

SUPREME COURT OF NEW MEXICO

State of New Mexico v. Travis Frank

52 P.3d 404, 132 N.M. 544 (N.M. 2002) · No. No. 26,907 · Decided July 24, 2002

SUMMARY

The Supreme Court of New Mexico held that the State had jurisdiction to prosecute Travis Frank for vehicular homicide because the accident did not occur in Indian country. Applying *Alaska v. Native Village of Venetie Tribal Government*, the court adopted the two-prong test requiring federal set-aside of land for Indian use and federal superintendence. The court rejected the requirement that a court first identify a separate community of reference and affirmed the district court while reversing the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Franchini, Justice; Patricio M. Serna, Chief Justice; Joseph F. Baca, Justice; Petra Jimenez Maes, Justice; Pamela B. Minzner, Justice
JURISDICTION	New Mexico
DECIDED	July 24, 2002
DOCKET	No. 26,907
DISPOSITION	reversed
PROCEDURAL POSTURE	The State petitioned for a writ of certiorari to review the Court of Appeals' decision reversing and remanding the district court's determination that New Mexico had jurisdiction to prosecute Frank. The Supreme Court granted certiorari.
STANDARD OF REVIEW	The court reviewed the application of law to facts de novo, deferred to factual findings supported by substantial evidence, and viewed the facts in the manner most favorable to the prevailing party.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of New Mexico v. Travis Frank

TOPICS

- tribal jurisdiction
- indian affairs
- federalism
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

federal Indian law

appellate procedure

QUESTIONS PRESENTED

1. Whether a court must conduct a community-of-reference inquiry before applying the two-prong test for a dependent Indian community established in *Alaska v. Native Village of Venetie Tribal Government*.
2. Whether the accident site was Indian country under 18 U.S.C. § 1151(b), such that New Mexico lacked jurisdiction to prosecute Frank.
3. Whether the district court's factual findings were supported by substantial evidence and its application of *Venetie* to those facts was legally correct.

HOLDINGS

1. No. Courts need not determine a community of reference as a threshold inquiry before applying the two-prong *Venetie* test for identifying a dependent Indian community.
2. The accident site was not a dependent Indian community or Indian country, so New Mexico had jurisdiction to prosecute Frank.
3. The district court's findings were supported by substantial evidence and its conclusions correctly applied the law to the facts.

KEY QUOTATIONS

“to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements— first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence.” (¶ 16)

“We adopt the two-prong test adopted in Venetie to resolve questions of Indian jurisdiction in civil and criminal cases; therefore, no examination of the community of reference is required before applying the two-prong test established in Venetie.” (¶ 23)

FACTUAL BACKGROUND

On May 21, 1994, Travis Frank, a registered member of the Navajo Nation, was driving on New Mexico State Highway 44 when he caused an accident that killed his father-in-law and five occupants of another vehicle. The accident occurred in a checkerboard area on land owned by the federal government and administered by the Bureau of Land Management. Frank was indicted on six counts of vehicular homicide and other offenses and later entered a conditional guilty plea reserving the issue of state jurisdiction.

PROCEDURAL HISTORY

Frank entered a conditional guilty plea to six counts of vehicular homicide, reserving the issue of state jurisdiction. The district court denied his motion to dismiss for lack of jurisdiction and later found that the accident site was not Indian country under the two-prong test from *Alaska v. Native Village of Venetie Tribal Government*. In *Frank I*, the Court of Appeals reversed and remanded for additional findings under *Pittsburg &*

Midway Coal Mining Co. v. Watchman. After the district court applied Venetie and again found state jurisdiction, the Court of Appeals in Frank II reversed and remanded for a community-of-reference inquiry. The Supreme Court reversed the Court of Appeals and affirmed the district court.

DISPOSITION

reversed

CASES CITED

- State v. Frank, 1997-NMCA-093, 123 N.M. 734, 945 P.2d 464
- Pittsburg & Midway Coal Mining Co. v. Watchman, 52 F.3d 1531 (10th Cir. 1995)
- Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520, 527, 531 nn. 5, 7 (1998)
- State v. Frank, 2001-NMCA-026, 130 N.M. 306, 24 P.3d 338
- State v. Boeglin, 100 N.M. 127, 666 P.2d 1274 (Ct. App. 1983)
- State v. Dick, 1999-NMCA-062, 127 N.M. 382, 981 P.2d 796
- Blatchford v. Sullivan, 904 F.2d 542 (10th Cir. 1990)
- United States v. McGowan, 302 U.S. 535, 539 (1938)
- United States v. Pelican, 232 U.S. 442, 449 (1914)
- United States v. Sandoval, 231 U.S. 28, 46 (1913)
- United States v. Roberts, 185 F.3d 1125, 1132-33 (10th Cir. 1999)
- Blunk v. Arizona Department of Transportation, 177 F.3d 879, 883-84 (9th Cir. 1999)
- HRI, Inc. v. Environmental Protection Agency, 198 F.3d 1224, 1248-54 (10th Cir. 2000)
- Blatchford v. Gonzales, 100 N.M. 333, 670 P.2d 944 (1983)
- State v. Ortiz, 105 N.M. 308, 731 P.2d 1352 (Ct. App. 1986)
- Thompson v. County of Franklin, 127 F. Supp. 2d 145, 152-53, 156-58 (N.D.N.Y. 2000)
- Malabed v. North Slope Borough, 42 F. Supp. 2d 927, 932-33 (D. Alaska 1999)