

JAN 03 2000

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,	)	Criminal No. 99-00047
	)	
Plaintiff	)	
	)	
v.	)	ORDER GRANTING
	)	DEFENDANT MENDIOLA'S
FRANKLIN BORJA MUNDO,	)	MOTION TO DISMISS
HERMAN PALACIOS ALDAN,	)	COUNTS II AND III
ALEX SAN NICOLAS BORJA,	)	
and JAMES MASGA MENDIOLA,	)	
	)	
Defendants	)	
_____	)	

THIS MATTER came before the court on Thursday, December 30, 1999, for hearing of defendant Mendiola's motion to dismiss counts II and III of the indictment. Defendant Alex San Nicolas Borja joined in the motion. Plaintiff appeared by and through its attorney, Assistant United States Attorney David T. Wood; defendant Mendiola appeared by and through his attorney, Paul A. Lawlor. The motion was submitted without oral argument.

1 THE COURT, having considered the written arguments of the
2 parties, rules as follows:
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4 Defendant Mendiola's motion to dismiss counts II and III of the indictment
5 is granted. Defendant moved for dismissal of counts II and III on the grounds that
6 the indictment does not allege sufficient facts to establish a violation of 18 U.S.C. §
7 2317, Sale or Receipt of Livestock.
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9 Section 2317 provides in full:

10 Whoever receives, conceals, stores, barter[s], buys, sells, or disposes of
11 any livestock, moving in or constituting a part of interstate or foreign
12 commerce knowing the same to have been stolen, shall be fined under
13 this title or imprisoned not more than five years, or both.

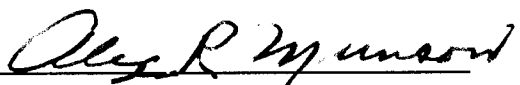
14 The crux of defendant's argument is that the livestock in question were not
15 moved in interstate or foreign commerce, proof of which movement is an essential
16 element of the crime. The leading case on the question comes from the Fifth
17 Circuit, United States v. Hines, 563 F.2d 737 (5th Cir. 1977), *relying on* Watkins v.
18 United States, 409 F.2d 1382 (5th Cir. 1969), *cert. denied*, 396 U.S. 921, 90 S.Ct. 252
19 (1970). In Hines, the court held that because § 2317 "posses[es] and interstate
20 character identical to the interstate character" found in the statutes dealing with
21 stolen motor vehicles, if the government cannot establish that the livestock were part
22 of interstate commerce, it has failed to establish an essential element. *Id.*
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25 Here, the indictment does not allege that the livestock were *moved* in interstate
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1 commerce; rather, that the cattle were killed on the island of Tinian and transported
2 to the island of Saipan. Because both islands are within the Commonwealth of the
3 Northern Mariana Islands there was no interstate movement.
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5 Plaintiff responds that the true question is what goods "constituted a part of
6 foreign commerce," and that the court should look at all the evidence which may
7 bear on the commercial nature or intended destination of the livestock.. Because
8 plaintiff would present evidence that cattle raised on Tinian are regularly sold to the
9 United States Territory of Guam and the state of Yap in the Federated States of
10 Micronesia, the cattle do in fact ultimately constitute a part of interstate or foreign
11 commerce. The court does not find this argument persuasive. The similar language
12 of the motor vehicle statutes and the analysis in Hines together convince the court
13 that defendant's position is well-taken. Accordingly, defendant's motion to dismiss
14 counts II and III of the indictment is granted.
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18 DATED this 3rd day of January, 2000.
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21 
22 ALEX R. MUNSON
23 Judge
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