IN THE SUPREME COURT OF IOWA

STATE OF IOWA	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Supreme Court No. 20-0401
	)	
HOLLIS BEAR,	)	
	)	
Defendant-Appellant.	)	

APPEAL FROM THE IOWA DISTRICT COURT
FOR TAMA COUNTY
HONORABLE PAUL D. MILLER (MOTION) and
FAE E. HOOVER (TRIAL/SENTENCING), JUDGES

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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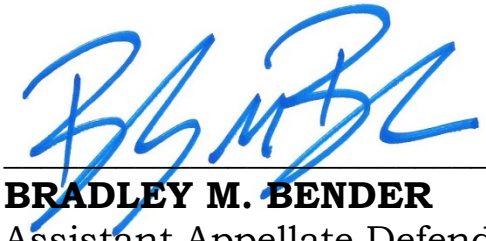
CERTIFICATE OF SERVICE

On the 6th day of July, 2020, the undersigned certifies that a true copy of the forgoing instrument was served upon the Defendant-Appellant by placing on copy thereof in the United States mail, proper postage attached, addressed to Hollis Bear, 3343 GG Ave., Tama, Iowa 52339.

STATE APPELLATE DEFENDER'S OFFICE



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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. When a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall within the law. Public Law No. 115-301 strips Iowa courts of jurisdiction over criminal cases that involved offenses committed by or against Indians on the Sac and Fox Indian Reservation. Did the district court err in denying Bear's Motion to Dismiss?

Authorities

Meier v. Senecaut, 641 N.W.2d 532, 537 (Iowa 2002)

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ROUTING STATEMENT

The Iowa Supreme Court should retain this case because it involves a substantial issue of broad public importance and first impression. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(c) & (d). Specifically, this case raises the question whether a 2018 Congressional Act strips Iowa courts of jurisdiction over criminal cases that involved offenses committed by or against Indians on the Sac and Fox Indian Reservation that were pending at the time of the bill's enactment.

STATEMENT OF THE CASE

Nature of Case. Defendant-Appellant Hollis Bear appeals from the judgment, conviction, and sentence for Domestic Abuse Assault Causing Bodily Injury – First Offense and Criminal Mischief in the Fourth Degree in violation of Iowa Code sections 708.2A(1), 708.2A(2)(b), and 716.6 (2017) following a bench trial and a verdict of guilty in the Tama County District Court. The Honorable Paul D. Miller presided over pretrial motion proceedings and the Honorable Fae E. Hoover presided over the bench trial and the sentencing hearing.

Course of Proceedings. On November 16, 2018, Bear was charged by Trial Information with the following offenses: (1) Sexual Abuse in the Third Degree, a class C felony, in violation of Iowa Code sections 709.1, 709.4(1)(a) and 903B.1 (2017); (2) Domestic Abuse Assault Causing Bodily Injury – First Offense, a serious misdemeanor, in violation of Iowa Code sections 708.2A(1) and 708.2A(2)(b) (2017); and (3) Criminal Mischief in the Third Degree, an aggravated misdemeanor, in violation of Iowa Code sections 71.1 and 716.5 (2017). (Trial Information) (App.). Bear pled not guilty to the charges and waived his right to a speedy trial. (Written Arraignment; Arraignment Order) (App.).

On December 17, 2018, Bear filed a Motion to Dismiss which alleged that the district court lacked subject matter jurisdiction to hear Bear's case because of a recent legislation by the U.S. Congress regrading jurisdiction over criminal offenses that is committed on the Sac and Fox Indian Reservation. (Motion to Dismiss) (App.). The State resisted the Motion. (Resistance) (App.).

The court commenced a hearing on January 31, 2019 regarding Bear's Motion to Dismiss. (Hrg. Tr. p. 1; Ruling on Motion to Dismiss) (App.). Following the hearing, the district court denied Bear's Motion to Dismiss. (Ruling on Motion to Dismiss) (App.). The court concluded that the recent legislation did not apply retroactively and does not disinvest the State of Iowa of jurisdiction over this matter. (Ruling on Motion to Dismiss) (App.).

Following the ruling, Bear filed an interlocutory appeal seeking a review of the district court's ruling. (SCT Order) (App.). On May 3, 2019, the Supreme Court denied the application and remanded the case for further proceedings. (SCT Order; Procedendo) (App.). On June 21, 2019, Bear waived his right to a jury trial and requested the case to proceed to a bench trial. (Waiver of Jury Trial) (App.). A hearing on Bear's waiver of jury trial commenced on June 27, 2019. (6/27/19 Order) (App.). Following a colloquy with Bear, the district court accepted Bear's wavier of jury trial. (6/27/19 Order) (App.).

On August 8, 2019, Bear and the State of Iowa entered in a stipulation regarding the following facts: (1) Rosie Youngbear and Hollis Bear was residing together and cohabitating on October 10, 2018 on the Meskwaki Indian Settlement in Tama, Iowa; (2) Bear and Youngbear are both Native Americans and residents of the Tama Indian Settlement; (3) on October 10, 2018, Youngbear owned an iPhone which was damaged and destroyed; (4) the cost of repairing or replacing the iPhone exceeds $300 but does not exceed $750; (5) the parties request the court take judicial notice of the proceedings and record in this matter; (6) the parties request that the court shall consider the minutes of testimony to determine Bear guilty only on the domestic abuse and criminal mischief charges; and (7) Bear and State of Iowa stipulate that the domestic abuse and criminal mischief charges were not sexually motivated as required by Iowa Code section 692A.126. (Stipulation) (App.).

The stipulated bench trial commenced on February 6, 2020. (Trial Tr. p. 1; 2/6/20 Order) (App.). The district court granted the State's motion to dismiss the sexual abuse charge. (Trial Tr. p. 2, Line 1 – p. 15; Line 8; 2/6/20 Order)

(App.). Following a review of the Minutes of Testimony and the Stipulation, the district court found guilty of Domestic Abuse Assault Causing Bodily Injury – First Offense and the lesser included offense of Criminal Mischief in the Fourth Degree. (Trial Tr. p. 2, Line 1 – p. 15; Line 8; 2/6/20 Order) (App.). The court also concluded that neither of these offenses was sexual motivated which is necessary to trigger section 692A.126. (Trial Tr. p. 2, Line 1 – p. 15; Line 8; 2/6/20 Order) (App.).

On February 24, 2020, Bear filed a Motion for New Trial and Motion in Arrest of Judgment which alleged that the court's verdict is contrary to the law or evidence, and no legal judgment can be pronounced based upon the whole record since the district court lacked subject matter jurisdiction to hear this case. (Posttrial Motions) (Trial Tr. p. 2, Line 1 – p. 15; Line 8; 2/6/20 Order) (App.).

Sentencing Hearing commenced on February 27, 2020. (Sent. Tr. p. 1; Judgment) (App.). Prior to sentencing, the district court entertained Bear's posttrial motions. (Sent. Tr. p. 2, Line 1 – p. 4, Line 15; Judgment) (App.).

Following arguments from the parties, the court denied Bear's posttrial motions. (Sent. Tr. p. 2, Line 1 – p. 4, Line 15; Judgment) (App.). The court proceeded to sentencing. (Sent. Tr. p. 4, Line 16 – p. 6, Line 1). On the charge of Domestic Abuse Causing Bodily Injury – First Offense, the district court ordered Bear to serve a one year jail sentence with all but two days suspended with credit for two days previously served and pay a fine of $315 as well as applicable statutory surcharges and court costs. (Sent. Tr. p. 6, Line 2 – p. 10, Line 10). On the charge of Criminal Mischief in the Fourth Degree, the district court ordered Bear to serve a one year jail sentence with all days suspended and pay a fine of $315 as sell as applicable statutory surcharges and court costs. (Sent. Tr. p. 6, Line 2 – p. 10, Line 10). The district court suspended the payment of the fines on each charge. (Sent. Tr. p. 6, Line 2 – p. 10, Line 10).

The court ordered Bear to be placed on self-supervised probation with Department of Corrections for a period of one year with the terms and conditions of probation to include completion of the Iowa Domestic Abuse Program. (Sent. Tr. p. 6, Line 2 – p. 10, Line 10). The district court also ordered the

sentences on each count to run consecutive to each other. (Sent. Tr. p. 6, Line 2 – p. 10, Line 10). In addition, the court ordered Bear to repay Tier 2 expenses in the amount of $50. (Sent. Tr. p. 6, Line 2 – p. 10, Line 10).

Bear filed a Notice of Appeal on March 6, 2020. (Notice of Appeal) (App.).

Background Facts. Based on a review of the Minutes of Testimony and the Stipulation, the district court found the following facts during the stipulated bench trial:

> On or about October 10, 2018, Hollis Bear and Rosie Youngbear resided at . . . .Tama Settlement, Tama County, Iowa. Hollis Bear and Rosie Youngbear cohabited for purposes of Iowa Code Section 236. Both Mr. Bear and Miss Youngbear are Native Americans living on the Tama Indian Settlement. Hollis Bear grabbed Rosie Youngbear by the hair and threw her to the floor. He then pulled her hair, punched her in the chest and struck her in the back of the head with an open palm. Hollis Bear then smashed Ms. Youngbear's head against the wall. He then poured cold and hot water on Ms. Youngbear while calling her names. Mr. Bear caused bodily injury to Rosie Youngbear by causing pain and bruising. During the assault that injured Rosie Youngbear, Hollis Bear threw a cell phone owned by Rosie Youngbear against the wall. The phone's screen shattered. The cost to repair the cell phone exceeds $300 but is less than $750.

(2//6/20 Order) (App.). Any additional pertinent facts will be discussed below.

ARGUMENT

I. When a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall within the law. Public Law No. 115-301 strips Iowa courts of jurisdiction over criminal cases that involved offenses committed by or against Indians on the Sac and Fox Indian Reservation. Did the district court err in denying Bear's Motion to Dismiss?

Preservation of Error. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Error was preserved by Bear's Motion to Dismiss; the district court's subsequent ruling denying the motion; Bear's posttrial motion and the court's subsequent ruling denying the motions. (Motion to Dismiss; Ruling on Motion to Dismiss; Posttrial Motions; Judgment) (App.). Therefore, Bear's issue regarding the subject matter jurisdiction is proper before this Court.

Standard of Review. "We review rulings on motions to dismiss for correction of errors at law." *Karon v. Elliott Aviation,*

937 N.W.2d 334, 339 (Iowa 2020). "We review a district court's ruling on subject matter jurisdiction for correction of errors at law." *Ney v. Ney*, 891 N.W.2d 446, 450 (Iowa 2017). In addition, because the case raises an issue of statutory interpretation, our review is for correction of errors at law. *State v. Wolford Corp.*, 689 N.W.2d 471, 473 (Iowa 2004).

The District Court Erred in Denying Bear's Motion to Dismiss. A case that involves an issue of Indian sovereignty immediately calls into question subject matter jurisdiction. *See Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998) ("As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity."); *see also State v. Bear*, 452 N.W.2d 430, 432 (Iowa 1990) (recognizing that Indian sovereignty raises a question of subject matter jurisdiction). "Subject matter jurisdiction may be raised at any time." *Bear*, 452 N.W.2d at 432; *Hyde v. Buckalew*, 393 N.W.2d 800, 802 (Iowa 1986) ("The issue whether the legislature intended to waive its sovereign immunity with respect to a particular type of claim is a matter of [subject matter] jurisdiction, the power of the court to hear

and adjudicate a particular class of cases, and the State may raise that issue by motion to dismiss at any stage of the proceeding."). In addition, this court may raise the issue sua sponte. *State ex rel. Vega v. Medina*, 549 N.W.2d 507, 508 (Iowa 1996).

The Federal Constitution "grants Congress broad general powers to legislate in respect to Indian tribes, powers that [the Supreme Court has] consistently described as 'plenary and exclusive.'" *United States v. Lara*, 541 U.S. 193 (2004) (citations omitted); *see* U.S. Const. art. I, § 8, cl. 3 (Indian Commerce Clause); U.S. Const. art. II, § 2, cl. 2 (Treaty Clause). In *California v. Cabazon Band of Mission Indians*, the United States Supreme Court reiterated several principles regarding Indian sovereignty:

> Indian tribes retain "attributes of sovereignty over both their members and their territory," and ... "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." It is clear, however, that state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided.

California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207 (1987) *superseded by statute as stated* in *Michigan v. Bay*

Mills Indian Community, 572 U.S. 782 (2014) (citations omitted). "Thus, although Indian tribes retain attributes of sovereignty, state laws may be applied to tribal Indians on reservations if Congress grants a state authority to do so." *State v. Lasley*, 705 N.W.2d 481 (Iowa 2005).

In 1896, the State of Iowa tendered to the federal government lands in Tama County which were previously held in trust for the benefit of the Sac and Fox Indians. 1896 Iowa Acts ch. 110. The Meskwaki Settlement in Tama County is now held in trust by the federal government for the benefit of the federally recognized tribe. *See Sac & Fox Tribe of Miss. in Iowa v. Licklider*, 576 F.2d 145, 147–48 (8th Cir. 1978). As a result, the Meskwaki Settlement is "Indian country" under applicable United States Supreme Court precedent. *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 511, 111 S. Ct. 905, 910, 112 L.Ed.2d 1112 (1991); *see State v. Youngbear*, 229 N.W.2d 728, 732 (Iowa 1975), *abrogated on other grounds by State v. Bear*, 452 N.W.2d 430, 432–33 (Iowa 1990).

The tender of the Tama County land by Iowa to the federal government specifically noted that nothing in the act

> shall be so construed as to ... prevent [Iowa] courts from exercising jurisdiction of crimes against the laws of Iowa committed thereon either by said Indians or others, or of such crimes committed by said Indians in any part of this state.

1896 Iowa Acts ch. 110, § 3. Clearly, the provisions in the 1896 Act did not limit the criminal jurisdiction of state courts and the federal government accepted all limitations on the transfer. *Licklider*, 576 F.2d at 147–49.

Whether a court has criminal jurisdiction over offenses committed in "Indian country" "is governed by a complex patchwork of federal, state, and tribal law" that often depends upon whether the defendant or the victim is an Indian. *Negonsott v. Samuels*, 507 U.S. 99, 102 (1993) (quoting *Duro v. Reina,* 495 U.S. 676, 680 n.1 (1990), *superseded by statute on other grounds,* Department of Defense Appropriations Act of 1990, Pub. L. No. 101-511, 104 Stat. 1856, as recognized in *Lower Brule Sioux Tribe v. South Dakota*, 917 F. Supp. 1434, 1444 n.8 (D.S.D. 1996)). Prior to 1948, the precedents of the United States Supreme Court consistently held that state courts

have jurisdiction over "Indian country" crimes involving non-Indians unless there is a treaty provision or clause in a state's enabling act prohibiting such jurisdiction. *New York ex rel. Ray v. Martin*, 326 U.S. 496, 499–500 (1946); *Draper v. United States*, 164 U.S. 240, 242–43 (1896); *United States v. McBratney*, 104 U.S. 621, 622–24 (1881). Further, many other cases stand for the proposition that states have criminal jurisdiction over criminal acts by non-Indians in "Indian country" that are not committed against Indians. *See, e.g., Hilderbrand v. United States*, 261 F.2d 354, 356 (9th Cir. 1958); Lasley, 705 N.W.2d at 490; *State v. Kurtz*, 350 Or. 65, 249 P.3d 1271, 1276 n.5 (2011); *State v. Reber*, 171 P.3d 406, 408 (Utah 2007).

In 1948, Congress conferred criminal jurisdiction over offenses committed "by or against Indians on the Sac and Fox Indian Reservation" located in Iowa. Act of June 30, 1948, ch. 759, 62 Stat. 1161. The statute, commonly known as Public Law 846, reads:

> Jurisdiction is hereby conferred on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation in that State

> to the same extent as its courts have jurisdiction generally over offenses committed within said State outside of any Indian reservation: Provided, however, That nothing herein contained shall deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

Id. Therefore, "after 1948, Iowa district courts had preexisting jurisdiction over crimes committed on the Meskwaki Settlement involving non-Indians and, in addition, over offenses committed by or against Indians." *State v. Stanton*, 933 N.W.2d 244, 249 (Iowa 2019).

In 2018, Congress reversed course and repealed the 1948 Act. The 2018 Act in full provides,

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of June 30, 1948, entitled "An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation" (62 Stat. 1161, chapter 759) is repealed.

Act of Dec. 11, 2018, Pub. L. No. 115-301, 132 Stat. 4395 (2018).

The Iowa Supreme Court last year concluded that the impact of the 2018 Act is clear:

> It simply repealed the 1948 expansion of state court jurisdiction. The 2018 legislation left undisturbed state court criminal jurisdiction involving criminal acts involving non-Indians existing prior to the passage of the 1948 Act. And the law prior to the enactment of the 1948 Act provided state court jurisdiction over crimes committed in "Indian country" involving non-Indians.

Stanton, 933 N.W.2d at 249.

In this case, Bear was charged by Trial Information on November 16, 2018 with the following offenses: (1) Sexual Abuse in the Third Degree, a class C felony, in violation of Iowa Code sections 709.1, 709.4(1)(a) and 903B.1 (2017); (2) Domestic Abuse Assault Causing Bodily Injury – First Offense, a serious misdemeanor, in violation of Iowa Code sections 708.2A(1) and 708.2A(2)(b) (2017); and (3) Criminal Mischief in the Third Degree, an aggravated misdemeanor, in violation of Iowa Code sections 71.1 and 716.5 (2017). (Trial Information) (App.). As mentioned, Public Law No. 115-301 was signed into law on December 11, 2018. *See* Act of Dec. 11, 2018, Pub. L. No. 115-301, 132 Stat. 4395 (2018). Therefore, the question in this case is whether the 2018 Act strips Iowa courts of jurisdiction over criminal cases that involved offenses

committed by or against Indians on the Sac and Fox Indian Reservation that were pending at the time of the bill's enactment.

In ruling on Bear's Motion to Dismiss, the district court concluded the following:

> Moving then to the second *Landgraf* step, the statute would have a retroactive effect, as it would impair rights possessed by the State at the time it acted. 511 U.S. at 280. Chiefly, it would impair the State's right to charge Defendant for the conduct alleged in this matter. Where the statute would have such a retroactive effect, it is presumed not to govern. *Id.*
>
> The record reflects and Defendant does not dispute that Iowa had the requisite jurisdiction over the conduct at issue, complaints, and indictment, all of which predate December 11, 2018. Under 1 U.S.C § 109, incomplete prosecutions are not abated by repeal where the repealing statute does not provide for such abatement. *Jackson*, 468 F.2d at 1390; *Brown*, 429 F.2d at 568.
>
> Based on the foregoing, Public Law No. 115-301 does not have the effect of divesting the State of Iowa of jurisdiction over this matter. Accordingly, Defendant's motion to dismiss should be denied.

The district's court reliance on *Landgraf* and the General Savings Clause under 1 U.S.C. § 109 were clearly erroneous. First, a retroactively analysis is unnecessary in this case

because Public Law No. 115-301 is a jurisdictional statute. When interpreting a statute, the United States Supreme Court normally presumes that the statute does not apply retroactively — that is, to cases pending on the date of the law's enactment— absent clear congressional intent to the contrary. *Hamdan v. Rumsfeld*, 548 U.S. 557, 576 (2006) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994)). This presumption against retroactivity, however, does not apply to statutes that only alter jurisdiction. "[S]tatutes 'conferring or ousting jurisdiction' that 'speak to the power of the court rather than to the rights or obligations of the parties' generally do not raise concerns about retroactivity." *Henry v. Ashcroft*, 175 F.Supp.2d 688, 693 (S.D.N.Y.2001) (quoting *Landgraf*, 511 U.S. 244, 274).

Application of "a jurisdiction-conferring or jurisdiction-stripping statute usually 'takes away no substantive right but simply changes the tribunal that is to hear the case.' " *Hamdan v. Rumsfeld*, 548 U.S. 557, 576–77 (2006) (quoting *Hallowell v. Commons*, 239 U.S. 506, 508 (1916)). "Present law normally governs in such situations because jurisdictional statutes 'speak to the power of the court rather than to the rights or

obligations of the parties.'" *Landgraf*, 511 U.S. at 274 (quoting *Republic Nat. Bank of Miami v. United States*, 506 U.S. 80, 100 (1992) (Thomas, J., concurring)). Thus, "no retroactivity problem arises because the change in the law does not 'impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'" *Hamdan*, 548 U.S. at 577 (quoting *Landgraf*, 511 U.S. at 280). "And if a new rule has no retroactive effect, the presumption against retroactivity will not prevent its application to a case that was already pending when the new rule was enacted." *Id.*

The Supreme Court has long held that "when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall within the law." *Bruner v. United States*, 343 U.S. 112, 116–17 (1952). The Court reaffirmed this "consistent practice" in *Landgraf*, noting that it has "regularly applied intervening statutes conferring or ousting jurisdiction, whether or not jurisdiction lay when the underlying conduct occurred or when the suit was filed." *Landgraf*, 511 U.S. at 274.

Clearly, Public Law No. 115-301 strips Iowa courts of jurisdiction over criminal cases that involved offenses committed by or against Indians on the Sac and Fox Indian Reservation. Therefore, Public Law No. 115-301 withdraws the jurisdiction that it previously conferred on Iowa under 1948 Act. When a statute confers jurisdiction and Congress repeals that statute, "the power to exercise such jurisdiction [is] withdrawn, and ... all pending actions f[a]ll, as the jurisdiction depend[s] entirely upon the act of Congress." *The Assessors v. Osbornes*, 76 U.S. (9 Wall.) 567, 575, 19 L.Ed. 748 (1870). Therefore, this Court should conclude that Public Law No. 115-301 affects the power of the court rather than the rights and obligations of the parties and thus revokes Iowa jurisdiction to resolve Bear's criminal case in this matter.

Furthermore, the jurisdiction stripping statute in Public Law 115-301 differs markedly from the one that was confronted by the United States Supreme Court in *Hamdan*. The United Supreme Court in *Hamdan* was confronted with a statute that included provisions that made it expressly applicable to pending cases whereas the jurisdiction stripping section omitted such

language. *See Hamdan*, 548 U.S. at 584, 126 S.Ct. 2749 (drawing the negative inference that Congress did not intend to eliminate jurisdiction over pending detainee habeas petitions where the statute was silent about whether its jurisdiction-stripping subsection applied to cases even though it expressly made two other subsections retroactive). By contrast, Public Law No. 115-301 is a statute in which Congress was completely silent about the effective date of the jurisdiction stripping statute. *See* Act of Dec. 11, 2018, Pub. L. No. 115-301, 132 Stat. 4395 (2018). Therefore, Public Law No. 115-301 is not conflicting and does have a retroactive effect.

In addition, the district court's reliance on the general savings clause in 1 U.S.C. § 901 is misplaced and not applicable to the analysis to resolve the issue confronting this Court in this pending case. The Supreme Court explained that because the saving statute "only has the force of a statute, its provisions cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enaction." *Great Northern Ry. Co. v. United States*, 208 U.S. 452, 465 (1908). Furthermore, the United States Supreme

Court also has stated explicitly that "the general saving clause does not ordinarily preserve discarded remedies or procedures." *Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 661 (1974). The reference to "remedies or procedures" means only that the Saving Statute does not cover situations in which a repealing statute does not affect the "penalties, forfeitures, or liabilities" imposed by the repealed statute, but rather only alters the procedures whereby substantive rights are adjudicated. *See United States v. Obermeier*, 186 F.2d 243, 253-55 (2d Cir. 1950). Therefore, the district court's reliance on the general savings clause of the United States Code was erroneous.

This Court should conclude that Public Law No. 115-301 should be applied retroactive. As such, this Court should conclude that the district court erred in denying Bear's Motion to Dismiss. The district court's conclusions were erroneous and contrary to the case law as outlined above. Consequently, this Court should remand Bear's case for an entry of an order for dismissal.

CONCLUSION

For all of the reasons discussed in the Division I above, Bear respectfully requests the Court vacate his convictions and remand his case for an entry of an order for dismissal.

REQUEST FOR ORAL ARGUMENT

Counsel for Defendant-Appellant Hollis Bear request to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true costs of producing the necessary copies of the foregoing Brief and Argument was $2.94, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 4,124 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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