United States v. Smith, 2023 WL 8358116 (N.D. Okla. Nov. 30, 2023).

- **Holding**: The federal court had jurisdiction under the General Crimes Act and the Assimilative Crimes Act to prosecute Smith, a non-native woman convicted of abusing her child, a tribal member; additionally, the fact that the counts against Smith described her as aiding and abetting her tribal member husband in his commission of child abuse in violation of the Major Crimes Act were not a basis for dismissal because even though Smith, as a non-native, was legally incapable of violating the Major Crimes Act, it is established that under 18 U.S.C. § 2 (which provides that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal,"), persons can aid and abet the commission of crime that they are either factually or legally unable to commit.
- **Summary**: Defendant Smith was a non-native woman whose husband was a member of a federally recognized tribe. Smith and her husband physically abused and neglected H.M., who was a tribal member. Smith was convicted of Child Abuse in Indian Country and Child Neglect in Indian Country. Smith moved for a judgment of acquittal and dismissal for lack of subject matter jurisdiction, arguing that after the Supreme Court's decision in *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022), federal courts now lack jurisdiction over criminal cases involving crimes committed in Indian country by non-Indians.

  The court denied the motion, holding that the General Crimes Act, 18 U.S.C. § 1152, extends the federal laws that apply on federal enclaves to Indian country, and the Assimilative Crimes Act, which incorporates local state law into federal law and applies that law to federal enclaves within the states, is applied to Indian country through the General Crimes Act. The court rejected Smith's argument that a "plain reading of the statute" reveals that the federal government may only charge a non-Indian with a "state offense" when it has "sole and exclusive jurisdiction" over the offense, holding that the General Crimes Act "extends the law of federal enclaves to Indian country; it does not make jurisdiction conditional on whether the federal government has exclusive jurisdiction."

  Likewise, the court rejected Smith's argument that under the Assimilative Crimes Act, the government may only assimilate state crimes against defendants when the state does not have jurisdiction, citing cases holding that the Assimilative Crimes Act applies to Indian country through the General Crimes Act, and the fact that in *Castro-Huerta* the Supreme Court declared that "[a]ll agree that the Federal Government has jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country."

  The counts against Smith also described her as aiding and abetting her husband in his violations of the Major Crimes Act, 18 U.S.C. § 1153. Smith argues that 18 U.S.C. § 2 (which provides that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal"), "does not extend federal jurisdiction to a non-Indian alleged accomplice." The court denied this argument, holding that "[t]here is a well-established principle that one can aid and abet in the commission of a crime that they are unable to commit," and "[w]hile this principle usually applies in cases where an aider/abettor is factually unable to commit a crime, I determined [during trial] that the principle applies equally where an

individual is legally unable to commit the crime." The court found that Smith offered no reason to reconsider his prior ruling, and Smith's objection that an instruction on aiding and abetting was improperly included in the jury instructions was not properly before the court on a motion to dismiss, but could be raised on appeal.

- **Relevant (2023) Deskbook Section**: 4:8
- **Comment**: Five days after the issuance of this opinion, another judge in the Northern District of Oklahoma ruled that 18 U.S.C. § 2 does not extend federal jurisdiction to a non-Indian accomplice charged under § 1153. *United States v Brown*, 2023 WL 8438575 (N.D. Okla. Dec. 5, 2023), summarized at https://docs.google.com/document/d/1WpzZiJctjzDMmXttsuk_9xaOuk91sZzC/edit.