

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DEBRA JONES, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendants.

Case No. 13-227

Judge Richard A. Hertling

**PLAINTIFFS' CONTENTION OF
FACT AND LAW**

I. A full but concise statement of the facts plaintiff expects to prove and a discussion of plaintiff's position with respect to the facts on which defendant is expected to rely.

Plaintiffs expects to show, under the standard set forth in this Court's spoliation order, that the United States is legally responsible for damages caused by "bad men among the whites," including damages from the death of Todd Murray, damages from destruction of evidence and damages the cover-up regarding the death (regardless of the cause of the death).

Plaintiffs expect to show, based upon the standard for spoliation, that the gun that Norton claimed Mr. Murray used had not been used for that purpose, and, based upon that standard, that Mr. Murray was shot by a "bad man," and that the United States is therefore financially liable.

Plaintiffs expects to show that Trooper Swenson believed he was attempting to stop a vehicle containing two tribal males, and that the alleged cause for the stop arose on the Reservation.

Plaintiffs expects to show that when Officer Norton arrived at the scene, he knew that Trooper Swenson had arrested the driver of the vehicle, that the passenger had not committed any crime, that it was unlawful for him to enter the non-public lands on the Reservation, and that he nevertheless entered those lands to attempt to apprehend the passenger.

Plaintiffs expects to show that officer Norton lacked probable cause to believe that Mr. Murray was a non-Indian and that he had probable cause to believe that the passenger was Indian.

Plaintiffs expects to show that Officers Norton was the bad man who shot Mr. Murray in the head at close range, withheld and falsified evidence regarding the same, and subsequently made false statements to federal investigators regarding the same, including claiming that Mr. Murray had held the .380 gun when the evidence establishes that Mr. Murray had not used the gun.

Plaintiffs expect to show that other state, county, and local officers at the scene are bad men for acts related to the cover-up. This includes making false statements to the federal investigator at the scene and preventing access by law enforcement officers with jurisdiction to investigate so that those officers could not obtain evidence regarding Norton's actions or evidence which contradicted the state, county, and local officers.

Plaintiffs expect to show that Agent Ashdown is a "bad man" for acts related to the cover-up.

II. A statement of the issues of fact and law to be resolved by the court. The issues should be set forth in sufficient detail to enable the court to resolve the case in its entirety by addressing each of the issues listed.

Many facts central to this case are not in dispute, and will be included in the parties stipulations of facts.

Many of the remaining facts must be filtered through the standard set forth in this Court's spoliation order.

The Court will need to determine whether Mr. Kurip's initial criminal violation occurred on or off of the Reservation. Plaintiffs' position is that the alleged offense occurred several miles inside the Reservation. Plaintiffs believe the Court will resolve this solely as a factual issue.

Plaintiff has previously listed the acts of the "bad men" for which the United States is financially responsible. The Court will have to determine whether the alleged bad men committed any of those acts. It will have to do so under the standard set forth in its spoliation order. The issue of damages is bifurcated from the determination of liability, but the Plaintiff notes that its

position is that there are damages from the cover up (loosely from the lack of “closure”) regardless of the cause of death.

The Court will have to determine whether any documents or testimony regarding Mr. Murray’s alleged intoxication or use of drugs is admissible. Plaintiffs’ position is that this is a legal issue, based upon lack of chain of custody for the blood sample that was allegedly tested, and further based upon the undisputed fact that there were multiple vials of Mr. Murray’s blood that are unaccounted for.

III. A discussion of the legal principles plaintiff contends are applicable, as well as plaintiff’s response to defendant’s anticipated legal position. Any objection to a witness or exhibit listed under paragraph 13 shall be made in the Memorandum of Contentions of Fact and Law or in a separate motion filed on the same date.

The primary legal principles that the Court must apply are contained in the Court’s spoliation order and in the Court’s prior orders restricting the crime that Plaintiffs can rely upon, and the prior appellate court decisions in this case. Those orders are in turn based upon prior orders from this Court and the appellate court which hold that the United States is liable for damages for crimes committed by non-Indians on the Reservation and for some related off-Reservation crimes. Plaintiffs note that they disagree with portions of this Court’s spoliation order, and disagree on both procedural and legal grounds with the Court’s prior order restricting the crimes that Plaintiffs can rely upon, but Plaintiffs understand that the Court will apply the standard set forth in those orders. Even under those orders, the Court should conclude that the United States has financial responsibility under the Treaty provision in which the United States agreed to indemnify tribal members for acts of “bad men among the whites.”

Respectfully submitted this 5th day of September, 2023.

/s/ Jeffrey S. Rasmussen _____

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