

AUG 27 2004

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY TAYLOR,

Defendant - Appellant.

No. 03-30520

D.C. No. CR-03-209-C-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Argued and Submitted August 6, 2004
Seattle, Washington

Before: HALL, CALLAHAN, Circuit Judges, and BERTELSMAN,** District
Judge.

Defendant Larry Taylor appeals the district court's denial of his motion for

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** The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

judgment of acquittal following his conviction for five counts of theft pursuant to 18 U.S.C. §§ 661 and 1153.¹

Taylor's argument that the government failed to prove the essential element of his status as an "Indian" is without merit. Taylor does not dispute that the government produced evidence that he is of Sioux lineage; that he was "socially recognized" as an Indian; that he was raised on the Nez Perce Reservation and returned to live there as an adult; and that he had family members on the reservation with whom he was linked both in lineage and in social relations. Proof of these factors is sufficient to establish by circumstantial evidence Taylor's status as an "Indian." See, e.g., United States v. Keys, 103 F.3d 758, 761 (9th Cir. 1996); Duro v. Reina, 851 F.2d 1136, 1144 (9th Cir. 1987), rev'd on other grounds, 495 U.S. 676 (1990).

Therefore, the district court did not err in denying Taylor's motion for judgment of acquittal.

AFFIRMED.

¹ 18 U.S.C. § 1153(a) criminalizes various offenses committed by an Indian against another Indian, specifically incorporating the felony theft provision found in 18 U.S.C. § 661.