

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

---

UNITED STATES OF AMERICA

v.

EDWARD LEWIS BROWN, and  
ELAINE A. BROWN,

Defendants.

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Criminal No.: 06-071-SM

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S NOTICE  
AND MOTION FOR THE COURT TO ISSUE AN ORDER TO THE GOVERNMENT  
TO CERTIFY AS TRUE THE ACTUAL VENUE FOR EACH COUNT LISTED IN  
THE INDICTMENT (DOC. NO. 89)**

The United States, by and through its undersigned attorney, hereby opposes the defendants’ Motion for the Court to Issue an Order to the Government to Certify as True the Actual Venue for Each Count Listed in the Indictment (Doc. No. 89). In support of its opposition, the government states as follows:

1. The defendants complain that venue is not adequately alleged in the indictment. They move for an order from the Court requiring the government to submit a sworn statement “that the charged federal offenses occurred on federal land” and to “disclose the address and physical location” for each count. The defendants apparently fail to recognize the concept of concurrent jurisdiction, and seem to be under the belief that venue can lie appropriately in this court only if the alleged crimes were committed on *federal lands* within this district. See, e.g., Defendants Motion, ¶ 5 (“The defendants have made a diligent search to locate federal land inside the boundaries of New Hampshire lawfully ceded to the United States of America and can find only a few post offices that are on federal lands and thus

under federal jurisdiction.”)

2. Contrary to the defendants’ apparent venues, venue properly lies in the district in which the offense occurred. U.S. Const., amend VI; United States v. Maldonado-Rivera, 922 F.2d 934, 968 (2d Cir. 1990); United States v. Bryan, 896 F.2d 68, 72 (5<sup>th</sup> Cir. 1990); United States v. Griley, 814 F.2d 967, 973 (4<sup>th</sup> Cir. 1987); United States v. Felak, 831 F.2d 794, 798 (8<sup>th</sup> Cir. 1987). If the offense is a continuing offense and was begun in one district and completed in another, the government may prosecute the offense in any district in which the criminal activity took place. 18 U.S.C. § 3237(a). In tax evasion cases, where a return was not filed, venue lies appropriately in any district in which the affirmative acts of evasion occurred. Felak, 831 F.2d at 799; United States v. Marchant, 774 F.2d 888, 891 (8<sup>th</sup> Cir. 1985); United States v. Slutsky, 487 F.2d 832, 839 (2d Cir. 1973). There is no requirement that the crime take place on federal lands in the district.
3. For each count, the indictment alleges that the crime took place in the District of New Hampshire. There is no need to allege to that the crime took place on federal lands or to “disclose the address and physical location” of the crime. Accordingly, there is no basis for the defendants’ request for a sworn statement.
4. To the extent the defendants’ motion is deemed a discovery motion, it is time barred. See Local Criminal Rule 12.1(a) (requiring discovery motions to be filed within 30 days after arraignment.) To the extent the defendants’ motion seeks dismissal, it is also not timely. See Local Criminal Rule 12.1(b) (requiring that dismissal motions be filed no later than 21 days before trial.)

For the above-mentioned reasons, the United States respectfully requests that the defendants' motion be denied.

Dated: January 7, 2006

Respectfully submitted,

THOMAS P. COLANTUONO  
United States Attorney

By: /s/William E. Morse  
William E. Morse  
D.C. Bar No. 421934  
Office of the United States Attorney  
53 Pleasant St., 4th Floor  
Concord, New Hampshire 03301  
(603) 225-1552

Certificate of Service

I hereby certify that a copy of the foregoing was forwarded this date by overnight delivery (Saturday service) to Elaine Brown and Edward Brown, defendants, 401 Center of Town Road, Plainfield, New Hampshire 03781.

/s/William E. Morse