

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Case No. 14-50013

Plaintiff,

DEFENDANT’S MOTION TO DISMISS
THE INDICTMENT

vs.

JUSTIN JANIS,

Defendant.

MOTION

Defendant respectfully moves this Honorable Court, pursuant to FED. R. CRIM. P. 12(b)(3)(B), to dismiss the indictment against him because it fails to state an offense under 18 U.S.C. § 111. Specifically, because Oglala Sioux Tribe Officer Mousseau was not acting as a “federal officer” at the time of the alleged offense, this Court lacks jurisdiction to hear the case. Alternatively, the defendant will move for a judgment of acquittal under FED. R. CRIM. P. 29(a) at trial, before submission to the jury. Defendant here makes the motion before trial in order to avoid any waiver or claim of waiver of his attack under FED. R. CRIM. P. 12 (b)(3) (A) and (B).

BACKGROUND

This case originates from a 911 call that was made at 6:25 p.m. on November 27, 2013. The call came from some residents who reported that Jeff Janis, Sr. and Justin Janis were

“drunk,” and they wanted them removed from the residence.¹ The dispatch records indicate that the call type was “Intoxicated Disorderly Person.”² Officer Mousseau activated her “lapel camera” shortly before arriving at the residence. That camera recorded the entire incident.³

Upon arriving, Officer Mousseau went to the door of the residence. Justin Janis would not open the door, so she stuck her foot in the door. An exchange occurred between them in which Officer Mousseau repeatedly told Janis that she was only there investigating a “liquor violation/intoxicated person” (LV/IP) – a tribal offense. At 2:20, Officer Mousseau states “It’s just a [LV/IP] right now”⁴ At 4:50 she clearly states “You got reported for being intoxicated. I can see you’re highly intoxicated. I told you [that] you are under arrest for [LV/IP] So I told you to open the door and all you would be charged with would be [LV/IP]. That’s eight hours.”⁵ After spraying mace in the house, Officer Mousseau then forces entry into the house and Justin Janis resists her, resulting in the instant charge against him.

Officer Mousseau then uses her taser and arrests Justin Janis, placing him in her patrol car. During that portion of the video, Justin Janis says, “I’m so sorry.”⁶ Officer Mousseau

¹ See Exhibit A, Officer Mousseau’s report from discovery, p. 45.

² See Exhibit B, dispatch records from discovery, pp. 38, 43.

³ Exhibit C, Officer Mousseau’s camera recording.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 8:40.

replies, “You should have thought of that. It was just eight hours. Now it’s a lot more charges.”⁷

After arresting Justin Janis, Officer Mousseau returns to the residence and arrests Jeffrey Janis, Jr., placing him in handcuffs and telling him, “You’re under arrest for a [LV/IP]”⁸ Justin Janis was ultimately arrested on charges for “liquor violation, intoxicated person, disorderly conduct,” for the conduct prior to the incident and “resisting arrest, assault & battery, A & B 63.1, [and] child abuse & neglect.”⁹

ARGUMENT

Officer Mousseau is not a Bureau of Indian Affairs (BIA) agent. She is an Oglala Sioux Tribe (OST) Officer.¹⁰ Mr. Janis does not argue with the facts that the Oglala Sioux Tribe has a “689 contract” with the United States federal government. He does not quarrel with the fact that Officer Mousseau was in possession of a “special law enforcement commission card” at the time of the incident, either.¹¹ Mr. Janis’s argument is that Officer Mousseau was not acting as a federal officer at the time of the assault; she was there acting as a tribal officer enforcing tribal

⁷ *Id.*

⁸ *Id.* at 13:22.

⁹ *See* Exhibit A, pp. 44, 47.

¹⁰ BIA agents are directly employed by the federal government, as opposed to OST officers, who are employed by the Oglala Sioux Tribe. *See, e.g., United States v Bettelyoun*, 16 F. 3d 850, 852-3 (8th Cir. 1994) (involving an argument as to the “federal officer” element of 18 U.S.C. § 111 where the victim was a BIA police officer).

¹¹ A copy of Officer Mousseau’s card was included in discovery, issued to her on July 20, 2011 and valid through July 20, 2014.

law. Because tribal officers engaged in the performance of tribal law enforcement are not *de facto* federal officers, this Court should dismiss the indictment in this case and return jurisdiction to the tribal courts.

In this case the government alleges that Sgt. Mousseau qualified as a “federal officer” in order to invoke the jurisdiction of this Court and also to allege an offense under 18 U.S.C. § 111. Because this is a “threshold legal question,” the Court should address it prior to a jury trial. In the alternative, the Court should allow Mr. Janis to argue the element of whether or not Sgt. Mousseau was a “federal officer” to the jury.¹² Additionally, should his motion be denied, Mr. Janis will make a motion at the conclusion of the government’s case-in-chief under FED. R. CRIM. P. 29(a).

In *United States v. Oakie*, the Eighth Circuit held that a tribal law enforcement officer who has been designated as a BIA Deputy Special Officer is entitled to protections of 18 U.S.C. § 111 “*when performing the federal functions he or she has been deputized to perform.*”¹³ Legitimately commissioned tribal officers are granted power and authorized to perform certain functions under 25 U.S.C. § 2803. The list of arrest powers, that include certain felonies, violations of the Controlled Substances Act, and certain assault or domestic violence crimes, does not include the crimes Officer Mousseau was investigating in this case – namely “liquor

¹² See *Bettelyoun* at 852-53 (8th Cir. 1994) (An action in which defendant was charged with assaulting federal officers in violation of 18 U.S.C. § 1114, whether tribal officers were federal officers acting as employees of Bureau of Indian Affairs was question for jury).

¹³ 12 F. 3d 1436, 1440 (8th Cir. 1993) (emphasis added).

violation,” “intoxicated person,” and “disorderly conduct”– at the time the alleged assault occurred.

In *United States v. Medearis*, Judge Lange issued a written opinion explaining the distinction between an individual acting as a tribal officer and a federal officer.¹⁴ In that opinion, the Court held that “[t]he fact that a tribal officer receives BIA deputization under a 638 contract does not necessarily make him a federal officer.”¹⁵ The Court explained:

In addition to receiving a certification from the BIA that the tribal officer is capable of enforcing federal law on a reservation¹⁶: The tribal officer must be enforcing federal law vis-a-vis tribal law. Thus, even assuming that the federal officers are certified, be they BIA, whether the officers were acting under color of federal law depends entirely on what law was being enforced, which means the facts in each case must be analyzed.¹⁷

In that case, Judge Lange held that the BIA agent was not deemed a federal officer “[b]ecause none of the specific purposes for deeming a tribal officer a federal officer apply in this case.”¹⁸

Significant to the specific facts in that case, Judge Lange noted that the BIA agent’s “investigation was not federal in character, as neither FBI Agent Keith nor any other federal agents were involved in the warrant application process or the search itself.”¹⁹

¹⁴ See *United States v. Medearis*, 775 F. Supp. 2d 1110 (D.S.D. 2011) (CR 10-30057-RAL).

¹⁵ *Id.* at 1119.

¹⁶ To clarify, Mr. Janis argues that Sgt. Mousseau *did not* receive this certification. *Supra.*

¹⁷ *Id.* (citations omitted).

¹⁸ *Id.*

¹⁹ *Id.*

This case is highly instructive to the present motion. Officer Mousseau clearly states several times on the arrest video that she was only at the scene for LV/IP, and no other “Major Crimes” invoking federal jurisdiction.²⁰ There were no other federal officers involved in the investigation or arrest. Up to the point that Mr. Janis was arrested, the nature of the investigation was purely tribal, involving only tribal violations.

CONCLUSION

Officer Mousseau, although a specially deputized federal agent, was acting solely as a tribal officer enforcing only tribal law, and not a federal officer, at the time of the alleged assault on her by the defendant. Therefore, there is no basis federal jurisdiction to support an assault on a federal officer charge. The indictment against Defendant Janis should therefore be dismissed as it fails to state a federal offense. Should the Court require further evidence or argument, Mr. Janis requests a hearing on the instant motion.

²⁰ 18 U.S.C. § 1153.

Dated this 13th day of June, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2014, a true and correct copy of Exhibit C to the foregoing Motion was served upon the following persons, by placing the same in the service indicated, addressed as follows:

Kathryn Rich	<input type="checkbox"/>	U.S. Mail
Assistant U.S. Attorney	<input checked="" type="checkbox"/>	Hand Delivery
United States Courthouse	<input type="checkbox"/>	Facsimile
515 Ninth Street	<input type="checkbox"/>	Federal Express
Rapid City, SD 57701	<input type="checkbox"/>	Electronic Case Filing

/s/ Stephen D. Demik
Stephen D. Demik, Assistant Federal Public Defender