95A JUDICIAL DISTRICT COURT

Menominee County Courthouse
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Menominee, Michigan 49858-3000
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JEFFREY G. BARSTOW
District Judge
(906) 863-9408

Linda A. Menacher
Magistrate
(906) 863-6776

Trenna R. Parrette
Clerk
(906) 863-8532

Mike Pfankuch
Probation Officer
(906) 863-2708

September 28, 2010

Chief Robin Halfaday
Hannahville Indian Community
Police Department
N14911 Hannahville B-1 Rd.
Wilson, MI 49896

RE: People v. Collins and
People v. Mason

Dear Chief Halfaday,

Please find enclosed copy of Opinion and Order issued by the 41st Circuit Court with reference to the above captioned cases. This order is binding and has precedential effect on the 95A District Court. Therefore, we will no longer exercise jurisdiction over any crimes committed on tribal lands. Please do not make arrests under state law.

I would suggest you discuss this with the Menominee County Prosecuting Attorney, Daniel Hass, and advise the Tribal Council of this decision.

If you have any questions, please contact me.

Very truly yours,

Jeffrey G. Barstow
District Judge

Enc.
cc: Daniel Hass

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MENOMINEE

THE PEOPLE OF THE STATE OF MICHIGAN,

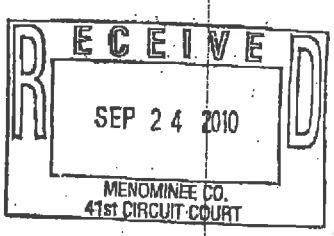
Plaintiff,

v

STORMY DEAN COLLINS,

Defendant.

OPINION AND ORDER ON DEFENDANTS' MOTION TO DISMISS
File No.: M10-3315-FH



THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

RODNEY FARRELL MASON,

Defendant.

File No.: M10-3323-FH

These motions involve two different non-American Indian Defendants charged with violating Michigan law by delivering a controlled substance. In the case of People vs. Collins, the controlled substance is alleged to be Ritalin and in the case of People vs. Mason, the controlled substance is alleged to be marijuana. The deliveries allegedly took place on Indian land at the Island Resort Casino in Hannahville, Michigan. The attorneys stipulate these facts are not disputed.

The issue in both of these matters is whether the State Court, specifically the Menominee County Circuit Court, has jurisdiction over non-American Indians to prosecute crimes committed on Indian land. Much has been cited by counsel for the Plaintiff and Defendants regarding jurisdiction of Tribal Courts, Federal Courts and State Courts. Plaintiff, at oral argument, presented a Federal argument and relied upon a portion of a Michigan Bar Journal article; the Oliphant decision (Oliphant v Suquamish Indian Tribe et al, 435 US 191, 55L Ed 2d 209, 98 S Ct 1011, 1978); an undated article entitled "Jurisdictional Issues Related to Indian Country Crimes"; and a "Western District of Michigan Indian Crime Chart - Tribal, State and Federal Jurisdiction." The Defendants submitted a brief in support of their positions. The Court has received and reviewed all of the authorities cited and has considered same along with oral argument.

The U. S. Supreme Court has made it abundantly clear in Oliphant that Tribal Courts do not have jurisdiction to prosecute non-American Indians. It is also clear law that the Federal Government has exclusive jurisdiction for crimes committed on Indian land by non-American Indians against American Indians. The instant matters do not involve crimes committed against an Indian nor do they involve damage to or theft of Indian property. Furthermore, these are not cases that would come under the umbrella of the Major Crimes Act giving tribes and Federal Government concurrent jurisdiction, because the crimes involved here are not any of the 14 serious crimes included in that Act.

To the extent the Plaintiffs rely on Oliphant, the Court finds that case is not helpful to their cause. The Plaintiff here, State of Michigan, contends that the State Trial Court, specifically Menominee County in these cases, has jurisdiction to prosecute non-Indians for offenses committed while visiting Indian Country when the crime is not against an Indian and does not involve damage to Indian property. The Defendants assert the jurisdiction over non-Indians committing crimes on Indian Reservation lies exclusively with the Federal Government and further, that the Federal Government has never granted jurisdiction over these types of matters to the State of Michigan.

The chart presented by the Plaintiff, which is referred to as the Western District of Michigan Indian Crime Chart, does not include a category for the crimes involved in the instant cases. Plaintiff also relies upon the United States Supreme Court decision in United States vs McBratney, 104 US 621(1881). In that case, the Court held that the State Court of Colorado, rather than the Federal Court, had jurisdiction to prosecute the crime of murder that was committed on an Indian Reservation. McBratney as well as Draper vs United States, are inapplicable here as the facts upon which those decisions are based make them highly distinguishable. (Draper vs U. S., 164 US 240 (1896). As was said in Brown vs United States, 146S 975, (1906), McBratney and Draper "....re inapplicable because they relate to crimes committed in a sovereign state the admission of which into the Union, without any exception with respect to the Indian reservations therein or the jurisdiction over them, removed those reservations from the plenary authority of the United States by reason of the constitutional rule of equality in respect of statehood", Brown page 976. In other words, the only reason the State Court had jurisdiction in McBratney was due to the unique manner in which the State of Colorado was admitted into the Union and the

and the fact that the Indian reservations were not carved out of the state's territory.

In conclusion, this Court can find no authority that gives the State Court jurisdiction for this matter. Since the Tribal Courts clearly do not have jurisdiction either, it would necessarily follow that the Federal Courts have exclusive jurisdiction over these criminal prosecutions. It appears the Federal Government has never chosen to share its jurisdiction over these matters with the State of Michigan. Defendants' Motions for Dismissal are, therefore, granted. This is a final Order and no further Order need be prepared.

DATE: 9-23-10

Mary B Barglind

MARY B. BARGLIND
41st Circuit Court Judge

MBB:nkm
cc: Prosecutor Daniel Hass
Attorney Wayne Erickson

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

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff,

Hon. Mary B. Barglind

v

Circuit Court No. 10-3323-FH

RODNEY FARRELL MASON
Defendant.

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Dan Hass (P37233)
Prosecuting Attorney
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MOTION TO DISMISS

Now Comes the defendant Rodney Farrell Mason by and through his attorney, Wayne Erickson and moves this court to dismiss all charges against this defendant for the reason that contrary to the complaint filed in this matter, none of the alleged misdeeds included in that complaint occurred in the State of Michigan or the County of Menominee, and this court lacks jurisdiction over the defendant.

Defendant Rodney Farrell Mason has been accused of violating MCL 333.7401(2) (b) (ii) while inside the Island Resort Casino on the Hannahville Indian Reservation located adjacent to Menominee County. The Hannahville Indian Reservation is a semi-autonomous territory under the control of the United States Federal Government and Michigan laws and statutes have no force or affect upon the occupants or visitors to that territory nor has any federal agency granted this court jurisdiction over that territory nor has the State of Michigan been granted or accepted jurisdiction over that territory.

Defendant would further allege that prosecution before this court is a violation of his rights under the 14th Amendment of the United States Constitution and Article I, Section 2 of the Michigan Constitution of 1963. While this writer cannot ascertain the exact policy that has brought the defendant to this court, it would appear that when an alleged violation is committed

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by a Caucasian and a Native American while on reservation property, the Native American is subject to tribal sanctions and the Caucasian is brought to this jurisdiction. The exact mechanics of custodial events are unclear due to the fact that state officers lack arrest powers on a reservation.

The irony of this situation is striking when one considers the fact that the reason 99% of Caucasians travel to the Hannahville Indian Reservation is to commit acts (gambling) which would be illegal if performed within the State of Michigan.

Either defendant lacks constitutional protection while visiting a reservation or his actual constitutional rights are violated when he is prosecuted in this court based upon his race.

For these reasons we would respectfully request that the charges in this court be dismissed.

MOTION TO WITHDRAW

The defendant's attorney in this matter has been directed by the 95A District Court to represent this defendant under the Menominee County Indigent Appointment Agreement under which the tax payers of Menominee County pay the defense costs for individuals charged with committing criminal acts in the County of Menominee. The defendant has not committed any wrong doing in the county which would be the responsibility of the county tax payers; hence either the taxpayers of this county are providing services to which the defendant is not eligible, or else the appointed attorney is not being paid for his services. This attorney is in a position wherein he must accept pay to which he is not entitled or perform Pro Bono under duress. Neither positions are desirable or acceptable, and the attorney would respectfully request that he be allowed to withdraw.

Dated: 4-8-10

Wayne Erickson

Wayne Erickson
Attorney for Defendant

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

PEOPLE OF THE STATE OF MICHIGAN Plaintiff,	Hon. Mary B. Barglind
V **STORMY DEAN COLLINS,** **RODNEY FARRELL MASON** Defendants	Circuit Court No. 06-3315-FH Circuit Court No. 10-3323-FH

Wayne A. Erickson (P44057) Attorney for Defendant 2012 Tenth Street, Suite 4 Menominee MI 49858 (906) 863-7853	Dan Hass (P37233) Prosecuting Attorney 839 Tenth Avenue Menominee, MI 49858 (906) 863-2002

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS

This matter involves two defendants, each of whom are accused of violating Michigan law, while physically occupying space in Indian country or an Indian reservation. Defendant Stormy Collins while under electronic surveillance was allegedly observed acting in a suspicious manner inside the Island Resort Casino. A security guard requested that he enter a secluded room where he was questioned extensively; his personal property was seized; and after he was released the Tribal police requested that Menominee County Prosecutor Daniel Hass issue a warrant for his arrest.

Defendant Rodney Mason was contacted by a cousin who informed him that she had illegal substances for sale cheap. The only catch to this proposed sale was that Defendant Mason would have to travel to the Island Casino Resort Hotel on the Hannahville Reservation to make the purchase. As it subsequently turned out, the proposed sale was a sting operation set up by the Menominee County Sheriff's Department and Defendant Mason was arrested when he completed a transaction with his cousin.

The question before the Court in this matter calls for a determination of what legal entity

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possesses authority for the prosecution of non-Indian individuals who allegedly commit violations of laws enacted by the State of Michigan while that individual is located inside the boundaries of Indian country or an Indian reservation.

Federal jurisdiction over actions taken while on Indian reservation or land is, at best, a complex issue due to the rather haphazard manner in which the United States Congress has dealt with them. Federal authorities have taken total control of some crimes committed in Indian country and have granted tribes authority over other cases depending upon both the type of crime alleged and the race of the victim or the perpetrator. Generally speaking the tribes retain authority should a crime be inflicted by one Indian against another Indian, unless the crime is particularly serious. In as much as Indian tribes have not been granted criminal authority over non-Indians, Federal authorities have retained jurisdiction of Indian country criminal prosecution over non-Indians. These lines of authority are clearly laid out in *Oliphant* v *Suquamish Indian Tribe*, 435 U.V. 191 (1978). At no time, however, is jurisdiction over actions potentially constituting crimes ever granted to any state, much less any county of any state.

The legal basis for jurisdiction over Indians and Indian lands originates in Article I, Section 8 of the United States Constitution, which states that the Federal government would hold all power:

> "To regulate commerce with foreign nations and among the several states, and with the Indian tribes."

The vast majority of Federal courts have found this to be a Federal right to control criminal prosecution for crimes committed in Indian country. See *Cherokee Nation* v *Georgia*, 5Pet.1, 15 (1831), *United States* v *Rogers* 4 How. 567, 571 (1846).

The defendants would maintain that the Federal government has retained criminal jurisdiction in Indian country, and the plaintiff would assert that the State of Michigan or the County of Menominee has authority to prosecute certain non-Indians for offenses committed while visiting Indian country. It would appear to the defendants that the plaintiff specifically claims authority to prosecute cases arising out of Indian country where a non-Indian has committed an offense against another non-Indian. Plaintiff appears to be arguing that this Court has jurisdiction over non-Indians for actions taken on Indian reservations through *United States v McBratney*, 104 U.S. 621 (1881). In that case, the Court held that the Federal government, by

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admission of the State of Colorado into statehood, had abandoned any jurisdiction over a certain Ute Indian Reservation within the boundaries of Colorado. However, the decision of the *McBratney* Court has been refuted by every Federal court since that time which touches upon the question of Federal jurisdiction over Indian country. Furthermore, the *McBratney* decision was rejected by the United States Supreme Court in *Oliphant*, supra, where that Court said:

> "In 1891, this Court recognized that Congress' various actions and inactions in regulating criminal jurisdiction on Indian reservations demonstrated intent to reserve jurisdiction over non-Indians for the Federal courts. In *In re Mayfield,* 141 U.S. 107, 115-116 (1891), the Court noted that the policy of Congress had been to allow the inhabitants of the Indian country "such power of self-government as was thought to be consistent with the safety of the white population with which they may have come in contact, and to encourage them as far as possible in raising themselves to our standard of civilization." The "general object" of the congressional statutes was to allow Indian nations criminal "jurisdiction of all controversies between Indians, or where a member of the nation is the only party to the proceeding, and to reserve to the courts of the United States jurisdiction of all actions to which its own citizens are parties on either side." *Ibid.* While Congress never expressly forbade Indian tribes to impose criminal penalties on non-Indians, we now make express our implicit conclusion of nearly a century ago that Congress consistently believed this to be the necessary result of its repeated legislative actions."

Congress also codified its intended jurisdiction over Indian country through 18 U.S.C. Section 1152 and Section 1153.

> "The Indian Country Crimes Act, 18 U.S.C. Section 1152, provides for Federal criminal jurisdiction where the offender is non-Indian and the *victim Indian*, or, conversely, where the offender is Indian and the victim is non-Indian, and the crime is not one enumerated under the Major Crimes Act, 18 U.S.C. Section 1153. Pursuant to this section, substantive Federal criminal statutes may be charged pursuant to the Federal Enclaves Act, 18 U.S.C. Section 7, or where there is no substantive Federal offense, the law of the state in which the crime occurred may be assimilated into the Federal criminal code pursuant to 18 U.S.C. Section 13, the Assimilative Crimes Act.
>
> The Major Crimes Act, 18 U.S. C. Section 1153, provides for Federal criminal jurisdiction over certain enumerated "major" crimes where the offender is an Indian. *The racial classification* of the victim is irrelevant where

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> one of the enumerated major crimes has been committed by virtue of the language of Section 1153. These crimes include: MURDER; MANSLAUGHTER; KIDNAPPING; MAIMING; A FELONY UNDER CHAPTER 109A; INCEST; ASSAULT WITH INTENT TO COMMIT MURDER; ASSAULT WITH A DANGEROUS WEAPON; ASSAULT RESULTING IN SERIOUS BODILY INJURY; ARSON; BURGLARY; A FELONY UNDER Section 661A. There is also an assimilative provision in Section 1153 where the enumerated offense is not defined by Federal statute. Incest and burglary, for example, are not contained in the Federal criminal code, thus they must be charged in accordance with state law pursuant to the assimilative feature of Section 1153."

At some point in or about 1953 Congress did transfer criminal jurisdictions over Indian country to approximately 19 states for certain specific tribes through the passage of P.L. 280, 18 U.S.C. Sec. 1162. The State of Michigan was not one of the states who were granted this jurisdiction and that statute had no impact on the jurisdiction of this Court. Since that time many states have returned that power to the Federal authorities.

Plaintiff also appears to claim that the *Oliphant* Court, (supra), confers jurisdiction over some crimes committed by non-Indians to the individual states in whose boundaries a reservation is located. The *Oliphant* decision does no such thing, that entire opinion is one establishing that tribes have no criminal jurisdiction over non-Indians and that all such jurisdictions lies within the powers of the Federal government. The Federal government has never chosen to share that power with the State of Michigan, and any attempt to assume that jurisdiction is a clear violation of Article 1, Section 8 of the United States Constitution.

The circumstance surrounding these two cases identifies two inherent dangers created by the process that has brought us to this Court. In the matter of Collins, the defendant was detained and questioned by tribal security for a lengthy period of time and his personal property, such as his cell phone, cash and personal medication were seized. Such actions were taken without the due process requirements to the United States Constitution and the Constitution of the State of Michigan. At this late date defendant has yet to have his property fully returned to him, a continuing violation of such constitutional rights. In *Talton* v *Mayes*, 163 U.S. 376 (1896) the Supreme Court held that the Bill of Rights in the Federal Constitution does not apply to Indian Tribal Governments. These facts demonstrate that, 1) non-Indians do not possess Constitutional rights while on Indian reservations or land; and, 2) a non-Indian is not in the State of Michigan

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when on an Indian reservation or land. Clearly, this Court has no jurisdiction over any land that is not a part of the State of Michigan, and in which no person is protected by the United States Constitution and the Michigan Constitution.

In the case of Defendant Rodney Mason, Mr. Mason was arrested as a result of a sting arranged by the Menominee County Sheriff's Department on the Hannahville Indian Reservation. The Menominee County Sheriff's Department has no jurisdiction over the Hannahville Reservation, and had no authority to conduct such a sting. Not only was such sting a violation of the sovereignty of the Indian reservation, but it was carried out in a place in which the alleged perpetrators had no protections afforded them by the United States Constitution and the Constitution of the State of Michigan. The right to arrest non-Indians in Indian country is reserved to officers of the Federal government. Michigan authorities have no right to enter upon Indian country in any official capacity. Article I, Section 8 of the United States Constitution provides that "*no state shall*," enter into any compact with another state or foreign power which will reduce the authority of the Federal government. In the event plaintiff attempts to argue that Hannahville had agreed to such sting, and therefore it was not a violation of its sovereignty, defendants would point out the Tribal government lacks authority to grant the State of Michigan to act in any manner that the United States Constitution prohibits. Any agreement made by the State of Michigan, the County of Menominee or the Menominee County Sheriff's Department which supplants the authority of the Federal authorities would be a clear violation of the Constitution. Furthermore, such an agreement would constitute an agreement to violate defendants' constitutional rights, since those rights do not exist on Indian lands. Short of a clear delegation of authority granted to the State of Michigan by the United States Congress, there is no manner in which this Court can claim authority and jurisdiction over any act or event occurring on an Indian reservation or Indian land.

The *Oliphant* case gives every indication that the Federal authorities intend to control all prosecution of criminal cases originating on Indian lands. Under I18 U.S.C. §1152. Congress provided language to prevent prosecution in both Federal courts and Indian courts for the same offense. By that language Congress intended to prevent double jeopardy. If State Courts had any authority on tribal lands the same language would be necessary to prevent double prosecution in State and Federal Courts.

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Also in *Oliphant* (see page 205) that Court discusses the Congressional Report concerning the passage of a statute to prevent non-Indians from trespassing upon Indian lands. While the Federal Courts could prosecute non-Indians under the Assimilative Crimes Act, 18, U.S.C. §13 with the State law covering trespass, Congress chose to pass a separate statute demonstrating that even misdemeanors are controlled by Federal authorities when they occur in Indian country.

THEREFORE, defendants assert that this Court lacks jurisdiction over these defendants and move for dismissal of these cases.

Dated: 6-30-10

Wayne Erickson

Wayne Erickson (P44057)
Attorney for Defendant