

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY D. KALLEMBACH,

Defendant.

ORDER

03-CR-037-C

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There are two matters raised by pro se defendant Larry Kallembach that should be addressed briefly by the court.

First, on September 22, 2003, defendant filed a lengthy document with the court that might be viewed as an inelegant motion to dismiss the charges. I cannot be sure of this because the document is incomprehensible and defendant refuses to explain it. This by itself is grounds to deny any request for action contained therein.

Apart from this, at the November 19, 2003 preliminary pretrial conference defendant made the following statement:

For the record, I hereby challenge the jurisdiction of the federal government to charge me with a crime inside the State of Wisconsin, specifically Madison, Wisconsin. I hereby cite the

statutory requirements within 40, United States Code, Section 255, with specific reference to interpretive note 14 and/or 40, United States Code § with specific reference to Interpretive Note Number 3, and hereby request that the court order the Department of Justice to produce the documentation specified per the statute to establish their criminal jurisdiction.

Transcript of November 19, 2003 Preliminary Pretrial Conference, Dkt. 49, at 14.

Defendant subsequently clarified that he was invoking § 3112 in addition to § 255.

Defendant's references were redundant, because § 3112 has replaced § 255. It states:

The United States is not required to obtain exclusive jurisdiction over land it acquires. The United States can secure or accept exclusive or partial jurisdiction. It is presumed that the United States does not accept jurisdiction until the government accepts jurisdiction as provided under this section.

Defendant is reading § 3112 too broadly. It is intended to address jurisdictional questions that might arise when the federal government acquires land within a sovereign state. Essentially § 3112 makes it clear that a state retains exclusive jurisdiction over federal government lands (such as military bases) unless the federal government secures exclusive or concurrent jurisdiction over those lands. Section 3112 does not apply to the prosecution of federal crimes outside federally-owned land. Under our federal system, the administration of criminal justice rests with the state, except when Congress has created offenses against the United States. United States v. Lopez, 514 U.S. 549, 561 (n. 3) 1995. The criminal charges against defendant are offenses against the United States. For that reason, § 3112 has no application to this prosecution.

ORDER

IT IS ORDERED that defendant Larry Kallembach's residual motions to dismiss and for other relief are DENIED.

Entered this 12th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge