STATE OF NORTH CAROLINA COUNTY OF JACKSON	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 12CRS 1362-3, 51719-20
STATE OF NORTH CAROLINA -VS- GEORGE LEE NOBLES	DEFENDANT'S RELPY BRIEF ON MOTION TO DISMISS FOR LACK OF JURISDICTION

The Defendant by and through the undersigned attorney, Assistant Capital Defender Todd. M. Williams, on April 16, 2013 filed a motion moving this Honorable Court for dismissal of the charges of murder and robbery for lack of personal and subject matter jurisdiction under 18 U.S.C.S. § 1153 et. seq. (the "Major Crimes Act of 1885"); 25 U.S.C.S. § 1301 et. seq. (the "Indian Civil Rights Act"); the Constitution of the United States, Articles I, § 8, cl. 3 (the "Indian Commerce Clause"), and Art. VI, cl. 2 (the "Supremacy Clause"); Art. III, § 2, cl. 3 (the "Trial by Jury Clause"), Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); St. Cloud v. United States, 702 F. Supp. 1456 (D.S.D. 1988); United States v. John et al, 437 U.S. 634 (1978); the Constitution of North Carolina, Article IV, § 12, N.C. Gen. Stat. §§ 1E-1, 15A-2010 et seq., and 15A-954(a)(8); Defendant contends that this Court lacks jurisdiction over these cases for the following reasons:

FACTS

The Cherokee inhabited the area of the Southern Appalachians prior to the arrival of peoples of European descent in the Western Hemisphere. (Driver, Transcript of Hearing on August 9, at 149). The Cherokee lived as sovereign self-governing people for thousands of years and developed a system of law; this tradition continues through official federal recognition of the Eastern Band of Cherokee Indians (EBCI) as a quasi-sovereign people. (Driver, Transcript of Hearing on August 9, at 149 – 150; Stipulation of Fact #9). Upon the founding of the United States of America, the Framers of the Constitution granted Congress power "to regulate Commerce . . . with the Indian Tribes."

(United States Constitution, Article I, Section 8, Clause 3). The "Indian Removal Act" was signed by President Jackson on May 28, 1930. (Twenty-First Congress Sess. I Ch. 148, 1830). Members of the EBCI are primarily descended from people who remained in Western North Carolina despite the federal Removal Act. EBCI Tribal government was organized in various ways following Removal, however, in 1986 the Tribe's Charter and Governing Document was revised and then amended in 1987 by a referendum. (Tarnawsky, Transcript of Hearing on August 9, at 109).

Federal laws permit tribes to determine their own eligibility standards for tribal enrollment. (Tarnawsky, Transcript of Hearing on August 9, at 107). The Eastern Band has opted to have a blood quantum, and that number is 1/16. (Tarnawsky, Transcript of Hearing on August 9, at 107). The EBCI has in the past allowed a lower blood quantum of 1/32. (Tarnawsky, Transcript of Hearing on August 9, at 107). The Cherokee Nation in Oklahoma has no blood quantum requirement for enrollment. See Cherokee Nation – Tribal Citizenship, http://www.cherokee.org/Services/TribalCitizenship/Citizenship.aspx (last visited September 17, 2013).

A first generation descendant is defined by both the EBCI Charter and Tribal Code. (Tarnawsky, Transcript of Hearing on August 9, at 109-110). First generation descendants are given particular use rights to the possessory holdings that their enrolled member parent or parents had at the time of their death in the Charter of the Eastern Band and the Tribal Code. (Tarnawsky, Transcript of Hearing on August 9, at 109). No other member of a federally-recognized tribe, even if fully enrolled, can own a possessory holding of Eastern Band trust land aside from enrolled members and first descendants of the EBCI. (Tarnawsky, Transcript of Hearing on August 9, at 119-120). EBCI Tribal Code further grants special rights, privileges and preferences to first descendants. (Tarnawsky, Transcript of Hearing on August 9, at 113-115). The EBCI Rules of Criminal Procedure direct tribal courts to take jurisdiction of cases involving first descendant defendants and also direct that a person making an arrest on the Qualla Boundary is to take the arrestee to a magistrate or judge for purposes of assessing tribal court jurisdiction. (Tarnawsky, Transcript of Hearing on August 9 at 121; Birchfield, Transcript of Hearing on August 9 at 46; Reed, Transcript of Hearing on September 13, at 24-26, 30, 31-32).

Donna Lorraine Smith Crowe, now known as Donna Lorraine Mann, is an enrolled member of the Eastern Band of Cherokee Indians (EBCI), a federally recognized tribe, the EBCI having issued her the number "R03978" to reference her enrollment. (Mann, Transcript of Hearing on September 13, at 57; Stipulation of Fact #9). Her blood quanta appears on her birth certificate to be 11/128ths. (Defendant's Exhibit 18; Mann, Transcript of Hearing on September 13, at 52). Defendant, George Lee Nobles, the son of enrolled member Mann, is a first descendant of the EBCI having been born to her on January 17, 1976. (Mann, Transcript of Hearing on September 13, at 56; Tarnawsky, Transcript of Hearing on August 9, at 106; Stipulation of Fact #10; State's Brief on Motion to Dismiss at 1).

George Lee Nobles, though born in Florida, first arrived in Cherokee, North Carolina at approximately two weeks of age. (Smith, Transcript of Hearing on September 13, at 51). The Defendant held employment on the reservation during 2012 and had his W2 form sent to a Cherokee address. (Defendant's Exhibit 6). The Defendant has a tattoo on his left shoulder blade of an Indian Chief with an eagle. (State's Exhibit 6). The Indian tattoo image is recognizable to be a Native American image; all Native American tribes honor the eagle. (Driver, Transcript of Hearing on August 9, at 146-7). Defendant George Lee Nobles is eligible to receive an official tribal letter certifying that he is a first generation descendant of the EBCI. (McCoy, Transcript of Hearing on August 9, at 98-99). He transferred his residence to Swain County March the 26th, 2012. (Clemmer, Transcript of Hearing on August 9, at 15). He resided at 404 Furman Smith Road within the Qualla Boundary at that time. (Ammons, Transcript of Hearing on August 9, at 73). On May 8, 2012 Defendant reported that he moved to 284 Fort Wilderness Road in Whittier, N.C. (Ammons, Transcript of Hearing on August 9, at 75). On June 20, 2012 Defendant reported moving to 460 Griggs Lane, Bryson City, N.C. (Ammons, Transcript of Hearing on August 9, at 77).

George Lee Nobles has received free, federally funded, Indian Health Service medical treatment on five occasions. (Jenkins, Transcript of Hearing on August 9, at 174-175, 181-182). Defendant possesses an identification number of 01-23-92 at the Cherokee Indian Hospital, a number that remains his today. (Jenkins, Transcript of Hearing on August 9, at175). Defendant's chart bears codes which both describe his

tribal affiliation and his descendant status of a federally recognized tribe, the EBCI. (Jenkins, Transcript of Hearing on August 9, at 176). Defendant would not need to pay for services were they received today. (Jenkins, Transcript of Hearing on August 9, at 175). The demographic data page of Defendant's chart identifies him as an "Indian non-tribal member". (Defendant's Exhibit 7). Defendant's medical bill for services received at Swain Medical Center were paid in part by an Indian or EBCI fund. (Mann, Transcript of Hearing on September 13, at 72, 74).

George Lee Nobles was enrolled in Cherokee Central Schools intermittently from 1984 through as late as 1991. (Defendant's Exhibit 20). Defendant's mother twice completed Indian Student Certification forms pursuant to Defendant's enrollment in Cherokee Schools by both referencing her enrollment number and the number given Defendant George Lee Nobles by Cherokee Indian Hospital – 01-23-92. (Defendant's Exhibit 20; Mann, Transcript of Hearing on September 13, at 83, 86). The enrollment forms indicate that the schools at that time were managed or administered by the Bureau of Indian Affairs. (Defendant's Exhibit 20). The State stipulates that Defendant was enrolled in schools located on the reservation. (State's Brief on Motion to Dismiss, at 1).

On or about September 30, 2012 officers of the Cherokee Indian Police Department responded to a reported armed robbery and homicide occurring on the sidewalk in front of the Fairfield Inn located at 568 Paint Town Road, in Cherokee, Jackson County, N.C on EBCI trust land. (Stipulation of Fact #1, #2). Two months later on November 30, 2012, Cherokee Indian Police Department Officer Sean Birchfield arrested the Defendant at the Cherokee Indian Police Department on trust land in connection with the incident of September 30, 2012. (Stipulation of Fact #3, #4). Prior to the arrest, Defendant was located and taken into custody at 1621 Olivet Church Road, which is also situated on EBCI trust lands. (Birchfield, Transcript of Hearing on August 9, at 69). Also on November 30, 2012 at the Cherokee Indian Police Department, Officer Sean Birchfield placed under arrest alleged co-defendants Edward Dewayne Swayney and Ashlynn Nicole Carrothers. (Birchfield, Transcript of Hearing on August 9, at 39).

The laws and procedures governing arrest on tribal trust lands are set out in Rule 6 of the Cherokee Rules of Criminal Procedure. (Reed, Transcript of Hearing on

September 13, at 32; Tarnawsky, Transcript of Hearing on August 9, at 123; Birchfield, Transcript of Hearing on August 9, at 45-46, 60-61). Co-defendant Swayney was known by officers to be an enrolled member of the EBCI. (Reed, Transcript of Hearing on September 13, at 15; Birchfield, Transcript of Hearing on August 9, at 44). Officers did not know Carrothers' Indian status, but, because she lived with an enrolled member, Officer Birchfield elected to transport Carrothers to tribal court. (Birchfield, Transcript of Hearing on August 9, at 44). Officer Birchfield did not verify Carrothers' enrollment with a federally recognized tribe prior to transporting her to tribal court. (Birchfield, Transcript of Hearing on August 9, at 44). Upon arrival at tribal court, Carrothers indicated on her "Affidavit of Jurisdiction" (Form CTC-CR-216) that she was an enrolled member of the "Western Band of Cherokee Indians" presumptively the Cherokee Nation. (Defendant's Exhibit 8; Reed, Transcript of Hearing on September 13, at 13; Birchfield, Transcript on Hearing on August 9, at 44). The tribal court magistrate took jurisdiction of both Swayney's and Carrothers' cases. (Birchfield, Transcript of Hearing on August 9, at 45; Reed, Transcript of Hearing on September 13, at 12-16). Co-defendant Carrothers was arrested on the charge of Homicide in the First Degree and charged by Criminal Complaint with Aid-Abet Homicide in the First Degree as per the Cherokee Code. (Reed, Transcript of Hearing on September 13, at 17). Co-Defendant Carrothers is presently awaiting trial in federal court. (Birchfield, Transcript of Hearing on August 9, at 54).

At no time did an investigating officer make inquiry as to Defendant George Nobles' descent status. (Oaks, Transcript of Hearing on September 13, at 42-43; Birchfield, Transcript of Hearing on August 9, at 46, 54). Officer Birchfield did not deliver Defendant George Lee Nobles to a tribal magistrate or judge as directed by the Cherokee Rules of Criminal Procedure for a determination of jurisdiction. (Birchfield, Transcript of Hearing on August 9, at 47; Reed, Transcript of Hearing on September 13, at 33). Rather, based on conversations Tribal Attorney General Tarnawsky had with her staff, Tribal Prosecutor Jason Smith, the Office of the District Attorney's for the 30th Prosecutorial District, and the U.S. Attorney's Office, a determination was made to transport Defendant to Sylva for booking at the Jackson County Jail. (Tarnawsky, Transcript of Hearing on August 9, at 134; Birchfield, Transcript of Hearing on August 9,

at 46, 53-54). Defendant George Lee Nobles never had an opportunity to complete "Affidavit of Jurisdiction" (Form CTC-CR-216) before Magistrate Reed as did the two co-defendants. (Reed, Transcript of Hearing from September 13, at 25-26). If Defendant had been given the opportunity complete Form CTC-CR-216, Magistrate Reed would have found that Cherokee Tribal Court has jurisdiction over Defendant's case under Cherokee law. (Reed, Transcript of Hearing on September 13, at 25). To comply with Rule 6 of the Cherokee Rules of Criminal Procedure, all who are arrested on tribal trust lands must be brought to a magistrate to determine Indian status as it is becoming ever more difficult to assess Indian status by skin complexion alone. (Reed, Transcript of Hearing on September 13, at 32-33).

ARGUMENT

Is George Nobles Indian for purposes of the Indian Major Crimes Act (IMCA) of 1865 and, if so, must these matters be dismissed for lack of jurisdiction?

Indian Status:

There being no dispute that the charged crime is a "Major Crime" under 18 U.S.C. § 1153 and the State having stipulated that the charged crime occurred on tribal trust land, the only factual issue in dispute before the Court is whether Defendant is an Indian as defined by the IMCA for jurisdictional purposes.

The enumerated powers set out in the text of the United States Constitution define the limits of governmental powers as interpreted by the Supreme Court. McCulloch v. Maryland, 17 U.S. 316 (1819). The plenary power of Congress to regulate commerce "*with the Indian tribes*" is "all that is required for the regulation of our intercourse with Indians". Worcester v. Georgia, 31 U.S. 515, 559 (1832) (emphasis in original). Though amended by the XIV Amendment the original Constitution excluded "Indians not taxed" from the population count for apportioning representatives to Congress indicating recognition of the separate status of tribes as sovereign entities. U.S. Const. art. I, § 2, Cl. 3.; U.S. Const. Amendment XIV § 2. The Indian Commerce Clause is cited as the constitutional basis for the Indian Civil Rights Act (ICRA) which grants tribes

jurisdiction "over all Indians". 25 U.S.C. § 1301(2); United States v. Lara, 541 U.S. 193, 202 (2004).

There is no statutory definition for "Indian" for purposes of federal criminal jurisdiction,[1] and the term has been judicially explicated.[2] The generally accepted test is derived from United States v. Rogers and is usually re-stated as a two-pronged test requiring 1) Indian descent (or "blood") and 2) recognition. United States v. Rogers, 45 U.S. 567 (1846). The "State's Brief" is correct in stating that federal courts have not identified a blood quantum considered too small or insignificant for consideration in jurisdictional determinations. (State's Brief on Motion to Dismiss at 3). Federal courts hold that this requirement is met by showing "some blood" descent recognition either by a tribe or the federal government or both. United States v. Stymiest, 581 F.3d 759, 762 (8th Cir. 2009). The second, or "recognition" prong of the test was initially identified in the "influential" opinion announced in St. Cloud v. United States, 702 F. Supp. 1456 (D.S.D. 1988). See State v Sebastian, 701 A.2d 13, 24 (Conn. 1997). The four factors the St. Cloud Court articulated, in declining order of importance are:

> 1) enrollment in a tribe;
> 2) government recognition formally and informally through providing the person assistance reserved only to Indians;
> 3) enjoying benefits of tribal affiliation; and
> 4) social recognition as an Indian through living on a reservation and participating in Indian social life.
>
> These factors do not establish a precise formula for determining who is an Indian. Rather, they merely guide the analysis of whether a person is recognized as an Indian. St. Cloud at 1461-62.

It is important to note that tribal enrollment is not a prerequisite for the exercise of federal jurisdiction. United States v. Antelope, 430 U.S. 631 (1977). Federal courts have also on numerous occasions explicitly observed that a tribe's designation of an individual as

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1 ICRA gives no definition of "Indian," instead referring to the IMCA. 25 U.S.C. § 1301(4). IMCA also does not give a clear definition of "Indian." 18 U.S.C. § 1153. Neither does the Indian General Crimes Act ("IGCA"). 18 U.S.C. § 1152. However, "Indian" appears and is clearly defined in many federal statutes. 25 U.S.C. § 1903(3) (Indian Child Welfare Act); 25 U.S.C. § 4103 (housing assistance to Native Americans); 25 U.S.C. § 1603(13) (Native American healthcare).

2 United States v. Maggi, 598 F.3d 1073, 1078 (9th Cir. 2010); *See also* United States v. Stymiest, 581 F.3d 759, 762 (8th Cir. 2009); United States v. Bruce, 394 F.3d 1215, 1223 (9th Cir. 2005); United States v. Prentiss, 273 F.3d 1277, 1280 (10th Cir. 2001); United States v. Torres, 733 F.2d 449, 456 (7th Cir. 1984); United States v. Broncheau, 597 F.2d 1260, 1263 (9th Cir. 1979) (the term "Indian" has been "judicially explicated" for purposes of federal criminal jurisdiction).

"Indian" and subsequent assumption of jurisdiction are evidence in favor of finding Indian status for purposes of federal criminal jurisdiction. United States v. Maggi, 598 F.3d 1073, 1076-77; 1083 (9th Cir. 2010) (acknowledging that defendant Maggi was a "descendant member" of the Blackfeet tribe and affirming that the Blackfeet Tribal Court "has jurisdiction to prosecute enrolled and descendant members of the Blackfeet tribe"); See also United States v. Stymiest, 581 F.3d 759, 762 (8th Cir. 2009) (holding that an unenrolled descendant defendant's self-identification as Indian supported a finding of Indian status while further observing that though tribal police policy is to exercise jurisdiction only over Indians, procedure directs police to make an Indian status inquiry before presenting the accused to state or non-tribal authorities if non-Indian).

The Eastern Band of Cherokee Indians having granted special status to first descendants in the EBCI Charter and Governing Document, has opted to assume jurisdiction over first generation descendants in its Rules of Criminal Procedure. See Cherokee Code Ch. 15, App. A., Rule 6 of the Cherokee Rules of Criminal Procedure. Cherokee Tribal Courts have also held that first descendants are within the jurisdiction of Cherokee Tribal Court and North Carolina Courts are statutorily obligated to give full faith and credit to tribal court judgments. E. Band of Cherokee Indians v. Lambert, 3 Cher. Rep. 62 (N.C. Cherokee Ct. 2003). N.C. Gen. Stat. § 1E-1. In adopting Rule 6 of the Cherokee Rules of Criminal Procedure the Tribe has satisfied the Rogers test as a matter of law. There is no dispute that George Nobles is a first generation descendant of an enrolled member of the EBCI. As applied to Defendant, the Eastern Band has officially recognized that George Nobles has sufficient 1) Indian "blood" or descendant status, and 2) that he has been officially recognized by the Tribe to possess sufficient tribal affiliation satisfying federal jurisdictional standards on their face. See United States v. Lara, 541 U.S. 193, 202 (2004); United States v. Stymiest, 581 F.3d 759, 762 (8th Cir. 2009); United States v. Maggi, 598 F.3d 1073 (9th Cir. 2010). George Nobles is, by and through official tribal enactment, Indian under 18 USC § 1153 (IMCA).

The State, in its "Brief on Motion to Dismiss" focuses on blood-quantum and minimizes Defendant's status and contacts with the Eastern Band. In so doing, the State ignores entirely the EBCI's quasi-sovereign political status and right to self-governance. See United States v. Lara, 541 U.S. 193, 204-205 (2004) (affirming the Supreme Court's

"traditional understanding" of each tribe as "'a distinct political society, separated from others, capable of managing its own affairs and governing itself'" (quoting Cherokee Nation v. Georgia, 30 U.S. 1 (1831)); United States v. Wheeler, 435 U.S. 313, 328, (1978) (holding that when the Navajo Nation exercises criminal jurisdiction "it does so as part of its retained sovereignty and not as an arm of the Federal Government."); Williams v. Lee, 358 U.S. 382 (1976); Fisher v. Dist. Ct., 424 U.S. 382 (1976). As stated above, the EBCI made a choice *as a tribe* to allow first descendants of the EBCI the right to possess and enjoy tribal trust lands in its Charter pursuant to tribal referendum in 1987. The EBCI (and by extension the federal government) has an interest in retaining jurisdiction over first descendants to prevent waste and damage to trust lands, which are held by the United States for the benefit of the EBCI. As a result, the EBCI has made violations of restrictions on land use by first descendants unlawful. In order for these restrictions to have any authority or legitimacy, the EBCI must have jurisdiction over first descendants. Hence, the Tribe's legitimate, sovereign scheme to treat them as Indians for the purposes of criminal jurisdiction. As a self-governing people absent an Act of Congress restricting their rights, the EBCI have a legitimate interest and a right to establish their own punishments, sanctions and norms for Indian conduct on Indian lands, including crimes which may occur on or about the premises of the Casino, without input from the State of North Carolina. This principle is at least as old as the holding of Worcester v. Georgia and surely for the Cherokee far more ancient than Worcester. George Lee Nobles, a first descendant, is Indian and the State of North Carolina has no jurisdiction of his person in these cases. Only tribal courts, concurrently with federal courts under the Indian Major Crimes Act, may prosecute the criminal conduct of an EBCI first descendant in Indian Country.

Even if the Court were to find the State's legal argument persuasive, George Lee Nobles has demonstrated substantial ties to the EBCI which satisfy the several Indian status tests explicated by the federal judiciary. In doing so, the Court should find that George Nobles has approximately 1/25th Indian "blood" (or 11/256 to be precise) -- substantially more than the 1/64th blood quanta of Maggi. Defendant's blood quanta therefore satisfies the first prong of the Rogers test. Turning to the second "recognition" prong, while Defendant has stipulated that he is not an enrolled member of the EBCI,

enrollment is not dispositive of Indian status in federal courts. See Antelope, 430 U.S. 631 (1977). Moreover, the EBCI, as stated at length above, officially recognizes first descendants in several places in its Code and the EBCI Charter and it is the expressed tribal policy to exercise criminal jurisdiction over them. George Nobles is descended from family that have resided in Cherokee since before the Civil War. He first appeared in Cherokee as an infant less than one month old. He attended school in Cherokee. He has received medical assistance reserved to Indians on several occasions without a need to pay. He found employment on the reservation in 2012 post-release from Florida Prisons. He holds himself out to be Native American and has adorned his body with Native American symbols. He was in social contact with Indians at the time of his arrest and had been living either on, or in close proximity to, the Qualla Boundary for the year or so following his release from Florida Prisons. It should be noted that Defendant's contact with the EBCI community and lands were constrained during Defendant's lengthy incarceration in Florida. Consistent with Article 84A of the North Carolina General Statutes, the Court should consider this period tolled. See N.C. Gen. Stat. § 15A-1368 *et seq.* After release from prison, when Defendant was once again freely able to choose a home for himself, he returned to Cherokee -- the only home he has.

George Lee Nobles is Indian for purposes of federal law and of the IMCA.

Preemption:

Having established that Defendant is Indian per the Indian Major Crimes act, the final issue for the Court's consideration is whether this court must dismiss these matters as a matter of law.

A state ordinarily may not regulate the property or conduct of tribes or tribal-member Indians in Indian country.[3] The limitation on state power in Indian Country stems from the Indian commerce clause, which vests exclusive legislative authority over tribes with Congress. See United States v. Lomayana, 86 F.3d 142, 145 (9th Cir. 1996) (rejecting argument that Major Crimes Act is unconstitutional because it does not regulate commerce, noting that the Indian commerce clause "confers more extensive

[3] See the Kansas Indians, 72 U.S. 737 (1867); Worcester v. Georgia; 31 U.S. 515 (1832); Okla. Tax Comm'n v. Sac & Fox Nation, 508 U.S. 114, 125 (1993).

power on Congress than does the interstate commerce clause"). The Major Crimes Act and the Indian Country Crimes Act create federal criminal jurisdiction that is exclusive of the states; that is, if federal jurisdiction exists under one or both of those two statutes, the states lack concurrent criminal jurisdiction to prosecute the same conduct.[4]

North Carolina Courts have repeatedly recognized the Eastern Band of Cherokee Indians' quasi-sovereign status and self-governance and have further acknowledged that federal power to regulate Indian affairs is plenary and supreme in this area.[5] Moreover, North Carolina Courts have ruled that where inconsistent with federal law, state law is pre-empted.[6] It is by no means novel that a North Carolina Court should find its jurisdictional limits at the Qualla Boundary. Indeed, in furtherance of the federal policy encouraging tribal self-governance, federal courts have developed an "exhaustion of tribal remedies" doctrine even where federal courts would have jurisdiction over a claim.[7] As applied to the facts of this case, but for the out of court intervention by Attorney General Tarnawsky and associated prosecutors and tribal officials, had Defendant been delivered to a Tribal Magistrate consistent with Tribal procedure, the Cherokee Court would have taken jurisdiction of Defendant's case.

As Congress has conferred no power on the State of North Carolina to prosecute this Indian Defendant, and the State offers no other rationale for continuing jurisdiction aside from arguing that Defendant is "not Indian enough", Defendant should be returned to tribal court and be given the opportunity to complete an Affidavit of Jurisdiction Form CTC-CR-216 which applies the St. Cloud test consistent with federal and tribal policies and procedures as were his purported co-defendants. To facilitate that procedure, this Court must order dismissal of these cases without undue delay.

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[4] United States v. John, 437 U.S. 634 (1978) (Major Crimes Act jurisdiction preempts states); United States v. Lynch, 632 F.2d 373 (4th Cir. 1980); Langley v. Ryder, 778 F.2d 1092 (5th Cir. 1985) (state lacks jurisdiction over crimes committed by Indians in Indian country); United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973). (South Dakota has no jurisdiction to convict Indian for rape of non-Indian committed in Indian Country)

[5] See Carden v. Owle Construction, 720 S.E.2d 825 (N.C.App., Jan. 17, 2012); Welch Contracting v. N.C. Department of Transportation, 175 N.C. App. 45 (2005); Hatcher v. Harrah's Casino, 169 N.C. App. 151 (2005); Jackson County v. Swayney, 319 N.C. 52 (1985); Wildcat v. Smith, 69 NC App 1 (1984)

[6] See Carden v. Owle Construction, 720 S.E.2d 825; Welch Contracting v. N.C. Department of Transportation, 175 N.C. App. 45; Jackson County v. Swayney, 319 N.C. 52; Wildcat v. Smith, 69 NC App 1.

[7] Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9 (1987); Nat'l Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845 (1985).

Respectfully submitted, this the 19th day of September, 2013.

/s Todd M. Williams

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