

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-342(2) (ECT/LIB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS**

SHALAINA STAR STATELY,

Defendant.

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Gina L. Allery, Special Assistant United States Attorney, hereby submits its response to defendant Shalaina Star Stately's Motion to Suppress. [Dkt. No. 43.]

I. Background

The defendant is charged by Indictment with Robbery, in violation of Title 18, United States Code, Sections 2, 1151, and 1153(a), 2111. [Dkt. No. 1.] On February 5, 2020, the defendant filed pretrial motions, including Defendant's Motion to Suppress in this matter. The Court held a motions hearing on October 30, 2020, before United States Magistrate Judge Leo I. Brisbois. The government offered five exhibits into the record at the motions hearing, including the defendant's plea of guilty in Red Lake Tribal Court to a violation of tribal law stemming from the same incident as the federal indictment in this case. [Govt. Exh. 4.]

In her motion to suppress the defendant seeks to suppress her plea of guilty in Red Lake Tribal Court on grounds that it violates her Sixth Amendment rights because her tribal

court attorney failed to counsel her on the collateral consequences of a plea of guilty in tribal court. However, the defendant's motion should be denied as the Sixth Amendment does not apply to tribal court proceedings.

II. Argument

A. The Sixth Amendment right to counsel does not apply to tribal court proceedings.

First, the Defendant argues that her Sixth Amendment rights under the constitution are triggered as a criminal defendant appearing in tribal court. As thoroughly detailed in United States v. Bryant, the Court plainly stated that the Sixth Amendment does not apply to tribal court proceedings. United States v. Bryant, 136 S. Ct. 1954, 1962 (2016) (citations omitted).¹ Because the Indian Civil Rights Act of 1968 controls rather than the United States Constitution in tribal court criminal proceedings, the government submits Bryant summarily halts the question on whether the defendant can claim a Sixth Amendment right attached to her tribal court proceeding.

“The Bill of Rights, including the Sixth Amendment right to counsel, therefore, does not apply in tribal-court proceedings.” United States v. Bryant at 1962 (citations omitted). “Therefore, the use of those convictions in a federal prosecution does not violate a defendant's right to due process.” Id. at 1966. “The Indian Civil Rights Act of 1968 (ICRA), which governs tribal court proceedings, accords a range of procedural

¹ Prior to the Supreme Court's decision in U.S. v. Bryant, there was a circuit split regarding whether uncounseled tribal court convictions could be used in federal prosecutions. See United States v. Cavanaugh, 643 F.3d 592 (8th Cir. 2011); United States v. Shavanaux, 647 F.3d 993 (10th Cir. 2011); United States v. Ant, 882 F.2d 1389 (9th Cir. 1989).

safeguards to tribal court defendants ‘similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment.’” Id. at 1956 (quoting Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)). The ICRA entitles criminal defendants appearing in a tribal court proceeding to appointed counsel when their sentence of imprisonment is more than one year. United States v. Long, 870 F.3d. 741, 747 (8th Cir. 2017).

The Defendant appeared in Red Lake Tribal Court on October 31, 2019 and entered a guilty plea to charges arising from the same incident as the federal indictment in this case. [Govt. Exh. 4.] The Defendant was represented by a tribal court advocate, as acknowledged by the defendant at the October 30 motions hearing. [Tr. Mot. Hrg. at 15.] As indicated in her memorandum, the defendant’s maximum sentence in tribal jail for the offense was one year, which she did not receive. [Dkt. No. 129 at 3.] Therefore, not only does the Sixth Amendment not apply to the defendant’s tribal court proceeding, but the tribal court was not required to provide counsel and in providing the defendant with a tribal court advocate it more than met the requirements of ICRA.

B. Because the Sixth Amendment does not apply to tribal court proceedings, the defendant’s argument regarding the application of Padilla v. Kentucky is misplaced.

The defendant relies heavily on the Supreme Court’s holding in Padilla v. Kentucky, 559 U.S. 356 (2010), to argue that she was never informed of the consequences of her guilty plea and that it could be used against her in a federal criminal action. [Dkt. No. 129.] As discussed above, the Sixth Amendment does not apply to tribal court proceedings, so Padilla v. Kentucky is inapplicable. See also U.S. v. Gillette, 2018 WL 3151642, at *6-7 (D.S.D. Jan. 29, 2018).

However, even if Padilla did apply, advice about collateral consequences does not violate the Sixth Amendment under the circumstances present here. The Sixth Amendment only requires that the defendant be informed of the direct, but not the collateral, consequences of a guilty plea. U.S. v. Williams, 104 F.3d 213, 216 (8th Cir. 1997). As the Eighth Circuit explained in Williams, “in order to satisfy constitutional requirements, a defendant must be ‘fully aware of the direct consequences’ of his plea. Use of the plea in a subsequent federal proceeding is not a direct consequence.” Id. (internal citations omitted). Padilla, and later U.S. v. Chaidez, 568 U.S. 342 (2013), only established that a direct certain consequence, deportation, requires that notice must be made to satisfy the dictates of the Sixth Amendment. But courts have not gone beyond deportation in expanding the categories of collateral consequences nor eliminated the distinction between collateral and direct consequences and unlike deportation, the defendant’s guilty plea in this case did not automatically trigger a federal charge. Even after Padilla, the defendant’s guilty plea is a collateral consequence that is not under the Sixth Amendment’s right to counsel.

Finally, if the Court were to determine that the Sixth Amendment and Padilla applied in this instance, the government would respectfully request permission to allow the use of the defendant’s guilty plea as a prior inconsistent statement. This alternative use of a plea has been permitted to impeach a defendant. See U.S. v. Denetclaw, 96 F.3d 454, 457(10th Cir. 1996) (citing Harris v. New York, 401 U.S. 222(1971)). “In Harris, the Supreme Court held that a statement made in violation of Miranda...may be admitted

to impeach the credibility of a defendant who testifies in his own behalf, even if such statements are not admissible in the prosecution's case-in-chief." Id.

III. Conclusion

Therefore, it is the position of the United States that there is no basis for suppressing the defendant's guilty plea in tribal court on October 31, 2019. For the foregoing reasons, the United States respectfully requests that the Court deny the Defendant's Motion to Suppress in all respects.

Dated: December 13, 2020

Respectfully Submitted,

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s/Gina L. Allery

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