M.L.E.O.T.C. The Tribe shall furnish a list of all qualified GTB Tribal Police officers on January 2nd of each year.

Section 5.

Operational Plan

- A. Any suspects arrested pursuant to this Agreement will be booked and lodged in the Leelanau County Jail, providing space is available.

Section 6.

Costs

- A. The Tribe will contract with L.C.S.D. for the lodging of prisoners within the jurisdiction of the Tribe.
- B. The Tribe shall bear the expense of testifying in State Court when acting pursuant to state law.

Section 7.

Arrests

- A. The L.C.S.D. agrees that they will make arrests for the Tribe outside Indian country, pursuant to a valid Tribal Court warrant, and the Tribe agrees that they will make arrests in Indian country for the L.C.S.D. pursuant to a valid State Court warrant.

Section 8.

Search Warrants

- A. Court Rules:

1. The provisions of Michigan Court Rule 2.615, Enforcement of Tribal Judgments, and Chapter 10 of the GTB Court Rules, Rules Regarding Enforcement and Recognition of Foreign Judgments, shall apply to this Agreement.

LEELANAU COUNTY SHERIFF'S DEPUTIZATION AGREEMENT

B. State Warrants:

1. County law enforcement officers shall present search warrants authorizing the search for evidence located on the Tribe's reservation and Indian country (in accordance with the Tribal Code) to Tribal law enforcement authorities for execution.
2. The Grand Traverse Band Police Department agrees to cooperate in the execution of properly issued state search warrants within the reservation and Indian country and to observe the requirements of State and Federal law in doing so.
3. L.C.S.D. law enforcement officers may, at the invitation of Tribal authorities, accompany Tribal officers when a state warrant is executed.

C. Tribal Warrants:

1. Tribal law enforcement officers shall present search warrants authorizing the search for evidence located off the Tribe's reservation and Indian country to County law enforcement authorities for execution. The Leelanau County Prosecuting Attorney agrees to review and prepare search warrants for off-reservation searches.
2. The L.C.S.D. agrees to cooperate in the execution of Tribal search warrants off the reservation and Indian country and to observe the requirements of State, Tribal and Federal law in doing so.

Section 9.

Immunities

- A. All the immunities from liability and exemptions from laws, ordinances and regulations which Tribal law enforcement officers deputized by the Sheriff, pursuant to the authority of this written instrument and M.C.L.A. 51.70, have in their own Tribal jurisdiction shall be effective in the state's jurisdiction in which the Tribal law enforcement officers are giving assistance unless otherwise prohibited by law. The provisions of 25 U.S.C. 450f and the application of the Federal Tort Claims Act applies to acts performed by GTB Tribal Police officers.

Section 10.

Hold Harmless

- A. The Sheriff and Tribe shall waive any and all claims against each other which may arise out of their activities outside their respective jurisdictions under this Agreement unless such claims are proximately caused by the gross negligence or

LEELANAU COUNTY SHERIFF'S DEPUTIZATION AGREEMENT

willful misconduct of the other party or its law enforcement officers.

- B. The Sheriff and Tribe shall be responsible for all liability of whatever nature arising from the acts of its own law enforcement officers and employees to the extent provided by law. Under no circumstances shall either the County or Tribe be held liable for the acts of employees of the other party performed under color of this Agreement.

Section 11. Indemnification

- A. The Tribe shall indemnify the Sheriff for all claims, judgments, or liabilities by third parties for property damage, personal injury or civil liability which may arise out of the activities of the Tribal law enforcement officers pursuant to this Agreement.

Section 12. Insurance

- A. The Tribe agrees to maintain and name the Sheriff as insured on an insurance policy in the amount of \$10 million per incident insuring against claims for liability and shall maintain the policy in full force and effect during the Agreement. The Tribe shall provide a copy of the policy to the Sheriff by January 2nd of each year.
- B. The Tribe shall submit to the Sheriff proof of adequate insurance covering each of its Tribal law enforcement officers pursuant to this Agreement by January 2nd of each year.
- C. The Tribe shall submit to the Sheriff proof of adequate insurance covering the Tribe and each of its law enforcement officers commissioned pursuant to this Agreement by January 2nd of each year.
- D. The provisions of 25 U.S.C. 450 (a)-(g) "self-governance contracting" and the application of the Federal Tort Claims Act shall apply to the extent provided by law to the actions of the Tribal law enforcement officers under this Agreement. See: Pub. L. No. 101-512, Title III, § 314, 104 Stat. 1959 (*codified at 25 U.S.C. § 450f notes*). In Comes Flying v. U.S. through Bureau of Indian Affairs, 830 F.Supp. 529, 530 (1993).

Section 13. Costs

- A. The Sheriff and Tribe shall each assume responsibility for all costs incurred by their own officers under this Agreement, except as otherwise provided.

LEELANAU COUNTY SHERIFF'S DEPUTIZATION AGREEMENT

Section 14. Oversight Committee

- A. A committee consisting of Tribal and Sheriff law enforcement officers shall review activities and method of performance undertaken pursuant to this Agreement.
- B. The Tribe's Chief of Police and the County Sheriff shall serve as co-chairmen and shall jointly set dates and places for meetings and shall jointly preside over meetings.
- C. This committee may recommend to the signatories of this Agreement any amendments for consideration by the parties. This committee shall further review, in the first instance, any dispute raised by either party or by third parties, relating to this Agreement.
- D. The committee co-chairman shall invite representatives of their respective courts and prosecutors to attend the meetings. The committee shall meet at least quarterly or more frequently at the call of either the Tribe's Chief of Police or the County Sheriff to discuss the status of this Agreement and invite other law enforcement or other officials to attend as necessary.

Section 15. Duration of Agreement

- A. This Agreement shall remain in full force and effect until and unless terminated by either party as provided in this Agreement.

Section 16. Suspension of Agreement

- A. If any provision of this Agreement is violated by the Sheriff or any of his agents, the Tribal Council may suspend the Agreement on ten (10) days written notice to the Sheriff. The suspension shall last until the Tribal Council is satisfied that the violation has been corrected and will not recur.
- B. If any provisions of this Agreement is violated by the Tribe or any of its agents, the Sheriff may suspend the Agreement immediately and terminate the deputy status of the GTB Tribal Police officers at will or upon revocation of this Agreement. The suspension shall last until the Sheriff is satisfied that the violation has been corrected and will not recur.
- C. The Sheriff may exercise his power of suspension to suspend an individual GTB Tribal Police officer without suspending this Agreement.

LEELANAU COUNTY SHERIFF'S DEPUTIZATION AGREEMENT

Section 17. Revocation of Agreement

- A. The Tribe may revoke this Agreement at any time by formal action upon ten (10) days written notice. The Sheriff may revoke this Agreement at any time.

Section 18. Amendments

- A. This Agreement shall not be amended except by an instrument in writing executed by signatories below and attached to this Agreement.

Section 19. Saving

- A. This Agreement, or any commission issued pursuant to it, shall not confer any authority on a state court or other state or county authority which that court or authority would not otherwise have.
- B. Nothing in this Agreement shall be construed to cede any jurisdiction of either of the parties, to waive any immunities, to modify the legal requirements for arrest or search or seizure or to otherwise modify the legal rights of any person, to accomplish any act in violation of state, federal, or tribal law or to subject the parties to any liability to which they would not otherwise be subject to by law.

Section 20. Severability

- A. The provisions of this Agreement are severable and should any provision be held invalid or unenforceable, the remainder of this Agreement remains in effect unless terminated as provided in this Agreement.

Section 21. Notice

- A. Any notice required or permitted to be given under this Agreement shall be deemed sufficient if given in writing and sent by registered or certified mail.
- B. In the case of the Sheriff, notices shall be sent to:

Leelanau County Sheriff
201 Chandler
Leland, Michigan 49654

- C. In the case of the Tribe, notices shall be sent to:

LEELANAU COUNTY SHERIFF'S DEPUTIZATION AGREEMENT

Chief of Police
Grand Traverse Band of Ottawa and Chippewa Indians
2605 N. West Bayshore Drive
Suttons Bay, Michigan 49682

Section 22. Repealers

A. This Agreement constitutes the entire Agreement between the parties.

The effective date of this Agreement shall be the 19th day of March, 1997.

IN WITNESS THEREOF, the parties have executed this Agreement the date and year first above written by authority of the Grand Traverse Band of Ottawa and Chippewa Indians and the Leelanau County Sheriff.

COUNTY OF LEELANAU

GRAND TRAVERSE BAND OF OTTAWA
AND CHIPPEWA INDIANS

BY: M. Oltersdorf
Mike Oltersdorf, Leelanau County Sheriff

BY: George E. Bennett
George E. Bennett, Tribal Chairman

DATE: MARCH 25, 1997

DATE: March 25, 1997

BY: Clarence G. Gomery
Clarence Gomery, Prosecuting Attorney

BY: Dennis L. Habedank
Dennis Habedank, GTB Chief of Police

DATE: March 25, 1997

DATE: MARCH 25, 1997

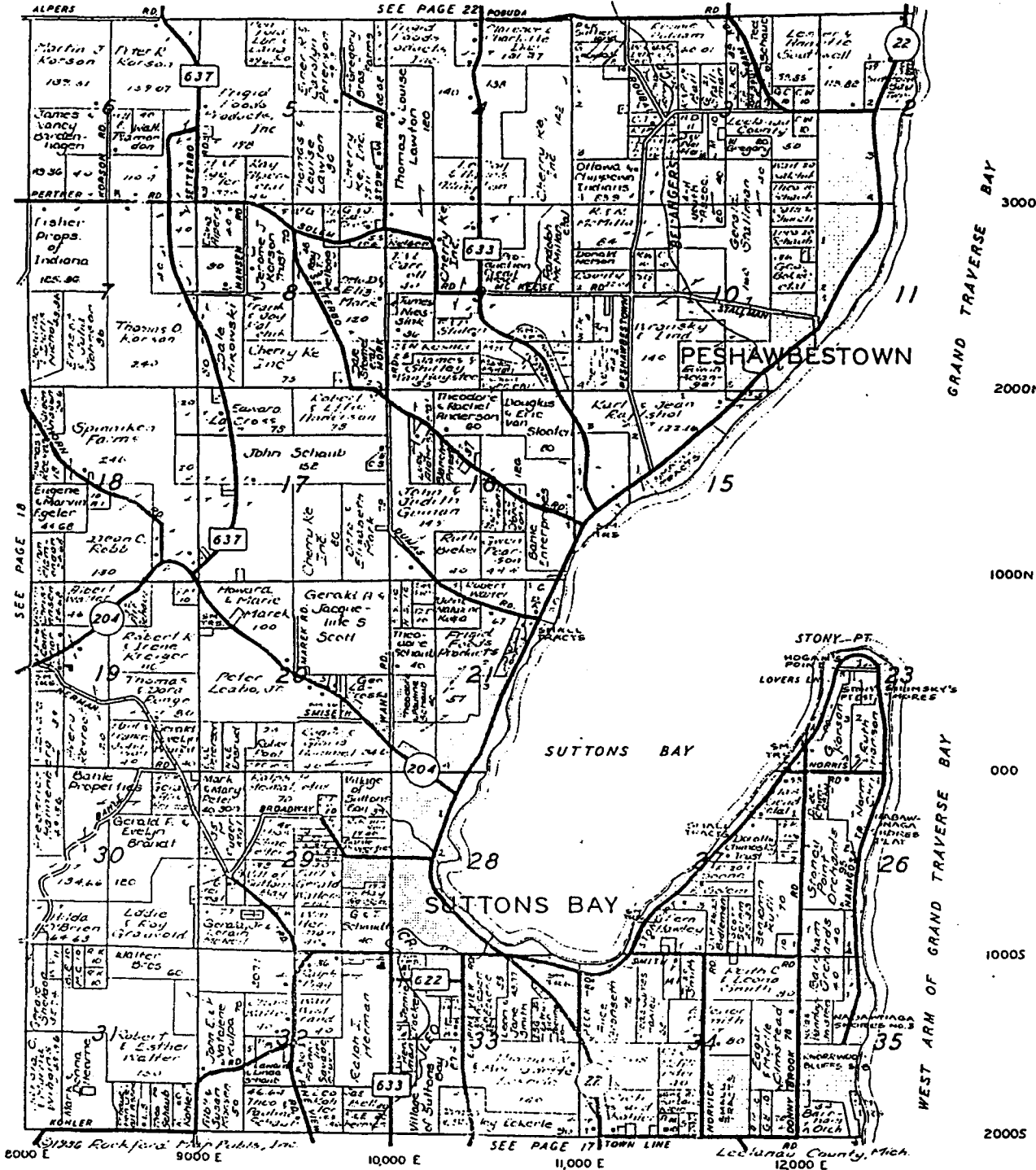
BY: William Gregory
William Gregory, Prosecuting Attorney

DATE: 3/25/97

0 EAST PART SUTTONS BAY

T.30 N.-R.11 W.

4000N



GRAND TRAVERSE BAY

WEST ARM OF GRAND TRAVERSE BAY

SEE PAGE 18 SEE PAGE 22 SEE PAGE 17 TOWN LINE

6000 E 8000 E 10000 E 11,000 E 12000 E

4000N 3000N 2000N 1000N 000 1000S 2000S