

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

ORDER DENYING MOTIONS
(#1186, #1188, #1189,
#1190, #1192, #1196)
FILED BY DEFENDANT
SHAWNA COX

v.

AMMON BUNDY, RYAN BUNDY,
SHAWNA COX, DAVID LEE FRY,
JEFF WAYNE BANTA, KENNETH
MEDENBACH, and NEIL WAMPLER,

Defendants.

BROWN, Judge.

This matter comes before the Court on six Motions filed by Defendant Shawna Cox on September 6, 2016. The government filed a Response (#1223) to Cox's Motions on September 7, 2016, but Cox did not file any reply within the time provided. On September 14, 2016, the Court originally issued an Order (#1273) Denying Motions (#1186, #1188, #1189, #1190, #1192, #1196) Filed by Defendant Shawna Cox. On September 16, 2016, however, Defendant Shawna Cox requested the Court withdraw that Order on the basis that she inadvertently missed the deadline to file a reply memorandum and desired an additional opportunity to do so. Accordingly, by Order (#1290) the Court withdrew its September

14, 2016, Order (#1273), and permitted Cox an opportunity to file a reply memorandum no later than 5:00 p.m., September 19, 2016. Cox filed that Reply Memorandum (#1303) on September 20, 2016.

In her Reply Memorandum, Cox addresses the government's arguments concerning her Motion (#1186) to Dismiss and Motion (#1196) to Dismiss for Lack of Subject Matter Jurisdiction. Cox also raises numerous other issues, many of which are not directly relevant to the pending Motions and do not raise any legally cognizable issue for this Court to consider.

Moreover, Cox includes in this Reply Memorandum various "stipulations" that she requests the Court present to the jury. It does not appear, however, that the government joins those "stipulations." In addition, the "stipulations" appear to include material that may be improper to submit to the jury. Accordingly, to the extent that Cox intends to offer any such material as evidence at trial, the Court directs Cox to raise it initially outside of the presence of the jury in order for the government to respond to any such submission and for the Court to rule on its admissibility.

The Court concludes the existing record on these Motions is sufficient to resolve these Motions without oral argument.

I. Motion (#1186) to Dismiss

In her Motion (#1186) to Dismiss Cox moves to dismiss this action on the basis that (1) this Court lacks jurisdiction

because Cox was arrested by Oregon State Police rather than by federal law enforcement; (2) venue is improper in the Portland Division of the District of Oregon, and, therefore, a jury drawn from the Portland area would be unfairly prejudicial because the jury pool would be more "liberal" than in the Pendleton Division; (3) the Criminal Complaint in this matter was defective; (4) the government was required to institute a civil quiet title and ejectment action before instituting these criminal proceedings; and (5) the evidence does not support the charges in the Superseding Indictment.

The mere fact that Cox was arrested by Oregon State Police does not deprive this Court of jurisdiction. This Court has jurisdiction over these criminal proceedings because the Defendants are charged with violating federal criminal statutes. See 18 U.S.C. § 3231.

Cox's separate contention that venue is improper in the Portland Division lacks merit. The Court notes the Portland Jury Management Division of the District of Oregon is a subdivision of the District set up to "facilitate juror management activities" and for other administrative functions. Decl. (#538) of Teresa Glover, Jury Administrator, Ex. 1 (Juror Management Plan). In any event, venue lies in the District of Oregon and not in any particular Division thereof. See Fed. R. Crim. P. 18 ("[T]he government must prosecute an offense in a district where the

offense was committed."). Moreover, Cox's arguments regarding the jury pool are meritless because, as some Defendants urged the Court to do, the Court drew the jury pool in this case from the entire District.¹ See Order (#599) Directing Clerk to Issue Jury Summonses (issued May 24, 2016).

The Court notes any deficiencies in the Criminal Complaint (#14) asserted by Cox do not support dismissal of this action because that Complaint was superseded by the Indictment (#58) and, in turn, the Superseding Indictment (#282), which establishes probable cause as a matter of law. In addition, the Court notes Cox has not provided any authority for the unusual proposition that the government was required to file a civil action before filing criminal proceedings.

Finally, Cox's contentions regarding the sufficiency or truth of the evidence against her do not establish a basis for a pretrial Motion to Dismiss, and, in any event, the sufficiency of the evidence is a matter for the Court's consideration at the close of the government's case-in-chief pursuant to Federal Rule of Criminal Procedure 29.

On this record, therefore, the Court **DENIES** Cox's Motion (#1186) to Dismiss.

¹ In any event, Cox does not cite any authority for the proposition that she is entitled to a jury pool with any particular political representation.

II. Motion (#1188) for Production of Evidence Favorable to the Accused

The Court **DENIES** Defendant Shawna Cox's Motion (#1188) for Production of Evidence Favorable to the Accused. At the September 6, 2016, hearing, the government again represented it has complied with all of its discovery obligations as certified at numerous stages of these proceedings. In its Response (#1223) to Cox's Motion, the government states it "is aware of its obligation to produce any exculpatory, favorable information, and it will continue to do so." Cox has not identified any particular evidence that she contends the government has not provided.

On this record, therefore, the Court concludes there is not any ripe issue before the Court regarding the government's discovery obligations.

III. Motion (#1189) for Order to Dismiss Based on Entrapment

The Court **DENIES** Defendant Shawna Cox's Motion (#1189) for Order to Dismiss Based on Entrapment.

Although entrapment is a defense on which the jury may be instructed in the event evidence is introduced pertaining to that defense, it is not a basis for pretrial dismissal of an indictment. As the Court noted in its Order (#1226) Regarding September 6, 2016, Hearing in response to a similar argument by Defendant Ryan Bundy, the Court will include a jury instruction

on entrapment in the Final Jury Instructions if trial evidence makes it appropriate to do so.

IV. Motion (#1190) to Suppress Evidence Seized at the Time of Arrest

Cox moves to suppress "all evidence alleged to have been found in any flash drives or other mobile devices taken from the Defendant's person at the time of arrest."² Cox contends the flash drives and mobile devices seized at the time of her arrest were searched without a warrant. Cox's "flash drives" and "mobile devices," however, were searched pursuant to a warrant issued by Magistrate Judge Paul Papak on April 22, 2016. *See In re 18 Electronic Devices, Currently in Law Enforcement Possession*, 3:16-mc-00217 (#2)(Sealed).

Accordingly, on this record the Court **DENIES** Cox's Motion (#1190) to Suppress Evidence Seized at the Time of Arrest.

V. Motion (#1192) for Extension of Time to File Pretrial Motions

The Court **DENIES** Defendant Shawna Cox's Motion (#1192) for Extension of Time to File Pretrial Motions to the extent that she seeks a continuance of the trial date. The Court will address all motions made during trial as time and circumstances permit,

² Motions to suppress were due June 15, 2016, pursuant to the Court's Order (#523) issued May 6, 2016. Cox has not shown good cause for her failure to timely file her Motion. In the exercise of its case-management discretion, the Court, nonetheless, addresses the merits of Cox's Motion.

but such motions are subject to denial without addressing the merits if they are untimely or repetitious.

VI. Motion (#1196) to Dismiss for Lack of Subject Matter Jurisdiction

In her Motion (#1196) to Dismiss for Lack of Subject Matter Jurisdiction Cox raises several arguments that the Court has already addressed and rejected on multiple occasions concerning venue and the Court's subject-matter jurisdiction over these criminal proceedings. Cox's Motion also contains considerable material that does not raise any legally cognizable issue for this Court to address. Finally, although Cox contends she was never arraigned on the Superseding Indictment, that contention is without merit. As the record reflects, this judicial officer personally presided over Cox's arraignment on the Superseding Indictment at the Status Conference held on March 9, 2016. Minutes of Proceedings (#284).

Accordingly, on this record the Court **DENIES** Cox's Motion (#1196) to Dismiss for Lack of Subject Matter Jurisdiction.

IT IS SO ORDERED.

DATED this 20th day of September, 2016.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge