

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR No. 17-1105 JH
)	
vs.)	
)	
TYRONE CORIZ,)	
)	
Defendant.)	

UNITED STATES' MOTION *IN LIMINE* FOR PRE-TRIAL
DETERMINATION OF INDIAN COUNTRY LAND STATUS

The United States respectfully requests that the Court make a pre-trial determination finding the land upon which the alleged crime occurred, on the dates listed in the Indictment, is Indian Country for purposes of federal criminal jurisdiction. Jane Doe was sexually abused in a home located within the exterior boundaries of the San Felipe Pueblo Indian Reservation in Sandoval County, New Mexico. Specifically, the GPS coordinates describing the land on which the alleged crime occurred on the dates listed in the Indictment are:

N35°26.424' latitude, and W106°26.234' longitude. Said site is located within Section 17, Township 14 North, Range 5 East, New Mexico Principal Meridian, Sandoval County, New Mexico.

This location has been determined to be within the exterior boundaries of the San Felipe Pueblo Indian Reservation, which is held in restricted land status by the United States of America for the Pueblo of San Felipe, a federally-recognized Indian Tribe. Accordingly, this location is within "Indian Country" as that term is defined by federal law pursuant to 18 U.S.C. §§ 1151 and 1153.

BACKGROUND

Defendant was charged on April 26, 2017 with committing a violation of 18 U.S.C. §§ 1153, 2241(c) and 2246(2)(C), that being Aggravated Sexual Abuse of Jane Doe, a child who had attained the age of twelve, but had not attained the age of sixteen, by the use of force or threat. Doc. 2. Defendant is charged with sexually abusing Jane Doe at a residence located within the exterior boundaries of the San Felipe Pueblo Indian Reservation.

The United States provided discovery that includes more particularized information to Defendant. That discovery includes a Land Status Certificate from the United States Department of the Interior, Bureau of Indian Affairs, that the site where the alleged crime occurred was within the exterior boundaries of the San Felipe Pueblo Indian Reservation. *See* the attached Government's Exhibit 1.

ARGUMENT

Under settled law, whether the area at issue in a criminal case is Indian Country is a legal matter to be decided by the Court. This is true because the question of land status is jurisdictional. As the United States Court of Appeals for the Tenth Circuit has explained, “[a]s a general matter, the trial court decides the jurisdictional status of a particular property or area and then 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 Tenth Circuit Pattern Criminal Jury Instructions embrace this approach directly in pattern instructions for crimes with a jurisdictional requirement that, like here, turns on the status of the land where a crime occurs. *See, e.g., 10th Cir. Pattern Jury Instructions*, 2.54.1, (2018) (“You are instructed that the alleged involuntary manslaughter occurred within the [territorial][special maritime] jurisdiction of the United States, if you find beyond a reasonable doubt that such offense occurred in the location

described in the indictment.”).

The United States therefore seeks a pre-trial determination by the Court that the land upon which the charged crime in the case occurred is Indian Country. The exhibit attached to this motion provides more than adequate evidence to support the requested finding. Although the United States does not believe a hearing is necessary to resolve this issue, it also is prepared to present evidence at a pre-trial hearing confirming the status of the land.

Every act that possibly could be at issue in this case occurred within the exterior boundaries of the San Felipe Pueblo and this area is far removed from any boundary that would impact federal jurisdiction over this case. *See* 18 U.S.C. § 1151(a) (defining Indian Country to include “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 only issue for the jury to decide at trial related to land status will be whether the United States has proved Defendant committed the crime he is charged with in this area.

Deciding this jurisdictional issue pre-trial avoids forcing the United States to mix proof of a purely legal matter such as land status together with the evidence it presents at trial to prove Defendant’s guilt to the trier-of-fact. Discussion of land title and what falls within and outside the San Felipe Pueblo can only serve to waste the jury’s time on a matter that it is not responsible for determining or, worse, lead to confusion of the issues that are for the jury’s consideration. Addressing the legal question of land status before trial similarly will streamline the presentation of the United States’ case. Finally, land status should be determined in advance to avoid integrating a jurisdictional question into the trial after jeopardy has attached. In cases – unlike this one – where there actually is a close question on jurisdiction, the United States should not be

deprived of the opportunity to appeal the decision.

By adhering to *Roberts* and deciding this legal question before trial, the Court will appropriately distinguish decisions of jurisdiction from decisions of guilt or innocence.

The United States has contacted counsel for the Defendant to determine her concurrence in this motion but as of the time of its filing has not received a response. It is thus presumed that counsel opposes this motion.

WHEREFORE, the United States moves the Court for a pre-trial ruling which finds the areas of land on which the charged crime occurred is located within the exterior boundaries of the San Felipe Pueblo Indian Reservation and, therefore, is Indian Country.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney

Electronically filed on 1/23/2019
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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.

Filed Electronically on 1/23/2019
NICHOLAS J. MARSHALL
Assistant United States Attorney



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Southern Pueblos Agency
1001 Indian School Road, NW
Albuquerque, New Mexico 87104



LAND STATUS CERTIFICATE

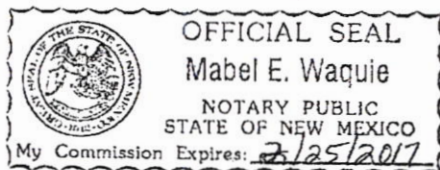
This statement is in reference to the land status of an incident that occurred within the San Felipe Pueblo Indian Reservation. This site was described to me by Chief of Police, Travis Lebeaux, Bureau of Indian Affairs, Office of Justice Services, Southern Pueblos Agency, Albuquerque, New Mexico. Incident location is at GPS coordinates of N35°26.424' latitude, and W106°26.234' longitude. Said site is located within Section 17, Township 14 North, Range 5 East, New Mexico Principal Meridian, Sandoval County, New Mexico. Said site is within the exterior boundaries of the San Felipe Pueblo Indian Reservation.

I hereby certify that this is a true and accurate land description of said site.

Earl P. Ortiz, Land Surveyor
Bureau of Indian Affairs
Southern Pueblos Agency
Real Estate Services
July 25, 2016

State of New Mexico
County of Bernalillo

On this 25th day of July 2016, Earl P. Ortiz, personally appeared before me, who is personally known to me to be the signer of the above instrument, and he acknowledged that he signed it.


Notary Public