U.S. v. English, 2023 WL 2330689 (D. Colo., March 2, 2023).

- **Holding**: Federal court lacked jurisdiction to approve plea arrangement under which tribal defendant charged with felony assault charges pursuant to the Major Crimes Act, 18 U.S.C. § 1153, agreed to plead guilty to a "lesser included offense" of simple assault, an offense not listed in § 1153.
- **Summary:** Defendant English was charged with one count of assault with intent to commit a felony, in violation of 18 U.S.C. § 113(a)(2), and one count of assault by striking, beating, or wounding, in violation of 18 U.S.C. § 113(a)(4). Mr. English was alleged to be an Indian and the crimes allegedly occurred with the exterior boundaries of the Southern Ute Indian Reservation. A plea agreement was proposed, under which English would plead guilty to a "lesser included offense of the Indictment[,] Simple Assault in Indian Country, 18 U.S.C. §§ 113(a)(5) and 1153." The magistrate judge refused to accept the plea, citing lack of jurisdiction. Both the prosecution and English filed objections with the district court.

  The district court held that "[p]rosecution of crimes not expressly designated in section 1153, including, specifically, simple assault – is reserved to the tribal courts, in recognition of their inherent sovereignty over such matters." 2023 WL 2330689 at *2. The court distinguished cases, including *Keeble v. United States*, 412 U.S. 205, 93 S.Ct. 1993, 36 L.Ed.2d 844 (1973), recognizing federal courts may issue jury instructions on lesser included offenses when defendants were charged under the Major Crimes Act. While the court recognized the "paucity of authority extending *Keeble* to the realm of pleas bargaining," it did find two unpublished opinions doing so. The court found the unpublished decisions to be unpersuasive, finding that the Major Crimes Act's directive to *try* cases "in the same manner" as other federal criminal proceedings would include Federal Rule of Criminal Procedure 31(c), which gives defendants the right to a jury instruction on lesser included offenses. The court found it "counterintuitive … to suggest that a rule of trial procedure has any logical relevance to plea bargaining." 2023 WL 2330689 at *4.

  The court also found relevant the Supreme Court's statement in *Keeble* that its decision regarding jury instructions for lesser included crimes "'neither expands the reach of the Major Crimes Act nor permits the Government to infringe the residual jurisdiction of a tribe by bringing prosecutions in federal court that are not authorized by statute.'" 2023 WL 2330689 at *5 (quoting *Keeble*, 908 S.Ct. at 1998). The court concluded that Keeble's "unequivocal language plainly counsels restraint in intruding further on the exclusive jurisdiction of the tribes." *Id*.
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