

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 16 CR 1106 JB

JEFFREY ANTONIO,

Defendant.

MOTION TO DISMISS FOR
LACK OF FEDERAL
SUBJECT MATTER JURISDICTION

NOW COMES the defendant, Jeffrey Antonio, by and through his counsels, Irma Rivas and Marc Robert Assistant Federal Public Defenders, and moves the Court to dismiss this indictment for lack of Federal Subject Matter Jurisdiction.

FACTUAL BACKGROUND

The events in this criminal cause of action took place on New Mexico Highway 313 and Wilda Dr. To the east of the location, and to the West, through to the Rio Grande River consists of privately held land. This is a non-Indian peninsula and not Sandia Pueblo. On August 5, 2015, Bureau of Indian Affairs Surveyor, Southern Pueblo Agency, Earl Ortiz finds that the land is not on Sandia Reservation. On September 8, 2015, Acting Superintendent for the United States Department of Interior, Bureau of Indian Affairs, Southern Pueblos Agency advises in a Memorandum that “We do not believe that there has been any subsequent acquisition of the subject land by the Pueblo,

nor do we have any record of a trust acquisition of the property by our Region.

Therefore, based on our review of the chain of title, we believe this property to be held privately.”¹

By Act of Congress of June 7, 1924, Pedro C. Garcia was found to be entitled to a patent from the United States of America over private land. This land is the place where this incident took place. In 1934, Pedro C. Garcia received a United States Patent number 1069186 and 1067360 from Congress from President Franklin D. Roosevelt. This patent states “...this patent shall have the effect only of a relinquishment by the United States of America and the Indians of said Pueblo [Sandia]”^{2 3}

It appears that Sandia Pueblo in no way exercises any jurisdiction over this Peninsula. It is owned privately, the Pedro C. Garcia land has been subdivided. The Middle Rio Grande Conservancy District (MRGCD) owns rights of way all the way across the River. It obtained these rights of way from private land owners. Residents in this private peninsula pay property taxes to the County of Bernalillo, ⁴ and the road on this private peninsula is also maintained by the County of Bernalillo Public Works Department. The United States Postal Service shows that the correct mailing address to this location is the City of Albuquerque. The zip code being 87114.⁵ The residents on Wilda Dr. pay Property Taxes to the Bernalillo County Assessor’s Office.

¹ Attached as Exhibit A - Memorandum

² Attached as Exhibit B – Patents to Pedro C. Garcia

³ Attached as Exhibit C – Map of Pedro C. Garcia Property

⁴ <<http://assessor.berncgo.gov/public.access/search>> (viewed April 9, 2017)

⁵ <<https://tools.usps.com/go/ZipLookup>>(viewed April 10, 2017)

Middle Rio Grande Conservancy District, which was created in 1923, received rights of way on the west bank of the River from Private Citizens.⁶ The land above the Peninsula and below this Peninsula is owned by the Sandia Pueblo and Fee Simple title to this right of way was not given to the Middle Rio Grande Conservancy District. On New Mexico Highway 313 there are no signs which alert anyone driving on this road that persons on this road are entering Sandia Reservation. The roads in this area are maintained by Bernalillo County Public Works Department.⁷

LEGAL ARGUMENT

I. The Federal Court in the District of New Mexico Lacks Subject Matter Jurisdiction because the Location where the incident took place is not within the Exterior Border of the Sandia Pueblo but rather is a non-Indian Country Peninsula and Cause of Action must be dismissed.

Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. *United States v. Tony*, 637 F.3d 1153 (2011) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S.Ct. 1003 (1998).) Under Fed. Rule of Criminal Procedure 12(b)(2) “A motion that the court lacks jurisdiction may be made at any time while the case is pending.”

Mr. Antonio is charged with Second Degree Murder in Indian Country. The Government has the burden of proof. The Government must respond to this motion

⁶ Attached as Exhibit E – Fee Simple Title to Right of Way from Private Citizens on West Bank

⁷ Attached as Exhibit D - Public Works Map showing that Bernalillo County Maintains Wilda Dr.

establishing that there is jurisdiction, further the issue must be allowed to be determined by the Jury as an element of the crime.

The United States seeks to prove its case against Mr. Antonio by proving the elements of two codes, 18 U.S.C. 1111, and 18 U.S.C. 1153, for the crime of Second Degree Murder in Indian Country:

a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

18 U.S.C.A. § 1153 (West)

Indian Country is defined as:

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C.A. § 1151 (West)

Further under Federal Rules of Criminal Procedure 12(b)(3)(iii), Mr. Antonio objects to the indictment for lack of specificity. It is unclear from the indictment which of the three theories the Government intends to use to establish jurisdiction. The lack of specificity in this indictment creates an issue of lack of notice to the defendant.

The location where the collision took place is an independent Peninsula. It is owned privately, by individual landowners and some is owned and governed by the Middle Rio Grande Conservancy District (MRGCD), residents in this private peninsula pay property taxes to the County of Bernalillo, and the road on this private peninsula is also maintained by the County of Bernalillo Public Works Department. The United States Postal Service assigns this area an Albuquerque zipcode, 87114.⁸ The residents on Wilda Dr. pay Property Taxes to the Bernalillo County Assessor's Office.⁹

The Middle Rio Grande Conservancy District (MRGCD) was created by New Mexico State Statute, Conservancy Act and is "An act to provide for the organization of conservancy districts for the purpose of cooperating with the government of the United States under the terms of the federal reclamation law and other federal laws, and to define the purposes and powers thereof" *In re Proposed Middle Rio Grande Conservancy Dist.*, 31 N.M. 188 (Dec. 12, 1925). This District was created and governed by the State of New Mexico. This District Owns and has Rights of Way rights to all the land on the East and West Banks of the Rio Grande River. At the location of our particular peninsula, MRGCD has a fee simple right of way received from Pedro C. Garcia.¹⁰

By Act of Congress of June 7, 1924, Pedro C. Garcia was found to be entitled to a patent from the United States of America over private land. The Patent enacted by Congress and Authorized by the President of the United States confirms his ownership of this land. This patent states "...this patent shall have the effect only of a relinquishment by the United

⁸ <<https://tools.usps.com/go/ZipLookup>>(viewed April 10, 2017)

⁹ <<http://assessor.berncgo.gov/public.access/search>> (viewed April 9, 2017)

States of America and the Indians of said Pueblo [Sandia]” Black’s Law Dictionary defines relinquishment as “The abandonment of a right or thing.” Black's Law Dictionary (10th ed. 2014). This patent should necessarily result in the creation of a privately owned and governed peninsula. Sandia Pueblo exists only on three sides of this property. This privately held land is not surrounded or enclosed by Sandia Pueblo.

Further, it appears that the boundaries of Sandia Pueblo have not always been clear. As late as 1988, Sandia Pueblo sought to establish that the eastern border of the Pueblo extended to the crest of the Sandia Mountains and not to the foothills. This issue was heavily litigated. *Pueblo of Sandia Boundary*, 96 Interior Dec. 331 (D.O.I.) 1988 WL 410394 (1988) In our case, Pedro C. Garcia’s land, recognized by the Patent, given to him in 1934, extended to the Rio Grande River. Past this border is privately held land, private parties have given fee simple title of a right of way to the MRGCD. One can enter and exit Pedro C. Garcia’s land, through the Rio Grande, by never entering Sandia Pueblo. The lands to the West of the River were owned by Spaniards and a “...compromise, [was reached that] acknowledged in writing, with the Spanish settlers on the west bank of the river to permit the new Pueblo to utilize the Spaniard’s land to water and pasture their cattle.” *Id. at 353*

Given the nature of this motion, and oral argument given by the Government on April 3, 2017, Defendant did not seek the position of the Government as it apparent that Attorneys for the Government Joseph Spindle and Michael Murphy, Assistant United States Attorneys oppose this motion to dismiss.

WHEREFORE, defendant Jeffrey Antonio requests that the Court dismiss this cause of action for lack of Federal Subject Matter Jurisdiction. Further, should this motion to dismiss be denied, Mr. Antonio in no way waives this issue. Further, he asserts that Jurisdiction is an element of the crime charged and that the Government has the Burden of Proof beyond a reasonable doubt and that this element of the crime must be deliberated by the Jury.

I HEREBY CERTIFY THAT on the 10th Day of April 2017, I filed the foregoing electronically through the CM/ECF system, which caused AUSA Joseph Spindle to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

 filed electronically

Respectfully submitted,

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/s/ filed electronically .
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