

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

)

vs.

)

CR14-134ML

TROY SIMONDS

)

MOTION TO DISMISS FOR LACK OF JURISDICTION

Now comes the Defendant, Troy Simonds, and hereby moves this Honorable Court to Dismiss the instant Indictment for lack of jurisdiction.

The jurisdictional basis for the instant Indictment is premised upon the Government's assertion that the acts alleged occurred on "Indian Country" as that term is defined in 18 U.S.C. § 1151.

In support of this Motion your Defendant avers that the acts alleged in the Indictment occurred on "Settlement Lands", as provided for in the Rhode Island Indian Claims Settlement Act, 25 U.S.C. §1701-1716. Pursuant to the "Settlement Act", it is clearly and unambiguously specified "Settlement Lands" shall be "subject to the civil and criminal laws and jurisdiction of the State of Rhode Island". 25 U.S.C. § 1708(a). Defendant avers "Settlement Lands" as provided for in 25 U.S.C. §1708(a) are distinct from "Indian Country". In support of this Motion Defendant refers to the holding of *Narragansett Indian Tribe v. State of Rhode Island*, 449 F.3d 16 (2006).

In further support of this Motion your Defendant relies upon the reasoning and law as set forth in the attached Memorandum of Law.

WHEREFORE, Defendant prays his Motion to Dismiss is granted.

TROY SIMONDS,

By his attorney,

/s/ Scott A. Lutes

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CERTIFICATION

I hereby certify that I caused a true and accurate copy of the within Motion to Dismiss to be electronically filed by means of the CM/ECF filing system to Gerard B. Sullivan, AUSA, and all counsel of record, on this the 16th day of February, 2015.

/s/ Scott A. Lutes

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MEMORANUM OF LAW IN SUPPORT OF

MOTION TO DISMISS FOR LACK OF JURISDICTION

Facts:

This Indictment arises out of an incident that is alleged to have occurred on August 9, 2014, in the Town of Charlestown within the boundaries of "Settlement Lands" held in trust for the Narragansett Indians by the United States Department of the Interior, Bureau of Indian Affairs.

Troy Simonds, a member of the Narragansett Indian Tribe is alleged to have stabbed another individual of the Narragansett Tribe with a knife, with intent to do bodily harm.

Historical Background:

For purposes of this Memorandum, all facts contained within this "Historical Background" are derived and summarized from the "Background" section of the First Circuit's decision in *Narragansett Indian Tribe v. State of Rhode Island*, 449 F.3d 16.

In 1880, the Narragansett Indians agreed to surrender its tribal authority and sell the State of Rhode Island all but two acres of its lands for \$5,000.00.

The tribe almost immediately regretted its decision. Years of protracted litigation with the State ensued.

In 1975, the Narragansett Indians filed a pair of complaints in the United States District Court for the District of Rhode Island alleging that the 1880 conveyance of 3,200 acres to the State was void under the Indian Nonintercourse Act, 25 U.S.C. § 177, because the State failed to secure federal approval. Therefore, as the Tribe's title had not been extinguished, it constituted a cloud on the title on the property of hundreds of landholders whose title derived from the 1880 sale.

Consequently, in an effort to resolve these issues, the Town of Charlestown, the affected landowners, the State of Rhode Island and the Narragansetts executed a Joint Memorandum of Understanding (hereinafter "J-Mem") on February 28, 1978. The J-Mem provided for the Narragansetts to receive 1,800 acres of land to be formed out of two parcels. One parcel was donated by the State and the other was purchased from private landowners with funds furnished by the federal government. The Tribe gained effective control of the settlement lands in exchange for relinquishment of its claims, the voluntary dismissal of its lawsuits, and its agreement that, with the exception of state hunting and fishing regulations, "all laws of the State of Rhode Island shall be in full force and effect on the settlement lands". The State agreed to create an Indian controlled corporation to hold the settlement lands in trust for the Tribe, to exempt the settlement lands from local taxation, and to work toward securing passage of the federal legislation necessary to implement the agreement. *Id.*, quoting from *Narragansett Indian Tribe v. Rhode Island*, 296 F.Supp. 2d at 161.

Both the Rhode Island General Assembly and the United States Congress subsequently passed the necessary enabling legislation. See, *R.I. Gen. Laws §§ 37-18-1 to 37-18-15*; 25 U.S.C. §§ 1701-1716. Consistent with the J-Mem, the federal piece of the legislative mosaic, the

“Settlement Act” declared that “the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.” 25 U.S.C. §1708(a).

Next, the settlement lands were conveyed to the holding company. On February 2, 1983, the Secretary of the Interior granted the tribe official federal recognition. *See, 48 Fed.Reg. 6,177-6,178.*

In 1985, the State of Rhode Island amended the pertinent state statute to permit the conveyance of the settlement lands directly to the Tribe. Significantly, the amendment included a provision that preserved the State’s jurisdiction over the settlement lands in terms substantially identical to those memorialized in section 1708(a).

In 1988, the Tribe deeded the settlement lands to the Bureau of Indian Affairs (“BIA”) as trustee. The trust deed explicitly confirmed the applicability of state law on the settlement lands as provided by section 1708(a). The BIA continues to hold the settlement land in trust for the Tribe.

Jurisdiction:

The Government premises its right to bring this criminal action in federal court based upon the definition of “Indian Country” as defined in Title 18 U.S.C. § 1151.

The Defense position is that the “Settlement Land” is not “Indian Country” and hence there is no jurisdiction in this court.

Indian country is defined in §1151 as, (a) “all land within the limits of any Indian reservation **under the jurisdiction of the United States Government**, (*emphasis added*) notwithstanding any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the

original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Title 18 U.S.C. § 1152 specifies the laws governing “Indian country”. It reads: “**Except as otherwise provided by law**, (*emphasis added*) the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.”

Finally, Title 18 U.S.C. §1153 reads: “(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title) an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title **within the Indian country**, (*emphasis added*) shall be subject to the same law and penalties as all other persons committing any of the above offenses, **within the exclusive jurisdiction of the United States**” (*emphasis added*).

The crux of the Defense’s argument is that the “Rhode Island Indian Claims Settlement Act, 25 U.S.C. §§ 1701-1716, is a unique piece of federal legislation designed to resolve a singular dispute between the Narragansetts and the State of Rhode Island and that it specifically guaranteed that the settlement lands would be “subject to the civil and criminal laws and jurisdiction of the State of Rhode Island”. *Id. at §1708(a)*. It did not create “Indian Country”. Moreover, the proviso in Section 1152, “Except as otherwise provided by law” was

placed there by Congress to specifically deal with situations such as this. The Rhode Island Indian Claims Settlement Act excludes the Settlement Land from the purview of 18 U.S.C. §§ 1151, 1152 and 1153.

The First Circuit held in *Narragansett Indian Tribe v. State of Rhode Island*, 449 F.3d 16, that the State of Rhode Island was authorized to enforce its criminal laws and to execute a search warrant against the Tribe and arrest its members incident to the enforcement of the State's civil and criminal laws. *Id.* at 18.

In that case, the First Circuit engaged in an exhaustive analysis of the historical and legislative background of the Rhode Island Indian Claims Settlement Act (hereinafter, "Settlement Act"). Ultimately, it held, "the Tribe abandoned any right to an autonomous enclave, submitting itself to state law as a quid pro quo for obtaining the land that it cherished." *Id.* at 22. The Court went on to say, "The J-Mem, the Settlement Act, and their historical antecedents make this case strikingly different from the mine-run of cases that have struggled to reconcile the sovereignty of Indian tribes with the legitimate interests of host states. Thus we rest our decision squarely on these idiosyncratic features." *Id.*

While true that the "Settlement Lands" are held in trust by the Department of Interior, Bureau of Indian Affairs, this does not transform them to "Indian Country".

In *Narragansett Indian Tribe v. Rhode Island*, the First Circuit held that the Narragansett Tribe had waived its sovereign immunity as valuable consideration for the 1,800 acres they bargained for and that Congress had also abrogated the Tribe's sovereignty when it passed the Settlement Act. "[U]nlike most other federal statutes touching on the complicated relationship

between tribes and states, the Settlement Act codified an agreement based on “the mutual consent of all parties”. *Id. at 25.*

“In light of this unique historical context, the provision quoted above, (*all laws of the State of Rhode Island shall be in full force and effect on the settlement lands*) clearly and unambiguously establishes that the parties to the Joint Memorandum of Understanding intended to subjugate the Tribe’s autonomy on and over the settlement lands (and thus its sovereign immunity) to the due enforcement of the State’s civil and criminal laws.” *Id.* Any other interpretation of the J-Mem would defy common sense and, in the bargain, nullify the State’s most important quid pro quo. *Id.*

Therefore, since the laws of the State of Rhode Island apply within the Settlement Lands, the provisions of 18 U.S.C. §§ 1151-1153 do not apply in this case.

Consequently, the instant Indictment should be dismissed for lack of jurisdiction.

TROY SIMONDS,

By his attorney,

/s/ Scott A. Lutes

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CERTIFICATION

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/s/ Scott A. Lutes