

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

8:12-CR-569

JAMES GRAY; WILLIAM ROGER JOCK;  
THOMAS ANGUS SQUARE, also known  
as "Salt;" ANTHONY LAUGHING, SR.; and  
JOSEPH HIGHT;

Defendants.  
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APPEARANCES:

HON. RICHARD S. HARTUNIAN  
United States Attorney for the  
Northern District of New York  
14 Durkee Street  
Plattsburgh, NY 12901

BRIAN P. BARRETT, ESQ.  
Attorney for Defendants Gray, Jock, and Square  
72 Olympic Drive  
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MOORE INTERNATIONAL LAW PLLC  
Attorneys for Defendants Gray, Jock, and Square  
45 Rockefeller Plaza, Suite 2000  
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DAVID N. HURD  
United States District Judge

OF COUNSEL:

ELIZABETH A. HORSMAN, ESQ.  
Ass't United States Attorney

SCOTT MICHAEL MOORE, ESQ.

**DECISION and ORDER**

Defendants James Gray ("Gray"), William Roger Jock ("Jock"), and Thomas Angus Square ("Square") (collectively "defendants") moved to dismiss the indictment. The United

States of America ("the government") responded in opposition.<sup>1</sup> The motion was taken on submission without oral argument on March 8, 2013.

There are two broad areas propounded by defendants as bases for dismissal of the indictment. First, they contend that the factual allegations of the indictment are insufficient. Second, they argue that because of their status as sovereign Indians, they cannot be charged with the crimes set forth in the indictment.

It is presumed that the grand jury had sufficient evidence upon which to act. See United States v. Weber, 197 F.2d 237, 238 (2d Cir. 1952). The "'indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.'" United States v. Alfonso, 143 F.3d 772, 776 (2d Cir.1998) (quoting Hamling v. United States, 418 U.S. 87, 117, 94 S. Ct. 2887, 2907 (1974)). Where the indictment tracks the language of the statute charged and states the approximate time and place of the alleged crimes, it is sufficient. Id.

The Indictment was handed up by the grand jury on December 12, 2012. Count One of the Indictment sets forth the elements of a violation of 18 U.S.C. §§ 1955 and 2 and alleges the approximate time and place of the alleged commission of the crime. It is

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<sup>1</sup> As part of its response, the government contends that Gray has absconded out of the country. According to the government, as a fugitive and non-party to this action, he cannot obtain dismissal of the indictment. It is noted that all of the authority cited by the government pertains to fugitive defendants seeking dismissal of the indictment on speedy trial grounds. See, e.g., United States v. Blanco, 861 F.2d 773, 780 (2d Cir. 1988). This authority is inapposite because speedy trial violations are not the grounds relied upon for dismissal of the indictment in this case. Moreover, no determination has been made that Gray is a fugitive. In any event, it is not necessary to resolve this issue in order to make determination on defendants' motion.

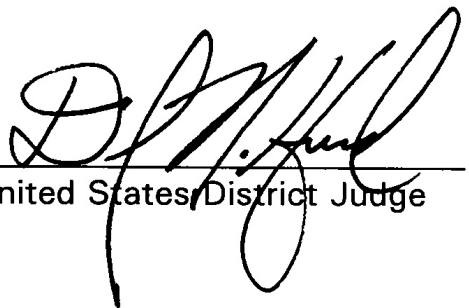
Additionally, the government asserts that questions exist as to whether Scott Michael Moore, Esq. ("Attorney Moore") properly represents the three defendants on whose behalf he brings the motion to dismiss the indictment. However, the government has not made a formal motion in this regard. Therefore, the defendants' representation by Attorney Moore will not be addressed at this time.

therefore valid on its face. See United States v. Pirro, 212 F.3d 86, 92 (2d Cir. 2000); United States v. Luguiz, 166 F. Supp. 2d 776, 778-79 (S.D.N.Y. 2001) (citing Alfonso, 143 F.3d at 776). Count Two alleges violation of 18 U.S.C. § 1151 and the approximate time and place of the alleged crime, and therefore is valid on its face. See Pirro. 212 F.3d at 92. Thus, the factual allegations of the indictment are sufficient. See Alfonso, 143 F.3d at 775.

The charged offenses, violation of 18 U.S.C. §§ 1151, 1955, and 2, are crimes of general applicability, applicable to Indians such as defendants in Indian Country such as location the crime was allegedly committed. See 18 U.S.C. § 1152; United States v. Farris, 624 F.2d 890, 893 (9th Cir. 1980). In addition, the individual defendants lack standing to assert treaty or statutory rights granted to an Indian tribe. See Canadian St. Regis Band of Mohawk Indians v. State of N.Y., 473 F. Supp. 1530, 1526–37 (N.D.N.Y. 1983) (McCurn, J.). Similarly, defendants' arguments relating to domestic dependent nation legal status as exceeding Congressional power are based upon treaty rights granted to the tribe as a whole and cannot be asserted by individuals. See generally Cherokee Nation v. State of Georgia, 30 U.S. 1 (1831).

Accordingly, defendants' motion to dismiss the indictment, Dkt. No. 32, is DENIED.

IT IS SO ORDERED.



United States District Judge

Dated: March 18, 2013  
Utica, New York.