

FILED

AUG 19 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

LJO, JUVENILE MALE,

Defendant-Appellee.

No. 13-10340

D.C. No.

4:12-cr-00516-CKJ-BPV-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Argued and Submitted August 12, 2016
San Francisco, California

Before: HAWKINS and GRABER, Circuit Judges, and SELNA,** District Judge.

The United States appeals the district court's judgment of acquittal. The district court held that it lacked jurisdiction over this juvenile delinquency case under the Indian Major Crimes Act, 18 U.S.C. § 1153, because the government had presented

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable James V. Selna, United States District Judge for the Central District of California, sitting by designation.

insufficient evidence at trial to establish that LJO's Indian blood derived from a federally recognized tribe, citing *United States v. Zepeda*, 705 F.3d 1052 (9th Cir. 2013). Intervening authority requires that we reverse and remand for the district court to consider the effect of the superseding en banc opinion in *United States v. Zepeda*, 792 F.3d 1103 (9th Cir. 2015) (en banc), *cert. denied*, 136 S. Ct. 1712 (2016). The district court should also decide in the first instance whether to take judicial notice of the Tohono O'odham Constitution for purposes of determining whether the government proved beyond a reasonable doubt that LJO has "some quantum of Indian blood." *Id.* at 1113.

REVERSED AND REMANDED.