

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK

Case No.:

Plaintiff,

- against -

NOTICE OF REMOVAL

JONATHAN K. SMITH,

Defendant.

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PLEASE TAKE NOTICE, that Defendant, Jonathan K. Smith, by and through counsel, pursuant to 28 U.S.C. § 1443(1), hereby gives notice of removal of Uniform Traffic Ticket No. AAN6862590, from the Town Court of East Hampton, County of Suffolk, 159 Pantigo Road. East Hampton, New York, 11431, where the action is now pending, to the United States District Court for the Eastern District of New York, Central Islip, New York, and in support states as follows.

1. That Defendant, Jonathan K. Smith, (“Defendant,” or “Smith”), is a member of the Shinnecock Indian Nation, and resides and does business at Old Point Road, Shinnecock Indian Nation Reservation, located within the territorial boundaries of the Town of Southampton, County of Suffolk, State of New York.¹

2. That Uniform Traffic Ticket No. AAN6862590 (“the Ticket”), written by New York Department of Environmental Conservation Officer Brian Farrish, (“DEC” and “Officer Farrish”), charges Smith with an allegation that on December 10, 2012 at 17:30 did possess eighty-seven (87) undersized bay scallops at the Montauk Marine Basin, in violation of New

¹ U.S. Bureau of Indian Affairs issued Tribal Identification Card, annexed hereto as Exhibit 1.

York Law 130327(2)(4), a misdemeanor.² The Receipt of Property Seized (“the Receipt”) is a document which was annexed to the Ticket, which describes the property seized as:

“87 undersized peconic bay scallops less than 2 ¼ inches.”

3. That Smith’s civil rights are violated as described herein, and is denied and cannot enforce in the courts of New York State, entitling removal as a civil rights case, pursuant to 28 U.S.C. § 1443(1).

4. That DEC Lt. Joseph C. Billotto (“Lt. Billotto”), DEC Officer Farrish, and DEC Officer Maggio, (full name unknown), did, in violation of 42 U.S.C. § 1985(3), conspire with one another for the purpose of depriving, either directly or indirectly, Smith as a member of the Shinnecock Indian racial class of persons, of the equal protection of the laws, and of equal privileges and immunities under the laws.

5. That Lt. Billotto, Officer Farrish, and Officer Maggio did, in violation of 42 U.S.C. § 1986, with knowledge of the wrongs conspired to be done, were about to be committed, and having power to prevent or aid in preventing the commission of same, neglected or refused to do so, to Wit: Neglecting or refusing to prevent, with knowledge of a conspiracy to deprive, either directly or indirectly, Smith as a member of the Shinnecock Indian racial class of persons, of the equal protection of the laws, and of equal privileges and immunities under the laws.

6. That 42 U.S.C. § 1982, provides: “All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

7. That interference with Smith’s personal property was on the basis of his membership in a Shinnecock Indian racial class of persons, and violates Smith’s right to purchase, hold, sell and convey his personal property in violation of 42 U.S.C. § 1982.

² See, Ticket and Receipt, annexed hereto as Exhibit 2.

8. That Smith's exercise of aboriginal fishing rights are property rights within the meaning of 42 U.S.C. § 1982, to Wit:

a. Smith has aborigine right to purchase, lease, sell, hold, and convey the personal property of scallops harvested on and in Shinnecock Indian Reservation lands and waters.

b. Smith has aborigine rights to purchase, lease, sell, hold, and convey the personal property of scallops free of encumbrance under the Free Trade Clause, Appended Article 3, Fort Albany Treaty, 1664, which provides in pertinent part:³

3. *That they may have free trade, as formerly.* [emphasis added]

c. Smith has aborigine retained rights to purchase, lease, sell, hold, and convey the personal property of scallops on and in land and waters ceded by the Shinnecock under Wyandanch's Deed to John Ogden, dated the 12th of May, 1659⁴ ("the Wyandanch to Ogden Deed"), which specifically retained fishing rights. The Wyandanch to Ogden Deed provides in pertinent part:

And it is also agreed that we shall keepe our privilege of fishing, fowling, or gathering of berries or any other thing for our use, [emphasis added]

Ceded territory under the Wyandanch to Ogden Deed includes land area adjoining the Peconic Bay,⁵ a location where retained fishing rights may be exercised:

... Northward to the water of the bay and to the creek of Accaboucke, Westward to the place called Pehecannache, [emphasis added]

³ See, Fort Albany Treaty, 1664, *Documents Relative to the Colonial History of the State of New York*, III, pp. 67-68, annexed hereto as Exhibit 3.

⁴ See, Wyandanch to Ogden Deed, *Records of the Town of Southampton*, I, p. 162, annexed hereto as Exhibit 4.

⁵ *Id.*, See also, Appendix D, Map of Approximate Locations of Deeds to Land on the North and South Forks of Long Island, 1640-1859, and Key to Appendix D Map, *Records of the Town of Southampton*, I, pp. 300-301, annexed hereto as Exhibit 5.

The Receipt identifies the scallops as “peconic bay scallops”.

9. That said property rights are self-executing, and/or executable under the Common Law and Acts of the Colonial and State Legislatures Section, Art. I, § 14, N.Y.S. CONST., the Contract Clause, U.S. CONST., Art. I, § 10 Cl. 1, and the Supremacy Clause, U.S. CONST., Art. VI, Cl. 2.

10. That on or about June 11, 2012, at Gabbyola’s Deli, in Montauk, New York, Officer Maggio followed Smith’s fishing captain, Captain Theodore S. Lester (“Capt. Lester”), into said deli, and ordered “I know you are running that boat⁶. You are not allowed to touch anything, the net or any of their⁷ gear. You cannot touch their⁸ fish. That is for the Indians. They⁹ can take that¹⁰ home¹¹. You cannot do that. You are going to end up going to jail.”

11. That on November 21, 2012, at approximately 1:00 p.m., Lt. Billotto stopped Capt. Lester and one crew member, while driving in Smith’s vehicle, at Gerard Drive, near Accabonac Harbor, East Hampton Town, New York, and in a threatening tone said to Capt. Lester, “I see you are running that boat¹² and I heard you are fishing and I am going to put you in jail. The Treaty is not worth shitpaper.”

12. That on December 10, 2012, after dark, with marina and boats lights illuminating the area, Smith, Capt. Lester, and Smith’s two (2) person fishing crew, were on the deck of Smith’s Top Notch at its slip at the Montauk Marine Basin, Suffolk County, and were preparing to exit the boat. Two ECOs approached and the following ensued:

a. One ECO identified himself to Smith as Lt. Billotto.

⁶ i.e. Smith’s Indian boat

⁷ i.e. Shinnecock Indian

⁸ i.e. Shinnecock Indian

⁹ i.e. Shinnecock Indian

¹⁰ i.e. fish

¹¹ i.e. Shinnecock Indian Reservation

¹² i.e. Smith’s Indian boat

- b. The second ECO did not identify himself or otherwise speak, but wrote out and handed the Ticket to Smith as described herein, which identifies Officer Farrish.
- c. Lt. Billotto stated he “wanted to come on board and check scallops”.
- d. Scallops were on board the boat and in a boat container designed for such.
- e. Smith stated “no, this is an Indian boat registered to me, that’s my car (pointing at the car), and I’m going back home to the reservation.” Smith showed Smith’s boat ownership and registration papers and Smith’s U.S. Bureau of Indian Affairs Identification Card to Lt. Billoto.
- f. Smith ordered his crew to remove the scallops from the boat’s container and put the scallops in a packing bag designed for such. Smith picked up the bag and walked towards Smith’s vehicle.
- g. Lt. Billotto unsnapped his holster, and in a threatening tone, ordered Smith “put that down”.
- h. Smith stated “I have a choice – I can either put the bag down, or I can walk to my car and drive to the Reservation”.
- i. Lt. Billotto, with his hand resting on his handgun, stated “you do not have a choice – trust me – it can get ugly - so let’s keep this civil”.
- j. Under this order, and not by choice, Smith put the bag down on the dock, and the ECOs removed the scallops from the bag, measured the scallops, and Officer Farrish wrote out the Ticket to Smith for possession of undersized scallops.

- k. While Officer Farrish was writing the Ticket to Smith, Lt. Billotto stated to Smith that “they’re¹³ lucky they don’t get a ticket, because they’re not allowed to touch the irons¹⁴ when they are with you.”
- l. Capt. Lester stated to Lt. Billotto in response, “give me a ticket”, but no other tickets were issued.
- m. Neither Lt. Billotto nor Officer Farrish asked Smith or anyone else if they were fishing, where they were fishing, or the location where the scallops in the bag were caught, nor was the topic raised or discussed.

13. That on January 11, 2013, at Jackson’s Marina, Town of Southampton, Capt. Lester was shot at twice, by an unknown person or persons, while Capt. Lester was standing on the rail of Top Notch. The first bullet hit the water. The second bullet hit the instep area of Capt. Lester’s right foot as he was stepping off the boat, spinning Capt. Lester around, and taking out a dime size area of skin.

14. That New York State law enforcement violated and failed to protect the rights of Smith, Smith’s fishing captain, Capt. Lester, and Smith’s crew.

15. That New York State’s “Indian Laws” illegally purport to regulate the system of government and other affairs of the Shinnecock Indian Nation and its members by and through Chapter 26, Article 9 of the New York State Indian Law.

16. That Smith has not been arraigned on the Ticket, and this notice of removal is filed in accordance with 28 U.S.C. § 1446(c)(1). All pleadings served on Jonathan K. Smith, being the Ticket and Receipt, are annexed hereto.

¹³ i.e. Smith’s captain and crew

¹⁴ i.e. scallop dredges

17. That Smith has given written notice of the filing of this notice of removal to the plaintiff and has filed a copy of the notice with the state court as required by 28 U.S.C. § 1446(d).

18. That as authorized by 42 U.S.C. § 1988, Smith demands award of costs and reasonable attorney fees for enforcement of 42 U.S.C. §§ 1982, 1985(3), and 1986.

WHEREFORE, the Defendant, Jonathan K. Smith, respectfully removes Uniform Traffic Ticket No. AAN6862590, from the Town Court of East Hampton, County of Suffolk, 159 Pantigo Road, East Hampton, New York, 11431, where the action is now pending, to the United States District Court for the Eastern District of New York, Central Islip, New York.

Dated: New York, New York
January 24, 2013

Respectfully submitted,

/s/

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Counsel for Defendant, Jonathan K. Smith

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I served a true copy of the annexed Instrument by postage-paid First Class Mail to all parties or their counsel of record below:

New York State Department of Environmental Conservation
Marine Enforcement Office Headquarters
205 North Belle Meade Road
East Setauket, NY 11733
Plaintiff

Office of the Clerk
Town Court of East Hampton
159 Pantigo Road
East Hampton, New York, 11431

Dated: New York, New York
January 24, 2013

/s/

Scott Michael Moore, Esq.