

Appendix A

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-4445

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD BOGGS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Cameron McGowan Currie, Senior District Judge. (3:22-cr-00221-CMC-1)

Submitted: February 15, 2024

Decided: March 18, 2024

Before WYNN, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard E. Boggs, Appellant Pro Se. John C. Potterfield, Assistant United States Attorney,
OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard Boggs appeals from his tax evasion convictions. On appeal, he raises various challenges. We affirm.

I.

Boggs first argues that the district court lacked jurisdiction over him because, as a South Carolina “native,” he is not within the territorial jurisdiction of the United States. This claim is “completely without merit and patently frivolous.” *United States v. Mundt*, 29 F.3d 233, 237 (6th Cir. 1994).

II.

We review the denial of a motion for judgment of acquittal de novo. *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018). In assessing the sufficiency of the evidence, we decide whether there is substantial evidence to support the conviction when viewed in the light most favorable to the government. *Id.* “Substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.” *United States v. Rodriguez-Soriano*, 931 F.3d 281, 286 (4th Cir. 2019) (cleaned up). In making this determination, we may not resolve conflicts in the evidence or evaluate witness credibility. *Savage*, 885 F.3d at 219. “A defendant who brings a sufficiency challenge bears a heavy burden, as appellate reversal on grounds of insufficient evidence is confined to cases where the prosecution’s failure is clear.” *Id.* (internal quotation marks omitted).

In order to sustain a conviction under 26 U.S.C. § 7201 for tax evasion, the Government must prove three elements beyond a reasonable doubt: the existence of a tax

deficiency, willfulness, and an affirmative act of evasion or attempted evasion of the tax. *See Sansone v. United States*, 380 U.S. 343, 351 (1965). Willfulness, in this context, means a voluntary, intentional violation of a known legal duty. *See Cheek v. United States*, 498 U.S. 192, 201 (1991). A belief, in good faith, that one has complied with the tax laws negates willfulness and is therefore a defense, even if the belief is unreasonable. In other words, the Government must demonstrate that Boggs did not have a subjective belief, however irrational or unreasonable, that he was compliant with tax laws. *See id.* at 201-02. The underlying issue is whether “the defendant was aware of the duty at issue.” *Id.* at 202. As such, a jury is free to consider evidence showing a defendant’s awareness of the relevant provisions of the tax code, of court decisions rejecting his interpretation, and of IRS forms and instructions making defendant’s claims untenable. *Id.*

Boggs asserts that he believed that no tax liability accrued with regard to his wages. Specifically, he claims that the tax laws, and in particular 26 U.S.C. § 83(a),¹ permit a taxpayer to deduct the fair market value of their labor from their wages.

We find that the Government presented more than sufficient evidence to show that Boggs was aware of his duty to pay taxes on his wages and was aware that the IRS rejected his interpretation of § 83(a). Specifically, a criminal investigator for the IRS, testified at trial that the IRS sent Boggs six notices that certain of his filings, including a tax return, were frivolous. With regard to the return, Boggs was informed that he should correct the

¹ 26 U.S.C. § 83(a) describes the calculation of income when property is received by a service provider in connection with their performance of services.

return or face penalties, and he was directed to a publication explaining why he was required to pay taxes. The agent further testified that he personally informed Boggs that his withholdings were not proper and that he was required to file tax returns. Boggs himself testified that he had informed the IRS of his stance on § 83(a) and his related arguments. While he admitted that he received letters back telling him that his arguments were frivolous, such did not change his opinion. Boggs also admitted that, as a result of his lawsuits, at least one court had told him that he was subject to taxes. Boggs conceded that he was familiar with an IRS bulletin that rejected his interpretation of § 83(a). This evidence was sufficient to show willfulness, and the jury was well within its purview to reject Boggs' argument that he was acting in good faith.²

III.

Boggs next asserts that his attorney was ineffective for failing to object to the Government's expert's testimony regarding the meaning of § 83(a). He also avers that his attorney was ineffective for failing to introduce evidence or make post-trial motions as requested, forcing Boggs to do so himself. Claims of ineffective assistance are cognizable on direct appeal "only where the record conclusively establishes ineffective assistance." *United States v. Baptiste*, 596 F.3d 214, 216 n.1 (4th Cir. 2010). Generally, a defendant

² Boggs also argues that the Government failed to show an affirmative act that constituted an evasion of tax payments. However, as just one example, Boggs submitted W-4 forms falsely stating that he was exempt. While he asserts that, given his understanding of the law, he did not believe he was falsely filing, the evidence described above was sufficient to show that Boggs knew his claim that he was exempt was in conflict with the IRS's interpretation of the relevant law.

should instead raise ineffectiveness claims in a 28 U.S.C. § 2255 motion to permit sufficient development of the record. *See Massaro v. United States*, 538 U.S. 500, 504-06 (2003). Because the record does not conclusively show ineffective assistance, Boggs' assertions of ineffective assistance are not cognizable on direct appeal.

IV.

Finally, Boggs asserts that the district court erred by permitting the Government's expert to be recalled in order to testify regarding a book that Boggs stated he relied upon. We review a district court's evidentiary and procedural rulings for abuse of discretion. *Persinger v. Norfolk & W. Ry.*, 920 F.2d 1185, 1187 (4th Cir. 1990). Because Boggs does not explain why recalling the expert was error, he has failed to show an abuse of discretion.

Based on the foregoing, we affirm Boggs' convictions. We dispense with oral arguments because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

UNITED STATES DISTRICT COURT

District of South Carolina

UNITED STATES OF AMERICA

v.

RICHARD BOGGS

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:22-221-001-CMC

USM Number: 93353-509

Pro Se
Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1-5 of the Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
26:7201	Please see Indictment	3/29/2022	1-5

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.
- ☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 28, 2026

Date of Imposition of Judgment

s/Cameron McGowan Currie

Signature of Judge

Cameron McGowan Currie, Senior United States District Judge

Name and Title of Judge

June 28, 2023

Date

AO 245B (SCDC Rev. 10/20) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 6

DEFENDANT: RICHARD BOGGS
CASE NUMBER: 3:22-221

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: twenty-seven (27) months as to each count, to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed at the closest available facility to Columbia, SC for which he qualifies.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☒ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RICHARD BOGGS
CASE NUMBER: 3:22-221

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: three (3) years as to each count, to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
7. ☐ You must participate in an approved program for domestic violence. (check if applicable)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page and the following special conditions:

- 1) Restitution in the amount of \$274,461.00 shall be paid directly to the IRS in minimum monthly installments of \$3,500.00 to commence 30 days after release from imprisonment. Interest on the restitution is waived. Payments shall be adjusted accordingly, based upon your ability to pay as determined by the Court.
- 2) You must pay any remaining unpaid fine balance in minimum monthly installments of \$500.00 to commence 30 days after release from imprisonment. Payments shall be made payable to "Clerk, U.S. District Court" and mailed to 901 Richland Street, Columbia, SC 29201. Interest on the fine is waived. Payments shall be adjusted accordingly, based upon your ability to pay as determined by the Court.
- 3) You shall not open additional lines of credit without the approval of the U.S. Probation Office.
- 4) You shall provide the U.S. Probation Office with access to all requested financial information to include income tax returns and bank statements.

DEFENDANT: RICHARD BOGGS
CASE NUMBER: 3:22-221**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines, based on your criminal record, personal history or characteristics, that you pose a risk to another person (including an organization), the probation officer, with the prior approval of the Court, may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: RICHARD BOGGS
CASE NUMBER: 3:22-221

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ <u>500.00</u>	\$	\$ <u>10,000.00</u>	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for ☒ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RICHARD BOGGS
CASE NUMBER: 3:22-221

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 10,500.00 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C ☒ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 500.00 over a period of _____ (e.g., months or years), to commence 30 days (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 500.00 over a period of _____ (e.g., months or years), to commence 30 days (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
As directed in the Preliminary Order of Forfeiture, filed _____ and the said order is incorporated herein as part of this judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA)

v.)

RICHARD BOGGS)

CRIMINAL NO. 3:22-221

26 U.S.C. § 7201

INDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment:

1. Defendant **RICHARD BOGGS** resided in Richland County, South Carolina.
2. **RICHARD BOGGS** was employed as an Information Technology Consultant by various companies (identified herein as "Employers 1-7," collectively, the "Employers") either at his residence in Irmo, South Carolina or at jobsites in the Columbia, South Carolina area.
3. During each of the years 2015 through 2019, **RICHARD BOGGS** received wages from one or more Employers. Specifically, **RICHARD BOGGS** received wages in the following approximate amounts:

YEAR	APPROXIMATE TOTAL WAGES
2015	\$ 267,054
2016	\$ 299,665
2017	\$ 180,143
2018	\$ 158,407
2019	\$ 189,476

4. **RICHARD BOGGS** failed to file individual income tax returns for the years 2015 through 2019 to report his wages and other income to the Internal Revenue Service ("IRS").

5. An IRS Form W-4, Employee's Withholding Allowance Certificate or Employee's Withholding Certificate ("Form W-4"), was a form signed under penalty of perjury by a taxpayer to inform his employer of the amount of federal income tax to withhold from the taxpayer's wages, and it allowed a taxpayer to claim exemption from wage withholding upon meeting certain conditions.

6. For the years 2015 through 2019, **RICHARD BOGGS** submitted and caused to be submitted, and maintained and caused to be maintained on file with his Employers, false Forms W-4, including, but not limited to, the following:

Employer	Approximate Date False Form W-4 Initially Submitted	Years False Form W-4 Maintained with Employer
Employer 1	November 27, 2013	2015 – 2016
Employer 2	July 24, 2014	2015 – 2017
Employer 3	November 20, 2014	2015
Employer 4	January 28, 2015	2015 – 2016
Employer 5	June 13, 2016	2016 – 2017
Employer 6	November 17, 2016	2016 – 2019
Employer 7	May 14, 2018	2018 – 2019

7. On these Forms W-4, **RICHARD BOGGS** falsely claimed that he was exempt from federal income tax withholding when, in fact, he was not entitled to claim exempt status. By claiming exempt status, **RICHARD BOGGS** caused his Employers to withhold little or no federal income taxes from his wages for the years 2015 through 2019. **RICHARD BOGGS** continued to submit and maintain false Forms W-4 after the IRS directed Employers to withhold taxes from his wages.

COUNTS ONE THROUGH FIVE

(Attempt to Evade or Defeat Tax)

8. The allegations of paragraphs 1 through 7 are realleged and incorporated herein by reference.

9. During the calendar years set forth below, **RICHARD BOGGS** received taxable income, upon which there was substantial income tax due and owing to the United States of America. Knowing the foregoing facts and failing to make an income tax return on or before the dates set forth below, as required by law, to any proper officer of the Internal Revenue Service, and to pay the income tax to the Internal Revenue Service, **RICHARD BOGGS** willfully attempted to evade and defeat income tax due and owing by him to the United States, for the calendar years set forth below, by, among other affirmative acts, submitting and causing to be submitted and maintaining and causing to be maintained on file with his Employers Forms W-4 on which he falsely claimed he was exempt from federal income tax withholding:


COUNT	YEAR	RETURN DUE DATE
1	2015	April 18, 2016
2	2016	April 18, 2017
3	2017	April 17, 2018
4	2018	April 15, 2019
5	2019	July 15, 2020

All in violation of Title 26, United States Code, Section 7201.

A True BILL



COREY F. ELLIS
UNITED STATES ATTORNEY

By: 
John C. Potterfield, ID No. 6472
Assistant U.S. Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Telephone: (803) 929-3000
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Appendix C

FILED: August 5, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4445
(3:22-cr-00221-CMC-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RICHARD BOGGS

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc and the motion for judicial notice.

For the Court

/s/ Nwamaka Anowi, Clerk

Appendix D

**CRIMINAL RESOURCE MANUAL****CRM 500-999**

663. Special Maritime and Territorial Jurisdiction


A number of Title 18 sections specifically declare certain conduct to be a Federal crime if committed "within the special maritime and territorial jurisdiction of the United States." See, e.g., murder, 18 U.S.C. § 1111. In some instances, the Assimilative Crimes Act, 18 U.S.C. § 13, is also applicable. See also, 15 U.S.C. § 1175; 15 U.S.C. § 1243; 16 U.S.C. § 3372.

The term "special maritime and territorial jurisdiction of the United States" is defined in eight subsections of 18 U.S.C. § 7. These subsections relate to maritime jurisdiction, 18 U.S.C. §§ 7(1), 7(2); lands and buildings, 18 U.S.C. § 7(3); Guano Islands, 18 U.S.C. § 7(4); aircraft, 18 U.S.C. § 7(5); spacecraft, 18 U.S.C. § 7(6); places outside the jurisdiction of any nation, 18 U.S.C. § 7(7); and foreign vessels en route to and from the United States, 18 U.S.C. § 7(8).

[cited in [JM 9-20.100](#)]

[662. Maritime, Territorial and Indian Jurisdiction--Generally](#)

[664. Territorial Jurisdiction](#)

 **U.S. Department of Justice**
950 Pennsylvania Avenue NW
Washington DC 20530

Contact the Department
Phone: 202-514-2000
TTY/TDD: 800-877-8339



CRIMINAL RESOURCE MANUAL

CRM 500-999

664. Territorial Jurisdiction

Of the several categories listed in 18 U.S.C. § 7, Section 7(3) is the most significant, and provides:

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: . . .

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

As is readily apparent, this subsection, and particularly its second clause, bears a striking resemblance to the 17th Clause of Article I, Sec. 8 of the Constitution. This clause provides:

The Congress shall have power. . . *To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, be Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.*

(Emphasis added.) The constitutional phrase "exclusive legislation" is the equivalent of the statutory expression "exclusive jurisdiction." See *James v. Dravo Contracting Co.*, 302 U.S. 134, 141 (1937), citing, *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930).

Until the decision in *Dravo*, it had been generally accepted that when the United States acquired property with the consent of the state for any of the enumerated purposes, it acquired exclusive jurisdiction by operation of law, and any reservation of authority by the state, other than the right to serve civil and criminal process, was inoperable. See *Surplus Trading Co. v. Cook*, 281 U.S. at 652-56. When *Dravo* held that a state might reserve legislative authority, e.g., the right to levy certain taxes, so long as that did not interfere with the United States' governmental functions, it became necessary for Congress to amend 18 U.S.C. § 7(3), by adding the words "so as," to restore criminal jurisdiction over those places previously believed to be under exclusive Federal legislative jurisdiction. See H.R. Rep. No. 1623, 76th Cong., 3d Sess. 1 (1940); S. Rep. No. 1788, 76th Cong., 3d Sess. 1 (1940).

Dravo also settled that the phrase "other needful building" was not to be strictly construed to include only military and naval structures, but was to be construed as "embracing whatever structures are found to be necessary in the performance of the function of the Federal Government." See *James v. Dravo Contracting Co.*, 302 U.S. at 142-43. It therefore properly embraces courthouses, customs houses, post offices and locks and dams for navigation purposes.

The "structures" limitation does not, however, prevent the United States from holding or acquiring and having jurisdiction over land acquired for other valid purposes, such as parks and irrigation projects since Clause 17 is not the exclusive method of obtaining jurisdiction. The United States may also obtain jurisdiction by reserving it when sovereign title is transferred to the state upon its entry into the Union or by cession of jurisdiction after the United States has otherwise acquired the property. See *Collins v. Yosemite Park Co.*, 304 U.S. 518, 529-30 (1938); *James v. Dravo Contracting Co.*, 302 U.S. at 142; *Surplus Trading Co. v. Cook*, 281 U.S. at 650-52; *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 526-27, 538, 539 (1885).

- c. The United States may hold or acquire property within the borders of a state without acquiring jurisdiction. It may acquire title to land necessary for the performance of its functions by purchase or eminent domain without the state's consent. See *Kohl v. United States*, 91 U.S. 367, 371, 372 (1976). But it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of or cession of jurisdiction by the state. See *Mason Co. v. Tax Commission*, 302 U.S. 97 (1937); *James v. Dravo Contracting Co.*, 302 U.S. at 141-42.

State consent to the exercise of Federal jurisdiction may be evidenced by a specific enactment or by general constitutional or statutory provision. Cession of jurisdiction by the state also requires acceptance by the United States. See *Adams v. United States*, 319 U.S. 312 (1943); *Surplus Trading Co. v. Cook*, 281 U.S. at 651-52. Whether or not the United States has jurisdiction is a Federal question. See *Mason Co. v. Tax Commission*, 302 U.S. at 197.

Prior to February 1, 1940, it was presumed that the United States accepted jurisdiction whenever the state offered it because the donation was deemed a benefit. See *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. at 528. This presumption was reversed by enactment of the Act of February 1, 1940, codified at 40 U.S.C. § 255. This statute requires the head or authorized officer of the agency acquiring or holding property to file with the state a formal acceptance of such "jurisdiction, exclusive or partial as he may deem desirable," and further provides that in the absence of such filing "it shall be conclusively presumed that no such jurisdiction has been acquired." See *Adams v. United States*, 319 U.S. 312 (district court is without jurisdiction to prosecute soldiers for rape committed on an army base prior to filing of acceptance prescribed by statute). The requirement of 40 U.S.C. § 255 can also be fulfilled by any filing satisfying state law. *United States v. Johnson*, 994 F.2d 980, 984-86 (2d Cir. 1993). The enactment of 40 U.S.C. § 255 did not retroactively affect jurisdiction previously acquired. See *Markham v. United States*, 215 F.2d 56 (4th Cir.), cert. denied, 348 U.S. 939 (1954); *United States v. Heard*, 270 F. Supp. 198, 200 (W.D. Mo. 1967).

COMMENT: In summary, the United States may exercise plenary criminal jurisdiction over lands within state borders:

- A. Where it reserved such jurisdiction upon entry of the state into the union;
- B. Where, prior to February 1, 1940, it acquired property for a purpose enumerated in the Constitution with the consent of the state;
- C. Where it acquired property whether by purchase, gift or eminent domain, and thereafter, but prior to February 1, 1940, received a cession of jurisdiction from the state; and
- D. Where it acquired the property, and/or received the state's consent or cession of jurisdiction after February 1, 1940, and has filed the requisite acceptance.

[cited in JM 9-20.100]

663. Special Maritime and Territorial Jurisdiction

665. Determining Federal Jurisdiction

U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

Contact the Department
Phone: 202-514-2000
TTY/TDD: 800-877-8339

**CRIMINAL RESOURCE MANUAL****CRM 500-999**

665. Determining Federal Jurisdiction


When instances are reported to the United States Attorney of offenses committed on land or in buildings occupied by agencies of the Federal government -- unless the crime reported is a Federal offense regardless of where committed, such as assault on a Federal officer or possession of narcotics -- the United States has jurisdiction only if the land or building is within the special territorial jurisdiction of the United States.


PRACTICE TIP: A convenient method of determining the jurisdictional status is to contact an appropriate attorney with the agency having custody of the land. If the land is other than a military base, the regional counsel's office of the General Services Administration usually has the complete roster of all Federal lands and buildings in its region and can frequently provide a definitive answer to jurisdiction. If the land in question is part of a military base, contact with the post Staff Judge Advocate may be helpful. If the military personnel in the field or the field attorneys of the agency having responsibility for the land are unable to render assistance, the Office of Enforcement Operations of the Criminal Division should be called. Each United States Attorney would be well advised to request from each agency within the district a report on the jurisdictional status claimed for each of its facilities and assurance that documentation is available.

[cited in JM 9-20.100]

664. Territorial Jurisdiction

666. Proof of Territorial Jurisdiction

 **U.S. Department of Justice**
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666. Proof of Territorial Jurisdiction

There has been a trend to treat certain "jurisdictional facts" that do not bear on guilt (*mens rea* or *actus reus*) as non-elements of the offense, and therefore as issues for the court rather than the jury, and to require proof by only a preponderance that the offense was committed in the territorial jurisdiction of the court to establish that venue has been properly laid. See *United States v. Bowers*, 660 F.2d 527, 531 (5th Cir. 1981); *Government of Canal Zone v. Burjan*, 596 F.2d 690, 694 (5th Cir. 1979); *United States v. Black Cloud*, 590 F.2d 270 (8th Cir. 1979) (jury question); *United States v. Powell*, 498 F.2d 890, 891 (9th Cir. 1974). The court in *Government of Canal Zone v. Burjan*, 596 F.2d at 694-95, applied the preponderance test to determinations of whether or not the offenses took place within the Canal Zone which established not merely proper venue but subject matter jurisdiction as well. Other cases, however, hold that the issue of whether the United States has jurisdiction over the site of a crime is a judicial question, see *United States v. Jones*, 480 F.2d 1135, 1138 (2d Cir. 1973), but that the issue of whether the act was committed within the borders of the Federal enclave is for the jury and must be established beyond a reasonable doubt. See *United States v. Parker*, 622 F.2d 298 (8th Cir. 1980); *United States v. Jones*, 480 F.2d at 1138. The law of your Circuit must be consulted to determine which approach is followed in your district.


The decision in *Burjan* should be viewed with caution. The analogy between territorial jurisdiction and venue has much to recommend it. Nevertheless, it is important to recognize that the two are not of equal importance. As the *Burjan* court noted, citing Fed. R. Crim. P. 12, subject matter jurisdiction is so important that it cannot be waived and may be noticed at any stage of the proceeding, see *Government of the Canal Zone v. Burjan*, 596 F.2d at 693, whereas the Ninth Circuit in *Powell* rested its ruling that venue need be proved by only a preponderance on the relative unimportance of venue as evidenced by its waivability. There is a clear distinction between the question of which court of a sovereign may try an accused for a violation of its laws and whether the sovereign's law has been violated at all.

Proof of territorial jurisdiction may be by direct or circumstantial evidence, and at least at the trial level may be aided by judicial notice. See *United States v. Bowers*, 660 F.2d at 530-31; *Government of Canal Zone v. Burjan*, 596 F.2d at 694. Compare *Government of Canal Zone v. Burjan*, 596 F.2d 690 with *United States v. Jones*, 480 F.2d 1135, concerning the role judicial notice may play on appeal.

[cited in JM 9-20.100]

665. Determining Federal Jurisdiction

667. Assimilative Crimes Act, 18 U.S.C. § 13

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