

U.S. Court of Federal Claims Holds that United States Wrongfully Destroyed Evidence Regarding Death of Ute Tribal Member Todd Murray

FORT DUCHESNE, UT (Mar. 9, 2020) — A federal court has determined that the Federal Bureau of Investigation failed to collect and even wrongfully destroyed highly relevant evidence regarding the 2007 death of Todd Murray. A member of the Ute Indian Tribe, Murray was shot in the head on tribal trust land 25 miles inside the Uintah and Ouray Indian Reservation, after the Utah State Patrol stopped the vehicle in which he was a passenger.

On Jan. 6, the U.S. Court of Federal Claims imposed spoliation sanctions against the United States, stating that the United States wrongfully destroyed the gun that off-duty Vernal City police officer Vance Norton claimed Murray used to shoot himself. What's more, in an important victory for tribes and tribal members, the U.S. Court of Appeals for the Federal Circuit also determined that the United States is required to compensate Ute members for damages caused by non-Indians on the reservation.

“Murray was not suspected of committing any crime on Apr. 1, 2007, and the Highway Patrol officer reported that he did not believe Murray was armed,” said Luke Duncan, chairman of the Ute Indian Tribe. “Yet after the driver who committed the traffic offenses was arrested, Norton came to the scene—roughly 40 miles from Vernal—and entered the Ute Indian Tribe’s trust land to arrest Murray. He was shot a few minutes later and died within the hour.”

Norton initially claimed that Murray shot once at Norton, Norton shot back twice, and Murray then shot himself. State police noted that there was a gun and two casings nearby. They also discovered a third casing jammed in the gun, after which Norton claimed Murray shot at him twice before shooting himself.

“Norton was allowed free access to the crime scene, and he was allowed to return to his truck without supervision,” Duncan noted. “He claimed to find two shell casings from his own gun, which the United States now claims is the sole physical proof that Norton was too far away from Murray to have fired the fatal shot.”

Because the death was a homicide in Indian Country, the FBI had criminal investigative responsibility. In local newspaper articles, a spokesperson stated the FBI was “going to make sure it was a suicide and not something else.” The FBI made similar promises to Murray’s mother, Debra Jones.

“The FBI did not conduct the promised investigation,” Duncan said. “In its recent briefs to the U.S. Federal Court of Claims, Debra Jones described an investigation that was little more than obtaining secondhand reports regarding Norton’s claim that Murray had shot himself, and then choosing not to collect basic physical evidence that might disprove Norton’s story.

“They didn’t take Norton’s gun as evidence, and although the officers took multiple vials of blood from Murray, none were preserved as admissible evidence,” he continued. “Bizarrely, some did not even reach the evidence room. The officers also took numerous inappropriate pictures of Murray after he died, including one which shows an officer inserting his finger into the gunshot hole in Murray’s head.”

In its motion for spoliation sanctions, the Murray family noted that the first FBI agent assigned to the matter was a friend of Norton’s and knew that Norton was the only living eyewitness to the shooting. The agent chose not to collect any of the physical evidence which had the potential to disprove Norton’s uncorroborated story; the FBI did not examine Norton’s gun, and it failed to test Norton’s gun, hands, and clothing for Murray’s blood or to determine how close Norton was to Murray at the time of the shooting.

In most cases of gunshot suicide, the gun is found within 1 foot of the body, and a right-handed person typically uses his right hand to shoot himself on the right side of the head. In the vast majority of cases, there also will be blood on the victim’s gun and shooting hand. Murray was right-handed, yet he was shot on the left side of his head, and photographs reveal that the gun is about 5 feet from the body with no blood visible on either the gun or Murray’s left hand.

“The United States had to admit that the gun was important evidence and that they took it into evidence on Apr. 1, 2007 and held onto it until Dec. 2008,” Duncan said. “The only defense was to claim that officers did not think litigation was foreseeable.”

In its response to the Murray family’s motion for spoliation sanctions, the United States cited the testimony of two FBI agents who claimed, under oath, that the FBI did not learn of likely litigation until after December 2008. The Murray family, however, had located a September 2008 document by one of those agents in which the agent noted the gun and bullet casings were related to an “active civil suit” involving the Vernal Police Department.

“The Murray family also noted that they discussed the matter with the assigned FBI agent multiple times prior to December 2008,” Duncan said. “So, despite the FBI agent’s statement to the contrary, the court held that the officer chose to wrongfully destroy the gun.”

In fact, the FBI agent assigned to the case repeatedly promised the Murray family that he would investigate the shooting. Yet discovery in the case shows that before he left the crime scene on April 1, 2007, he decided not to collect physical evidence that could be used to determine if Norton had wrongfully killed a member of the Ute Indian Tribe.

The Murray family first brought suit in Utah against Norton and other state officers. In that suit, the court decided that it could not impose sanctions against Norton and his fellow state officers, reasoning that because the United States was responsible for investigating whether Norton had wrongfully killed Murray, Norton or his fellow state officers did not have control over the

evidence. It also held there was not enough evidence for a jury to reject Norton's claim that he had not shot Murray.

While that suit was progressing, the Murray family brought its related suit in the U.S. Federal Court of Claims, arguing that under a Ute treaty provision in which the United States agreed to compensate tribal members for harm caused by "bad man among the whites," the United States is required to pay for the harm that Norton caused. The court rejected the Murray family's treaty interpretation and dismissed the case, but they decided to appeal.

"The U.S. Court of Appeals for the Federal Circuit agreed with their interpretation," Duncan said. "The United States is required to compensate Ute members for damages caused by crimes by non-Indians on the Ute Reservation."

The U.S. Court of Appeals also agreed with the Murray family's perspective that Norton's win in the Utah case was not an exoneration. Instead, he had exploited a loophole in the law based upon his argument that he could not be held responsible for the lack of physical evidence.

The U.S. Court of Appeals stated, "But for the destruction of the cited evidence, Jones may have shown that Murray was, in fact shot by Norton." It then sent the case back to the U.S. Court of Federal Claims, stating that it must reconsider whether to impose spoliation sanctions against the United States. That reconsideration resulted in the Jan. 6 decision.

The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band and the Uintah Band. The tribe has a membership of more than 3,000 individuals, with more than half living on the Uintah and Ouray Reservation. The Ute Indian Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust land that contains significant oil and gas deposits. The Ute Business Committee is the governing council of the tribe, which remains engaged in legal battles with the state of Utah and local counties to protect its jurisdiction over lands that were specifically set aside and reserved by the federal government for the benefit of the tribe.

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