STATE OF MICHIGAN

IN THE COURT OF APPEALS

SCOTT WILLIAM MOSES,

Plaintiff-Appellant,

V.

State of Michigan,
Michigan Department Of Corrections
Saginaw Correctional Facility
9625 Pierce Road
Freeland, MI 48623

Defendant-Appellee.

_____/

COURT OF APPEALS NO: 262970

CIRCUIT COURT NO: 01-0272-FC

Stephen L. Borrello, Presiding Judge
Peter D. O'Connell, Judge
Alton T. Davis, Judge

PLAINTIFF-APPELLANT'S BRIEF
IN SUPPORT OF COMPLAINT FOR WRIT OF *HABEAS CORPUS* PURSUANT TO MICHIGAN COURT RULES 7.203(C)(3),AND 7.206(D)(3)

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

U.S. CONSTITUTION

TREATIES

FEDERAL STATUTES

CASES

MICHIGAN STATUTES

MICHIGAN COURT RULES (MCR)

MISCELLANEOUS

APPENDIX

STATEMENT OF THE BASIS OF JURISDICTION

OF THE COURT OF APPEALS

This Honorable Court has jurisdiction to hear this matter pursuant to Michigan Court Rule (MCR) 7.203(C)(3), and MCR 7.206(D(3). See Order, Court of Appeals, State of Michigan, Docket No. 262970, October 17, 2005. Appendix A. See also MCR 3.301(G)(2).

DATE AND NATURE OF JUDGMENT APPEALED FROM

On or about October 17, 2001, the Isabella County Prosecutor for the State of Michigan did file a Felony Complaint and Felony Warrant in the Isabella County Trial Court, and therein charging Scott William Moses, Plaintiff-Appellant, with a single court of Criminal Sexual Conduct in the first degree (personal injury) pursuant to MCL Section 750.520(b)(1)(f); Michigan Statutes Annotated (MSA) Section 28.788(2)(1)(F), and a single count of Domestic Violence, pursuant to MCL 750.81(2); MSA 28.276. See Felony Complaint, Appendix B, and and Felony Warrant, Appendix C.

On or about November 15, 2001, the Isabella County Prosecutor did file a Felony Information in the Isabella County Trial Court, and therein alleging that on or about 10-15-02, or 10-16-01, Mr. Moses did commit a Criminal Sexual Conduct in the first degree (personal injury) pursuant to MCL 750.520(b)(1)(f); MSA 28.788(2)(1)(f), and Domestic Violence, pursuant to MCL 750.81(2); MSA 28.276, upon his partner, Joann Chamberlain, and causing personal injury to her. See Felony Information, Appendix D. On November 28, 2001, the Isabella County Prosecutor did file an Amended Information and therein charging Mr. Moses with a violation of Criminal Sexual Conduct in the third degree (force or coercion) MCL 750.520(d)(1)(B); MSA

28.788(4)(1)(b). See Appendix E.

On November 28, 2001, Mr. Moses did appear before the Isabella County Trial Court with his attorney of record James D. Veldhuis, and there was informed of his rights under Michigan law. Mr. Moses did at this time enter a plea of no contest to a single court of Criminal Sexual Conduct in the third degree, (force or coercion) pursuant to MCL 750.520(d)(1)(B); MSA 28.788(4)(1)(b). There was no jury trial therefore. On April 11, 2002, Mr. Moses did appear for sentencing with his attorney James D. Veldhuis in the Isabella County Trial Court. Mr. Moses having been convicted under MCL 750.520(d)(1)(B); MSA 28.788(4)(1)(b), was sentenced by the Isabella County Trial Court to the care and custody of the Michigan Department of Corrections for a period of 110 months to 15 years. Mr. Moses was given credit for 109 days served. See Judgment of Sentence, Commitment To Corrections Department, and Isabella County Trial Court's Pre-Sentence Information Report, Appendix F.

Plaintiff-Appellant asserts that the State of Michigan was from the beginning without probable cause, subject matter and personal jurisdiction to arrest, charge, apply conditions of bond, take his plea, determine his guilt or innocence, and to sentence him to prison with the Michigan Department of Corrections for a period of 110 months to 15 years. It is for this reason of claimed lack of probable cause, subject matter and personal jurisdiction by the State of Michigan over his case, and Judgement of Sentence of April 11, 2002, that Scott William Moses seeks a Writ of *Habeas Corpus*.

STATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE BOUNDARIES OF THE FEDERAL ISABELLA INDIAN RESERVATION HAVE BEEN ESTABLISHED BY TREATY WITH THE UNITED STATES OF AMERICA SUCH THAT THE LANDS WITHIN CONSTITUTE INDIAN COUNTRY.

THE ISABELLA COUNTY TRIAL COURT WOULD ANSWER: "NO"

THE PLAINTIFF-APPELLANT WOULD ANSWER, "YES"

THE DEFENDANT-APPELLEE WOULD ANSWER, "NO"

II. WHETHER THE STATE OF MICHIGAN CAN LAWFULLY ASSERT CRIMINAL JURISDICTION OVER MR. MOSES, AN ENROLLED MEMBER OF THE SAGINAW CHIPPEWA INDIAN OF MICHIGAN, WHERE THE LOCATION OF THE ALLEGED OFFENSES WERE WITHIN THE EXTERIOR BOUNDARIES OF THE FEDERAL ISABELLA INDIAN RESERVATION.

THE ISABELLA COUNTY TRIAL COURT WOULD ANSWER, "YES"

THE PLAINTIFF-APPELLANT WOULD ANSWER, "NO"

THE DEFENDANT-APPELLEE WOULD ANSWER, "YES"

III. WHETHER THE EXTENSION OF CRIMINAL JURISDICTION OVER RESERVATION INDIANS BY THE STATE OF MICHIGAN CONSTITUTES AN UNLAWFUL DIMINISHMENT OF THE FEDERAL ISABELLA SUCH THAT A FEDERAL QUESTION IS PRESENT.

THE ISABELLA COUNTY TRIAL COURT WOULD ANSWER, "NO"

THE PLAINTIFF-APPELLANT WOULD ANSWER, "YES"

THE DEFENDANT-APPELLEE WOULD ANSWER, "NO"

IV. WHETHER THE STATE OF MICHIGAN'S ASSERTION OF CRIMINAL JURISDICTION ON THE FEDERAL ISABELLA INDIAN RESERVATION, UNDER COLOR OF LAW, IS A VIOLATION OF MR. MOSES'S CIVIL RIGHTS UNDER AMENDMENTS IV, V, VI, AND XIV OF THE U.S. CONSTITUTION.

THE ISABELLA COUNTY TRIAL COURT WOULD ANSWER, "NO"

THE PLAINTIFF-APPELLANT WOULD ANSWER, "YES"

THE DEFENDANT-APPELLEE WOULD ANSWER, "NO"

V. WHETHER *HABEAS CORPUS* RELIEF IS AVAILABLE TO MR. MOSES WHERE THE STATE OF MICHIGAN'S UNLAWFUL ASSERTION OF CRIMINAL JURISDICTION OVER HIM DID RESULT IN AN UNLAWFUL AND THEREFORE VOID PROCESS.

THE ISABELLA COUNTY TRIAL COURT WOULD ANSWER, "NO"

THE PLAINTIFF-APPELLANT WOULD ANSWER, "YES"

THE DEFENDANT-APPELLEE WOULD ANSWER, "NO"

STATEMENT OF THE FACTS

On or about October 16, 2001, Michigan State Police Trooper Donald Dutcher did report that he was contacted by Joann Denaro Chamberlain (a.k.a. Joann Denaro Moses) and who did wish to make a report of sexual assault and domestic violence against her person by Plaintiff-Appellant, Scott William Moses. Ms. Chamberlain did report that the incident had occurred on or about October 15, 2001. See Michigan Department of State Police Original Incident Report, October 16, 2001, Report No. 063-0003759-01 (02), Appendix G. Trooper Dutcher did report Ms. Chamberlain's race as being white, and the race of Scott W. Moses as being "I" for American Indian. Id. Report. Pg. 1, 3. Trooper Dutcher did report that on October 15, or 16, 2001, he and Saginaw Chippewa Indian Tribe of Michigan police officer Mike Woodruff did travel to the location of the alleged assault (and residence of Ms. Chamberlain and Mr. Moses at the time) and which was described by Trooper Dutcher as: Isabella County, Nottawa Township, 3560 N. Johnson road, Weidman, Isabella County, State of Michigan, 48893. Id. Report pg. 1.

Trooper Dutcher reports that he did attempt to make contact with Mr. Moses by knocking and announcing his presence, but that he could not get an answer from the person he observed inside the residence. Trooper Dutcher states that he did announce on his public address system for the person(s) inside to come out, and that Mr. Moses was under arrest. Trooper Dutcher reports that he got no response. Id. Report pg. 4.

Next, Trooper Dutcher reports that he did make a decision to forcibly enter the home of Scott Moses based upon probable cause to believe that a felony had been committed by Mr. Moses, and after a consultation with Sergeant Harrington of the Michigan Department of State Police. Id. Report Pg. 4. Trooper Dutcher did report that he and other officers did gain entry into

Mr. Moses' residence by use of a ram. Id. Report pg. 4. Trooper Dutcher did report that after officers did enter into the home, Mr. Moses was taken into custody without incident, read his *Miranda* rights, and transported to the Isabella County Jail for processing on charges of Criminal Sexual Conduct in the 3rd degree (MCL 750.520(d): MSA 28.788(4), and domestic assault (MCL 750.81(2), MSA 28.276). Id. Report pg. 3 and 5. Trooper Dutcher reports that the date and time of the officer's investigations and arrest of Mr. Moses was "On or after Monday, October 15, 2001, at 2330, and before Tuesday, October 16, 2001, at 1445". Id. Report pg. 1.

During transport to the jail, Trooper Dutcher reports that Mr. Moses made statements to him regarding his knowledge of the incident reported by Joann Chamberlain. Id. Report pg. 4-5. In his Official Report, Trooper Dutcher did designate Mr. Moses' race as "I", for American Indian. Id. Report pg 3. At the time of the alleged assault, Mr. Moses and his partner Joann Denaro Chamberlain did reside together at the 3560 N. Johnson Road. Id. Report pg. 1.

Trooper Dutcher did make a journal reporting that he did speak with Jim Brunson, Assistant Federal Prosecutor on 10-18-01. Trooper Dutcher states: "He will be handling this case." See Appendix G, Michigan Department of State Police Supplemental Report, No. 063-0003759-01 (02) dated December 4, 2001, pg. 1. Further, Trooper Dutcher reports a journal entry on December 18, 2001, as "U.S. Attorney called and said case is now being handled by Isabella County. I put call into Bob Holmes. Awaiting reply." Id. pg 1. Lastly, Trooper Dutcher reports a journal entry on December 19, 2001, as "Bob Holmes advised that MOSES plead guilty to CSC 3rd on 11-28-01. He is scheduled for sentencing in January 2002." Id. pg. 1

On or about October 17, 2001, the Isabella County Prosecutor for the State of Michigan did file a Felony Complaint and Felony Warrant with the Isabella County Trial Court charging

Mr. Moses with a count of Criminal Sexual Conduct in the first degree (personal injury) pursuant to MCL 750.520(b)(1)(f); MSA 28.788(2)(1)(f). Appendix B, and Appendix C, respectively. The prescribed penalty under this section and as given in the Felony Complaint was: Felony, life or any term of years; mandatory AIDS./STD testing. In said complaint, Mr. Moses was also charged with a single count of Domestic Violence pursuant to MCL 750.81(2); MSA 28.276, a misdemeanor. The penalty was 93 days and /or $500.00 fine. The Felony Complaint, did also contain a second offense notice pursuant to MCL 750.520(f); MSA 28.788(6), regarding the offense of Criminal Sexual Conduct. Here, the Prosecution did allege a prior conviction for MCL Section 750.520(c),MSA 28.788.

On October 17, 2001, the Isabella County Trial Court Magistrate did set Mr. Moses' bond in the amount of 10 percent cash or surety, of $150,000.00. See Order Regarding Pre-Trial Release/Custody, Isabella County Trial Court, dated October 17, 2001, Appendix H. On November 15, 2001, the Isabella County Prosecutor did file a Felony Information in the Isabella County Trial Court charging Mr. Moses as stated above. See Appendix D. In said Felony Information, the Prosecution did allege that on or about 10-15-01 or 10-16-01, Mr. Moses did commit a sexual assault upon his partner, Joann Chamberlain, and causing personal injury to her. This Information did also contain a second offense notice pursuant to MCL 750.520(f); MSA 28.788(6), for the criminal sexual conduct charge.

On November 15, 2001, Mr. Moses did waive his right to a pre-liminary examination on said felony, and was bound over to the Isabella County Trial Court (Circuit). The case number after bind over was 01-272-FC. See Bind Over/Transfer After Preliminary Examination, Felony, Appendix I. On November 28, 2001, the Isabella County Prosecutor did file an Amended Felony

Information, and therein charging Mr. Moses with a violation of Criminal Sexual Conduct in the third degree (force or coercion) pursuant to MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). See Appendix E. The penalty given under this section was: Felony, 15 years; Mandatory Aids/Std testing. On November 29, 2001, the Isabella County Prosecutor did file a Notice Of Intent To Seek Enhanced Sentence pursuant to MCL 769.12, MSA 28.1084. See Appendix J.

On November 28, 2001, Mr. Moses did appear before the Isabella County Trial Court with his attorney James D. Veldhuis to enter a plea. Mr. Moses did enter a plea of no contest to a single count of Criminal Sexual Conduct in the Third Degree, (force or coercion) MCL 750.520D(1)(b); MSA 28.788(4)(1)(b), the Honorable James E. Wilson presiding (and now deceased). Their was no trial therefore. See Plea Transcript, Isabella County Trial Court, November 28, 2001. Also on November 28, 2001, the Isabella County Trial Court did issue an new Order regarding bond. Here, the Trial Court did order that Mr. Moses could gain his release from jail upon the posting of $30,000.00, at ten percent. See Order Regarding Bond, Appendix K. Mr. Moses' did post the ten percent bond in the amount of $3,000.00, on November 28, 2001.

On April 11, 2002, Mr. Moses did appear for sentencing with his attorney James D. Veldhuis. See Sentencing Transcript, April 11, 2002. The sentencing Judge was the Honorable James E. Wilson. Here, Mr. Moses was sentenced to the custody of the Michigan Department of Corrections for a period of 110 months to 15 years in prison. See Judgment of Sentence and Commitment To Corrections Department, April 11, 2002, Appendix F. Mr. Moses was given credit for 109 days served in the County Jail. A copy of Mr. Moses Pre-Sentence Information Report, Isabella County Trial Court, April 11, 2002, is appended to this Brief at Appendix F.

Currently, Mr. Moses is serving his sentence in the Michigan Department of Corrections

Newberry Correctional Facility, 3100 Newberry Ave., Newberry, MI 49868.

Plaintiff-Appellant Scott W. Moses is an enrolled member of the Saginaw Chippewa Indian Tribe of Michigan (Tribe). Mr. Moses was an enrolled member of the Tribe on the date and time of the alleged offenses charged by the Isabella County Prosecutor. See Appendix L. (Affidavit of Scott William Moses, Saginaw Chippewa Indian Tribe Certification of Membership, Certification of Blood Quantum, Copy of Mr. Moses' Saginaw Chippewa Indian Tribe Membership Card, and Voter's Registration Card). Mr. Moses asserts that the location of the alleged offenses (3560 N. Johnson Road) as described by Trooper Dutcher, was within the exterior boundaries of the Federal Isabella Reservation (Reservation). The location, Township15, North, and Range, 5 West, Section 7, of Nottawa Township, represents the extreme north-west corner of the Reservation with the western Reservation border running along Woodruff Road, and the northern border running along Vernon Road. See Map Isabella Indian Reservation, Appendix M.

ARGUMENT

I. WHETHER THE BOUNDARIES OF THE FEDERAL ISABELLA INDIAN RESERVATION HAVE BEEN ESTABLISHED BY TREATY WITH THE UNITED STATES OF AMERICA SUCH THAT THE LANDS WITHIN CONSTITUTE INDIAN COUNTRY.

Standard of Review. The interpretation of treaties involves a question of law which the appellate court reviews *de novo*. People v. Mackle, 241 Mich App. 583, 617 N.W.2d 339 (2000). Indian treaties must be construed "so far as possible, in the sense in which the Indians understood them, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people." Choctaw Nation of Indians v. United States, 318 U.S. 423, 432; 63 S.Ct. 672 (1943). Ambiguities in treaties with Indians are to be construed in favor of the Indians. Oneida Co. v. Oneida Indian Nation, 470 U.S. 226, 247; 105 S.Ct. 1245 (1985).

Standards Applied. Mr. Moses maintains that 3560 N. Johnson Road is now and was at the material time within the exterior boundaries of the Federal Isabella Indian Reservation (Reservation). Mr. Moses maintains that his Tribe, the Saginaw Chippewa Indian Tribe of Michigan (Tribe), is a federally recognized American Indian Tribe, pursuant to 25 U.S.C. 476 et seq. ("Indian Reorganization Act"); (48 Stat. 984, codified as amended by Act of June 15, 1935, 49 Stat. 378), and that the boundaries of the Tribe's Reservation have been fixed by the "Treaty With The Chippewa's", August 2, 1855, (11 Stat. 633), and the "Treaty With the Chippewa Indians", October 18, 1864, (14 Stat. 657). See Treaty With The Chippewa's, August 2, 1855, 11 Stat. 633, Appendix N; and Treaty With the Chippewa Indians, October 18, 1864, 14 Stat. 657, Appendix O. See 25 U.S.C. 1301, Definitions ("Indian Tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.").

The Treaty of 1864, did affirm and designate as the boundaries of the Reservation six townships within the County of Isabella, State of Michigan. The legal description given in Article II of the Treaty of 1864 is as follows:

> "In consideration of the foregoing relinquishments, the United States hereby agree to set apart for the exclusive use, ownership, and occupancy of the said of the said (sic) Chippewas of Saginaw, of Saginaw, Swan Creek, and Black River, all of the unsold lands within the six townships in Isabella County, reserved to said Indians by the treaty of August 2d, 1855, aforesaid, and designated as follows, viz:-
>
> The north half of township fourteen, and townships fifteen and sixteen north, of range three west; the north half of township fourteen and township fifteen north, of range four west, and townships fourteen and fifteen north, of range five west."

As stated, the Map (Appendix M) generated for this area by the Michigan Department of Natural Resources does specify the location in question as within Township15, North, and Range, 5 West, Section 7, of Nottawa Township. The location in question (3560 N. Johnson Road) is in the extreme north west corner of the Reservation with the western Reservation border running along Woodruff Road, and the northern Reservation border running along Vernon Road. In support of his argument that 3560 N. Johnson road is within the exterior boundaries of the Reservation, and therefore Indian Country, Mr. Moses cites to Title 18 U.S.C. 1151, Indian Country defined, which provides:

> "Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian Country", as used in this chapter [18 USCS sections 1151 et seq.], means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c)all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-ways running through the same."

Indeed, it has been the position of the United State of America that the boundaries of the

Isabella Reservation have not been diminished since these were established by Treaty with the United States in 1864 (14 Stat. 864). See. Brief on behalf of the United States of America, United States of America v. Manier, Case No. 77-20066, (E. Dist, Mich.1977), Appendix P . See, Manier, Case No. 77-20066 (E. Dist. Mich. 1977) (Memorandum and Opinion, finding that allotment of lands within an Indian reservation does not reduce the boundaries of the reservation nor terminate its existence, and once Congress has established a reservation, all tracts of land within it remain a part of the reservation until separated by Act of Congress, *citations omitted.*), Copy of Opinion, Appendix Q. See also, Declaration Of Dr. Charles Cleland, United State of America v State of Michigan, Case No. 91-CV-10103-BC (E. Dist. Mich. 1991)(providing expert analysis and opinion of the history of the Saginaw Chippewa Indian Tribe of Michigan), Appendix R; Treaty With The Chippewa's, August 2, 1855, 11 Stat. 633. Appendix N.

In 1992, the Michigan Court of Appeals did examine the issue of whether lands within the exterior boundaries of the Federal Isabella Indian Reservation (Reservation) that were designated as "sold lands" in the Treaty of 1864, were to be excluded from the Reservation. People v. Bennett, 195 Mich. App. 455, 458; 491 N.W.2d 866, 867 (1992). Further, the Bennett Court did address whether such exclusion then did allow the State of Michigan to lawfully assert criminal subject matter and personal jurisdiction over Defendant David A. Bennett, and by implication over other Native American persons. Id. Here, the Bennett Court did find:

> "...examining the treaty itself, it appears that the parties intended for the previously sold lands to be excluded from the reservation, because the Chippewas were granted all the "unsold" lands within the six townships. Given the plan language of the treaty, and the lack of evidence to the contrary, we believe the Chippewas would have understood at the time of treaty formation that they were not permitted to settle on or own any lands previously patented to individual." *Citations omitted.*

Id. at 458-459, 867-868. Given this reasoning, the Bennett Court did hold that David A. Bennett, an Indian person, was subject to criminal prosecution in the Courts of the State of Michigan. Id.

As the Map at (Appendix M) does reveal, the holding of Bennett *supra* was extended to include for purposes of asserting State of Michigan criminal jurisdiction, not only lands previously patented to individuals, but also to so-called canal land grants, swamp land grants, school land grants, and military boundary lands. Mr. Moses residence (3560 N. Johnson road) is located on lands designated as swamp land grants.

Mr. Moses maintains that the State of Michigan's assertion of criminal jurisdiction on said Reservation and in his case under Bennett, 195 Mich. App. 455; 491 N.W.2d 866, or otherwise, is in violation of the Treaties of 1855, and 1864 for the following reasons:

(1). the Treaties of 1855, and 1864, between the United States of American and the Chippewas did set forth a specific and described boundary for said Reservation (and which boundaries were contiguous and un-fragmented), and within said boundary the federal government or the Tribe did retain exclusive jurisdiction over Native Americans crimes and offenses;

(2). the Bennett, Court 195 Mich. App. 455; 491 N.W.2d 866, did not interpret or construe the Treaty of 1864, in a sense that the Chippewas' of the time would have understood said Treaty because said Treaty did not contain language which would have lead (either implicitly or explicitly) the Chippewas' at the time to believe that their Reservation had or would be fragmented, or that portions of said Reservation were previously, or then to be under the jurisdiction of the State of Michigan. Choctaw Nation of Indians v. United States, 318 U.S. 423,

432; 63 S.Ct. 672;

(3). the Bennett, Court 195 Mich. App. 455; 491 N.W.2d 866, did not interpret or construe the Treaty of 1864, in a sense that the Chippewas' of the time would have understood said Treaty language because at the time of the Treaty formation, no evidence of, or language in said Treaty exists to show where the State of Michigan did attempt or sought any jurisdictional control over so-called "sold lands", or any other lands within said Reservation;

(4). the Bennett, Court *supra* did not interpret or construe the Treaty of 1864, in a sense that the Chippewas' of the time would have understood said Treaty language because the Treaty of 1864, contains no language that the Federal Government did cede (or affirm) criminal or civil jurisdiction to the State of Michigan on any lands within the described Reservation boundaries, whether sold, unsold, or given over to settlement by the Chippewas or other persons;

(5). the Bennett, Court *supra* did not interpret or construe the Treaty of 1864, in a sense that the Chippewas' of the time would have understood said Treaty language where the Court did not and could not reconcile their interpretations said Treaty and events surrounding the formation of said Treaty in light of applicable federal law found under Title 18 U.S.C. Section 1151;

(6). the Bennett, Court *supra* did not interpret or construe the Treaty of 1864 in a sense that the Chippewas' of the time would have understood said Treaty language because:

(a). the Treaty of 1864, does not name a representative of the State of Michigan as being present during the time of the formation or signing of said Treaty;

(b). there is no language in said Treaty to show that the State of Michigan had any role to play in said negotiations, Treaty signing or Treaty interpretation regarding criminal or civil jurisdiction on said Reservation; and

(c).the language contained in the Treaty of 1864, does show that the federal government and Chippewas' were dealing which each other as separate sovereigns, and that it is reasonable to construe that the Chippewas' of the time would believe that the federal government was empowered to settle title (and jurisdiction therefore) to *all lands* contained with the Reservation boundaries. See Choctaw Nation of Indians v. United States, 318 U.S. 423, 63 S.Ct. 672 (1943);

(7). the Bennett, Court 195 Mich. App. 455; 491 N.W.2d 866, did not interpret or construe the Treaty of 1864, in a sense that the Chippewas' of the time would have understood said Treaty language because the Treaty of 1864, does not contain any language regarding any attempts by the State of Michigan to assert criminal or civil jurisdiction on any lands within said Reservation;

(8). the Bennett, Court *supra* did not interpret or construe the Treaty of 1864, in a sense that the Chippewas' of the time would have understood said Treaty because language contained in said Treaty of 1864, never implied nor specifically notified the Chippewas' that the State of Michigan did, could or would assert jurisdiction on any lands (whether designated as "sold lands" or not) within Reservation boundaries;

(9). the Bennett, Court *supra* did not construe any ambiguities in the Treaty of 1864 in favor of the Chippewa Indians. Ambiguity exists where no evidence of the negotiations surrounding the formation of the Treaty of 1864, was presented to the Bennett Court during its deliberations, but such ambiguity was not construed in favor of the Chippewas'. Bennett, 195 Mich. App. at 458, 491 N.W.2d at 867. See Oneida Co. v. Oneida Indian Nation, 470 U.S. 226, 105 S.Ct. 1245 (1985);

(10). the Bennett, Court 195 Mich. App. 455; 491 N.W.2d 866, did not construe any ambiguities in the Treaty of 1864, in favor of the Chippewa Indians where the Bennett, Court held that Chippewa Indians of the time would have understood that they were not permitted to settle on or own any lands previously patented to individuals. Bennett, 195 Mich. App. 458-459; 491 N.W.2d 867-868. Ambiguity exists where under such interpretation even today's Chippewas' could not own or settle upon lands previously patented to individuals;

(11). the Bennett, Court *supra* did not construe any ambiguities in the Treaty of 1864, in favor of the Chippewa Indians where no language exists within the Treaty of 1864, which would have lead the Chippewas' at the time to believe that their Reservation would be fragmented, or that any lands within said Reservation were then to be under the civil or criminal jurisdiction of the State of Michigan, or that the federal government was not empowered to settle title to all lands within said Reservation;

(12). the Bennett, Court *supra* did not construe any ambiguities in the Treaty of 1864, in favor of the Chippewa Indians where the Treaty contains no language affirming State of Michigan civil or criminal jurisdiction on any lands within the boundaries of said Reservation;

(13). the Bennett, Court *supra* did not construe any ambiguities in the Treaty of 1864, in favor of the Chippewa Indians where:

(a). the Treaty of 1864 does not name a representative of the State of Michigan as being present during the time of the negotiations, formation or signing of said Treaty;

(b). at the time of the Treaty formation, no evidence or language in said Treaty did show where the State of Michigan did attempt or sought jurisdictional control over so-called "sold lands", or any lands;

(c).the Treaty of 1864, contains no language that the Federal Government would cede (or affirm) criminal or civil jurisdiction to the State of Michigan on any lands within said Reservation; and

(d). the Treaty of 1864, contains no language that the State of Michigan had any role to play in the formation of said Treaty or its interpretations, or jurisdictional interest to assert in said Treaty. Said ambiguities were not construed in favor of the Chippewas'; and

(14). the Bennett, Court *supra* did not construe any ambiguities in the Treaty of 1864, in favor of the Chippewa Indians where the interpretation of treaty language was clearly in the favor of the State of Michigan, and not the Chippewas, since it resulted in divesting the Saginaw Chippewa Indian Tribe of civil and criminal jurisdiction over large tracts of land within said Reservation, and thus defacto diminishing the Reservation.

Thus, Mr. Moses maintains that all lands (whether so-called swamp land grants or other) within the exterior boundaries of the Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, are Indian Country. In Indian Country criminal subject matter and personal jurisdiction involving alleged crimes by Indians is within the exclusive jurisdiction of the United States Government or the tribe. Title 18, U.S.C. Section 1151; See United States of America v. Peltier, 344 F. Supp. 2d. 539, (E. Dist. Mich. 2004); *Unpublished Opinion*, U.S. v. Manier, Case No. 77-20066, (E. Dist. Mich.1977), Appendix Q; See also Declaration of Dr. Cleland, Appendix R. Mr. Moses asserts where the State of Michigan did assert criminal jurisdiction over him, in contravention to federal law and Treaties cited above, a federal question is present pursuant to Title 28 U.S.C. Section 1331.

II. WHETHER THE STATE OF MICHIGAN CAN LAWFULLY ASSERT CRIMINAL JURISDICTION OVER MR. MOSES, AN ENROLLED MEMBER OF THE SAGINAW CHIPPEWA INDIAN OF MICHIGAN, WHERE THE LOCATION OF THE ALLEGED OFFENSES WERE WITHIN THE EXTERIOR BOUNDARIES OF THE FEDERAL ISABELLA INDIAN RESERVATION.

Standard of Review. Issues of law are reviewed *de novo*. United States v. Griffith, 17 F3d 865, 877 (CA6, 1994), cert. den. 513 U.S. 850, 115 S.Ct. 149 (1994); People v. Carpenter, 446 Mich.19, 521 N.W.2d 195 (1994). The *de novo* standard of review is applied in construing constitutional provisions, court rules, and statutes. People v. Houstina, 216 Mich. App. 70, 549 N.W.2d 11 (1996); Seals v. Henry Ford Hospital, 123 Mich. App. 329, 333 N.W.2d 272 (1983) (examining the constitutionality of a statute). The interpretation of treaties involves a question of law which the appellate court reviews *de novo*. People v. Mackle, 241 Mich App. 583, 617 N.W.2d 339 (2000). Indian treaties must be construed "so far as possible, in the sense in which the Indians understood them, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people." Choctaw Nation of Indians v. United States, 318 U.S. 423, 432; 63 S.Ct. 672 (1943). Ambiguities in treaties with Indians are to be construed in favor of the Indians. Oneida Co. v. Oneida Indian Nation, 470 U.S. 226, 247; 105 S.Ct. 1245 (1985).

Standards Applied.

Violations of Title 18 U.S.C. Sections 1151, 1152, and 1153. Mr. Moses asserts that criminal jurisdiction over Indian persons who are alleged to have committed crimes within a federally recognized Indian reservation is either federal or tribal pursuant to Title 18 U.S.C. Sections 1152, and 1153. Here, 18 U.S.C. 1152, Laws governing, provides:

"Except as otherwise expressly provided by law, 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 County.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian Country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively."

Title 18 U.S.C. 1153, Offenses committed within Indian Country, provides:

"(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, maiming, a felony under chapter 109A [18 USCS sections 2241 et seq.], incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under Section 661 of this title within Indian Country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States..."

Title 18 U.S.C. Section 2241 et seq., referenced above addresses sexual assault crimes.

In this regard, Mr. Moses asserts that where the alleged criminal conduct was within the exterior boundaries of the Reservation, and he is an enrolled member of the Saginaw Chippewa Indian, jurisdiction in his case has been granted to the federal courts or the Community Tribal Court of his Tribe thru Title 18, Section 1151, 1152, and 1153, of the United States Code; See, Nevada v. Hicks, 533 U.S. 353, 365;121 S.Ct. 2304, 2313 (2001) (finding, Sections 1152, and 1153, of Title18 give the United States and tribal criminal law generally exclusive application, but which apply only to crimes committed in Indian Country); United States of America v. Peltier, 344 F.Supp. 2d. 539, 547 (E. Dist. Mich. 2004) (finding, there is no evidence that Michigan has sought or obtained consent by Congress or its own political affirmation to assert such jurisdiction or that the Saginaw Chippewa Indian Tribe consented to it; criminal jurisdiction

over tribal members on the reservation, therefore, is exclusively tribal or federal).

In addition, Mr. Moses asserts that the decision of Bennett, 195 Mich. App. 455; 491 N.W.2d 866, which authorizes the State of Michigan to determine and regulate criminal jurisdiction within said Reservation and in his case does violate the Doctrine of Preemption where federal law (Title 18 U.S.C. Sections 1151, 1152, and 1153) does occupy and define the legal question of what constitutes Indian Country and who may exercise jurisdiction therein. The State of Michigan under Bennett, *supra* has no lawful authority to determine or regulate in an area where the federal government has set forth a clear intent to do so. See Worchester v. Georgia, 31 U.S. (6 Pet.) 515, 561 (1832) providing that state law has no force in Indian Country); New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 334, 103 S. Ct. 2378, 2386 (1983) (finding "State jurisdiction is preempted by the operation of federal law if it interferes with or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority."). Thus, Mr. Moses argues that the State of Michigan's assertion of criminal jurisdiction in his case is in violation of Title 18 U.S.C. Sections 1151, 1152, and 1153, cited above and thus creates a federal question pursuant to Title 28 U.S.C. 1331.

Violations of the U.S. Constitution. Pursuant to the U.S. Constitution's Commerce Clause (Art. I. Sec. 8(3)), the U.S. Congress has the sole and exclusive authority to regulate commerce and to manage all affairs with the Indian tribes. The states have no authority to regulate in this area. Worchester v. Georgia, 31 U.S. (6 Pet.) 515 (1832). Under Art. II, Sec. 2, Treaty Clause, of the U.S. Constitution only the United States of America, and not the States, has the sole and exclusive authority to establish through treaty American Indian reservations, to set

their boundaries, and to determine criminal subject matter and personal jurisdiction thereon. Significantly, it was under this Constitutional authority that the United States of America did treat with the Chippewa Indians in 1855, and 1864. It was under this Constitutional authority that the United States of American did establish the boundaries of the Federal Isabella Indian Reservation. Mr. Moses maintains that the application of the decision of Bennett, 195 Mich. App. 455; 491 N.W.2d 866, in his case is an unlawful abridgment of Congress' treaty making power because it attempts to re-determine and re-define said Reservation boundaries and criminal jurisdiction therein without the consent of Congress.

The U.S. Constitution's Supremacy Clause, Article VI, on the other hand provides that all laws which are made in furtherance of the U.S. Constitution *and all treaties* made under the authority of the United States of America are the supreme law of the land, and have legal superiority over any conflicting provision of a state constitution or law. See Worchester, 31 U.S. (6 Pet.) 515; Peltier, 344 F.Supp. 2d. 539, 546 (E. Dist. Mich. 2004), *citing* Oregon Dept. Of Fish and Wildlife v. Klamath Indian Tribe, 473 U.S. 753, 765-66, 105 S.Ct. 3420 (1985). Further, the Supremacy Clause empowers the United States of America to enter into binding treaties with Native American Tribes, including the Saginaw Chippewa Indian Tribe. Under the Supremacy Clause such treaties are to be considered the supreme law of the land, and "the judges of every state shall be bound thereby...".

In the present case, the State of Michigan through the holding of Bennett, 195 Mich. App. 455; 491 N.W.2d 866, or otherwise, does assert that it is lawful for the State to not only make determinations of the jurisdictional boundaries of the Federal Isabella Reservation, but also to assert criminal jurisdiction in said Indian Country. However, in the Treaty of 1864, it is clear

that the federal government did represent to the Chippewas' at the time of the Treaty formation that it (federal government) was empowered to make determinations of legal title to all lands within said Reservation. Significantly, the Treaty of 1864 contains no language whereby the federal government cedes title to, or affirms jurisdiction of, any lands (whether swamp land grants or other) within said Reservation boundaries to the State of Michigan. The Treaty of 1864, does not contain language which would represent to the Chippewas' at the time that the State of Michigan, did, could or would be allowed to assert criminal jurisdiction on their Reservation; nor that their Reservation would be jurisdictionally fragmented. In fact, the language of the Treaty of 1864, does clearly set forth the exterior boundaries of the Reservation, and with no exceptions for jurisdictional checker-boarding. See Peltier, 344 F.Supp. 2d 539, at 546-547 (E. Dist. Mich. 2004) (reservation Indian's have the power to make their own laws and to be ruled by them); Williams v. Lee, 358 U.S. 217, 220, 79 S.Ct. 269, 271 (1959) (finding, Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation).

Moreover, the federal government by acts of the U.S. Congress (Title 18 U.S.C. Sections 1151, 1152, 1153), has provided specific definitions as to what constitutes Indian Country for purposes of establishing criminal subject matter and personal jurisdiction over Native American persons therein. Here, the federal government has shown the unambiguous intent to address and occupy the question of criminal jurisdiction in Indian Country, and on the Federal Isabella Indian Reservation. Peltier, 344 F.Supp. 2d 539, 547 (E. Dist. Mich. 2004) (*citing* Cheyenne-Arapaho Tribes v. Oklahoma, 618 F.2d 665, 668 (10th Cir. 1980) which found that "states have no authority over Indians in Indian Country unless it is expressly conferred by Congress"). Clearly,

the federal government has the sole authority to do so. Article I, Section 8(3), Commerce Clause, Article II, Section 2, Treaty Clause, and Article VI, clause 2, Supremacy Clause.

In addition to the above, Mr. Moses maintains that the holding of the Bennett, 195 Mich. App. 455; 491 N.W.2d 866, was unlawfully extended to his criminal case by including lands (specifically Swamp Land Grants) within the Reservation (3560 N. Johnson Road) for state criminal jurisdictional purposes not then at issue and before the Bennett Court. Id. at 456, 886. Here, where it is contrary to the U.S. Constitution, said Treaties, and federal law for the State of Michigan to extend criminal jurisdiction under the facts in Bennett,195 Mich. App. 455; 491 N.W.2d 866, it follows that it is unlawful to extend the holding of Bennett to other lands within the Reservation. U.S. Const., Art. I, Section 8, cl.3, Commerce Clause; Art. II, Section 2, Treaty Clause; and Art. VI, Section 2, Supremacy Clause; and 18 U.S.C. Sec. 1151, 1152, and 1153.

In summary, Mr. Moses asserts that his Tribe or the federal government (and not the State of Michigan) have the exclusive authority and power under the U.S. Constitution, the Treaty of 1864, and federal law to punish members of his Tribe for criminal conduct occurring on said Reservation. See Nevada v. Hicks, 533 U.S. 353, 361, 121 S.Ct. 2304 (2001); Peltier, 344 F. Supp. 2d. 539 (E. Dist. Mich. 2004). Furthermore, where the State of Michigan acts through the decision of, Bennett, 195 Mich. App. 455; 491 N.W.2d 866, or otherwise to determine and assert criminal jurisdiction on the Federal Isabella Indian Reservation over Native American persons, and in defendant's case, such actions are in violation of the U.S. Constitution's Commerce Clause, Treaty Clause, and Supremacy Clause. Thus, a federal question is present pursuant to Title 28 U.S.C. 1331.

Violations of Federal Judicial Opinions. Assertion of criminal jurisdiction by the State of

Michigan in Mr. Moses' case (under Bennett, 195 Mich. App. 455; 491 N.W.2d 866, or otherwise) is in contradiction to the judicial opinions of the United States Supreme Court in Seymour v. Superintendent, 368 U.S. 351, 82 S.Ct. 424 (1962); the United States 6th Circuit Court of Appeals in Cardinal v. United States of America, 954 F.2D 359 (1992) (6th Cir. Mich); the United States District Court in Keweenaw Bay Indian Community v. State of Michigan, 784 F. Supp. 418, (1991) (W.D. Mich.); and the United States District Court in Peltier, 344 F.Supp. 2d. 539 (E. Dist. Mich. 2004).

In Seymour, 368 U.S. 351, 82 S.Ct. 424, the State of Washington did assert criminal jurisdiction over an Indian person who was alleged to have committed a crime on the federally recognized Colville Indian reservation. Defendant, Seymour sought a writ of *Habeas Corpus* which was denied by Supreme Court of Washington. Id. at 351, 424. Defendant, Seymour did appeal. Id. Here, the Seymour, Court did determine that the location of the alleged crime was upon land held under patent in fee by a non-Indian person, but nevertheless was still within the exterior boundaries of the Colville Reservation. Id. In determining jurisdiction, the Seymour Court did cite to Title 18 U.S.C. 1151, as the controlling federal statute. The Seymour Court then did find that even though the parcel of land in question was held under patent in fee by a non-Indian person, it was still Indian Country in light of 18 U.S.C. 1151. In this regard, the Seymour Court did state:

> "...But the issue has since been squarely put to rest by congressional enactment of the currently prevailing definition of Indian country in Section 1151 to include 'all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent.'"

Seymour, 368 U.S. 351, 357-358, 82 S.Ct. 424, 428.

In the present case, Mr. Moses asserts that the reasoning and holding of Bennett, 195

Mich. App. 455; 491 N.W.2d 866, is in clear contradiction to the holding by the United States Supreme Court in Seymour, 368 U.S. 351, 357-358, 82 S.Ct. 424, 428, and Title 18 U.S.C. 1151, as it is interpreted and applied in Seymour. Thus, Bennett 195 Mich. App. 455; 491 N.W.2d 866, should not be relied upon by this Honorable Court to permit the State of Michigan to assert criminal jurisdiction on the Federal Isabella Reservation. Lastly, Bennett, *supra* should not be relied upon to permit the State of Michigan to continue to unlawfully deny Mr. Moses his liberty.

In Cardinal, 954 F.2D 359, the federal government did assert criminal jurisdiction under Title 18 U.S.C. 1151 and 1153, against defendant Cardinal, a Chippewa Indian for a crime that he was alleged to have committed on the Keweenaw Bay Indian Reservation. Id. at 361. Defendant Cardinal did argue that the federal government did not have jurisdiction in his case because the location of the alleged crime was not on the reservation, but rather on private land not within Indian Country. Id. Here, Defendant Cardinal did argue that the land in question was sold to the State of Michigan pursuant to the Canal Act of 1852, 10 Stat. 35 (1852), and before the formation of the La Pointe Treaty of 1854, creating the Keweenaw Indian Reservation. Id. However, the Cardinal Court did decide that the land in question was within the *exterior boundaries* of the Keweenaw Bay Reservation, and was Indian Country pursuant to the definition of Indian Country found in Title 18 U.S.C. 1151. Id. at 362-263. *Citations omitted.* The Cardinal Court then did find that the federal government did have jurisdiction over defendant Cardinal, notwithstanding the issuance of any patents to Michigan or the canal company. Id.

Here again, the Cardinal, Court in citing to Title 18 U.S.C. 1151, did find that irrespective of so-called patents designated canal, school and swamp lands, if they are found within the exterior boundaries of the federally created Indian reservation, the same are a part of Indian

Country for purposes of federal jurisdiction. Cardinal, 954 F.2D at 362-263. Now in the present case, the State of Michigan makes similar claims in Bennett, 195 Mich. App. at 458-459; 491 N.W.2d, 867-868, that lands which did receive their patents (including swamp land grants) prior to the formation of the Treaties of 1855, and 1864, are not part of the Federal Isabella Reservation and thereby imply that they are not "Indian County" for purposes of criminal jurisdiction. Id. But how can this reasoning and logic prevail in the face of the holdings of Seymour, 368 U.S. 351, 82 S.Ct. 424, and Cardinal, 954 F.2D 359? Clearly, at the very least an ambiguity exists as to whether the lands examined in Bennett,195 Mich. App. 455; 491 N.W.2d 866, are Indian County. Ambiguity in treaties with Indian people are to be construed in their favor. Oneida Co. v. Oneida Indian Nation, 470 U.S. 226, 247; 105 S.Ct. 1245. In light of these cases, Bennett,195 Mich. App. 455; 491 N.W.2d 866, should be overruled, and the Bennett Court's decision should not be relied upon by this Honorable Court to continue to permit the State of Michigan to assert criminal jurisdiction on the Federal Isabella Reservation, and to continue to deny Mr. Moses his liberty.

In Keweenaw Bay Indian Community, 784 F. Supp. 418 (1991), the United States District Court for the Western District of Michigan was asked by the Keweenaw Bay Indian Community to make a declaration regarding the boundaries of the L'Anse Federal Indian Reservation, and who also sought an injunction against the State of Michigan to prevent the State from asserting its civil and criminal jurisdiction within said Reservation. Id. at 418. It was found that the L'Anse Federal Indian Reservation was created by treaty with the United States of American in the year of 1854. Id. at 418. Inclusive in its analysis of the boundaries of that Reservation, the Keweenaw Bay Indian Community District Court did examine claims of ownership involving so called

canal, school and swamp lands. Id. at 426.

Here, the Keweenaw Bay Indian Community District Court found that the record was devoid of any evidence that at the time of the treaty that either the Indians or the treaty commissioners had any knowledge whatsoever of canal, school and swamp lands. Further, that it was in inconceivable that the Indians would have understood these lands to be outside the reservation boundaries. Id. at 426. (Similarly, in the present case Mr. Moses' residence and location of the alleged offense was within the Federal Isabella Reservation boundaries on land that the State of Michigan designates swamp land grants. See Map, Appendix M). Finally, the Keweenaw Bay Indian Community District Court did find that all the lands in question were within the boundaries of the L'Anse Federal Indian Reservation, and that its findings were irrespective of whether they had been sold by the United States prior to the effective date of the 1854 Treaty with the Chippewa, 10 Stat. 1109. Id. at 426.

Again, the reasoning and holding of Bennett, 195 Mich. App. 455; 491 N.W.2d 866, is in clear contradiction to the federal court opinions as found in Seymour, 368 U.S. 351, 82 S.Ct. 424, Cardinal, 954 F.2D 359, and Keweenaw Bay Indian Community, 784 F. Supp. 418 (1991). The reasoning of Bennett, 195 Mich. App. 455; 491 N.W.2d 866, also is in direct contradiction to the clear language of Title 18 U.S.C. 1151. For these reasons the holdings of Bennett *supra* should be overturned, and the decision should not be relied upon by this Honorable Court to allow the State of Michigan to continue to deny Mr. Moses' his liberty.

In Peltier, 344 F.Supp. 2d. 539 (E. Dist. Mich. 2004), the State of Michigan did issue a search warrant to search an Indian person's residence located within the exterior boundaries of the Federal Isabella Indian Reservation. Id. at 541. Here, the Peltier Court did

find such State action unlawful and finding:

> "...there is no evidence that Michigan sought or obtained consent by Congress or its own political affirmation to assert such jurisdiction or that the Saginaw Chippewa Indian Tribe consented to it; criminal jurisdiction over tribal members on the reservation, therefore, is exclusively tribal or federal."

Id. at 547.

In summary, Mr. Moses maintains that Bennett,195 Mich. App. 455; 491 N.W.2d 866, is in error and in contradiction to the federal judicial decisions cited above, and Title 18 U.S.C 1151. Mr. Moses is a member of the Saginaw Chippewa Indian Tribe of Michigan. The record is clear that the location of Mr. Moses' alleged crimes were within the exterior boundaries of the Federal Isabella Reservation. The location in question, 3560 N. Johnson Road, has been designated by the State of Michigan as "swamp land grants". See Map, Appendix M. It is under this "swamp land grant" designation that the State of Michigan claims the right to exercise its criminal jurisdiction over Mr. Moses. Yet, in Keweenaw Bay Indian Community, 784 F. Supp. 418, at 426, that court found that such designations were irrelevant as to whether those lands were in Indian Country.

The federal decisions cited above make clear that the federal government or Tribe, pursuant to the definitions and law found in Title 18 U.S.C. 1151, 1152, and 1153, and the Treaty of 1864, have the sole and exclusive jurisdiction within the exterior boundaries of said Reservation, and in Mr. Moses' case. Mr. Moses argues a federal question is present pursuant to Title 28 U.S.C. 1331, where the State of Michigan, in violation of federal law, treaties, and judicial opinion attempts to assert criminal jurisdiction within the exterior boundaries of Federal Isabella Reservation. For these reasons, Mr. Moses seeks *habeas corpus* relief to restore his liberty unlawfully taken from him.

III. WHETHER THE EXTENSION OF CRIMINAL JURISDICTION OVER RESERVATION INDIANS BY THE STATE OF MICHIGAN CONSTITUTES AN UNLAWFUL DIMINISHMENT OF THE FEDERAL ISABELLA SUCH THAT A FEDERAL QUESTION IS PRESENT.

Standard of Review. Issues of law are reviewed *de novo*. United States v. Griffith, 17 F3d 865, 877 (CA6, 1994), cert. den. 513 U.S. 850, 115 S.Ct. 149 (1994); People v. Carpenter, 446 Mich.19, 521 N.W.2d 195 (1994). The *de novo* standard of review is applied in construing constitutional provisions, court rules, and statutes. People v. Houstina, 216 Mich. App. 70, 549 N.W.2d 11 (1996); Seals v. Henry Ford Hospital, 123 Mich. App. 329, 333 N.W.2d 272 (1983) (examining the constitutionality of a statute). The interpretation of treaties involves a question of law which the appellate court reviews *de novo*. People v. Mackle, 241 Mich App. 583, 617 N.W.2d 339 (2000).

Standards Applied. Mr. Moses maintains that the assertion of criminal jurisdiction over Native American persons, and in his case, on said Reservation by the decision of Bennett, 195 Mich. App. 455; 491 N.W.2d 866, or otherwise unlawfully diminishes the area, boundaries and jurisdiction of the Federal Isabella Indian Reservation. Such diminishment by the State of Michigan is contrary to the U.S. Const., Art. I, Sec. 8(3), Commerce Clause; Art. II, Sec. II, Treaty Clause; and Article VI, clause 2, Supremacy Clause because under said provisions only the United State Congress has the power to set, diminish or change the boundaries of a Federal Indian Reservation. Solem v. Bartlett, 465 U.S. 463, 104 S.Ct. 1161 (1984).

In this regard, Mr. Moses maintains that the holdings of Bennett 195 Mich. App. 455; 491 N.W.2d 866, which allow the State of Michigan to assert criminal jurisdiction on said Reservation, and thus acting to diminish its boundaries, are a clear violation of Title 18 U.S.C. 1151, 1152, and 1153, the Treaties of 1955, and 1864, and the federal court decisions cited

above. As such, Bennett *supra* should not be relied upon as a basis to continue to allow the State of Michigan to assert criminal jurisdiction on the Federal Isabella Indian Reservation. See Peltier, 344 F.Supp. 2d. 539, 546, 547 (E. Dist. Mich. 2004) (finding, a treaty retains the same force and effect as a treaty with a foreign nation; it is the supreme law of the land and may be abrogated by a subsequent act of Congress, *citations omitted*, and "...there is no evidence that Michigan sought or obtained consent by Congress or its own political affirmation to assert such jurisdiction or that the Saginaw Chippewa Indian Tribe consented to it; criminal jurisdiction over tribal members on the reservation, therefore, is exclusively tribal or federal."); See Manier, Case No. 77-20066 (E. Dist. Mich. 1977) (finding that allotment of lands within an Indian reservation does not reduce the boundaries of the reservation nor terminate its existence, and once Congress has established a reservation, all tracts of land within it remain a part of the reservation until separated by an Act of Congress, *citations omitted.*). Copy of Manier Opinion, Appendix Q.

As stated above, the interpretation of the meaning of the Treaties of 1855 and 1864, between the Chippewas and the United States of America by Bennett,195 Mich. App. 455; 491 N.W.2d 866, does disregard the principle of construing ambiguities in treaties with Indians. Oneida Co. V. Oneida Indian Nation, 470 U.S. 226, 247; 105 S.Ct. 1245 (1985). Indeed, under the Bennett, Court's 195 Mich. App. 455; 491 N.W.2d 866, interpretations, the Chippewas would not be getting a "Reservation" at all. Rather, they would be getting individual plots of land with no right or guarantee to conduct tribal governance, nor the right to function as a distinct Indian political and landed society. Such an interpretation simply does not, and cannot not square with what the Indians at the time would have understood the language of said Treaties to have meant. Choctaw Nation of Indians v. United States, 318 U.S. 423, 432; 63 S.Ct. 672 (1943)

(finding, Indian treaties must be construed "so far as possible, in the sense in which the Indians understood them, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people."). See Keweenaw Bay Indian Community, 784 F. Supp. 418 at 426 (1991) (finding that the record was devoid of any evidence that at the time of the treaty that either the Indians or the treaty commissioners had any knowledge whatsoever of canal, school and swamp lands. Further, that it was in inconceivable that the Indians would have understood these lands to be outside the reservation boundaries.

Similarly, in the present case Mr. Moses' residence, and location of the alleged offenses, were within the Federal Isabella Reservation boundaries and on land that the State of Michigan designates "swamp land grants". See Map, Appendix M. Here, said Map does reveal that the location in question is rural in nature, and not developed. As in Keweenaw Bay Indian Community, *supra*, the record in the present case does appear to indicate that the State of Michigan is attempting to defacto diminish the boundaries of the Federal Isabella Reservation by designating certain lands within the Reservation as either being sold prior to the formation of the Reservation, or by designation as canal, swamp, or school lands. See Map, Appendix M. See also, Bennett, 195 Mich. App. at 458-459, 491 N.W.2d at 867-868. As in Keweenaw Bay Indian Community, this Honorable Court should not support such an untenable position. Rather, this Honorable Court should overrule Bennett, 195 Mich. App. 455, 491 N.W.2d 866, since it clearly does not comport with the applicable federal law and treaties cited above.

In summary, Mr. Moses argues that State of Michigan has acted by judicial opinion to diminish the boundaries of the Federal Isabella Indian Reservation in contravention to federal law and treaties. Mr. Moses asserts that where the State of Michigan has acted to violate or

circumvent federal law or violate or circumvent the Treaties of 1855, and 1864 between the United States of America and the Saginaw Chippewa Indian Tribe, a federal question is raised. 28 U.S.C. 1331.

IV. WHETHER THE STATE OF MICHIGAN'S ASSERTION OF CRIMINAL JURISDICTION ON THE FEDERAL ISABELLA INDIAN RESERVATION, UNDER COLOR OF LAW, IS A VIOLATION OF MR. MOSES'S CIVIL RIGHTS UNDER AMENDMENTS IV, V, VI, AND XIV OF THE U.S. CONSTITUTION.

Standard of Review. Issues of law are reviewed *de novo*. United States v. Griffith, 17 F3d 865, 877 (CA6, 1994), cert. den. 513 U.S. 850, 115 S.Ct. 149 (1994); People v. Carpenter, 446 Mich.19, 521 N.W.2d 195 (1994). The *de novo* standard of review is applied in construing constitutional provisions, court rules, and statutes. People v. Houstina, 216 Mich. App. 70, 549 N.W.2d 11 (1996); Seals v. Henry Ford Hospital, 123 Mich. App. 329, 333 N.W.2d 272 (1983) (examining the constitutionality of a statute). Constitutional questions are reviewed *de novo* with the reviewing court placing itself in the position of the framers of the constitution. People v. Swint, 225 Mich. App. 353, 572 N.W.2d 666 (1997). The interpretation of treaties involves a question of law which the appellate court reviews *de novo*. People v. Mackle, 241 Mich App. 583, 617 N.W.2d 339 (2000).

Standards Applied. Mr. Moses maintains that criminal jurisdiction over his case has been delegated to federal or tribal courts by acts of the U.S. Congress. Williams v. Lee, 358 U.S. 217, 219-220 (1959) (...but if the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive). Mr. Moses, although an Indian person, was born in Grand Rapids, Michigan, the United States of America. Thus, Mr. Moses is a citizen of the United States of America. See Title 8 U.S.C. 1401, (Congressional

action conferring U.S. Citizenship upon all Native American persons born in the United States). Mr. Moses maintains that the State of Michigan did unlawfully assert criminal jurisdiction in his case under color of law, and that he continues to suffer an unlawful restrain on his liberty. Such unlawful restraint by the State of Michigan does deny Mr. Moses his U.S. Constitutional rights pursuant to Amendment's IV, V, VI, and XIV, in violation of Title 42 U.S.C. 1983.

Amendment IV, of the U.S. Constitution (and made applicable to the states through the Fourteenth Amendment) provides the right of the people to be secure in their persons and houses against unreasonable searches and seizures...Further, that no warrants shall issue but upon probable cause...". The Fifth Amendment to the U.S. Constitution (and made applicable to the states through the Fourteenth Amendment) provides "No person shall be...deprived of life, liberty, or property, without due process of law..." The Sixth Amendment to the U.S. Constitution (and made applicable to the states through the Fourteenth Amendment) provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law..." The Fourteenth Amendment to the U.S. Constitution provides that "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Fourth and Fourteenth Amendment Violations. In the present case, Mr. Moses maintains that the State of Michigan did exceed its lawful authority under the U.S. Constitution's Amendment IV, and XIV where it did:

(a). make an arrest of his person without probable cause, or subject matter and personal jurisdiction to do so;

(b). enter his Reservation home without a federal or tribal search or arrest warrant, or probable cause to do and exigency to do so;

(c).issue a State of Michigan felony warrant for his arrest without probable cause, or subject matter and personal jurisdiction to do so, and did act upon said felony warrant by placing restrictions of bond and incarceration upon his liberty interests;

(d). issue a State of Michigan felony information against him without probable cause, or subject matter and personal jurisdiction to do so;

Here, certainly the underlying basis of any finding of probable cause is first a finding of subject matter and personal jurisdiction over the accused. Indeed, where the State of Michigan lacks said jurisdiction over Mr. Moses, how then can the State find that probable cause exists such that it supports the issuance of warrant to arrest? See Peltier, 344 F.Supp. 2d. 539, 547, 548 (E. Dist. Mich. 2004) (finding "A search warrant signed by a person who lacks the authority to issue it is void as matter of law". *citations omitted.* Further, "The State judge was not authorized to issue the warrant to search the property within the reservation in this case.").

Further, the record does show that as consequence of the issuance of the arrest warrant by the State of Michigan, Mr. Moses did ultimately suffer a loss of his liberty. See Judgment of Sentence, Commitment To Department of Corrections, Appendix F. In this regard, how can Mr. Moses, or any Indian person residing on said Reservation, be secure in their persons or houses where the State of Michigan, contrary to established federal law and Treaties, does assert criminal jurisdiction over them while on said Reservation? In the present case, the State of

Michigan did unlawfully assert jurisdiction over Mr. Moses. In doing so, the State of Michigan did violate Mr. Moses' Fourth and Fourteenth Amendment rights under the U.S. Constitution.

Fifth and Fourteenth Amendment Violations. As regards Mr. Moses' Fifth and Fourteenth Amendment rights under the U.S. Constitution's Bill of Rights, Mr. Moses maintains that the State of Michigan did exceed its lawful authority where it did:

(a). subject Mr. Moses to the State of Michigan's substantive court rules, judicial procedures, and substantive and procedural criminal laws and statutes without probable cause, or subject matter and personal jurisdiction to do so;

(b). act upon said felony arrest warrant, did impose State of Michigan criminal law and procedures upon him, did incarcerate him, and did place conditions of bond upon his person all in the name of the State of Michigan;

(c).take his plea under State of Michigan criminal rules of court and substantive and procedural criminal law statutes without probable cause and subject matter and personal jurisdiction to do so, and thus placing in jeopardy his liberty interests;

(d). make final determinations of his guilt or innocence under State of Michigan rules of court and substantive and procedural criminal statutes without probable cause or subject matter and personal jurisdiction in his case, and thus placing in jeopardy his liberty interests; and

(e). sentence Mr. Moses' to prison for an extended term under State of Michigan rules of court and substantive and procedural criminal law statutes without probable cause or subject matter and personal jurisdiction to do so. See Judgment of Sentence, Commitment To Department of Corrections, Appendix F.

Under the U.S. Constitution's Fifth and Fourteenth Amendments, every citizen of the

United States is afforded the right of due process of law. Due process of law includes both procedural due process and substantive due process. In the instant case, Mr. Moses' liberty interest was taken from him without due process of law. Mr. Moses was not afforded fair procedural due process where the State of Michigan did impose upon the Mr. Moses a judicial forum which did not possess the requisite subject matter and personal jurisdiction. Mr. Moses argues that no fair hearing, nor fair procedure, can be had in a forum which is devoid of such jurisdiction. As a consequence, Mr. Moses argues that his Fifth and Fourteenth Amendment Rights under the U.S. Constitution have been violated by the State of Michigan.

Further, Mr. Moses is entitled under the U.S. Constitution's Fifth and Fourteenth Amendments to fair substantive due process. Fair substantive due process requires government including states to make and apply laws which are fair and reasonable in content. As Mr. Moses has shown, assertion of criminal jurisdiction over reservation Indians by the State of Michigan is neither fair, reasonable, nor lawful. Mr. Moses' liberty was taken, and he was not afforded fair substantive due process of law, where the State of Michigan did impose upon Mr. Moses judicial process, and body of criminal laws and statutes which were not lawfully applicable to his case. Here, the State of Michigan did charge the Mr. Moses with violations of State of Michigan criminal statutes, it did set his bond under State of Michigan criminal statutes, it did conduct its judicial proceeding under state of Michigan criminal statutes and rules of court.

Lastly, it did adjudicate Mr. Moses' guilt or innocence and did sentence him to incarceration under State of Michigan criminal statutes and rules of court. As stated, jurisdiction in Mr. Moses' case is either federal of with the Saginaw Chippewa Indian Tribe of Michigan. Mr. Moses maintains that a court which is without subject matter and personal jurisdiction cannot

lawfully and fairly provide substantive due process. Applying law which is not applicable is neither fair nor reasonable. Rather, it is void. See generally, In re Stone, 295 Mich. 207, 209, 294 N.W. 156, 157 (1940) (finding the writ of *habeas corpus* lies only where radical defects exist such that they rendering a judgment or proceeding absolutely void); Ex parte Allen, 139 Mich. 712, 103 N.W. 209 (1905) (finding that *habeas corpus* relief is a proper remedy where a sentence to a certain prison was wholly void); National Discount Corp. et. al. v. O'Mell, 194 F.2d 452, 456 (1952) (6th Cir.) (finding that a void judgment may be collaterally attached).

Sixth and Fourteenth Amendment Violations. Mr. Moses asserts a violation of his U.S. Constitution's Sixth and Fourteenth Amendment rights which guarantee the right to a speedy trial in the state or district wherein the crime shall have been committed, and which *district shall have been previously ascertained by law*. Here, Mr. Moses asserts that federal law, and by the Treaties of 1855, and 1864, with the United States of America, directs that criminal jurisdiction over his case has been ascertained to be either federal, or with the Saginaw Chippewa Indian Tribe of Michigan. In this regard, Mr. Moses was not tried or given due process of law in the jurisdiction or district where his crimes were alleged to have been committed. Further, such jurisdiction has been previously ascertained by federal law cited above. Thus, Mr. Moses' asserts a violation of his Sixth and Fourteenth Amendment rights under the U.S. Constitutions' Bill of Rights.

Fourteenth Amendment Violations. Lastly, Mr. Moses asserts a denial of his equal protection rights under the Fourteenth Amendment to the U.S. Constitution. Here, equal protection requires states to treat a U.S. citizen or class of persons the same as it treats other U.S. citizens or classes who are in like circumstance. Equal protection also requires a reviewing court to consider the substance of the law for a discriminatory purpose, intent or application. See

Village of Willowbrook v. Grace, 528 U.S. 562, 120 S.Ct. 1073 (2000). In Mr. Moses' case he is an enrolled member of the Saginaw Chippewa Indian Tribe of Michigan. The location (and also Mr. Moses' residence at the time) of the alleged offenses were within the exterior boundaries of his Reservation. Federal law cited above is clear that subject matter and personal jurisdiction in criminal cases involving American Indians who are alleged to have committed crimes on a federally recognized Indian reservation is reserved to the United States of America or the tribes themselves. Yet, in spite of the facts, and federal laws occupying this field, the State of Michigan did assert jurisdiction in Mr. Moses' case. The result, Mr. Moses has lost his liberty.

Mr. Moses maintains that the decision in Bennett 195 Mich. App. 455; 491 N.W.2d 866, which allows the State of Michigan to assert criminal jurisdiction within certain areas of the Federal Isabella Indian Reservation is discriminatory in purpose where it fails to recognize federal law and treaties preempting and delegating such jurisdiction. See Title 18 U.S.C. Sections 1151, 1152, and 1153; Treaty of 1855, and Treaty of 1864. Further, that Bennett 195 Mich. App. 455; 491 N.W.2d 866, in its application singles out a class of persons (American Indian) for treatment different than, and counter to, that mandated by federal law and treaties cited above. The result is a discriminatory, color of law application.

In summary, Mr. Moses maintains that the State of Michigan did under color of law assert criminal jurisdiction on said Reservation and in his case through the application of the decision in Bennett 195 Mich. App. 455; 491 N.W.2d 866, or otherwise. Mr. Moses asserts that said unlawful color of law application in his case did result in the State of Michigan acting to violate his IV, V, VI, and XIV Amendment rights under the U.S. Constitution as set forth above. Mr. Moses asserts that Title 42, U.S.C. Section 1983, of the United States Code prohibits states

(including the State of Michigan) from abridging his federal civil liberties under color of law, and respectfully requests this Honorable Court address his claims therefore.

V. WHETHER *HABEAS CORPUS* RELIEF IS AVAILABLE TO MR. MOSES WHERE THE STATE OF MICHIGAN'S UNLAWFUL ASSERTION OF CRIMINAL JURISDICTION OVER HIM DID RESULT IN AN UNLAWFUL AND THEREFORE VOID PROCESS.

Standard of Review. Issues of law are reviewed *de novo*. United States v. Griffith, 17 F3d 865, 877 (CA6, 1994), cert. den. 513 U.S. 850, 115 S.Ct. 149 (1994); People v. Carpenter, 446 Mich.19, 521 N.W.2d 195 (1994). The *de novo* standard of review is applied in construing constitutional provisions, court rules, and statutes. People v. Houstina, 216 Mich. App. 70, 549 N.W.2d 11 (1996). Mr. Moses argues that this Honorable Court has original jurisdiction to hear and decide a Petition for Writ of *Habeas Corpus* pursuant to MCR7.203(C)(3),and 7.206(D)(3).

Standards Applied. Mr. Moses by his Complaint in this Honorable Court seeks *habeas corpus* relief. By law, Mr. Moses cannot apply for federal *habeas corpus* relief, or other relief associated with his federal civil rights, until he has fully exhausted his state court remedies. 28 U.S.C. Section 2254(b)(1)(A). To satisfy the requirement of exhaustion, a defendant must present to the state appellate courts the basis for his or her federal claims. Anderson v. Harless, 459 U.S. 4, 103 S.Ct. 276 (1982). Michigan Court Rule (MCR), Chapter 3, Sub-chapter 3.300, Extraordinary Writs, Sections 3.301, 3.303, and 3.304, address *habeas corpus* relief in the courts of this State. Here, MCR Section 3.301, provides a party may bring a civil action to gain a writ of *habeas corpus*. Michigan Court Rule, Section 3.301(1) provides that an action for writ of *habeas corpus* may be brought to inquire into the cause of detention of a person. Pursuant to MCR MCR7.203(C)(3),and 7.206(D)(3), this Honorable Court has jurisdiction to hear an appeal of right, including those requests for a Writ of *Habeas Corpus*. Michigan Court Rule 3.303(3), sets

forth what the petition or complain for *habeas corpus* must contain.

The definition and reach of *habeas corpus* relief has been examined by the Michigan Supreme Court, and federal courts. In People v. McCager, 367 Mich. 116, 121,116 N.W.2d 205, 207 (1962) the Michigan Supreme Court did hold that *habeas corpus* relief involves a civil proceeding, and that the purpose of such proceeding is to cause the release of persons illegally detained, and to inquire into the authority of law by which said person is deprived of his or her liberty interest. In In re Hamilton, 51 Mich. 174, 175, 16 N.W. 327, (1883), the Michigan Supreme Court did hold that *habeas corpus* relief was the proper remedy to obtain the release of an unlawfully imprisoned person where it is shown that the court had no jurisdiction or power to render a judgment, or issue process for imprisonment. See In re Morton, 10 Mich. 208 (1862) (finding that *habeas corpus* relief available where it appeared that the court had no jurisdiction of the proceeding in which the petitioner was cited for contempt); In re Stone, 295 Mich. 207, 209, 294 N.W. 156, 157 (1940) (finding the writ of *habeas corpus* lies only where radical defects exist such that they rendering a judgment or proceeding absolutely void); Ex parte Allen, 139 Mich. 712, 103 N.W. 209 (1905) (finding that *habeas corpus* relief is a proper remedy where a sentence to a certain prison was wholly void).

The United States Supreme Court in Ex Parte Siebold, 100 U.S. 371, at 376 (1880) found that the only ground on which this court, or any court, without some special statute authorizing it, will give relief on *habeas corpus* to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rending its proceedings void. See In re Belt, 159 U.S. 95, 100; 15 S.Ct. 987, 988 (1895) (finding, the general rule is that the writ of *habeas corpus* will not issue unless the court, under whose warrant

the petitioner is held is without jurisdiction); National Discount Corp. et. al. v. O'Mell, 194 F.2d 452, 456 (1952) (6th Cir.) (finding that a void judgment may be collaterally attached).

In the present case, Mr. Moses argues that a petition for Writ of *Habeas Corpus* is the proper procedure to challenge his unlawful detention. Indeed, the issue of whether *Habeas Corpus* is the proper method of review for a convicted person to make a *jurisdictional* challenge of a court's power to pass sentence on him or her has been previously decided by the Michigan Court of Appeals in People v. Price, 23 Mich. App. 663, 179 N.W. 2d 177 (1970). In Price, the Court did examine the defendant's request for *Habeas Corpus* relief in light of MCL section 600.4310(3). MSA 27A.4310. Id. at 669, 179. In Price, the defendant was charged with larceny. Subsequently, defendant Price was convicted of larceny from a person and sent to prison to serve his sentence. Id. at 665, 177-178. While incarcerated defendant Price sought a review of his conviction. Here, the reviewing court did treat Price's review action as an action for writ of *habeas corpus*. Id. The reviewing court did grant defendant Price's request and did release him. The People for the State of Michigan did appeal. Id. at 666-667, 178.

On appeal the Price Court found as follows:

> "We now turn to the question whether *habeas corpus* was a proper method of review in the instant case. Section 4310(3) of the *habeas corpus* statute prohibits a *habeas* action by or on the behalf of "persons convicted, or in execution, upon legal process, civil or criminal." This statutory prohibition is generally consonant with often-repeated judicial declarations that *habeas corpus* cannot serve as a substitute for an appeal and cannot be used to review the merits of a criminal conviction. Despite the general prohibition, *habeas corpus* is open to a convicted person in one narrow instance, one that concerns us here, and that is where the convicting court was without jurisdiction to try the defendant for the crime in question. *Citing*, In re Joseph, 206 Mich. 659 (1919), People v. Harris, 266 Mich. 317 (1934); In re Joslin, 334 Mich. 627 (1952). This exception, it must be added, is qualified by the requirement that the jurisdictional defect be radical. It must render the conviction absolutely void. *Citing*, In re Palm, 255 Mich. 632 (1931); In re Gardner, 260 Mich. 122, (1932); In re Stone, 295 Mich. 207 (1940)."

Id. at 669-670, 180.

In this regard, the findings of the Price Court clearly and directly state that *habeas corpus* relief is not prohibited by MCL Section 600.4310(3), where the convicted person alleges jurisdictional defects. As stated above, Mr. Moses asserts subject matter and personal jurisdiction defects as they regard his arrest, charging, advise of rights, setting of bond, taking of his plea, determining his guilt of innocence, pronouncing sentence upon him, and taking his liberty from him. Scott W. Moses seeks *habeas corpus* relief on the basis of jurisdictional defects.

Moreover, Mr. Moses is not asking this Honorable Court to review his conviction on the merits. Rather, Mr. Moses is requesting this Honorable Court to inquire into the authority of law (jurisdiction) by which his liberty is being denied him. Mr. Moses herein argues that a court (in the present case the Isabella County Trial Court) without personal and subject matter jurisdiction over an accused cannot lawfully process charges, sit in judgment, nor pass sentence. Further, that where such a court without jurisdiction did enter a judgment and sentence the same would be more than merely erroneous, it would be void. A void process may be collaterally attacked by writ of *habeas corpus*. National Discount Corp. et. al. V. O'Mell, 194 F.2d 452 (1952). Thus, Mr. Moses argues that *habeas corpus* relief is available to him, a convicted person where the trial court in his case was without jurisdiction to charge or try him, and where as a consequence his conviction is by law void. People v. Price, 23 Mich. App. 663, 179 N.W. 2d 177 (1970).

In summary, Mr. Moses asserts that the Isabella County Trial Court was not in lawful possession of the requisite subject matter and personal jurisdiction to hear his case, to determine his guilt or innocence, nor to issue an order committing Mr. Moses to the Michigan Department of Corrections. See Judgment of Sentence and Commitment To Department of Corrections,

dated April 11, 2002, Appendix F. Mr. Moses asserts that jurisdiction in his case is either federal, or with the Saginaw Chippewa Indian Tribe of which he is a member. Mr. Moses has shown by citation to authority that such unlawful assertion of criminal jurisdiction by the State of Michigan is more than mere error–it is by law void. Mr. Moses maintains that he has a right to collaterally attack a void judgment through petition for writ of *habeas corpus*. Ex Parte Siebold, 100 U.S. 371; In re Belt, 159 U.S. 95; 15 S.Ct. 987; National Discount Corp. et. al. v. O'Mell, 194 F.2d 452; Ex parte Allen, 139 Mich. 712, 103 N.W. 209; In re Hamilton, 51 Mich. 174, 16 N.W. 327; In re Morton, 10 Mich. 208. Mr. Moses maintains that *habeas corpus* relief is the proper procedure to attack a wholly void proceeding, and where lack of jurisdiction is clear. McCager, 367 Mich. 116, 116 N.W.2d 205. Mr. Moses asserts that a petition for *habeas corpus* relief is the proper procedure to inquire into the authority of law by which he has been denied his liberty. McCager, 367 Mich. 116, 116 N.W.2d 205; Price, 23 Mich. App. 663, 179 N.W. 2d 177. Mr. Moses argues that *habeas corpus* relief is the proper remedy to cause the release of a person who is unlawfully confine. No prohibition against Plaintiff-Appellant's Complaint for writ of *habeas corpus* is present. Mr. Moses has no other appeals pending in this case before the courts of the State of Michigan, nor any federal or tribal courts.

CONCLUSION

Mr. Moses is a member of the Saginaw Chippewa Indian Tribe of Michigan. Mr. Moses is a citizen of the United States. Mr. Moses asserts that the Saginaw Chippewa Indian Tribe of Michigan is a federally recognized American Indian Tribe, pursuant to 25 U.S.C. 476 et seq. ("IRA") and that the boundaries of the Tribe's Reservation have been fixed by Treaties with the United States of America: (1). Treaty With The Chippewa's, August 2, 1855, 11 Stat. 633; and

(2). Treaty With the Chippewa Indians, October 18, 1864, 14 Stat. 657.

Mr. Moses asserts that the location of said alleged offenses, 3560 N. Johnson, is now and was at the material time, within the exterior boundaries of the Federal Isabella Indian Reservation. Mr. Moses asserts that all lands within the exterior boundaries of said Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through said Reservation, pursuant to federal law and Treaties are Indian Country and are therefore within the exclusive jurisdiction of the United States Government, or the Community Tribal Court of the Saginaw Chippewa Indian Tribe of Michigan. 18 U.S.C. Sections 1151, 1152, and 1153.

Mr. Moses asserts that due to the State of Michigan's assertion of jurisdiction in his case, he is now unlawfully incarcerated and denied his liberty in the Newberry Correctional Facility, and which facility is under the control of the Michigan Department of Corrections. Mr. Moses maintains that the State's actions are in violation of the U.S. Constitution, the Bill of Rights, the Treaties of 1855, and 1864, and federal law and federal judicial opinions cited above. Mr. Moses' asserts his civil rights as contained in the U.S. Constitution's Bill of Rights have been violated. Mr. Moses alleges a violation under Title 42 U.S.C. 1983, Color of Law, and asserts that the issues raised herein do constitute federal questions pursuant to Title 28 U.S.C. 1331.

Lastly, Mr. Moses argues that where the Defendant-Appellee's does rely upon MCL Section 600.4310, to defeat his Complaint same would be error where the issue of whether a prisoner's challenge to a void judgement (for lack of personal and subject matter jurisdiction) by *habeas corpus* review has been decided in Mr. Moses' favor. People v. Price, 23 Mich. App. 663, 179 N.W. 2d 177 (1970). Mr. Moses asserts that the sentence imposed upon him is void for lack of subject matter and personal jurisdiction. Where such is the case, he respectfully requests that

this Honorable Court grant his request for a Writ of *Habeas Corpus* forthwith.

REQUEST FOR RELIEF

Mr. Moses respectfully requests the following relief of this Honorable Court:

(1). Find and declare that *habeas corpus* is the proper remedy in his case;

(2). Find and declare that the location of the alleged offenses (3560 N. Johnson Road) is within the exterior boundaries of the Federal Isabella Indian Reservation, and as such is Indian Country for purposes of asserting criminal subject matter and personal jurisdiction in his case;

(3). Find and declare that criminal jurisdiction over Mr. Moses is either with the federal government or the Saginaw Chippewa Indian Tribe of Michigan, and not with the State of Michigan;

(4). Find and declare that the State of Michigan does not have criminal subject matter and personal jurisdiction over his case under Bennett 195 Mich. App. 455; 491 N.W.2d 866, or otherwise such that State officials may lawfully arrest him, set conditions of his bond, determine his guilt or innocence, pronounce sentence upon him, or continue to hold him under the care and custody of the Michigan Department of Corrections;

(5). Find and declare that the State of Michigan cannot assert subject matter and personal jurisdiction over Native American persons, including Mr. Moses, who are alleged to have committed crimes on the Federal Isabella Indian Reservation;

(6). Find and declare for the reasons stated above that the State of Michigan's assertion of criminal subject matter and personal jurisdiction in his case under Bennett 195 Mich. App. 455; 491 N.W.2d 866, or otherwise is:

(a). in violation of the Treaties of 1855, or 1864;

(b). in his in violation of 18 U.S.C. Sections 1151, or 1152, or 1153;

(c).not consistent with, and contrary to, Art. I, Section 8, cl.3, Commerce Clause; or Art. II, cl.2, Treaty Clause; or Art. VI, Section 2, Supremacy Clause of the U.S. Constitution, or the Doctrine of Preemption;

(d). in violation of Mr. Moses' U.S. Constitution's Bill of Rights, Amendments IV, V, VI, and XIV, under color of law pursuant to Title 42 U.S.C. 1983;

(e). not consistent with the decisions of the United States Supreme Court in Choctaw Nation of Indians v. United States, 318 U.S. 423, 432; 63 S.Ct. 672 (1943), or Oneida Co. v. Oneida Indian Nation, 470 U.S. 226, 247; 105 S.Ct. 1245 (1985);

(f). for the reasons stated above and in his Complaint, not consistent with and contrary to the above cited opinions of the U.S. Supreme Court, the U.S. 6th Circuit Court of Appeals, the U.S. District Court for the Eastern District of Michigan, or the U.S. District Court for the Western District of Michigan;

(g). in fact an unlawful diminishment of the Federal Isabella Indian Reservation boundaries and jurisdiction;

(7). Find and declare that Mr. Moses has presented substantial federal questions claims pursuant to 28 U.S.C. 1331, and to consider and decide said claims in his favor;

(8). Find and declare that Mr. Moses has presented substantial claims under Title 42, Section 1983, of the United States Code, and consider and decide said claims in his favor;

(9). For the reasons stated above and in his Complaint overturn or overrule the holding of Bennett 195 Mich. App. 455; 491 N.W.2d 866, and specifically where it allows and permits the State of Michigan to assert criminal jurisdiction over Indian persons on lands within the exterior

boundaries of the Federal Isabella Indian Reservation, and in Mr. Moses' case;

(10). For the reasons stated above and in his Complaint, Mr. Moses respectfully requests that this Honorable Court grant his request for a Writ of *Habeas Corpus,* and to issue an Order releasing him from the custody of the Michigan Department of Corrections; and

(11). Grant to Plaintiff-Appellant any other relief to which he is entitled under law or equity.

WHEREFORE, Scott William Moses, Plaintiff-Appellant respectfully submits his Brief in Support of his Petition For Writ of *Habeas Corpus.*

Respectfully submitted,

Dated: December 1, 2005

William L. Antrobius (P56721)
Attorney For Plaintiff-Appellant