

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHANNON JAMES AUGARE,

Defendant.

MJ-13-25-GF-RKS

**ORDER DENYING MOTION
TO DISMISS**

Mr. Augare has moved to dismiss this prosecution for lack of jurisdiction. C.D. 11. The parties argued the motion on September 13, 2013. The motion must be denied for the reasons set forth below.

The United States has charged Mr. Augare with three misdemeanor counts arising from an incident alleged to have occurred May 26, 2013. Mr. Augare is

charged with: Count I--Obstructing a Peace officer, an alleged violation of Title 18 U.S.C. §§ 1152 and 13 and §45-7-302(1) MCA; Count II--Driving Under the Influence of Alcohol, an alleged violation of 18 U.S.C. §§ 1152 and 13 and §61-8-401(1)(a) MCA; and, Count III Reckless Driving, an alleged violation of 18 U.S.C. §§ 1152 and 13 and §61-9-301(1)(a) MCA. C.D. 1. These incidents are alleged to have occurred within the exterior boundaries of the Blackfeet Indian Reservation on U.S. Highway 2. Mr. Augare is alleged to be an enrolled member of the Blackfeet Tribe.

Mr. Augare argues that the Blackfoot Tribe has exclusive jurisdiction of misdemeanors of the sort at issue here with no specific victim. Mr. Augare asserts that the United States Code sections cited do not convey jurisdiction to the United States so this prosecution must be dismissed. Trial begins November 7, 2013 at 9:00 a.m. C.D. 20, absent dismissal.

The statutes in question here are known as the General Crimes Act, 18 U.S.C. §1152, and the Assimilative Crimes Act, 18 U.S.C. §13. The General Crimes Act extends federal criminal law into areas under federal jurisdiction; the Assimilative Crimes Act supplements federal law with assimilated State law. U.S. v. Errol D., Jr., 292 F. 3d 1159, 1164-65 and fn. 5. (9th Cir. 2002).

Mr. Augare cites no appellate court decision holding that federal jurisdiction

is limited as he argues. Both parties cite the Errol D. Jr. decision. That decision requires a finding that jurisdiction exists. The Ninth Circuit dismissed a prosecution in Errol D Jr., holding that the way the United States had charged the crime required dismissal. The Ninth Circuit held that the assimilated MCA section relied upon to charge a juvenile tribal member with an offense did not apply to crimes against government entities such as the Bureau of Indian Affairs. U.S. v. Errol D., Jr., 292 F. 3d 1159, 1161-2.

Other courts have found jurisdiction in federal prosecutions on Indian reservations charging victimless crimes under assimilated State statutes. United States v. Pino, 606 F.2d 908, 915 (10th. Cir. 1979)(careless driving); United States v. Thunder Hawk, 127 F. 3d 705, 708 (8th Cir. 1997) (driving drunk on the reservation); United States v. Billadeau, 275 F. 3d 692, 694 (8th Cir. 2001)(drunk driving and speeding laws).

The 9th Circuit in Errol D. Jr., supra, an appeal from the District of Montana, cited the Thunder Hawk decision with approval as a method the United States could use to prosecute offenses on the Fort Peck reservation. Errol D. Jr. supra at 1165, fn. 5. The Ninth Circuit approved federal prosecutions charging tribal members with the sort of victimless crimes charged here.

The Ninth Circuit's ruling and the absence of any decided cases to the

contrary requires a holding here that concurrent jurisdiction exists.

For these reasons the motion to dismiss for lack of jurisdiction, C.D. 13 is
DENIED.

DATED this 1st day of October, 2013.


Keith Strong
United States Magistrate Judge