

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR-7

Plaintiff,

ORDER DENYING DEFENDANT
SHAWNA COX'S MOTION FOR
CERTIFIED COPIES OF
GRAND JURY TRIAL
TRANSCRIPTS AND RECORDS
SUBMITTED TO GRAND JURY

v.

SHAWNA COX,

Defendant.

BROWN, Judge.

This matter comes before the Court on Defendant Shawna Cox's Motion (#986) for Certified Copies of Grand Jury Trial Transcripts and Records Submitted to Grand Jury.

Cox, proceeding *pro se*, filed her Motion on August 5, 2016, more than three months after the April 27, 2016, deadline for filing purely legal motions. The Court set that deadline pursuant to its authority under Federal Rule of Criminal Procedure 12(c), and in order to permit the Court and the parties

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to litigate this complex case in an efficient manner and to permit the parties sufficient time to prepare for trial with the benefit of the Court's rulings. Accordingly, on August 8, 2016, the Court directed Cox to show good cause for her failure to file her Motion timely. On August 12, 2016, Cox filed a Declaration (#1029) of Shawna Cox in response to the Court's order to show cause.

In her Declaration, Cox contends her failure to file her Motion timely was a result of the alleged failure of her then-counsel (who now serves as Cox's standby counsel) to communicate effectively and to follow Cox's instructions. Cox also raises several other frivolous arguments that do not merit particularized discussion.

To the extent Cox asserts she failed to file her motion timely as a result of ineffective assistance of counsel, that assertion is properly raised in the event she is ultimately convicted in this matter and after she has exhausted her appeals.¹ Cox's Declaration does not otherwise provide any basis to excuse her untimely filing of this Motion.

Accordingly, on this record the Court denies as untimely

¹ Although the Court is not privy to the interactions between Cox and her now-standby counsel, the Court nevertheless has observed that counsel's representation of Cox has been vigorous in every respect and exceptional in quality.

Defendant Shawna Cox's Motion.

In any event, even if the Court reached the merits of Cox's Motion, the Court would nonetheless deny it. Cox contends she must be permitted to inspect grand jury records because she believes the Criminal Complaint (#14) contains a factual error regarding an alleged incident between co-Defendants Blaine Cooper and Jon Ritzheimer and a Bureau of Land Management employee,² the government's presentation to the grand jury omitted allegedly exculpatory evidence and contained hearsay evidence, and the grand-jury records could contain evidence of malicious prosecution.

"Grand juries operate secretly." *United States v. Navarro*, 608 F.3d 529, 536 (9th Cir. 2010). The court, however, "may authorize disclosure . . . of a grand jury matter . . ." "at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury." Fed. R. Crim. P. 6(e)(3)(E)(ii). "Discovery of grand jury transcripts may be ordered if the party seeking disclosure has demonstrated that a particularized need exists that outweighs the policy of grand jury secrecy." *United States v. Murray*, 751 F.2d 1528, 1533 (9th Cir. 1985). See also *United*

² The Court notes the only alleged factual error that Cox identifies with particularity does not directly involve Cox.

States v. Graham, 630 F. App'x 712, 715 (9th Cir. 2015). If the alleged basis for the defendant's motion "would not have compelled the dismissal of the . . . indictment," then the defendant's motion for discovery of grand jury records should be denied. *Murray*, 751 F.2d at 1533-34.

The alleged factual error in the Criminal Complaint is not sufficiently significant that, if true, it would compel the dismissal of the Superseding Indictment in this case. Moreover, the use of hearsay evidence before the grand jury could not provide a basis for dismissing the Indictment because the Federal Rules of Evidence do not apply to grand jury proceedings. See Fed. R. Evidence 1101(d)(2). In addition, the government is not required to present potentially exculpatory evidence to the grand jury. *United States v. Williams*, 504 U.S. 36, 52-53 (1992). See also *Navarro*, 608 F.3d at 573. Finally, an unspecified search for evidence of prosecutorial misconduct does not establish a "particularized need" for grand jury transcripts. *Graham*, 630 F. App'x at 715. In short, Cox does not provide any plausible basis on which she could establish a particularized need for the grand jury transcripts that could overcome the policy of secrecy. Accordingly, even if Cox had filed her Motion timely, it would nonetheless have been denied.

On this record, therefore, the Court **DENIES** as untimely

Cox's Motion (#986) for Certified Copies of Grand Jury Trial
Transcripts and Records Submitted to Grand Jury.

IT IS SO ORDERED.

DATED this 15th day of August, 2016.



ANNA J. BROWN
United States District Judge