

STATE OF NORTH CAROLINA
COUNTY OF JACKSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12CRS 1362-3, 51719-20

STATE OF NORTH CAROLINA
VS.
GEORGE LEE NOBLES

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| AMENDMENT TO
| MOTION TO DISMISS
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NOW COMES, the Defendant, by and through his attorney, Assistant Capital Defender Todd. M. Williams, pursuant to the Constitution of the United States, Articles I, § 8, cl. 3 (the “Indian Commerce Clause”), Art. III, § 2, cl. 3 (the “Trial by Jury Clause”), and Art. VI, cl. 2 (the “Supremacy Clause”), the V, VI, VIII, and XIV Amendments to the Constitution of the United States, Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), 18 U.S.C.S. § 1153 et. seq. (the “Major Crimes Act of 1885”), 25 U.S.C.S. § 1301, St. Cloud v. United States, 702 F. Supp. 1456 (D.S.D. 1988), the Constitution of North Carolina, Article IV, § 12, and N.C. Gen. Stat. §§ 1E-1, 15A-2010 et. seq. (the “Racial Justice Act”), and 15A-954(a)(8) and does hereby move this Honorable Court to amend his motion for dismissal filed with the the Jackson County Clerk of Superior Court April 16, 2013 of the above-referenced matters for lack of personal and subject matter jurisdiction and shows unto this Court additional support of said motion as follows:

1. That Congress enacted the Major Crimes Act, 18 U.S.C. § 1153, to confer jurisdiction on the federal courts to punish certain offenses committed by Indians in Indian country and further granted the federal courts exclusive jurisdiction over the enumerated crimes therein;
2. That 18 U.S.C. § 1153(a) does not define Indian, but the generally accepted test – adapted from United States v. Rogers, 45 U.S. 476, 572-73, (1846) – asks whether a defendant (1) has some Indian blood, and (2) is recognized as an Indian by a tribe or federal government or both. United States v. Stymiest, 581 F.3d 759 (8th Circuit 2009);

3. That on information and belief, the alleged crime set out in the above-captioned matter occurred in “Indian Country” as defined by federal law and is a “major crime” as defined by 18 U.S.C. § 1153;
4. That the tribal trust land held by the Eastern Band of Cherokee Indians and lying within the Qualla Boundary is “Indian Country” as defined by the Major Crimes Act; United States v. John et. al., 437 U.S. 634, 647 (1978);
5. That North Carolina State Courts have no jurisdiction, concurrent or otherwise, to prosecute this Defendant for the murder of a non-Indian in Indian Country under 18 USC § 1153; John, 437 U.S. 634 (1978); United States v. Lynch, 632 F.2d 373 (4th Circuit 1980);
6. That Defendant’s right to Due Process requires notice and hearing on these jurisdictional questions in a federal forum; such facts may only be developed fully in a court with jurisdiction over Indian conduct within Indian Country as defined and developed under federal statutes and case-law.

WHEREFORE, defendant prays this Honorable Court to issue an Order dismissing this matter for lack of jurisdiction in that this action is pre-empted by legislation of the United States Congress and the operation of the Supremacy Clause of the United States Constitution and for such other relief as is just and proper.

THIS the _____ day of August, 2013.

/s Todd M. Williams
TODD M. WILLIAMS
Assistant Capital Defender
17 N Market Street, Suite 102
Asheville NC 28801
828/251-6785

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been served on the District Attorney's Office for the 30th Prosecutorial District, by either delivering it to the District Attorney's _____ office or Courthouse _____ mailbox in the appropriate county of service within the 30th Judicial District.

This is the _____ day of August, 2013.

/s Todd M. Williams _____
TODD M. WILLIAMS
Assistant Capital Defender
17 N Market Street, Suite 102
Asheville NC 28801
828/251-6785