UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **ROYAL DALE JUAN BROWN, a/k/a "Buck,"** **Defendant.**	**Case No. 23-CR-339-GKF**

Government's Response in Opposition to Defendant's Motion to Dismiss Counts One, Two, and Five of the Indictment (Dkt. #49)

The Court should deny Royal Dale Juan Brown's (Brown) motion to dismiss the Indictment because Brown aided and abetted two Indian co-defendants in the commission of Counts One and Five of the Indictment and is, thus, criminally liable as if he himself committed the offenses. Where Brown was properly charged with a predicate violent offense under Count One of the Indictment, Count Two is not defective.

Relevant Facts

Brown and two Indian confederates brutally robbed and beat Brittany Hester while she patronized Haney's Super Trip Food Store on the night of September 14, 2023. Haney's is located within the Northern District of Oklahoma and the Cherokee Nation.

The Tulsa Police Department (TPD) responded to Haney's shortly after the incident and found Hester inside, dazed and suffering from a significant laceration to

her forehead. She told officers that she entered the store to purchase cigarettes when she was confronted by Brown, Keenan Duke Lamont Brown II, and Isaac Emiliano Littleman-Ortega. Keenan Brown is a member of the Muscogee (Creek) Nation and Ortega is a member of the Cheyenne and Arapaho Tribes.

When Brown saw Hester with a $100 bill, he removed an AR-style rifle from his pants, pointed it at her, and demanded the money. Hester refused and Brown repeatedly struck her in the forehead with the body of the weapon. Keenan Brown filmed the incident, while Ortega tore Hester's purse from her shoulder and punched her repeatedly. All three fled the store together.

After speaking with Hester, TPD reviewed surveillance video of the incident, which captured the defendants engaged in the acts that she described. The video also revealed that, at various points before the robbery, Brown passed the rifle to Ortega and Keenan Brown, respectively. Brown and his two co-defendants are observed leaving Haney's after the robbery and entering a champagne-colored Jeep Cherokee operated by a third party.

Armed with this information, TPD canvassed the area for the car. They located it at a gas station a few miles from Haney's and attempted to stop it. Brown, Keenan Brown, and Ortega fled the vehicle. Officer Houck pursued Brown, who was armed. Brown ditched the weapon and attempted to jump over a fence when he was apprehended. Hester's phone, purse, and identification were found near Brown.

In the early morning hours of September 15, 2023, TPD officers spoke with the driver of the Jeep Cherokee, Ivan Vega. Vega relayed that he was exiting the Cash

Saver on East 31st Street in Tulsa, within the Muscogee (Creek) Nation, when he was approached by Ortega, Brown, and Keenan Brown. Ortega asked if he could help with Ortega's sister's vehicle, which had been disabled. Vega assisted the three, and, when asked, agreed to give them a ride. Vega told TPD that at some point during the drive, Brown produced a rifle and pointed it at him, demanding that he transport the three to various locations. Ortega fired at least once while in the vehicle. Consistent with Vega's representations, TPD recovered three spent .223 ammunition shell casings inside of the Jeep Cherokee.

A little over a week later, TPD located and arrested Keenan Brown and Ortega. Keenan Brown gave a statement following *Miranda*, and conceded that the parties were present at Haney's and committed the robbery. He also acknowledged that Vega drove them around.

On October 19, 2023, a Grand Jury returned a five-count Indictment against Brown, Keenan Brown, and Ortega. In addition to charges of Carjacking (Count Three) and Carrying, Using, Brandishing, and Discharging a Firearm During and in Relation to a Crime of Violence (Count Four), the Indictment charged the defendants with Robbery in Indian Country (Count One), Carrying, Using, and Brandishing a Firearm During and in Relation to a Crime of Violence (Count Two), and Kidnapping in Indian Country (Count Five). Count Two is related to Count One.

Count One of the Indictment reads:

COUNT ONE

[18 U.S.C. §§ 1151, 1153, and 2111]

On or about September 14, 2023, within Indian Country in the Northern District of Oklahoma, the defendants, **KEENAN DUKE LAMONT BROWN II**, a/k/a "Trigga," an Indian, and **ISAAC EMILIANO LITTLEMAN-ORTEGA**, an Indian, aiding and abetting each other, took property of approximately $200 in value, specifically, a cellular telephone, a wallet, and a purse, from the person and presence of B.H., a person known to the Grand Jury, by force and violence, and by intimidation, and the defendant, **ROYAL DALE JUAN BROWN**, a/k/a "Buck," willfully caused the act described above to be done, pursuant to Title 18, United States Code, Section 2(b).

All in violation of Title 18, United States Code, Sections 1151, 1153, and 2111.

Count Five of the Indictment reads:

COUNT FIVE
[18 U.S.C. §§ 1151, 1153, 1201(a)(2), and 1201(d)]

On or about September 14, 2023, within Indian Country in the Northern District of Oklahoma, the defendants, **KEENAN DUKE LAMONT BROWN II**, a/k/a "Trigga," an Indian, and **ISAAC EMILIANO LITTLEMAN-ORTEGA**, an Indian, aiding and abetting each other, knowingly and unlawfully seized, confined, inveigled, and held for ransom, reward, and otherwise, I.V., a person known to the Grand Jury, and the defendant, **ROYAL DALE JUAN BROWN**, a/k/a "Buck," willfully caused the act described above to be done, pursuant to Title 18, United States Code, Section 2(b).

All in violation of Title 18, United States Code, Sections 1151, 1153, 1201(a)(2), and 1201(d).

On November 22, 2023, Brown filed a Motion to Dismiss Counts One, Two, and Five of the Indictment (Dkt. # 49). The Government opposes.

Argument & Authorities

This Court has jurisdiction over Brown because Brown aided and abetted Keenan Brown and Ortega in the commission of the robbery of Hester and kidnapping of Vega. Jurisdiction is proper in federal court because the principals – Keenan Brown

and Ortega – are members of two federally-recognized tribes who committed the offense within the boundaries of the Cherokee and Muscogee (Creek) Nations. Brown – in his posture as an aider and abettor – willfully caused the kidnapping and robbery to occur, first, by bringing and pointing the AR-style rifle at Vega, and second, by repeatedly striking Hester with the firearm, thus allowing Ortega to remove her bag from her shoulder.

The indictment is sufficient under both the Federal Rules of Criminal Procedure and the Constitution. Rule 7(c)(1) requires that an indictment be a "plain, concise and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). An indictment is "sufficient [under the Constitution] if it sets forth the elements of the offense charged, puts the defendant on fair notice of charges against which he must defend, and enables the defendant to assert a double jeopardy defense." *United States v. Dashney*, 117 F.3d 1197, 1205 (10th Cir. 1997) (citation omitted). The test of the validity of the indictment is "not whether the indictment could have been framed in a more satisfactory manner, but whether it conforms to minimal constitutional standards." *United States v. Gama-Bastidas*, 222 F.3d 779, 785 (10th Cir. 2000) (citation and quotation marks omitted).

A pretrial motion to dismiss an indictment is not an appropriate mechanism for the Court to evaluate or rule on the strength of the government's evidence. *See United States v. Hall*, 20 F.3d 1084, 1087 (10th Cir. 1994); *see also United States v. Doe*, 572 F.3d 1162, 1173-74 (10th Cir. 2009) (the indictment should state the elements of the crime and provide fair notice of the allegations to defend against Double Jeopardy;

the indictment need not set forth the evidence on which the charges rely). Where "the indictment quotes the language of a statute and includes the date, place, and nature of illegal activity, it need not go further and allege in detail the factual proof that will be relied upon to support the charges." *United States v. Redcorn,* 528 F.3d 727, 733 (citations omitted).

The indictment should be tested instead on the basis of the allegations on its face and such allegations are to be taken as true. *United States v. Sampson*, 371 U.S. 75, 78-79 (1962). Where a defendant challenges the sufficiency of an indictment for failure to state an offense, "a court is generally bound by the factual allegations contained within the four corners of the indictment." *United States v. Welch*, 327 F.3d 1081, 1090 (10th Cir. 2003) (citation omitted).

Here, Counts One, Two, and Five plainly stated the nature of the offenses charged, the date and location of those offenses, and the basis for jurisdiction.

I. The Court has Jurisdiction Over Counts One, Two, and Five.[1]

The Court has jurisdiction over Counts One, Two, and Five because they properly allege federal crimes.

Under the Indian Major Crimes Act, any "Indian who commits against the person or property of another Indian or other person any of the following offenses, namely … kidnapping … [and] robbery … shall be subject to the same law and

[1] Where Brown does not attack Counts Three and Four of the Indictment, the Government has not addressed them in its submission. Both counts are predicated upon a separate federal nexus, mainly, the interstate assembly and shipment of the vehicle at issue.

penalties as all other persons … within the exclusive jurisdiction of the United States." 18 U.S.C. § 1153. In passing the Act, Congress extended federal jurisdiction over fourteen specific offenses committed by Indians in Indian country, exercising "broad respect for tribal sovereignty[.]" *United States v. Prentiss*, 206 F.3d 960, 968 (10th Cir. 2000). In *Prentiss*, the Tenth Circuit confirmed that the mere occurrence of a crime in Indian Country is unsatisfactory to grant federal jurisdiction. *Prentiss*, 206 F.3d at 969. Instead, "Indian status … [is an] essential element of a crime," which must be asserted and proven by the government. *Id.*

Here, the Indictment satisfies *Prentiss* by directly alleging the Indian status of the principals – Keenan Brown and Isaac Ortega. Count One of the Indictment provides that on September 14, 2023, "Keenan Duke Lamont Brown III … an Indian, and Isaac Emiliano Littleman-Ortega, an Indian, aiding and abetting each other, took property … from the person or presence of B.H[.]" Similarly, Count Five adopts the same Indian-status identification language in its allegation of Kidnapping in Indian Country. Both counts make clear that Royal Brown "willfully caused the act describe above to be done, pursuant to Title 18, United States Code, Section 2(b)."

Consequently, the Indictment alleges a plainly ascertainable federal nexus in both counts, and they are facially sufficient. Where those counts "quote[] the language of a statute and includes the date, place, and nature of illegal activity," *United States v. Redcorn,* 528 F.3d at 733, they should remain undisturbed.

Because Count Two is predicated upon Count One, which successfully alleges a federal crime, it too should remain undisturbed. *See United States v. Smith*, 852 F.

App'x 318, 320 (10th Cir. 2021) ("924(c) does not require an indictment or conviction for the underlying crime of violence; it only requires the presence of a crime of violence … for which the person *may be prosecuted* in a court of the United States.") (citations omitted) (emphasis in the original); *accord United States v. Haywood*, 363 F.3d 200, 211 (3d Cir. 2004) ("A valid § 924(c) conviction requires only that the defendant have committed a violence crime for which he may be prosecuted in federal court.").

II. Brown is correctly before the Court as an Aider and Abettor under 18 U.S.C. § 2(b).

Where the Court properly has jurisdiction over Keenan Brown and Ortega, as principals, so too does it properly have jurisdiction over Brown as an aider and abettor under 18 U.S.C. § 2(b). Brown's sole contention in his submission is that "§ 2 does not extend federal jurisdiction under § 1153 to include non-Indians [and] therefore the indictment failed to state an offense[.]" (Dkt. #49 at 4). Brown's argument turns on a single Eighth Circuit case, *United States v. Graham*, 572 F.3d 954 (8th Cir. 2009), which ignores both the plain language and longstanding general application of 18 U.S.C. § 2. This Court should reject the non-binding opinion in *Graham* as unpersuasive. *See United States v. Carson*, 793 F.2d 1141, 1147 (10th Cir. 1986) ("While we often rely upon the analysis … of other circuit courts of appeals, we are not bound by their decisions or modifications of those decisions.").

Under 18 U.S.C. § 2(b), "[w]hoever willfully causes an act to be done which if directly performed by him *or another* would be an offense against the United States, is

punishable as a principal." 18 U.S.C. § 2(b) (emphasis supplied). The statute recognizes and endorses the axiomatic principle that "criminal law … uniformly treats [aiders an abettors and principals] alike[.]" *United States v. Deiter*, 890 F.3d 1203, 1215 (10th Cir. 2018), citing *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 190 (2007). In this regard, 18 U.S.C. § 2 "simply abolishes the common-law distinction between principal and accessory … [and allows for] a defendant … [to] be convicted as an aider and abettor … provided the commission of the underlying offense is … proven." *United States v. Cooper*, 375 F.3d 1041, 1049 (10th Cir. 2004).

Importantly, the application of 18 U.S.C. § 2 is not limited to specific provisions of Title 18, but, as one of its general provisions, is "applicable to the entire United States criminal code." *Breeze v. United States*, 395 F.2d 178, 192 (10th Cir. 1968). By its express terms, 18 U.S.C. § 2 is not a federal enclave statute but one of general applicability. *See*, *e.g.*, *United States v. Bolt*, 2018 WL 4760839, at *2 (N.D. Okla. Oct. 2, 2018) ("The statutes under which Mr. Bolt was convicted – 18 U.S.C. §§ 2, 1014, and 1314 – are not federal enclave laws, and the government did not depend on § 1152 in charging him with these crimes.").

To this end, a defendant need not participate in every aspect, or even an important "aspect[,] of a crime to be liable as an aider and abettor." *United States v. Bowen*, 527 F.3d 1065, 1078 (10th Cir. 2008); *accord United States v. Sigalow*, 812 F.2 783, 785 (2d Cir. 1987) (a defendant can be convicted under an aider and abettor theory "without proof that he participated in each and every element of the

offense."). All that is required is defendant's participation in a "relatively slight moment." *Bowen*, 527 F.3d at 1078.

These general principals speak to the intended breadth of the aiding and abetting statute, which has been construed broadly to permit prosecution of aiders and abettors as surely as the principals who committed the crime. *See Standefer v. United States*, 447 U.S. 10, 18 (1980). As the Supreme Court explained in *Standefer*, an aider and abettor need not be subject to prosecution under the law for which the principal has been prosecuted so long as the crime for which the principal has been charged is itself a federal offense. *Id.* The Court summarized:

> In 1951, the words "is a principal" were altered to read "is punishable as a principal." That change was designed to eliminate all doubt that in the case of offenses whose prohibition is directed at members of specified classes (e.g. federal employees) a person who is not himself a member of that class may nonetheless be punished as a principal if he induces a person in that class to violate the probation. *See* S. Rep. No. 1020, 82d Cong., 1st Sess., 7-8 (1951). The change was fully consistent with congressional intent to treat accessories before the fact as principals and to abolish the common-law procedural bar.

Id. at 18, n.11.

Standefer is a prime example of the proposition it endorses. There, the defendant was prosecuted as an aider and abettor to a crime that could only be committed by a federal official, 18 U.S.C. § 7214, Unlawful Acts of Revenue Officers or Agents. *Id.* at 11. The Supreme Court upheld the conviction of the defendant, even after the principal was acquitted, because of the plain language of 18 U.S.C. § 2, which

allowed him to be treated as if he himself were a principal. *Id.* at 18. Jurisdiction was proper, and the conviction sound.

The same conclusion applies with equal force here. Like the defendant in *Standefer*, Royal Brown is not himself a member of the specified class prosecutable under § 1153. Notwithstanding, he took direct steps to associate himself with the acts of the principals: He repeatedly struck Hester in the face with the body of an AR-style weapon, thus allowing his principal, Ortega, a member of a federally recognized Indian tribe, to complete the robbery of which he was apart. Similarly, Brown used and brandished the weapon that allowed Ortega and Keenan Brown to perfect the carjacking of Vega. Because Brown willfully caused the acts alleged in Count One and Count Five to be done, he can be treated in the exact same fashion as Ortega and Keenan Brown, even where he did not participate in each and every discrete element of the offense.

This conclusion is further supported by the Tenth Circuit Pattern Jury Instructions for 18 U.S.C. § 2. These instructions require a showing that: (i) every element of the charged crime was committed by someone other than the defendant and (ii) the defendant intentionally associated himself in some way with the crime as he would in something he wished to bring about. *See* Committee of the United States Court of Appeals for the Tenth Circuit, *Criminal Pattern Jury Instructions* § 2.06 (2021). By their very terms, the instructions contemplate the precise scenario at bar.

Brown asserts, in turn, that he is exempt from prosecution at the federal level for the reasons articulated in the Eighth Circuit's non-binding opinion in *Graham*.[2] *Graham* involved the prosecution of a non-Indian who aided and abetted an Indian in a murder in Indian Country. *Graham*, 527 F.3d at 956. The court affirmed the lower court's dismissal of the indictment against the non-Indian co-defendant. *Id.* at 957. However, in affirming the dismissal, the Eighth Circuit engaged in an anemic analysis of 18 U.S.C. § 2 and rested its conclusion almost entirely on its 1990 opinion in *United States v. Norquay*, 905 F.2d 1157 (1990). The Court's reliance on *Norquay* was itself erroneous because the *Norquay* decision was concerned not with 18 U.S.C. §§ 2 and 1153, but instead addressed a disparate sentence between a non-Indian and Indian in federal court and Minnesota State Court. *Norquay*, 905 F.2d at 1166. The *Graham* decision should be given short shrift.

Because federal jurisdiction in this matter is properly based upon the Indian status of the two principals, the Government submits that the plain language of § 2, binding precedent, and pragmatic considerations allow for the prosecution of Brown as an

[2] Brown makes contrary assertions in his submissions to the Court. First, in his Motion to Dismiss Counts One, Two, and Five of the Indictment, Brown concedes that "[t]he Tenth Circuit has not yet addressed the intersection between this statute [18 U.S.C. §2] and the jurisdictional element of §1153." (Dkt. #49 at 4). Notwithstanding, in Brown's submission in Opposition to the Joint Motion for Continuance, he asserts that the "legal issues regarding Indian Country crimes are not novel to the government." (Dkt. #54 at ¶8). Brown relies on *United States v. Lipp*, 20 CR-186, and *United States v. Barnes*, 23-CR-110. Both are distinguishable. *Lipp* involved an indictment that failed to allege the Indian status of both the principals and the aider and abettor. In *Barnes*, this Court addressed a matter in which an Indian aided and abetted two non-Indian principals.

aider and abettor. If the Court adopts Brown's argument, it would functionally foreclose a full and fair prosecution of all three individuals, who were engaged in a common nucleus of operative fact, and serve as an automatic severance in a manner not contemplated and directly undermined by 18 U.S.C. § 2.

Thus, Counts One, Two, and Five of the Indictment are facially sufficient, adequately state the nature of the offenses, the location, date, and jurisdiction. Brown's motion should be denied.

Conclusion

Brown is criminally liable as an aider and abettor who willfully brought about the conduct of his principals, and, thus, the Court should deny Barnes's motion to dismiss.

CLINTON J. JOHNSON
UNITED STATES ATTORNEY

/s/ Joshua M. Carmel

Joshua M. Carmel, NJSBA No. 196202016
Assistant United States Attorney
Northern District of Oklahoma
110 West Seventh Street, Suite 300
Tulsa, Oklahoma 74119
918.382.2700
joshua.carmel@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and notification was sent to the following recipient:

Sarah McManes
Counsel for Royal Dale Juan Brown

Ryan S. Childress
Counsel for Isaac Emiliano Littleman-Ortega

Stephen G. Layman
Counsel for Keenan Duke Lamont Brown II

/s/ Joshua M. Carmel
Joshua M. Carmel
Assistant United States Attorney