

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

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

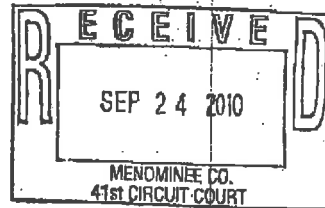
v

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.

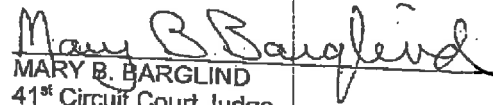
To the extent the Plaintiffs rely on Oliphant, the Court finds that case is not helpful to their cause. The Plaintiff here, State of Michigan, contends that the State Trial Court, specifically Menominee County in these cases, has jurisdiction to prosecute non-Indians for offenses committed while visiting 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. BARGLUND
41st Circuit Court Judge

MBB:nkm

cc: Prosecutor Daniel Hass
Attorney Wayne Erickson