

United States v. Smyer, [596 F.2d 939 \(10th Cir. 1979\)](#), *cert. denied*, 444 U.S. 843 (1979).

Location: Gila National Forest in New Mexico

Applicable Law: [Antiquities Act \(16 U.S.C. §§ 431 et seq.\)](#)

Where Law Applies: *Antiquities Act*: Applies on land owned or controlled by the United States government, including the outer continental shelf

Holding: The enforcement of the Antiquities Act is not unconstitutionally vague as applied to “ruins” and “objects of antiquity” that a reasonable person would understand to be protected by the Act, such as an 800-900 year-old prehistoric ruin and artifacts from that ruin.

General Facts:

In 1977, forest rangers in the Mimbres Ranger District of the Gila National Forest in New Mexico discovered tire tracks leading to the area of the National Forest where two prehistoric Mimbres ruins were located. The rangers followed the tire tracks to the ruins and found several freshly dug holes at each ruin, as well as shovels, picks, a sifting screen, and a small pottery bowl. Nearby, the rangers also discovered an abandoned pick-up truck, which they then had towed. That same night, Byron May went to one of the ranger’s homes and told the ranger that he had been out scouting for deer in the forest and that his truck had been stolen. Over the next few days, the rangers obtained statements from May and his friend, William Smyer and pursuant to a warrant to search Smyer’s home, seized several pieces of Mimbres pottery, later identified as originating from the two Mimbres ruins in question.

Procedural Posture:

In 1979, the U.S. Court of Appeals for the Tenth Circuit affirmed William Smyer’s and Byron May’s convictions for excavating prehistoric ruins and appropriating objects of antiquity in violation of the Antiquities Act, which states:

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.” (16 U.S.C. § 433 (1906)).

Court Holding and Reasoning:

The lower court found both Smyer and May guilty of eleven counts of excavating prehistoric ruins and appropriating objects of antiquity from the Gila National Forest in violation of the Antiquities Act. Smyer and May challenged the constitutionality of the Antiquities Act pointing

to *United States v. Diaz*, where the Ninth Circuit held the Antiquities Act to be unconstitutionally vague because of the Act's failure to define terms of uncommon usage such as "ruin" or "antiquity". The court in *Diaz* felt that there was nothing in the Antiquities Act to put the public on notice that "antiquity" also included objects of recent manufacture connected to a long-standing religious or social tradition. Here, however, the Tenth Circuit disagreed with the Ninth Circuit's determination, stating that "in assessing vagueness, a statute must be considered in the light of the conduct with which the defendant is charged." The Antiquities Act is very clearly meant to protect ruins and antiquities that are 800-900 years old and located on government owned or controlled land. Therefore, as applied in this case, the court held that the Antiquities Act was not unconstitutionally vague because Smyer and May were adequately put on notice that their actions were in violation of the Act.