UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff/Appellee,	)	
	)	
v.	)	**Case No. 25-7057**
	)	
ASHLIE NICOLE ROSE MARTIN,	)	
	)	
Defendant/Appellant.	)	

UNITED STATES' SUPPLEMENTAL BRIEF ON JURISDICTION

I. PROCEDURAL HISTORY

Defendant pleaded guilty without a plea agreement to one count of conspiracy to murder in Indian country in violation of 18 U.S.C. § 1117. (Vol. I, *Notice*, ROA at 15). The district court sentenced Defendant to 456 months. (Vol. I, *J & C*, ROA at 62). Defendant appealed and the United States filed its response. (Doc. No. 36-1, 47). The Court set the matter for oral argument. (Doc. No. 58, 61). Thereafter, Defendant moved to reopen briefing to address subject matter jurisdiction. (Doc. No. 65). The Court granted Defendant's request, ordered the parties to submit briefs of no more than ten pages, and exempted the briefs from the requirements of Fed. R. App. P. 28(a). (Doc. No. 66).

II. ISSUE PRESENTED IN SUPPLEMENTAL BRIEFING

Crimes of nationwide applicability, like criminal statutes on firearms and narcotics, apply to all citizens of the United States regardless of whether the defendant is an Indian

on a reservation. Against that backdrop, does a district court possess subject matter jurisdiction over an Indian defendant who conspires to murder in Indian country?

III. ARGUMENT & AUTHORITY

a. Conspiracy to Murder Applies Nationwide to All People Irrespective of Indian Country Jurisdiction.

1. Standard of Review

Whether the district court possessed subject matter jurisdiction is a question of law this Court reviews de novo. *United States v. Hopson*, 150 F.4th 1290, 1297 (10th Cir. 2025). The party asserting jurisdiction bears the burden. *Id*., 150 F.4th at 1298.

2. The United States Exercises Jurisdiction Over Indian Country in Three Ways.

"Subject matter jurisdiction is a court's statutory or constitutional power to adjudicate a case." *Hopson*, 150 F.th at 1296 (cleaned up). Federal criminal law applies to Indians in three distinct situations. First, it applies under the "Major Crimes Act" when an Indian defendant commits one of 14 enumerated felony offenses. 18 U.S.C. § 1153; *Hopson*, 150 F.4th at 1293, 1300.[1] Second, it applies under the "General Crimes Act" when an Indian defendant violates the general laws applicable to the exclusive jurisdiction of the United States. 18 U.S.C. § 1152; *Hopson*, 150 F.4th at 1299. The United States may not, however, charge Indian defendants who commit crimes against Indian victims in Indian country under the General Crimes Act. 18 U.S.C. § 1152. Third, the United States may

[1] The offenses include 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. 18 U.S.C. § 1153.

charge Indians, just like all other people in the United States, with "crimes over which there is federal jurisdiction regardless of whether an Indian is involved, such as assaulting a federal officer." *United States v. Wheeler*, 435 U.S. 313, 330 n. 30 (1978), *superseded in other aspects by statute,* 25 U.S.C. §§ 1301-1303; *United States v. Lara,* 541 U.S. 193, 199-207 (2004); *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960)("[I]t is now well settled by many decisions of this Court that a general statute in terms applying to all persons includes Indians and their property interests.").

The jurisdictional mechanism from *Wheeler* applies here. In *Wheeler*, the Supreme Court relied on *Stone v. United States*, 506 F.2d 561 (8th Cir. 1974).[2] In *Stone*, the defendant, an Indian, assaulted a federal police officer, also an Indian, on the Fort Berthold Indian Reservation. *Stone*, 506 F.2d at 563. The defendant argued the General Crimes Act deprived the federal courts of subject matter jurisdiction over "intra-Indian" offenses. *Id*. The Eighth Circuit held the General Crimes Act "refers only to those laws where the situs of the offense is an element of the crime." *Id*. The General Crimes Act does not address "the laws of the United States that make actions criminal wherever committed." *Id*. To reach this conclusion, *Stone* relied on the Tenth Circuit case of *Head v. Hunter*, 141 F.2d 449, 451 (10th Cir. 1944): "There is nothing in the legislation to indicate or from which it can be inferred that the jurisdiction of the United States was restricted in respect to crimes which are generally applicable throughout the United States to all persons." *Id*.

[2] To the extent *Wheeler's* holding is dicta, "this court considers itself bound by Supreme Court dicta almost as firmly as by the Court's outright holdings." *United States v. Nixon*, 919 F.3d 1265, 1273 (10th Cir. 2019).

3. The Conspiracy to Murder Law Applies to Indian Defendants.

Federal law penalizes those who conspire to commit certain types of murder:

> If two or more persons conspire to violate section 1111, 1114, 1116, or 1119 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

18 U.S.C. § 1117.

A murder under § 1114 involves killing employees of the United States, a murder under § 1116 involves killing certain foreign officials, and a murder under § 1119 involves killing nationals of the United States while abroad. Murder under § 1111 involves a killing within the "special maritime and territorial jurisdiction of the United States." 18 U.S.C. § 1111(b). Examples of murder under § 1111 include a killing on a military instillation, *Lewis v. United States*, 523 U.S. 155 (1998); a killing in a national forest, *United States v. Fields*, 516 F.3d 923 (10th Cir. 2008); and a killing committed by an Indian defendant in Indian country, *United States v. Antelope*, 430 U.S. 641 (1977).

The Tenth Circuit has not yet decided a case regarding conspiracy to murder in Indian country . This Circuit has held, however, that federal jurisdiction exists for many federal crimes, e.g., gambling statutes, when applied to Indian defendants in Indian country violating laws of nationwide applicability. *United States v. Gachot*, 512 F3d 1252, 1254 (10th Cir. 2008). Other circuits agree.

In *United States v. Begay*, 42 F.3d at 486, 487 (9th Cir. 1994), the United States charged the defendant with kidnaping in Indian country and conspiracy to commit kidnapping under 18 U.S.C. § 371. The defendant challenged the district court's subject

matter jurisdiction by claiming the Major Crimes Act prohibited charging any unenumerated offense when committed by one Indian against another Indian. *Id*. The defendant reasoned "because conspiracy, as defined in 18 U.S.C. § 371, is not an enumerated crime under § 1153…tribal courts must have exclusive jurisdiction over the conspiracy charge." *Id*., 42 F.3d at 497-498 (cleaned up). The Ninth Circuit disagreed, holding "the Major Crimes Act deals only with the application of federal enclave law to Indians and has no bearing on federal laws of nationwide applicability that make actions criminal wherever committed." *Id*. Likewise, with the General Crimes Act, the Ninth Circuit has held that § 1152 "relates only to federal enclave law—law in which the situs of the offense is an element of the crime…section 1152 does not apply to violations of laws of nationwide applicability that constitute federal crimes regardless of where committed." *Id*., (cleaned up). The court ultimately ruled "[s]ection 371 is a federal criminal statute of nationwide applicability, and therefore applies equally to everyone everywhere within the United States, including [an] Indian in Indian country" *Id*., 42 F.3d at 499; *see also United States v. Juvenile Male*, 118 F.3d 1344, 1350-1351 (9th Cir. 1997)(rejecting argument that RICO could not apply to Indian defendant in Indian country because RICO is not enumerated in the Major Crimes Act).

In *United States v. Wadena*, 152 F.3d 831 (8th Cir. 1998), the Eighth Circuit affirmed a conviction for conspiracy in violation of 18 U.S.C. § 371 and conspiracy to violate civil rights in violation of 18 U.S.C. § 241. The defendant in *Wadena*, like Defendant here, argued the district court lacked jurisdiction over his offenses because he, an Indian, committed his offenses against other Indians on the reservation. *Id*., 152 F.3d at 839-840,

842. In rejecting the defendant's claim on appeal, the Eighth Circuit held, "[f]ederal statutes of general applicability, those in which situs of the offense is not an element of the crime, are not encompassed within the Indian Country Crimes Act [§ 1152]." *Id*., 152 F.3d at 841. Because the conspiracy crimes did not fall within the General Crimes Act, the Eighth Circuit concluded, "they are not subject to the Act's exception relating to crimes committed in Indian Country by one Indian against another." *Id*., 152 F.3d at 841; *see too United States v. Milk*, 66 F.4th 1121 (8th Cir. 2023)(Major Crimes Act does not prohibit charging Indian defendant in Indian country with conspiracy to distribute methamphetamine).

Recently, the Eleventh Circuit also ruled the Major Crimes Act and General Crimes Act do not bar federal prosecution for crimes of nationwide applicability. In *United States v. Brice*, 167 F.4th 1330, 1333 (11th Cir. 2026), the United States charged the defendants with, among other things, conspiracy to commit Hobbs Act robbery. The defendants appealed their convictions claiming: (1) the district court lacked jurisdiction because they, as Indians, committed their crimes against Indians within Indian country and (2) conspiracy to violate the Hobbs Act is not a crime listed in the Major Crimes Act. *Id*. The court held the Hobbs Act is a crime of general applicability that "prohibits anyone, anywhere, from in any way or degree obstructing, delaying, or affecting commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so." *Id*., 167 F.4th at 1336-1337 (cleaned up).[3] The court further held the Hobbs Act

[3] The statute's text does not contain the term "anywhere." 18 U.S.C. § 1951(a).

"applies in Indian country by its own terms, and nothing in its terms limits how it applies to Indian-on-Indian crime." *Id*. In specifically addressing whether the Hobbs Act applies to Indian defendants notwithstanding its absence from the list of Major Crimes Act offenses, the court held "federal courts may exercise jurisdiction over generally applicable federal crimes—even when the offense is committed by an Indian, against an Indian, while in Indian country." *Id*. In setting out its reasoning, the Eleventh Circuit held:

> generally applicable federal laws extend to the acts of Indians committed in Indian country, even if the victim is also an Indian. Contrary to [the defendant's] arguments, nothing in the Major Crimes Act limits federal jurisdiction to only the crimes it enumerates. Rather, the Major Crimes Act functions as an exception to the Indian Country Crimes Act's exception for Indian-on-Indian crime. The Major Crimes Act has nothing to say about criminal statutes that apply by their own terms to everyone, everywhere, such as the Hobbs Act.

Id., 167 F.4th at 1339.[4]

Applying these holdings, the federal crime of conspiracy to murder applies nationwide - regardless of whether a defendant is an Indian within Indian country. The crime applies to any person who conspires to commit one of four types of murder. Nothing in the text limits its reach to non-Indians. Instead, the statute broadly covers anyone who commits the offense anywhere within the conceivable jurisdictional reach of the United States.

4. <u>*Hopson* Does Not Foreclose the District Court's Jurisdiction</u>.

In her motion to reopen briefing, Defendant argues conspiracy and any underlying substantive offense are separate and distinct crimes. (Doc. No. 65 p. 3). The United States

[4] The Eleventh Circuit refers to the General Crimes Act found in 18 U.S.C. § 1152 as the "Indian Country Crimes Act." *Brice*, 167 F.4th at 1335-1336.

agrees. Relying on *Hopson*, Defendant takes it a step further, however, and contends conspiracy to murder is not an offense listed under the Major Crimes Act, and therefore, the district court lacks jurisdiction. (Doc. No. 65 p. 2-3). Defendant's reliance on *Hopson* is misplaced.

In *Hopson*, the United States charged the defendant under the Major Crimes Act with felony assault resulting in serious bodily injury in Indian country. *Hopson*, 150 F.4th at 1293. The jury returned a guilty verdict on the lesser-included offense of misdemeanor simple assault. *Id*. This Court held the district court did not have jurisdiction over the lesser-included offense because the Major Crimes Act did not make intra-Indian misdemeanor simple assault a violation of federal criminal law. *Id*., 150 F.4th at 1303. In its reasoning, the Court relied heavily upon the fact that misdemeanor assault is not listed among the 14 offenses in the Major Crimes Act. *Id*., 510 F.4th at 1300-1302.

The Court in *Hopson* limited its holding to "federal enclave laws applicable to conduct committed by an Indian defendant in Indian country." *Id*., 150 F.4th at 1299. Federal enclave jurisdiction, also known as special maritime and territorial jurisdiction, includes traditional locations of federal jurisdiction like the high seas, certain aircraft, military bases, federal facilities, and national parks. *United States v. Smith*, 178 F.4th 572, 593; 18 U.S.C. § 7. The General Crimes Act extends enclave jurisdiction to Indian country "except for those offenses committed by one Indian against the person or property of another Indian." *Negonsott v. Samuels*, 507 U.S. 99, 102 (1993). In sum, *Hopson* did nothing to disturb the rule that crimes of nationwide applicability, which do not rely on enclave jurisdiction, apply equally to all—including Indian defendants on the reservation.

With conspiracy, jurisdiction flows from the statutory grant of jurisdiction found in 18 U.S.C. § 3231. The jurisdiction statute "provides the district courts of the United States shall have original jurisdiction of all offenses against the laws of the United States." *Hopson*, 150 F.4th at 1298 (cleaned up). Under the statute, "district courts have jurisdiction over all crimes cognizable under the authority of the United States." *Id*. In contrast, enclave laws require the situs of crime as an element of the offense to trigger jurisdiction. *United States v. Lamy*, 521 F.3d 1257, 1267 (10th Cir. 2008). Crimes of nationwide applicability, like conspiracy, do not require situs as an element of the offense to trigger jurisdiction. Pattern Crim. Jury Instr. 10th Cir. 2.19 (2026).

As Defendant argued on appeal, the crime of conspiracy is distinct from the ultimate object of the conspiracy. Thus, so long as two or more persons conspire to commit a federal murder, and one of them takes an overt act towards that goal, the district court possesses jurisdiction over the offense as a crime against the laws of the United States under 18 U.S.C. § 3231. Defendants cannot borrow the situs requirement from enclave jurisdiction to block prosecution of a crime of nationwide applicability.

IV. CONCLUSION

Based on the foregoing, the government respectfully requests this Court affirm Defendant's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF DIGITAL SUBMISSION

I certify that:
- all required privacy redactions have been made;
- that with the exception of those redactions, every document submitted in digital form or scanned PDF format is an exact copy of the written document filed with the Clerk; and
- that the ECF submission was scanned for viruses using McAfee Endpoint Security version 10.5, updated continuously, and according to the program is free of viruses.

/s/ Jarrod Leaman

CERTIFICATE OF ECF FILING & DELIVERY

I hereby certify that on August 27, 2026, I electronically transmitted the attached documents to the Clerk of Court using the ECF System for filing. A Notice of Electronic Filing will be sent via the Court's CM-ECF system to the following counsel of record.

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