STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

STORMY DEAN COLLINS,
Defendant-Appellee.
_____/

Court of Appeals No. 300644

Menominee Circuit Court No. 10-003315-FH

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other State governmental action is invalid.

consolidated with

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

RODNEY FARRELL MASON,

Defendant-Appellee.
_____/

Court of Appeals No. 300645

Menominee Circuit Court No. 10-003323-FH

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other State governmental action is invalid.

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel

Louis B. Reinwasser (P37757)
Assistant Attorney General
Attorneys for Plaintiff-Appellant
ENRA Division
525 W. Ottawa Street, 6th Floor,
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

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ARGUMENT

I. Appellees erroneously contend that the State does not have criminal jurisdiction over Defendants Collins and Mason, both non-Indians, who committed the victimless crime of delivering a controlled substance within Indian Country.

A. Appellees mischaracterize dispositive Supreme Court opinions.

In *United States v McBratney*[1] the United States Supreme Court unambiguously ruled that states have jurisdiction over crimes committed by non-Indians against non-Indians in Indian country. Like the lower court here, Appellees dismiss this decision, erroneously asserting that there was some unique process by which Colorado was admitted to the Union that allowed it to retain jurisdiction over such crimes. As explained in the State's main brief, this assertion is just wrong.

The *McBratney* Court in fact determined that Colorado had jurisdiction over the conduct of non-Indians on a reservation because the reservation had not been excepted from the territory that became the State of Colorado. The Court stated, "Whenever, upon the admission of a State into the Union, Congress has intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words."[2] It is thus clear that unless a special exception for an Indian reservation was made by Congress when a state was brought into the Union, that state has jurisdiction over all lands within its borders, including Indian reservations not excepted. [3]

Appellees attempt to cast *McBratney* and *Draper v United States*[4] (where the Court made a similar ruling as in *McBratney*) as the exception to some rule, when in reality these two cases

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[1] *United States v McBratney*, 104 US 621; 26 L Ed 869 (1882).
[2] *United States v McBratney* at 623-624.
[3] As explained in Appellant's main brief, p 11, there was no exception for Indian country in legislation that authorized admission of Michigan to the Union.
[4] *Draper v United States*, 164 US 240; 17 S Ct 107; 41 L Ed 419 (1896).

represent the norm, i.e., that states retain criminal jurisdiction over crimes in Indian country that do not implicate Indian interests.[5] In *McBratney* and *Draper*, no Indian interests were involved because the crimes alleged were committed by a non-Indian and the victim was also a non-Indian. The Supreme Court has followed this rule to this day, and has extended it to the situation where no Indian interests are involved because the criminal defendant was a non-Indian and there was no victim, in other words, a victimless crime.[6] Appellees' careless interpretation of these seminal cases must be rejected. The State has jurisdiction over the victimless crimes at issue here.

B. The federal government does not have exclusive jurisdiction over crimes committed in Indian Country.

Appellees present selective quotes from a handful of cases taken out of context to support their primary argument, that "the Federal government has sole jurisdiction over criminal activity committed by Non-American Indians in Indian territory." Appellees' Brief, p. 11. None of these cases says, or even suggests, that the federal government has sole or exclusive jurisdiction over crimes committed by non-Indians in Indian country, and none of them addresses the issue of whether a State has jurisdiction over crimes in Indian country. One of the main cases quoted by Appellees considered the question of whether a tribe or the federal government had jurisdiction over a non-Indian,[7] and the other principal case relied on by Appellees held that a tribe did have authority to prosecute Indians who commit certain crimes in Indian country, but who are not

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[5] Appellees have shown no such exception in the case of the admission of the State of Michigan to the Union.

[6] *Solem v Bartlett*, 465 US 463; 104 S Ct 1161; L Ed 2d 443 (1984). Appellees do not argue that victimless crimes, such as are at issue in this case, are legally distinguishable from crimes committed by non-Indians against non-Indians in Indian country. Appellees appear to take the position that the State ***never*** has jurisdiction of ***any crime*** committed by anybody in Indian country.

[7] *Oliphant v Suquamish Indian Tribe*, 435 US 19; 198 S Ct 1011; 55 L Ed 2d 209 (1978).

members of the prosecuting tribe.[8] There cases are irrelevant, and in fact, the quote from the *Lara* case is not even from the majority opinion; it is from the dissent.[9]

Appellees implicitly acknowledge that their position has not gained acceptance. They challenge the "[v]arious legal analysts and writers [who] have taken the position that the cases relied on by Appellants, essentially created State jurisdiction over all criminal activity engaged in by Non-American Indians in Indian territory." Appellees' Brief, pp 10-11. While this mischaracterizes the conclusions of these writers, and the position of the State,[10] Appellees' criticism of these writers is ill-founded and unpersuasive. As explained in detail in Appellant's main brief, the Supreme Court has made it clear that states retained jurisdiction over crimes in Indian country where no tribal interests were involved. No serious challenge of this conclusion has been made by Appellees here.

C. How the State investigates crimes in Indian country is irrelevant.

Appellees attempt to distract the Court by asserting that the State will not be able to investigate victimless crimes by non-Indians committed in Indian country. This discussion is completely irrelevant. The question for this Court is whether under federal law the State has jurisdiction to prosecute such crimes, and as explained in detail in the State's briefs, the clear answer to this question is "Yes." In any event, there was nothing in the record in this case that

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[8] *United States v Lara*, 541 US 193; 124 S Ct 1628; 158 L Ed 2d 420 (2004).
[9] *United States v Lara* at 228. Appellees' Brief, p. 9.
[10] It is not the State's position that it has jurisdiction of all crimes committed by non-Indians in Indian country. Where such crimes impact tribal interests, the federal government may very well have jurisdiction. That is not the case here, however.

suggested that the State had any difficulty investigating and prosecuting the crimes committed by these particular Defendants.[11] This red herring should be ignored by the Court.

[11] In fact, under the Michigan Court Rules and the Tribal Code of the Hannahville Indian Community, the State has full authority to have its judgments, decrees, orders, warrants, subpoenas, records and judicial acts enforced in Indian country. See MCR 2.615 which provides for reciprocal enforcement of State and Tribal judicial process; see also the State Court Administrative Offices web page, *http://courts.michigan.gov/scao/services/TribalCourts/tribal.htm* that documents that the Hannahville Indian Community has a reciprocal ordinance satisfying the court rule.

RELIEF SOUGHT

For the reasons stated above and in the State's initial brief on appeal, the Circuit Court's ruling that dismissed this case should be reversed.

Respectfully submitted,

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel

Louis B. Reinwasser (P37757)
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