

1010IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Cr. No. 16-1106-JB
)	
vs.)	
)	
JEFFREY ANTONIO,)	
)	
Defendant.)	

UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

The United States hereby responds to Defendant Jeffrey Antonio's motion to dismiss for lack of subject matter jurisdiction filed on April 10, 2017. (Doc. 62) and Defendant Jeffrey Antonio's Supplement to Motion to Dismiss for Lack of Subject Matter Jurisdiction filed April 12, 2017 (Doc. 66). The United States respectfully requests the Court deny Defendant's motion and in support thereof states:

FACTS:

1. Defendant, an Indian under federal law, drove his vehicle across lanes of traffic while under the influence of alcohol, directly into the victim's vehicle, causing her death.
2. The collision occurred at the intersection of Highway 313 and Wilda Drive, in Bernalillo County, New Mexico.
3. Land on either side of Highway 313 and Wilda Drive is held privately.
4. The southern border of the Sandia Pueblo Indian Reservation is more than 3,000 feet to the south of location.
5. The United States presented evidence that the western border of the Sandia Pueblo

Indian Reservation is to the west of the tract of private land which encompasses the collision site. Defendant seeks to controvert that evidence.

6. Defendant is charged with second-degree murder under the Major Crimes Act. (Doc. 2).

ARGUMENT:

The location of the collision was within “Indian Country.” Indian Country land status is a necessary element of offenses charged under the Major Crimes Act, as the instant offense is, in order to establish jurisdiction. 18 U.S.C. § 1153. Indian Country is defined as “all land within the limits of any Indian reservation.” 18 U.S.C. § 1151. Jurisdictional issues are matters of law decided by the court, rather than the jury. *See United States v. Tinoco*, 304 F.3d 1088, 1107 (11th Cir. 2002) (explaining subject matter jurisdiction questions may be decided by the court as matters of law). A trial court decides if a particular area is legally Indian Country, but “leaves to the jury the factual determination of whether the alleged crime occurred at the site.” *United States v. Roberts*, 185 F.3d 1125, 1139 (10th Cir. 1999). The Court determines whether “a particular tract of land or geographic area is Indian Country, and then instructs the jury to determine whether the alleged offense occurred there.” *Id.* The burden remains on the United States to establish the crime occurred at the location alleged. *Id.* Where jurisdiction is challenged, the party seeking to invoke the jurisdiction of the Court must prove that it exists by a preponderance of the evidence. *United States v. Bustillos*, 31 F.3d 931, 933 (10th Cir. 1994).

Defendant argues that the location of the intersection of New Mexico Highway 313 and Wilda Drive in Bernalillo County, New Mexico (“the collision site”) consists of privately held land. The United States does not dispute this characterization. Defendant further contends that the privately held land encompassing the collision site extends westward to the Rio Grande River.

Defendant also asserts that the privately held land thereby abuts other non-Indian land, forming a “peninsula” of private property extending into the boundaries of the Sandia Pueblo Reservation. The United States contends that the evidence before the Court does not support the latter two propositions.

At a hearing held April 3, 2017, the United States presented the testimony of Earl Ortiz, a land surveyor with the Bureau of Indian Affairs. Mr. Ortiz, after personally visiting the corners of the Sandia Pueblo reservation, made a land status determination in this case. He found that the collision site is within the exterior boundaries of the Sandia Pueblo Reservation. That land status determination included a memorandum dated August 31, 2015, from the Acting Superintendent of Real Estate Services of the Bureau of Indian Affairs, concluding that the collision site is privately held land. That memorandum and Mr. Ortiz’ land status certificate are attached to Defendant’s Motion to Dismiss. The United States agrees that they are authentic and accurate. In addition, Defendant attached to his motion to dismiss two patents: Patent Number 1069186, dated April 26, 1934, purporting to effect a relinquishment of certain lands within the Pueblo of Sandia by the United States and the Indians of the Pueblo of Sandia to Pedro C. Garcia and his heirs; and Patent Number 1067360 dated December 20, 1933, purporting to effect a relinquishment of certain lands within the Pueblo of Sandia by the United States and the Indians of the Pueblo of Sandia to Pedro C. Garcia and his heirs. The United States agrees that these documents are authentic and pertain to the lands surrounding the collision site.

At the pre-trial conference held April 11, 2017, Defendant called Douglas Stretch, a mapping supervisor with the Middle Rio Grande Conservancy District, who, among other duties, is responsible for real property records with that agency. Mr. Stretch testified that the Middle Rio Grande Conservancy District (“MRGCD”) is a political subdivision of the government of the State

of New Mexico, and is responsible for flood control, drainage, and irrigation. As part of those responsibilities, the MRGCD consolidated the acequia and drainage system in the middle Rio Grande valley as well as making flood control measures and acquired rights of way for its purposes. Defendant introduced various exhibits during the testimony of Mr. Stretch, including an MRGCD map (Defendant's Exhibit A), a packet of conveyances of land for right-of-way to the MRGCD pertaining to the west side of the Rio Grande (Defendant's Exhibit B), and a conveyance of land for right-of-way to the MRGCD pertaining to a portion of the Pedro Garcia tract, purporting to affect land from the eastern bank of the Rio Grande eastward to a point within that private Pedro Garcia tract (Defendant's Exhibit C). The conveyance from Pedro Garcia and his wife to the MRGCD submitted to the Court as Defendant's Exhibit C is dated October 22, 1930, well before the Patent was issued to Mr. Garcia as against the United States and the Pueblo of Sandia referenced above and attached to Defendant's motion to dismiss. As such, it appears invalid on its face.

Douglas Stretch testified that he is not personally familiar with the tract of land in question and has not inspected the boundaries of the property or of the Pueblo of Sandia. Further, Mr. Stretch agreed that the MRGCD limits public access to its rights of way, requiring a fee and certain information to allow vehicle travel and further limiting any public access to those portions of its works crossing Pueblo lands. He also testified that it is his opinion that the MRGCD right of way runs from the western boundary of the private property derived from the Pedro Garcia tract, which encompasses the collision site, west to the Rio Grande. Mr. Stretch testified that he is aware of a Bureau of Land Management (BLM) survey of the area, which he believed was accurate and undertaken after the year 2000.

In rebuttal of Mr. Stretch's testimony, the United States re-called Earl Ortiz. Mr. Ortiz is

personally familiar with the area and has inspected the corners of the relevant boundaries. A survey of the land derived from the Pedro Garcia patent was undertaken by the BLM in 2010, and Mr. Ortiz, a surveyor of over thirty years' experience, has inspected the western corners of that land. He testified that those corners lie east of the Rio Grande and that the land between those corners and the river is part of the Sandia Pueblo Reservation. In illustration of Mr. Ortiz' testimony, the United States submitted two exhibits, designated United States' Exhibit 43 and Exhibit 44, which constituted a map of the exterior boundaries of the Sandia Pueblo Reservation (Exhibit 43) and an enlargement of the southern portion of that map, to better show the Pedro Garcia patent private tract, which encompasses the collision site, and the southern and western Sandia Pueblo boundaries (Exhibit 44). As Exhibit 1 attached hereto for the purposes of the record, a single sheet depicting each of those maps is included. In addition to his further explanatory testimony regarding the western boundary of the Pedro Garcia patent private tract and the western boundary of Sandia Pueblo, Mr. Ortiz testified at the first hearing that the southern boundary of the Sandia Pueblo Reservation lies some three-thousand feet south of the collision site. He also testified at the April 11, 2017, hearing that Sandia Pueblo has fenced and posted the portion of its land cut by a flood control channel running from east to west that lies south of the Pedro Garcia patent. Lastly, Mr. Ortiz noted that private, non-Indian land in-holdings are common in the various Indian Pueblos located along the Rio Grande River.

The United States has shown by a preponderance of the evidence that the collision site lies within the exterior boundaries of the Sandia Pueblo Reservation and is therefore "Indian Country" for the purpose of 18 U.S.C. § 1151 and subject matter jurisdiction. Even "private property owned by non-Indians but situated within the boundaries of an Indian reservation" is Indian Country. *United States v. Baker*, 894 F.2d 1144, 1149 (10th Cir. 1990); also see *Ute Indian Tribe v. State of*

Utah, 935 F.Supp. 1473, 1486 (D. Utah 1996) (Holding that Indian Country encompasses “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.”). The patents from 1933 and 1934 granting title to Pedro C. Garcia and his heirs against the United States and the Pueblo of Sandia explicitly describe the tracts of land as “within” the Pueblo of Sandia. Further, the purported conveyance of title for rights-of-way from Mr. Garcia and his wife to the MRGCD pre-date the patents against the rights of Sandia Pueblo. More importantly, the United States presented the testimony of an experienced surveyor who had personally inspected the bounds of the tract in question and who testified that it lay entirely within the exterior boundaries of the Pueblo of Sandia.

Even if Defendant was correct that it is possible to travel from the collision site to private property west of the Rio Grande River, without setting foot on land belonging to the Pueblo of Sandia, the Court should still determine that the collision site is “Indian Country” for the purpose of 18 U.S.C. § 1151 and jurisdiction in this trial. In *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351 (1962), the Supreme Court took a practical view of the definition of “Indian Country”, noting that if “...the existence or nonexistence of an Indian reservation, and therefore the existence or nonexistence of federal jurisdiction, depends upon the ownership of particular parcels of land, law enforcement officers operating in the area will find it necessary to search tract books in order to determine whether criminal jurisdiction over each particular offense, even though committed within the reservation, is in the State or Federal Government.” *Seymour*, 368 U.S. at 358. The Court went on to hold that “[s]uch an impractical pattern of checkerboard jurisdiction was avoided by the plain language of § 1151”. *Id.* As shown in United States’ Exhibits 43 and 44, as reproduced as “Exhibit 1” attached hereto, the portion of private land that

encompasses the collision site is a small piece of the overall land mass comprising the Sandia Pueblo Reservation. It lies more than three thousand feet north of the Pueblo's southern boundary and well to the south of the Pueblo's northern boundary. To hold that the segment of that land crossed by Highway 313, where the collision site is located, is not "Indian Country" would require officers patrolling that road or responding to calls along it to search tract books or historic patents in order to determine jurisdiction, contrary to the guidance provided by the Supreme Court.

For the foregoing reasons, the United States respectfully requests that this Court deny Defendant’s motion to dismiss and the supplement to the motion to dismiss and instruct the jury that, as a matter of law, the intersection of New Mexico Highway 313 and Wilda Drive in Bernalillo County, New Mexico, is “Indian Country” for the purpose of federal law.

Respectfully submitted,

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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will cause a copy of this filing to be sent to counsel for Defendant.

/s/

MICHAEL D. MURPHY
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