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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,	CR 20-70-BLG-SPW
Plaintiff,	
vs.	TRIAL BRIEF
DONALD RAY GARDNER,	
Defendant.	

The United States of America, represented by Assistant United States Attorney Lori Harper Suek, submits the following trial brief in anticipation of trial.

INTRODUCTION

The defendant, Donald Ray Gardner, has been charged by indictment with two counts of aggravated sexual abuse of a child, in violation of 18 U.S.C. §§ 1153(a) and 2241(a)(1) (Counts I and II), and abusive sexual contact, in violation of 18 U.S.C. §§ 1153(a) and 2244(a)(5) (Counts III, and IV).

ANTICIPATED PROOF

Jane Doe 1 disclosed that when she was a child (under the age of 10 – she estimates around 6 years of age), her mother’s boyfriend, Gardner, sexually abused her. She was living with her mother, Gardner, and siblings including Jane Doe 2 with a relative in Lane Deer, within the boundaries of the Northern Cheyenne Indian reservation. Jane Doe 1 remembers that Gardner touched her under her underwear in her vaginal area. She and Jane Doe 2 were sleeping on the floor and she remembers waking up to Gardner sitting next to her and touching her. She does not know if Gardner touched her more than once as she said that after the sexual abuse, she has “blank spots” in her memories from that time. Jane Doe 1 told her mother, now deceased, about the abuse, but her mother did not believe her. She also told her brother, also deceased, but nothing ever happened.

After Jane Doe 1’s disclosure, Jane Doe 2 was interviewed. Jane Doe 2 confirmed that when she was a child, she estimated between the ages between 8

and 11, Gardner sexually abused her culminating in sexual intercourse. Jane Doe 2 remembers living on the Northern Cheyenne Indian Reservation in a relative's house when her mother started dating Gardner. They then moved to a house in Hardin when Jane Doe 2 was about 8 and Jane Doe 1 was about 7. They lived in the Hardin house for at least 6 months and then when Jane Doe 2 was around 10 and Jane Doe 1 was 9, they moved in with a friend in Colstrip after being evicted from the Hardin apartment. They lived in Colstrip for a short time until they moved to a house in Black Lodge, within the boundaries of the Crow Indian Reservation. One night, Jane Doe 2 remembers that Gardner came into her room, woke her up and took her into the living room. She was on his lap when he removed her pants and underwear and engaged in sexual intercourse with her. Jane Doe 2 also told her mother and brother, but no one believed her, and nothing happened.

Gardner was interviewed by FBI Special Agent Steve Lowe. He admitted that he dated Jane Doe 1's and Jane Doe 2's mother and lived with them and their brother in Hardin, Dunmore (Black Lodge area), and Colstrip.

The parties have entered into a stipulation, agreeing that Gardner is an enrolled member of the Crow Tribe, which is a federally recognized tribe.

LENGTH OF TRIAL AND NUMBER OF WITNESSES

The United States anticipates calling approximately three witnesses during its case-in-chief, one witness during rebuttal, and expects that the case will be submitted to the jury on Tuesday, October 19, 2021.

ELEMENTS OF THE CHARGED OFFENSES

Counts I and III: Aggravated Sexual abuse of a Child

First, the defendant is an Indian person;

Second, the defendant knowingly engaged in a sexual act with Jane Doe 1 (Count I) and Jane Doe II (Count III);

Third, neither Jane Doe 1 nor Jane Doe 2 had reached the age of twelve years; and

Fourth, the offense was committed within the exterior boundaries of the Northern Cheyenne Indian Reservation (Count I) Crow Indian Reservation (Count III).

Counts II and IV: Abusive Sexual Contact

First, the defendant is an Indian person;

Second, the defendant knowingly engaged in sexual contact with Jane Doe 1 (Count II) and Jane Doe 2 (Count IV);

Third, neither Jane Doe 1 or Jane Doe 2 had not yet reached the age of twelve

years; and

Fourth, the offense was committed within the exterior boundaries of the Northern Cheyenne Indian Reservation (Count II) Crow Indian Reservation (Count IV).

PLEA OFFER

Though the United States contacted the defendant's counsel regarding a plea, the defendant's counsel has not indicated that the defendant is interested in a plea agreement in this case.

EVIDENTIARY ISSUES

There are no evidentiary or legal issues known to the United States at this time.

DATED this 12th day of October, 2021.

LEIF M. JOHNSON
Acting United States Attorney

/s/ Lori Harper Suek
LORI HARPER SUEK
Assistant U.S. Attorney