

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)	Criminal No. 16-006 (MJD/LIB)
)	
v. Plaintiff,)	
)	DEFENDANT'S MOTION TO
NODIN MAKWA,)	DISMISS FOR LACK OF
)	JURISDICTION AND IMPROPER
Defendant.)	CHARGING

The defendant, Nodin Makwa, by and through his attorney, Douglas Olson, hereby moves the Court for an order dismissing the indictment for lack of federal jurisdiction and/or failure to properly charge a federal offense because the officer involved is not a federal law enforcement officer nor does his “assistance” in this case fall within the purview of the charged statute. Mr. Makwa is charged in a one count indictment with violating Title 18, United States Code, Sections 111(a)(1) and 111(b). The indictment alleges that Mr. Makwa:

Did forcibly assault, resist, oppose, impede, intimidate and interfere with Beltrami County Deputy Sheriff David Hart who was assisting Special Agent Christopher Dudley of the Federal Bureau of Investigation and Officer Keary Petschel of the Red Lake Police Department, while they were engaged in the performance of official duties, and the defendant used a deadly and dangerous weapon, to-wit: a Ford automobile, and inflicted bodily injury upon Deputy David hart, all in violation of Title 18, United States Code, Sections 111(a)(1) and 111(b).

The defense moves to dismiss the indictment because, as a matter of law, Beltrami Officer Hart was working as a State law enforcement officer when he was injured and his involvement in the apprehension of Mr. Makwa does not come under the purview of the federal statute charged. 18 U.S.C § 111(a) provides:

(a) In general. – Whoever –

(1) Forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; [is subject to the penalties of the subsection sections].

18 U.S.C. § 1114, in turn, provides:

Whoever kills or attempts to kill any officer or employee of the United States or if any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance [is subject to the listed penalties].

The indictment should be dismissed because, as a matter of law, Officer Hart was not an officer or employee of the United States nor was he “assisting such officer or employee in the performance of such duties” at the time of the alleged assault.

Briefly, on August 8, 2015, Mr. Makwa was involved in a high speed police chase that started on the Red Lake reservation after Red Lake Officer Petschl responded to a call of a disturbance at a Red Lake residence. Mr. Makwa took off in a motor vehicle. FBI Officer Dudley was on the reservation and saw the fleeing vehicle and joined in the chase. As he was leaving the reservation, Officer Dudley called in the assistance of local law enforcement to apprehend the fleeing vehicle, and, because his car was not equipped to conduct a high speed chase, the apprehension of Makwa’s vehicle was turned over to local law enforcement (Beltrami County Sheriff’s department and Minnesota Highway Patrol) to chase and pursue Mr. Makwa’s fleeing vehicle; Agent Dudley became “secondary” in the pursuit. The majority of the chase occurred off the Red Lake reservation and was conducted by state and local law enforcement.

A “pit” maneuver was eventually conducted in rural Beltrami County, and Mr. Makwa’s vehicle was spun around and temporarily stopped but not disabled. He put the car in reverse and as he was backing up, and his car hit and injured Beltrami Officer Hart, who was on foot at the side of Mr. Makwa’s vehicle when he was struck. Mr. Makwa reversed into a ditch and was apprehended.

Under these circumstances, the indictment should be dismissed because Officer Hart, a state Law enforcement officer, was injured while performing state court police officer duties - the apprehension and arrest of a suspect fleeing police on state and county roads. The involvement of FBI agent Dudley was simply incidental at the time of the arrest and injury; this case lacks federal jurisdiction because it did not happen on federal land nor was Hart “assisting” a federal officer at the time of the injury. Accordingly, the case should be dismissed.

This motion is based on the indictment, the records and files in the above-entitled action, and any and all other matters which may be presented prior to or at the time of the hearing of said motion. It is anticipated that the government would call Agent Dudley to testify concerning the chase, circumstances of the assault, and Mr. Makwa’s arrest in order to address the issues raised by this motion.

Dated: February 12, 2016

Respectfully submitted,

s/ Douglas Olson

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