

No 19-6921

ORIGINAL

IN THE
Supreme Court of the United States

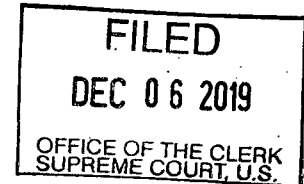
BRIAN HARRISON JONES SR

Petitioner,

vs.

UNITED STATES OF AMERICA

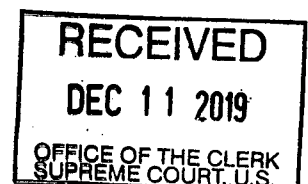
"et al." *Respondent.*



On Petition for Writ of Certiorari
to the Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

BRIAN HARRISON JONES, SR #45004-086
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QUESTION(S) PRESENTED

1. Is the legal definition of the term "same transaction" unconstitutionally vague?
2. How would two incidents separated by four months constitute as the "same transaction?"
3. Why are the exact same issues of ultimate fact, which have previously been determined by a valid and final judgment, be able to be relitigated in a successive prosecution?
4. Would the conduct committed in an offense, which is the same exact conduct needed for proof to convict in a separate offense make both offenses the "same offense" within the meaning of the Double Jeopardy Clause?
5. Would one tribe which derives from surrounding original tribes still benefit from the Dual Sovereignty Doctrine?
6. How does a non-original tribe or entity be considered to have and wield "inherent" power if such power is "delegated" to them?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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Tulalip Tribes v. Brian Harrison Jones Sr, #TUL-CR-DV-2015-0185

FRCP RULE 8(a)(iii)

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SUPREME COURT**

Petitioner, Jones respectfully prays that a writ of certiorari be issued to review the published decision of the United States Court of Appeals for the Ninth Circuit entered on June 22, 2018.

OPINIONS AND ORDERS

On December 17, 2015 a grand jury returned a seven count first superseeding indictment charging the defendant with;

Count 1 - Assault by Strangulation

Count 2 - Assault resulting in Serious Bodily Injury

Count 3 - Witness Tampering

Count 4 - Felon in Possession of a Firearm

Count 5 - Assault with a Dangerous Weapon - (A.W.)

Count 6 - Assault with a Dangerous Weapon - (D.W.)

Count 7 - Possession of a Firearm in Furtherance of a Crime of Violence

Beginning on January 11, 2016 this Court presided over a jury trial, which concluded with the jury finding the defendant guilty on all charges.

On October 7, 2016 Judge Richard A. Jones sentenced the defendant to a term of 24 months of imprisonment for counts 1-6, and 84 months of imprisonment for count 7 to be served consecutive to counts 1-6 followed by 48 months of supervised release.

A timely notice of appeal was filed on October 13, 2016, the District Court had original jurisdiction pursuant to 18 U.S.C. §3231. This court has jurisdiction over appeals from final judgments under 28 U.S.C. §1291 and 18 U.S.C. §3742. The judgment and sentence was a final decision subject to appeal under 28 U.S.C. §1291.

I. STATEMENT OF JURISDICTION

The Court of Appeals affirmed the District Courts denial of petitioner Jones appeal, the Court of Appeals had Jurisdiction Pursuant to 28 U.S.C. §1291. The Jurisdiction of this Court is invoked Pursuant to 28 U.S.C. §1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

§1153

§1512(d)(1)

§1512(d)(4)

§924(c)

§922(g)(1)

§113(a)

II. STATEMENT OF THE CASE

In the Tulalip Tribal criminal complaint defendant Jones was charged with allegedly committing the following offenses on December 25, 2014. Case # TUL-CR-DV-2015-0015;

Charge 1 - Kidnapping in the Second Degree Domestic Violence
(TTC 3.15.130(2), 4.25.100(11))

Charge 2 - Assault in the Second Degree Domestic Violence
(TTC 3.15.030(2), 4.25.100(11))

Charge 3 - Assault Second Degree (TTC 3.15.030(2))

Charge 4 - Unlawful Restraint (TTC 3.15.120)

Charge 5 - Criminal Endangerment (TTC 3.15.090)

Charge 6 - Criminal Endangerment Domestic Violence (TTC 3.15.090, 4.25.100(11))

Jones was prosecuted in the Tulalip Tribal Court on March 19, 2015, with the Jury finding Jones NOT-guilty of all six charges.

In the Tulalip Tribal criminal complaint defendant Jones was charged and arrested for allegedly committing the following offenses on April 6, 2015, Case# TUL-CR-DV-2015-0185;

Charge 1- Assault in the First Degree Domestic Violence
(TTC 3.15.030(1)), 4.25.100(11))

Charge 2- Intimidation Domestic Violence (TTC 3.15.050, 4.25.100(11))

This trial date was set for June 3, 2015 but on June 1, 2015 Jones wa indicted in the Federal Courts for the following offenses;

Count 1 - Assault resulting in substantial bodily injury
(18 U.S.C. §1153 §113(a)(7))

Count 2 - Assault by Strangulation (18 U.S.C. §1153 §113(a)(8))

This trial date was set for August 24, 2015 but on August 13, 2015 it was continued until January 11, 2016, on December 17, 2015 the superseding Indictment was filed containing the following charges;

Count 1 - Assault Resulting in Serious Bodily Injury (18 U.S.C. §§1153 §113(a)(8)

Count 2- Assault by Strangulation (18 U.S.C. §1153 §113 (a)(6)

Count 3 - Witness Tampering (18 U.S.C. §1512(d)(1) §1512(D)(4)

Count 4 - Felon in possession of a firearm 18 U.S.C. §1153 §922(g)(1)

Count 5 - Assault with a dangerous Weapon(A.W.) (18 U.S.C. §1153 §113 (a)(3)

Count 6 - Assault with a dangerous Weapon (D.W.) (18 U.S.C. §1153 §113(a)(3)

Count 7 - Possession of a firearm in furtherance of a crime of violence

(18 U.S.C. §1153 §924(c)(1)(A)

Brandishing 18 U.S.C. §1153 §924 (c)(1)(A)(ii)

On January 21, 2016 Jones was found guilty of all seven counts by the jury then on October 7, 2016 Jones was sentenced to a term of 24 months for counts 1-6 and 84 months for count 7 to be served consecutively.

Then on October 13, 2016 Jones filed for an appeal with the Ninth Circuit Court of Appeals, then on June 22, 2018 the Ninth Circuit Court of Appeal entered its memorandum decision affirming Jones' conviction.

III. ARGUMENT

The Ninth Circuit Court of Appeals erred in affirming Jones conviction in their memorandum decision filed on June 22, 2018.

The court found Jones arguments as to legal error either to have no merit or to have been waived at the trial court level or on appeal.

The Ninth Circuit Court of Appeals erred in denying Jones motion to dismiss the indictment on Double Jeopardy grounds by misconstruing Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 1867 (2016), to explain the use of the dual sovereignty doctrine.

This Court's opinion was that of "Puerto Rico and the United States may not successively prosecute a single defendant for the 'same conduct'", and that 'the oldest roots of Puerto Rico's power to prosecute lie in federal soil.'"

Additionally stating the fact that the Double Jeopardy Clause does bar Puerto Rico from successively prosecuting the defendant after a federal prosecution.

Jones argues that the district court erred in denying his motion to dismiss the indictment based on double jeopardy and due process violations.

The double jeopardy clause of the fifth amendment to the federal constitution embodies three basic prohibitions;

- (1) against further prosecution of a defendant for the same offense following an acquittal; acquittal;
- (2) against further prosecution of a defendant for the same offense following a conviction; and
- (3) against multiple punishment of a defendant for the same offense.

Jones argues that the superseeding indictment in the case at hand derives from the conduct of six tribal offenses which occurred on December 25, 2014.

Offenses which Jones was perviously prosecuted for and acquitted of all charges by a jury in Tulalip tribal court on March 19, 2015.

Those six offenses and conduct as listed in the tribal criminal complaint, which

Jones emphatically contested are a follows:

- (1) Kidnapping in the Second Degree Domestic Violence (TTC 3.15.130(2), 4.25.100(11)), "by holding his former wife Denise Williams 'at gunpoint.'"
- (2) Assault in the Second Degree Domestic Violence (TTC 3.15.030(2), 4.25.100(11)), "by striking his former wife in the head with the 'butt of a gun' causing injury."
- (3) Assault Second Degree (TTC 3.15.030(2)), "by striking Anthony Williams pushing him to the floor and kicking him causing injury."
- (4) Unlawful Restraint (TTC 3.15.120), "by holding A.W. by threat of force."
- (5) Criminal Endangerment (TTC 3.15.090), "by pointing a 'loaded gun' at A.W."
- (6) Criminal Endangerment Domestic Violence (TTC 3.15.090, 4.25.100(11)), "by pointing a loaded gun at his former wife D.W."

Comparing the tribal offenses and conduct listed above to the federal offenses in the superseeding indictment, in which Jones' double jeopardy claims arises, are as follows:

- (1) Assault Resulting in Serious Bodily Injury Title U.S.C. § 1153 113(a)(8),
- (2) Assault by Strangulation, Title 18 U.S.C. § 1153, 113(a)(6),
- (3) Witness Tampering, Title 18 U.S.C. § 1512(d)(1), § 1512(d)(4),
- (4) Felon in Possession of a Firearm, Title 18 § 1153, 922(g)(1),
- (5) Assault with a Dangerous Weapon(A.W.) Title 18 U.S.C. § 1153, 113(a)(3),
- (6) Assault with a Dangerous Weapon (D.W.) Title 18 § U.S.C. 1153, 113(a)(3),
- (7) Possession of a Firearm in Furtherance of a Crime of Violence, Title 18 U.S.C. § 1153, 924(c)(1)(A), Brandishing § 924(c)(1)(A)(ii).

Jones does not deny that the Tulalip tribal statutes listed in the tribal criminal complaint are in fact different from the federal statutes listed in the superseeding indictment, however it is the key element of "a gun" and the conduct committed which are the issues of the ultimate fact in the successive prosecution which are litigated again.

Jones argues that the criminal conduct as stated in the tribal criminal complaint requires proof of the main element, "a gun", whether Jones allegedly possessed and used "a gun" and whether Jones allegedly committed the conduct as charged in the criminal complaint.

Furthermore the tribal trial in it's entirety was based on the fact that Jones allegedly assaulted both Anthony Williams and Denise Medina-Williams, by among other things "pointing a loaded gun" at both A.W. and D.W.

As is the same in the subsequent federal trial where counts 4-7 are also based on these exact same facts that Jones assaulted both Anthony William and Denise Medina-William, by among other things "pointing a loaded gun" at them both.

This successive prosecution being a duplicate prosecution doing nothing more than to give another prosecutor a chance to better convince another jury with not only the same but additional evidence from the medical providers who did not testify in the preceeding tribal prosecution but also with physical evidence not previously provided along with the aide of the expert testimony as well.

In Grady v. Corbin (1990) 495 U.S. 508, 109 L. Ed. 2d. 548, 110 S. Ct. 2084, in an opinion by Brennan, J., joined by White, Marshall, Blackmun, and Stevens, JJ.,

"the double jeopardy clause of the Fifth Amendment bars a subsequent prosecution where, as in the case at hand, the prosecutors, to establish an essential element of an offense charged in that prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted...the test established by Blockburger, (1932) 284 U.S. 299, 76 L. Ed. 2d. 306, 52 S. Ct. 180, that the double jeopardy clause prohibits successive prosecutions for the same criminal act or transaction under two criminal statutes whenever each statute does not require proof of a fact which the other does is the first step in determining whether subsequent prosecutions are barred."

Jones argues that in the case at hand, counts 4-7 are clearly in violation of the Double Jeopardy Clause of the Fifth Amendment of the Federal Constitution of the United States, as is the case with counts 1-3 by the governments statements in the

"Answering Brief" where they justify the joinder of these incidents as listed below:

"the December 2014 assaults involved threats with a dangerous weapon, while the April 2015 assaults involved a physical assault and strangulation...These assault charges, as well as weapon-possession charges involving the December 2014 assaults (counts 4-7), and the witness tampering...(count 3), were also properly properly joined because they are part of the "same transaction," and/or involved "a common plan or scheme." Under Rule 8(a) the term 'transaction' is to be interpreted flexibly and may comprehend a series of related occurrences." U.S. v. Terry, 911 F. 2d 272, 276 (9th Cir. 1990)(quoting U.S. v. Kinslow, 860 F. 2d 963, 966 (9th Cir. 1988)...the crimes related to these two incidents involved the "same transaction" within the meaning of Rule 8(a)."

By simply stating these two separate incidents, which are different in nature and four months in time, "involved the same transaction" constitutes that not only the crimes related to these two separate incidents but that the two separate incidents themselves are one continuous non-stop episode, occurrence, and a single criminal act when interpreting the "same transaction" term flexibly.

In Brown v. Ohio (1977), 432, U.S. 161, 53 L. Ed. 2d 187, 97 L. Ct. 2221, in an opinion by Powell, J., joined by Brennan, Stewart, Marshall, and Stevens, JJ., it was held that :

"where the same act or transaction constituted a violation of two distinct statutory provisions, the test for determining whether there were two offenses or only one for the purposes of Double Jeopardy Clause of the Fifth Amendment was whether each provision required proof of a fact which the other did not."

Brennan, J., joined by Marshall, J., concurred, expressing the view that:

"...the double jeopardy clause should be construed as requiring the prosecution in one proceeding...of all the charges against a defendant that grew out of a single criminal act, occurrence, episode or transaction."

Blackmun, J., joined by Burger, Ch J., and Rehnquist, J., dissented, expressed the view that:
view that:

"...the two acts were not so closely connected in time as to require treating them as one offense for double jeopardy purposes, and the double jeopardy clause did not require the Ohio courts to hold that the allowable unit of prosecution was the defendants course of conduct rather than the separate segments thereof"

Additionally the tribal offenses contained three Domestic Violence charges because Denise Medina-Williams in Jones' former wife, for the domestic violence element in regards to counts 1, 2 and 6 of the tribal criminal complaint.

Therefore to convict Jones of Kidnapping Second Degree DV. the tribal prosecutor must prove beyond a reasonable doubt the element and conduct that Jones held D.W. "at gunpoint", where proving the gun element alone constitutes the required elements needed for conviction of counts 4-7 of the federal offenses of the case at hand.

Additionally to convict Jones of Assault Second Degree DV, the tribal prosecutor must prove beyond a reasonable doubt the element and conduct that Jones struck D.W. in the head with the butt of the gun, in which proving the gun element alone constitutes the required elements needed for conviction of counts 4-7 of the federal offenses of the case at hand.

Additionally to convict Jones of Criminal Endangerment DV, the tribal prosecutor must prove beyond a reasonable doubt the element and conduct that Jones "pointed a loaded gun at D.W." in which proving the gun element or the conduct constitutes the required elements needed for conviction of counts 4-7 of the federal offenses of the case at hand.

The Tulalip Tribes has an ordinance defining domestic violence charges as follows:

Tulalip Tribes Domestic Violence Ordinance #117

Section 1.5 Definitions

(G) Crimes involving domestic violence means one or more of the following when committed by a family or household member against another family household member;

(1) Offenses listed under 18 U.S.C. § 1153, the Major Crimes Act

"Any Indian who commits against the person or property of another Indian any of the following offenses namely...assault with a dangerous weapon assault resulting in serious bodily injury, assault by strangulation...within Indian country shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(2) Offenses listed under the Tulalip Tribes Code (TTC), Ordinance #49, Title

111 as now or hereafter amended;

...assault, intimidation, unlawful restraint, kidnapping.

Taking note of the fact that Ordinance #117, Section 1.5(G)(1) stated that the Tulalip Tribes prosecutes these crimes under federal statutes 18 U.S.C. § 1153, which makes the crimes Jones was previously prosecuted for and acquitted of, the same offense within the meaning of the double jeopardy clause therefore a Double Jeopardy violation.

Furthermore the tribal prosecutor elected to prosecute Jones of the lesser offenses listed in Ordinance #117 (G)(2), therefore Jones was prosecuted and acquitted of all charges which are lesser included offenses as listed above.

In Brown v. Ohio (1977) 432 U.S. 161, 53 L. Ed. 2d 187, 97 S. Ct. 2221 in an opinion by Powell, J., joined by Brennan, Stewart, White, Marshall and Stevens, JJ., it was found that:

"a lesser included offense required no proof beyond that which was required for conviction of the greater offenses, the greater offense thus being the 'same' for double jeopardy purposes as any lesser offense included in it"

As in the case at hand whereas the tribal offenses being lesser offenses and the federal offenses being greater offenses as described in the Tulalip Tribes Ordinance #117, Section 1.5(G)(1), (2) making these offenses the "same offense" for Double Jeopardy purposes thus barring the subsequent federal prosecution.

To further support the Double Jeopardy claim Jones turns to the opening statement of the Assistant United States Attorney, J. Tate London, where you will find the government stated as a fact:

"There are two counts of assault with a dangerous weapon, both of those counts arise from that Christmas morning, the victims being Denise and Anthony in these separate counts...Both Tony and Denise testified, as did some of the tribal officers who responded to the scene, the same officers that you will hear from in this trial. Tony testified that the defendant 'held him at gunpoint' and assaulted them both."

This fact stated by the government clearly proves these issues of ultimate fact have been previously litigated and determined in Jones favor, and that the government will use the same testimony and witnesses to do so.

Anthony Williams is Denise Medina-Williams estranged husband in regards to counts 3, 4 and 5 of the tribal criminal complaint therefore to convict Jones of Assault Second Degree the tribal prosecutor must prove beyond a reasonable doubt the element and conduct the Jones struck A.W., pushed him down and kicked him causing injury.

A.W. testified that upon entering the home Jones pulled out "a gun" and kept it in his hand the entire time Jones was in the home during the commission of the assaults of both A.W. and D.W., threatening to shoot and kill the both, which in proving the gun element and the conduct constitutes the required elements needed for conviction of counts 4-7 of the federal offenses of the case at hand.

Additionally to convict Jones of Unlawful Restraint the tribal prosecutor must prove beyond a reasonable doubt the element and conduct that Jones held A.W. by threat of force not allowing him to leave, A.W. testified that Jones "forced him at gunpoint" to stay on the couch or Jones will shoot him, proving the gun element and conduct constitutes the required elements needed for conviction of counts 4-7 of the federal offenses of the case at hand.

Additionally to convict Jones of Criminal Endangerment the tribal prosecutor must prove beyond a reasonable doubt the element and conduct that Jones "pointed a loaded gun" at A.W., proving the gun element as well as this conduct constitutes the required element needed for conviction of counts 4-7 of the federal offenses of the case at hand.

The critical inquiry of the March 19, 2015 tribal prosecution of Jones, which the tribal prosecutor failed miserably to convince a jury beyond a reasonable doubt was, did Jones possess and use "a gun", and did Jones commit any of the conduct of the offenses that he is charged with having allegedly committed on December 25, 2014.

The tribal offenses needed no more proof to convict Jones than the federal offenses did, the testimony of everyone involved in the tribal trial identifying

Jones at the assailant with a gun remained the same as did the evidence used against Jones with the exception of additional identification witnesses who did not testify in the March 2015 proceedings.

Additionally the prosecutor states the fact that Denise disclosed information to two different medical providers, "Nurse Ebben and Nurse Latte" during separate visits to each nurse, one visit on December 27, 2014 to nurse Ebben, just two days after the assault and the other visit to nurse Latta, on January 27, 2015.

During these visits Denise describes the assaults at "gunpoint" as well as identifying Jones as the assailant, but these two crucial witnesses with this crucial evidence, as early as December 27, 2014, well before the tribal trial, were not called in as witnesses to testify to this knowledge during the March 19, 2015 tribal trial of Jones.

With the addition of these two new witnesses who provided the same identification evidence of the December 25, 2014 assaults, along with several other new witnesses that provided testimony in regards to the December 25, 2014 assaults providing the prosecution with the same identification evidence as to Jones being the assailant with a gun.

In Ashe v. Swenson (1970) 397 U.S. 436, 25 L. Ed. 2d 469, 90 S. Ct. 1189, the Supreme Court specifically stated that:

"where a previous judgment of acquittal was based on a general verdict the collateral estoppel rule requires a court to examine the record of the prior proceedings and determine whether a rational jury could have grounded its verdict on an issue other than the one which the defendant seeks to foreclose from consideration"

"collateral estoppel prevented the prosecution from presenting the same or different identification evidence in a second trial in the hope that a second jury might find it more convincing"

"when an issue of ultimate fact has once been determined by a valid and final judgment that issue cannot again be litigated between the same parties in any future lawsuit."

"collateral estoppel is a requirement of the double jeopardy clause."

These issues of ultimate fact which have been previously litigated and determined

by a jury in favor of Jones in the preceeding tribal trial, by a valid and final judgment of acquittal was based on the pleadings, evidence, charges, testimony of those involved, and other relevant matters presented at the time of the trial, bars the subsequent prosecution as the government sought to prove these exact same facts that have been previously determined.

The tribal prosecutor having failed miserably to convince the jury beyond a reasonable doubt of all essential facts, elements and conduct of the tribal offenses which are shared by the federal offenses in the successive prosecution in the case at hand, where the government was given a chance at presenting the same evidence and testimony therefore convincing a second jury and successfully convicting Jones of these charges.

In Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 195 L. Ed. 2d 179 (2016), in an opinion by Kagan, J., joined by Roberts C. J., Kennedy, Ginsburg, and Alito, JJ., it was held that:

"...To determine whether two prosecuting authorities are different sovereigns for double jeopardy purposes, this court asks a narrow, historically focused question."

"whether the prosecutorial powers of the two jurisdictions have independent origins - or, said conversely, whether those powers derive from the same 'ultimate source.' United States v. Wheeler, 435 U.S. 313, 320, 98 S. Ct. 1079 55 L. Ed. 2d 303 (1978)."

"in this case we must decide if, under that test, Puerto Rico and the United States may successively prosecute a single defendant for the same criminal conduct. We hold that they may not, because the oldest roots of Puerto Rico's power lie in federal soil."

Jones argues that the Tulalip Tribe and the United States are not separate sovereigns and that these two entities draw their power from the same "ultimate source," the Tulalip Tribes prosecutorial power reveals the United States Federal Government as the wellspring of authority so the Tulalip Tribes cannot benefit from the dual-sovereignty doctrine.

In support of this, Jones now turns to the Constitution and Bylaws for the Tulalip Tribes of Washington, which Congress has authorized the Tulalip Tribes constitution making process and has both amended the draft charter and gave it the indispensable

Tulalip became a federally recognized Tribe as a result of the Federal Government forcing tribal members from six surrounding Tribes to relocate to one location in the early 1900's, the Lummi Nation being one of them, in order to obtain their lands for whatever the Governments reason being.

As the government forced these tribes to take this land and make it their new reservation and call it home, some of these displaced Indians expected this land and called this new reservation Tulalip, but some of these displaced Indians did not expect their native lands being taken from them and went back to their native lands to keep their tribes and reservations alive as we come to know them today.

Tulalip never was a "pre-existing" tribe when Columbus first found America or when the States were formed let alone when Washington gained its statehood in 1855.

In the case at hand, which is similar to United States v. Sanchez Valle, 136 S. Ct. 1863 (2016), where the dual-sovereignty doctrine is of great significance, what is crucial here as well is the "ultimate source" of the Tulalip Tribes prosecutorial power, where as stated above in the "Constitution and Bylaws of the Tulalip Tribes," this power can be tracked back to the doorstep of the United States Congress.

Whether two prosecuting entities are dual sovereigns in the double jeopardy context, depends on "whether [they] drew their authority to punish the offender from distinct sources of power," (Heath, 474 U.S. at 88, 106 S. Ct. 433, 88 L. Ed. 2d 387).'"

Furthermore, the argument here is not one of whether the Tulalip Tribes "became" a domestic dependent nation, subject to plenary control by Congress after the formation of the United States, this would imply that the Tulalip was a pre-existing tribe before the formation of the United States, but one of Congress not only forming this tribe but also delegating power to this tribe, which has become abundantly clear here.

In further support of this Jones turns to his prior conviction of Second Degree Assault with a Weapon Enhancement, a crime which was committed on the Tulalip Reservation in October of 1995 but was prosecuted in Snohomish County Superior Court due to the fact that the Tulalip Tribes was at the time dependent upon and under the sole jurisdiction of the Snohomish County Sheriffs and the Snohomish County Courts.

This case went before Snohomish County Superior Court because it was considered a felony regardless of the fact this crime happened on the Tulalip Reservation as Tulalip was not yet able to prosecute criminal cases of its tribal members until 1997, at which time Congress delegated the Tulalip Tribes the prosecutorial power needed to prosecute criminal cases over its tribal members and all Indians.

At this time in 1997 Tulalip went from having only family court to having a criminal court to prosecute criminal cases as well as having its own tribal police force rather than having to rely on the Snohomish County Sheriffs and County Court system for everything from protection to law and order on the Reservation.

Without this delegation of power in 1997 Jones would have been prosecuted in Snohomish County Superior Court for the felony charges in the case at hand as well as for any type of misdemeanor charges as the County Sheriffs and Courts had sole jurisdiction on the Tulalip Indian Reservation until this delegation of power which enabled Tulalip to arrest and prosecute its tribal members, along with still having joint jurisdiction with the Snohomish County Sheriffs on the Reservation.

The Lummi Nation is a "pre-existing" tribe before Washington gained its Statehood meaning the Lummi Nation exercises its "inherent" power in which the Lummi Nation does in fact benefit from the dual-sovereignty doctrine but Jones was not prosecuted in the Lummi Nations judicial system Jones was prosecuted in the Tulalip Courts.

Tulalip which is not a "pre-existing" tribe therefore not a separate sovereign that exercises "inherent" power, but is an existing tribe that does exercise power "delegated" to it by Congress, meaning the Tulalip Tribes authority derives from the United States Congress therefore making Congress the "ultimate source" of Tulalips prosecutorial power.

In Puerto Rico v. Valle, 136 S. Ct. 1863, 195 L. Ed. 2d 179 (2016), in an opinion delivered by Justice Kagen;

"...the delegator cannot make itself any less so-no matter how much authority it opts to hand over. And our dual-sovereignty test makes this historical fact dispositive: In an entity's authority to enact and enforce criminal law ultimately comes from Congress, then it cannot follow a federal prosecution with its own."

Jones has made crystal clear the fact as stated in the Constitution and Bylaws for the Tulalip Tribes, that "the Board of Directors powers are 'subject to any limitations imposed by the Statutes of the Constitution of the United States of America.'"

Additionally any Ordinance or Amendment as well as the entire Constitution and the Bylaws are "subject to review by the Secretary of the Interior", the Tulalip Tribes cannot amend or change their own Constitution without approval from the Secretary of the Interior or from the United States Congress.

Furthermore the Tulalip Board of Directors may exercise powers as "delegated" by the Secretary of the Interior, or by any other duly authorized official or agency of Government.

This crystal clear statement of fact proves that the prosecutorial power of Tulalip derives from Congress thus the Tulalip judicial system is merely an extension of the the Federal Government judicial system therefore barring the subsequent prosecution of Jones in the case at hand.

In addition to the fact that the Tulalip Tribes power has been 'delegated' by Congress an additional stated fact is "every ordinance or resolution shall contain a citation of the 'laws of the United States.'"

Thus making crystal clear that the United States Constitution dictates every aspect of the Tulalip Tribes Constitution as the tribe looks to the Federal Government for direction.

Turning to Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, Justice Ginsburg, with whom Justice Thomas joins, concurring stated that;

"...I write only to flag a larger question that bears fresh examination in an appropriate case. The double jeopardy prosecution is intended to shield individuals from the harassment of multiple prosecutions for the same conduct. Green v. United States; 355 U.S. 184, 187, 78, S. Ct. 221 2 L Ed. 2d 199, 77 Ohio Law Abs 202 (1957). Current "separate sovereigns" doctrine hardly serves that objective..."

"...Ordinarily, a final judgment in a criminal case, just as a final judgment in a civil case, should preclude renewal of the fray anyplace in the Nation..."

"...The matter warrants attention in a future case in which a defendant faces successive prosecutions by parts of the whole U.S.A...."

Jones argues that the case at hand is the "appropriate case" which argues the double jeopardy clause as well as the dual-sovereignty doctrine along with the collateral estoppel doctrine, the dual-sovereignty doctrine being a carve out and the collateral estoppel doctrine being a requirement of the double Jeopardy Clause.

Additionally the case at hand "warrants attention" as Jones is that "future case in which a defendant faces successive prosecutions "because of the fact that the Tulalip Tribes is not just a "part of the whole U.S.A." but is the "same" as the U.S.A. as the Constitution and the Bylaws for the Tulalip Tribes clearly demonstrates.

Turning back to Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016), where Justice Breyer, with whom Justice Sotomayor joins, dissenting stated that;

"...the Courts statement that we should trace the source of power back to a time when a previously nonexistent entity, or a previously dependent entity, became independant at least sufficiently independent to be considered 'sovereign' for the purpose of the Double Jeopardy Clause."

Simply put the Tulalip Tribes was a nonexistent entity when the United States Constitution first took effect in 1776, the Federal Government once dependent of Britian then becoming an independant entity, as this document gave the Government the authority to enact criminal laws as well as creating Congress whom consequently is the source of those laws.

Furthermore the Tulalip Tribes was a non existent entity when Washington gained its statehood in 1855 at which time surrounding tribes gained recognition, but it was not until the Federal Government forced six surrounding tribes to relocate to a central location the government set aside for them in the beginning of the 1900's.

This newly made tribe, the Tulalip Tribes as we come to know it now, was a tribe dependent upon the Government and Washington State as well as Snohomish County until 1997 when the tribe became independent as Congress delegated prosecutorial power to the tribe thereby granting authority to declare sovereignty, which Tulalip cannot benefit from as it is still being dictated by Congress as stated throughout the Constitution of the Tulalip Tribes.

In United States v. Lara, 541 U.S. 193, 158 L. Ed. 2d 420, 124 S. Ct. 1628 (2004), in an opinion by Breyer, J., joined by Rehnquist, Ch. J., and Stevens, O'Connor, and Ginsburg, JJ., in which Kennedy, J., concurring, expressed the view that;

"the Band member's first prosecution was not a delegated federal prosecution and thus his double-jeopardy argument had to fail..."

Thomas, J., concurring, expressed the view that;

"...Congress could regulate virtually every aspect of the tribes without rendering tribal sovereignty nullity and the Indian tribes retained inherent sovereignty to enforce their criminal laws against their own members."

Souter, J., joined by Scalia, J., dissenting, expressed the view that;

"congress could not reinvest tribal courts with inherent criminal jurisdiction over nonmembers Indians; any tribal exercise of criminal jurisdiction over nonmembers necessarily rested on a delegation of federal power; and a tribes excess of this delegated power barred subsequent federal prosecution for the same offense."

Therefore the Tulalip Tribes cannot wield the "inherent power" as the original surrounding tribes, however the power Tulalip does wield has in fact been "delegated" by Congress as Jones has made crystal clear, therefore making the Tulalip Tribes unable to benefit from the dual-sovereignty doctrine until Congress once again exercises authority in amending such a doctrine to fit the need, as it has in amending § 1301(2) as well as the Indian Civil Rights Act (1990 Amendment).

The Tulalip Tribes did not act as a separate sovereign in prosecuting and acquitting Jones and the double jeopardy clause does in fact bar the subsequent federal prosecution as Congress does regulate every aspect of the Tulalip Tribes

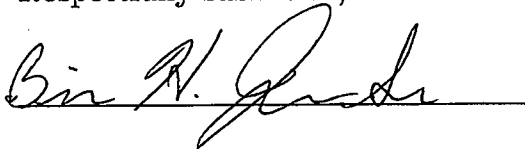
therefore rendering Tulalips sovereignty a nullity as Tulalip does not retain inherent sovereignty as it enforces federal criminal laws against their own members.

Tulalip exercise of criminal jurisdiction over any Indian whether a tribal member or no rests entirely on delegated federal power and as Tulalip exercised this delegated power over Jones this bars the subsequent federal prosecution in the case at hand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bin H. Gunda", is written over a horizontal line.

Date: December 5, 2019