

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

LEGAL STANDARDS,
FINDINGS OF FACT, AND
VERDICTS ON CLASS B
MISDEMEANOR CHARGES

v.

JASON PATRICK, DUANE LEO
EHMER, DARRYL WILLIAM THORN,
and JAKE RYAN,

Defendants.

BROWN, Judge.

This matter comes before the Court following the bench trial (see Orders #1756, #1775) on the Class B misdemeanors ("petty offenses") that the government brought against Defendants Jason Patrick, Duane Leo Ehmer, Darryl William Thorn, and Jake Ryan in the Misdemeanor Information (#1628) filed January 19, 2016.

The evidentiary record for these petty offenses includes all of the evidence received during Defendants' jury trial that began February 14, 2017, on the felony counts in the Superseding Indictment (#282) and Indictment (#1) in Case No. 3:16-cr-00493-

BR-1 as well as additional evidence that the parties submitted via testimony and exhibits after the felony charges were submitted to the jury. In addition to this evidentiary record, the Court has considered all of the oral and written arguments relevant to these petty offenses submitted throughout these proceedings, including the filings the parties made with leave of Court after the conclusion of closing arguments.

For the reasons that follow, the Court enters the following Verdicts on the counts in the Misdemeanor Information:

I. Count One: Trespassing

Defendant Jason Patrick: **GUILTY**

Defendant Duane Leo Ehmer: **GUILTY**

Defendant Darryl William Thorn: **GUILTY**

Defendant Jake Ryan: **GUILTY**

II. Count Two: Tampering with Vehicles and Equipment

Defendant Jason Patrick: **GUILTY**

III. Count Three: Tampering with Vehicles and Equipment

Defendant Duane Leo Ehmer: **GUILTY**

Defendant Jake Ryan: **GUILTY**

IV. Count Four: Tampering with Vehicles and Equipment

Defendant Darryl William Thorn: **NOT GUILTY**

V. Count Five: Tampering with Vehicles and Equipment

Defendant Darryl William Thorn: **GUILTY**

VI. Count Six: Destruction and Removal of Property

Defendant Jason Patrick: **GUILTY**

VII. Count Seven: Removal of Property

Defendant Duane Leo Ehmer: **NOT GUILTY**

FINDINGS AS TO BACKGROUND FACTS

Having completed its deliberations on the described evidentiary record, the Court finds the following facts beyond a reasonable doubt:

I. The Hammond Case

1. Burns is a small town in Harney County, which is a large, rural county in southeastern Oregon within the District of Oregon.

2. On June 21, 2012, Dwight and Steven Hammond (collectively referred to as the Hammonds), who resided in Burns and its surrounding area, were found guilty of felony arson charges after a federal jury trial in Pendleton, Oregon. Dwight Hammond was convicted of one count of arson and Steven Hammond was convicted of two counts of arson.¹

3. On October 30, 2012, the United States District Judge who presided over the jury trial sentenced Dwight Hammond to

¹ The jury failed to reach a verdict on additional charges that ultimately were dismissed.

three months imprisonment and Steven Hammond to twelve months and a day imprisonment. The government appealed these sentences as legally erroneous in light of the five-year mandatory-minimum sentence required by 18 U.S.C. § 844(f)(1) for each count of conviction.

4. During the pendency of the government's appeal the Hammonds surrendered to the Bureau of Prisons, completed their original sentences, and returned to Burns. Thereafter, on February 7, 2014, however, the Ninth Circuit Court of Appeals found their original sentences were legally erroneous, vacated the sentences, and remanded the Hammonds' cases back to the District of Oregon for re-sentencing consistent with the Ninth Circuit Mandate.

5. The Hammonds sought review of the Ninth Circuit Mandate by the United States Supreme Court, but the Supreme Court denied review. The Mandate thereby became final.

6. Accordingly, pursuant to the Mandate a different² United States District Judge re-sentenced the Hammonds on October 7, 2015, to the mandatory five-year term of imprisonment applicable to each count of conviction. The District Judge permitted the Hammonds to remain out of custody through the 2015 year-end holidays and directed them to surrender to the Bureau of

² The trial judge had retired during the appeals process.

Prisons on January 4, 2016, to serve the remainder of their modified sentences.

II. Protest in Burns

7. Many individuals both within and outside of the Burns area learned of the re-sentencing decisions and strongly objected to the Hammonds' being required to return to prison.

8. Beginning in November 2015 individuals from outside the Burns area, including Ammon Bundy who lived in Emmett, Idaho, traveled to Burns to organize a protest in support of the Hammonds. At least some of them also sought to prevent the Hammonds from being required to return to prison.

9. At various times in November and December 2015 Ammon Bundy, Ryan Payne, Defendant Jason Patrick, and others attempted to convince various officials, including Harney County Sheriff David Ward, to assist their efforts to prevent the Hammonds from being required to return to prison.

10. As part of their ongoing protest of the re-sentencing of the Hammonds, Ammon Bundy and others, including Defendant Jason Patrick, organized and recruited people during December 2015 to participate in a protest march to take place on January 2, 2016, in Burns, Oregon, in support of the Hammonds.

11. In anticipation of the January 2, 2016, march, Ammon Bundy held a private meeting on December 29, 2015, at a home in Burns, Oregon. Ryan Payne, Jon Ritzheimer, Blaine Cooper,

Defendant Jason Patrick, and others were present at that meeting. Ammon Bundy requested all attendees to leave their cellular telephones outside of this meeting so that the substance of the meeting would not be recorded.

12. At the December 29, 2015, meeting, Ammon Bundy proposed an armed takeover of the Malheur National Wildlife Refuge (MNWR) (located approximately 30 miles south of Burns) to take place after the protest march on January 2, 2016. Some, but not all, of the meeting attendees agreed with Ammon Bundy's plan.

13. On January 2, 2016, the protest March in Burns took place. The protest march was peaceful and indisputably lawful.

III. Occupation of the Malheur National Wildlife Refuge

14. The entirety of the MNWR lies within the District of Oregon and is owned by the United States.

15. Consistent with the plan developed at the December 29, 2015, meeting, Ryan Payne, Jon Ritzheimer, Defendant Jason Patrick, Blaine Cooper, Brand Thornton, Walter "Butch" Eaton, and others left Burns as the January 2, 2016, protest march was concluding. They drove in multiple vehicles to the MNWR headquarters compound.

16. When they arrived at the MNWR headquarters compound, these individuals conducted a military-style sweep of most of the MNWR headquarters buildings to ensure that there were not any MNWR employees present. Most of the individuals who conducted

the sweep, including Defendant Jason Patrick, were armed with long guns, including AR-15-type semiautomatic rifles.

17. After sweeping the buildings, these individuals set up armed blockades at each entrance to the MNWR headquarters compound and placed armed individuals in a fire watchtower near the main entrance to the MNWR headquarters to keep lookout on the surrounding area. Those who staffed the blockades were usually also equipped with radios. By taking over the MNWR in this fashion, the armed occupiers secured the MNWR headquarters compound and controlled who could enter and remain on the premises.

18. Due to holiday and weekend staffing there were not any employees present at the MNWR when the individuals conducted the sweep, but the MNWR was otherwise open to the public on January 2, 2016. There were, nevertheless, numerous signs around the MNWR headquarters compound that gave notice of the hours during which the MNWR was open to the public, the specified conduct that was permitted and prohibited on the MNWR, and the identified areas that were always closed to the public. Multiple signs clearly stated the MNWR was only open to the public from sunrise to sunset.

19. At the conclusion of the protest march in Burns, Ammon Bundy announced to the remaining protesters that he and others had decided to continue the protest by taking a "hard stand" and

taking over the MNWR, and he invited protesters to join them at the MNWR.

20. Ammon Bundy and others from the protest proceeded to the MNWR to join those who had earlier swept and secured the MNWR headquarters compound. This conduct began the armed occupation of the MNWR headquarters compound that would last until February 12, 2016.

21. Between January 2 and January 26, 2016, various occupiers organized armed "security" teams that maintained the armed blockades at the entrances to the MNWR headquarters compound and the armed lookouts in the fire watchtower near the main entrance to the MNWR headquarters compound.

22. Notwithstanding these armed security measures, the occupiers permitted various individuals to proceed past the blockades at the entrances, to visit the MNWR headquarters area, or to stay and to join the occupation. Most of those individuals who were permitted to enter the MNWR were supporters of the occupiers, but from time to time media representatives and counter-protesters were also permitted to enter the MNWR headquarters compound. Nevertheless, no federal officials, including federal law-enforcement officers, BLM employees, or MNWR employees, entered the MNWR headquarters compound during the occupation. If any MNWR employee or unsympathetic federal official had sought entry at the entrance to the MNWR

headquarters compound during the occupation, it is highly improbable that the occupiers would have permitted them to enter the premises.

23. Those who occupied the MNWR exercised control in varying degrees over most buildings in the MNWR headquarters compound, and they used many of the buildings as sleeping, meeting, and living quarters or as offices.

24. During the armed occupation of the MNWR headquarters compound, the occupiers used vehicles and equipment owned by the United States Fish and Wildlife Service (USFWS) that were ordinarily kept at the MNWR and used by MNWR employees in the performance of their duties. The occupiers used the vehicles and equipment both for transportation and to block the entrances to the MNWR headquarters compound. These vehicles and equipment included construction and maintenance equipment, USFWS-owned trucks, and other vehicles such as all-terrain vehicles.

25. Throughout the armed occupation Ammon Bundy and others publicly and repeatedly expressed their objections not only to the handling of the Hammonds' case ("the plight of the Hammonds") but also their objections to federal land-ownership and land-management policies ("federal overreach"). In particular, Ammon and Ryan Bundy publicly and repeatedly stated the MNWR was the type of federal facility that facilitated the federal land-ownership and land-management policies to which they strenuously

objected and that they wished to overturn.

26. As part of their objections to "federal overreach" in land-management policies, Ammon Bundy and other occupiers advocated asserting a claim of "adverse possession" on the MNWR to try to redistribute ownership of its land to local landowners.

27. Throughout the armed occupation the occupiers gave various and conflicting indications of how long they planned for the occupation of the MNWR headquarters compound to continue. The occupiers made abundantly clear, however, that they intended to maintain their armed occupation and control over the MNWR as long as necessary to achieve their various goals.

28. As noted, there were numerous signs throughout the MNWR headquarters compound that gave notice of the hours the MNWR was open to the public and of certain marked areas that were always closed to the public. See, e.g., Ex. 61, 91, 126, 165, 440. Although no federal-government official ever served the individuals occupying the MNWR with a notice of trespass or an official demand to leave the MNWR, on several occasions various individuals, including Sheriff Ward, unequivocally communicated to the occupiers via Ammon Bundy and the media that they were not welcome to remain at the MNWR and that they should leave. In light of the extrajudicial nature of the occupation, service of a formal notice of trespass on those occupying the MNWR would have been a meaningless action and would have created an unreasonable

risk of unnecessarily enflaming a volatile situation involving numerous armed individuals.

29. Each person who participated in the occupation of the MNWR, including Defendants Patrick, Ehmer, Thorn, and Ryan, knew the MNWR was the property of the United States government and knew they were not authorized to occupy and to exercise control over the property as they did. This fact was not only obvious to any reasonable observer, it was fundamental to the purposes of those who took over and continued to control the MNWR. Indeed, knowing that their actions were not authorized was inherent in the occupiers' efforts to attempt to assert "adverse possession" over the MNWR and to protest what they described as federal-government overreach.

IV. Participation of Defendants

30. As noted, Defendant Jason Patrick was among those who conducted the initial, armed sweep of the MNWR. Patrick remained at the MNWR from January 2, 2016, through January 27, 2016, when he was arrested as he attempted to leave. Patrick was a leader of the occupation from its inception.

31. Defendant Duane Leo Ehmer first arrived at the MNWR on January 3, 2016, and left on January 27, 2016, when he was arrested as he attempted to leave. Ehmer was a member of a security team on the MNWR, performed armed guard duty at the main entrance blockade to the MNWR and kept lookout in the fire

watchtower. Ehmer made at least one brief trip back to his home in Irrigon, Oregon, at some point during the occupation, but he and his horse, "Hellboy," were otherwise a regular presence at the MNWR during the occupation.

32. Defendant Darryl William Thorn posted on social media about being part of the MNWR occupation as early as January 3, 2016, and he definitely was present at the MNWR no later than January 6, 2016, but whether Thorn arrived on January 3, 2017, or January 6, 2017, is not material. Thorn left the MNWR either late in the evening of January 26, 2016, or early in the morning of January 27, 2016. Thorn was also a member of an armed security team on the MNWR, performed guard duty at the blockades to the entrances of the MNWR, and kept lookout in the fire watchtower.

33. Defendant Jake Ryan was inspired by viewing online videos and other postings of Ammon Bundy before and during the occupation of the MNWR headquarters compound. On January 15 and 16, 2016, Ryan traveled from his home in Plains, Montana, to the MNWR with his father, brother, and a family friend. Ryan arrived at the MNWR on January 16, 2016. Once there he decided not to return to Plains with his father and the others. Ryan was also a member of an armed security team at the MNWR, and he stayed at the MNWR until January 28, 2016.

34. Defendants Patrick, Ehmer, Thorn, and Ryan, therefore,

each actively participated in the armed occupation of the MNWR.

COUNT ONE: TRESPASSING
ALL DEFENDANTS

In Count One the government charges Defendants Jason Patrick, Duane Leo Ehmer, Darryl William Thorn, and Jake Ryan with Trespassing in violation of 50 C.F.R. § 26.21.

I. Standard

The parties stipulate that in order for any Defendant to be found guilty of the Count One Trespassing charge, the government must prove beyond a reasonable doubt that on or between January 2, 2016, and February 11, 2016, in the District of Oregon, the particular Defendant: (1) knowingly entered, occupied, and/or used the Malheur National Wildlife Refuge and (2) that Defendant knew he was not authorized to do so.

A person acts "knowingly" if the person is aware of the act and does not act through ignorance, mistake or accident. The Court may consider evidence of a Defendant's words, acts or omissions, along with all other evidence, in deciding whether a particular Defendant acted knowingly.

II. Findings of Fact and Verdict as to Defendant Jason Patrick

A. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. As noted, Defendant Jason Patrick came to the MNWR on January 2, 2016, together with the first group of individuals who arrived and, while armed, personally participated in the sweep of the MNWR headquarters compound to ensure that no employees were present.

2. Patrick remained at the MNWR until January 27, 2016.

3. During the occupation Patrick remained at the MNWR during both daytime and nighttime hours. *See, e.g., Ex. 402.*

4. Throughout his time at the MNWR Patrick personally participated in and helped to lead and to maintain the armed occupation of the MNWR. Patrick thereby participated in taking from the USFWS and maintaining exclusive control over the entirety of the MNWR headquarters compound, including areas that were closed to public access.

5. Patrick acted knowingly; that is, he knew neither he nor the other participants in the occupation were authorized to occupy the entirety of the MNWR headquarters compound during both daytime and nighttime hours or to exercise exclusive control over the compound.

B. Verdict

On this record, therefore, the Court finds Defendant Jason Patrick **GUILTY** of trespassing as charged in Count One of the Misdemeanor Information.

III. Findings of Fact and Verdict as to Defendant Duane Leo Ehmer

A. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. As noted, Defendant Duane Leo Ehmer arrived at the MNWR on January 3, 2016.

2. Although Ehmer made at least one trip back to his home in Irrigon, Oregon, during the occupation of the MNWR, Ehmer remained at the MNWR during both daytime and nighttime hours over most of the occupation. See, e.g., Ex. 113. Ehmer left the MNWR on January 27, 2016.

3. Throughout his time at the MNWR Ehmer participated in the armed occupation of the MNWR, was an armed member of a security team, performed guard duty at the blockade at the main entrance to the MNWR headquarters compound, and kept watch in the fire watchtower. See Ex. 35, 113.

4. Ehmer acted knowingly; that is, he knew neither he nor the other participants in the occupation were authorized to occupy the entirety of the MNWR headquarters compound during both daytime and nighttime hours or to exercise exclusive control over the compound.

B. Verdict

On this record, therefore, the Court finds Defendant Duane Leo Ehmer **GUILTY** of trespassing as charged in Count One of the

Misdemeanor Information.

IV. Findings of Fact and Verdict as to Defendant Darryl William Thorn

A. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. As noted, Defendant Darryl William Thorn arrived at the MNWR as early as January 3, 2016, and no later than January 6, 2016.

2. Thorn left the MNWR either late in the evening of January 26, 2016, or early in the morning of January 27, 2016.

3. During the occupation Thorn remained at the MNWR during both daytime and nighttime hours.

4. Throughout his time at the MNWR Thorn participated in the armed occupation of the MNWR, was an armed member of a security team, performed guard duty at the blockades at the entrances to the MNWR headquarters compound, and kept watch in the fire watchtower. *See, e.g., Ex. 47.*

5. Thorn acted knowingly; that is, he knew neither he nor the other participants in the occupation were authorized to occupy the entirety of the MNWR headquarters compound during both daytime and nighttime hours or to exercise exclusive control over the compound.

B. Verdict

On this record, therefore, the Court finds Defendant Darryl William Thorn **GUILTY** of trespassing as charged in Count One of the Misdemeanor Information.

V. Findings of Fact and Verdict as to Defendant Jake Ryan

A. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. As noted, Defendant Jake Ryan arrived at the MNWR on January 16, 2016.

2. Ryan left the MNWR on January 28, 2016.

3. During the occupation Ryan remained at the MNWR during both daytime and nighttime hours. *See, e.g., Ex. 402.*

4. Throughout his time at the MNWR Ryan participated in the armed occupation of the MNWR, was an armed member of a security team, and participated in firearms target practice together with leaders of the security teams at the MNWR that included Ryan Payne and Jon Ritzheimer.

5. Ryan acted knowingly; that is, he knew neither he nor the other participants in the occupation were authorized to occupy the entirety of the MNWR headquarters compound during both daytime and nighttime hours or to exercise exclusive control over the compound.

B. Verdict

On this record, therefore, the Court finds Defendant Jake Ryan **GUILTY** of Trespassing as charged in Count One of the Misdemeanor Information.

COUNTS TWO THROUGH FIVE: APPLICABLE LEGAL STANDARDS
ALL DEFENDANTS

In each of Counts Two through Five the government charges at least one Defendant with Tampering with Vehicles and Equipment in violation of 50 C.F.R. § 27.65. Section 27.65 provides:

Tampering with, entering, or starting any motor vehicle, boat, equipment or machinery or attempting to tamper with, enter, or start any motor vehicle, boat, equipment or machinery on any national wildlife refuge without proper authorization is prohibited.

Before trial the government and Defendants agreed the following elements constitute a violation of § 27.65: the particular Defendant (1) knowingly entered and started a motor vehicle or equipment; (2) knowing that the vehicle or equipment was property of the United States Government; and (3) knowing he was not authorized to do so. Following closing arguments, however, the government filed a Supplemental Memorandum (#2003) Regarding Misdemeanor Trial in which it contends its previous position was erroneous and the result of an oversight. In particular, the government argued the Court need not find the particular Defendant knew the vehicle and/or the equipment at

issue were government property.

In light of the government's eleventh-hour change in its position as to the elements of a violation of § 27.65, the Court must determine as part of its adjudicatory duties which *mens rea* requirement, if any, the government is required to prove in order to establish a Defendant violated § 27.65.

Notwithstanding the parties' earlier stipulations, the Court notes § 27.65 does not specify proof of government ownership of the vehicle and/or equipment as an element. The explicit terms of the regulation do not apply only to government-owned vehicles and equipment, but instead apply broadly to "any motor vehicle, boat, equipment or machinery." *Id.* (emphasis added). Evidence of government ownership of the various vehicles and equipment is, nevertheless, relevant to whether any Defendant was authorized to use the vehicle or equipment.

The Court notes none of the directly relevant regulations and statutes contain any explicit *mens rea* requirement. Specifically, § 27.65 does not contain an explicit *mens rea* requirement nor does 50 C.F.R. § 28.31, the applicable regulatory penalty provision. In fact, § 28.31(b)(1) provides a violation of § 27.65 (among other regulations) is punishable by "[t]he penalties as prescribed by law" and contains parenthetical references to several statutory provisions, including, as relevant here, 16 U.S.C. § 460k-3 and 16 U.S.C. § 668dd. In the

Misdemeanor Information the government charged Defendants with violations of § 27.65 under the statutory penalty provision in § 460k-3. Section 460k-3, like § 27.65 and § 28.31, also does not contain an explicit *mens rea* requirement. Consistent with the Misdemeanor Information, however, § 460k-3 provides the maximum penalty for any such violation shall not exceed six months imprisonment or a fine in excess of \$500.

Section 668dd, however, is more helpful by analogy. Section 668dd(f) provides two options for charging violations of regulations that arise under that statute: Knowing violations of the regulations are punishable by up to one year imprisonment (16 U.S.C. § 668dd(f)(1)) and "other violations" of the regulations that arise under the statute are punishable by up to six months imprisonment (16 U.S.C. § 668dd(f)(2)). Because the government clearly charged Defendants with a six-month maximum penalty in the Misdemeanor Information, the Court concludes the "knowing" *mens rea* applicable to charges punishable by up to one year imprisonment is not relevant here. The *mens rea* required for "other violations," however, provides a helpful analogy to § 460k-3 because the six-month maximum potential imprisonment for violations of § 668dd(f)(2) and § 460k-3 are the same.

The Court notes that because § 668dd(f)(2) lacks any explicit *mens rea* requirement and because strict-liability crimes are heavily disfavored, cases interpreting § 668dd(f)(2) have

applied the *mens rea* standard of simple negligence even though the underlying statute and regulations do not contain any explicit *mens rea* requirement. See *United States v. Best*, No. 5:11-cr-00414-HRL, 2012 WL 3027544, at *5 (N.D. Cal. July 24, 2012). See also *United States v. Kenner*, No. 4:16-cr-3085, 2017 WL 782497, at *5 (D. Neb. Feb. 28, 2017). To prove simple negligence “the Government must prove an act which the actor as a reasonable [person] should recognize as involving an unreasonable risk of causing an invasion of an interest of another.” See *Best*, 2012 WL 3027544, at *5. See also *Kenner*, 2017 WL 782497, at *5. As noted, the charges the government brought in the Misdemeanor Information under § 460k-3 are Class B misdemeanors punishable by up to six months imprisonment, just like charges brought under § 668dd(f)(2).

In the absence of clear authority to the contrary and consistent with the analysis in *Best* and *Kenner* by analogy as to the appropriate *mens rea* for violations charged under § 460k-3, the Court concludes a *mens rea* requirement of simple negligence applies when adjudicating Counts Two through Five in the Misdemeanor Information. Nevertheless, because this controversy developed after closing arguments and in order to provide a complete record for appeal, the Court also makes alternative findings beyond a reasonable doubt as to whether each Defendant acted knowingly as Defendants contend the government must

establish.

The Court concludes Defendants are not prejudiced by the government's belated change of position as to the *mens rea* requirements under § 27.65 because Defendants were operating under the assumption that the relevant *mens rea* was knowingly, and, therefore, they had at least as much incentive to submit evidence as to both their subjective mental states under these regulations as well as the reasonableness thereof as circumstantial evidence that, for example, they did not know they lacked authorization. Indeed, each Defendant introduced evidence at trial and made arguments to that effect as to each of Counts Two through Five.

COUNT TWO: TAMPERING WITH VEHICLES AND EQUIPMENT
DEFENDANT JASON PATRICK

In Count Two Defendant Jason Patrick is charged with Tampering with Vehicles and Equipment (in particular, a Dodge Durango) in violation of 50 C.F.R. § 27.65.

I. Standard

In order for Defendant Jason Patrick to be found guilty of Count Two consistent with the Legal Standards set out above, the government must prove beyond a reasonable doubt that on or about January 27, 2016, Defendant Jason Patrick: (1) entered and started the Dodge Durango; (2) on a wildlife refuge; (3) without

authorization; and (4) a reasonable person in Patrick's circumstances would have known he did not have authorization to enter and to start the Dodge Durango.

II. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. On the morning of January 27, 2016, Defendant Jason Patrick entered and started the white Dodge Durango that was parked at the MNWR headquarters compound, and he drove it to the nearby bridge that crosses the Donner and Blitzen River on Sodhouse Lane. See Ex. 428.

2. The white Dodge Durango is owned by the United States government and was located on the MNWR at the time that Patrick entered and started the vehicle.

3. When Patrick entered and drove the white Dodge Durango on January 27, 2016, the vehicle did not have any rear license plate attached to it. See Ex. 93.

4. The appearance of the white Dodge Durango, however, was consistent with other government-owned vehicles that were parked at the MNWR when the occupation began and that remained there throughout the occupation.

5. Because Patrick was among those who initially took over and swept the MNWR on January 2, 2016, and because he remained at the MNWR until January 27, 2016, Patrick was familiar with the

government-owned vehicles and other government-owned property that were present at the MNWR from the time that the occupation began until his departure.

6. Throughout the armed occupation the occupiers used equipment and vehicles owned by the United States and ordinarily used by MNWR employees in the course of their employment. For example, the occupiers used government-owned trucks to create and to maintain blockades at the entrances to the MNWR headquarters compound. Patrick's use of the Dodge Durango on January 27, 2016, was consistent with the occupiers' regular use of government equipment and vehicles throughout the occupation of the MNWR headquarters compound.

7. Patrick was not authorized to enter or to start the white Dodge Durango on January 27, 2016.

8. A reasonable person in Patrick's circumstances would have known that he lacked authorization to enter and to start the Dodge Durango on January 27, 2016.

9. Alternatively, the Court finds beyond a reasonable doubt that Patrick knew the white Dodge Durango was government property and that he was not authorized to use that truck.

III. Verdict

On this record, therefore, the Court finds Defendant Jason Patrick **GUILTY** of Tampering with Vehicles and Equipment as charged in Count Two of the Misdemeanor Information.

COUNT THREE: TAMPERING WITH VEHICLES AND EQUIPMENT
DEFENDANTS DUANE LEO EHMER AND JAKE RYAN

In Count Three Defendants Duane Leo Ehmer and Jake Ryan are charged with Tampering with Vehicles and Equipment (in particular, an excavator) in violation of 50 C.F.R. § 27.65.

I. Standard

In order for either Defendant Duane Leo Ehmer or Defendant Jake Ryan to be found guilty of Count Three consistent with the Legal Standards set out above, the government must prove beyond a reasonable doubt that on or about January 27, 2016, the particular Defendant: (1) entered or started the excavator; (2) on a wildlife refuge; (3) without authorization; and (4) a reasonable person in the particular Defendant's circumstances would have known he did not have authorization to enter or to start the excavator.

II. Findings of Fact and Verdict as to Defendant Duane Leo Ehmer

A. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. On the morning of January 27, 2016, Ehmer entered, started, and operated a large excavator on the MNWR in order to dig a trench near the west end of the MNWR headquarters public parking lot. See Ex. 131, 132.

2. As already established, throughout the occupation of

the MNWR headquarters compound individuals participating in the occupation regularly used vehicles and equipment owned by the United States and ordinarily used by MNWR employees in the course of their employment. For example, the occupiers used government-owned trucks and equipment at the blockades to the MNWR entrances at which Ehmer regularly performed guard duty.

3. Among the equipment regularly used by MNWR employees in the ordinary course of business are multiple pieces of heavy construction equipment that are kept at the MNWR. There is not any evidence that any individual associated with the occupation of the MNWR brought any privately-owned heavy construction equipment to the MNWR.

4. The large excavator that Ehmer used to dig the trench near the west end of the public parking lot is government property.

5. A reasonable person in Ehmer's circumstances would have known he did not have authorization to use the government-owned excavator.

6. In the alternative, the Court finds beyond a reasonable doubt that Ehmer knew the excavator was owned by the United States and that he did not have authorization to use the excavator.

B. Verdict

On this record, therefore, the Court finds Defendant Duane

Leo Ehmer **GUILTY** of Tampering with Vehicles and Equipment as charged in Count Three of the Misdemeanor Information.

III. Findings of Fact and Verdict as to Defendant Jake Ryan

A. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. On the morning of January 27, 2016, Ryan entered, started, and operated a large excavator on the MNWR in order to dig a trench near the west end of the MNWR headquarters public parking lot and to dig a second trench near the main entrance to the MNWR headquarters compound. See Ex. 135, 137.

2. As noted, throughout the occupation of the MNWR headquarters compound individuals participating in the occupation regularly used vehicles and equipment that are owned by the United States and ordinarily are used by MNWR employees in the course of their employment.

3. Among the equipment regularly used by MNWR employees in the ordinary course of business at the MNWR are multiple pieces of heavy construction equipment that are ordinarily kept at the MNWR. There is not any evidence that any individual associated with the occupation of the MNWR brought any privately-owned heavy construction equipment to the MNWR.

4. The large excavator that Ryan used to dig the trench near the west end of the public parking lot and the trench near

the main entrance to the MNWR headquarters compound is the property of the United States.

5. A reasonable person in Ryan's circumstances would have known he did not have authorization to use the government-owned excavator.

6. In the alternative, the Court finds beyond a reasonable doubt that Ryan knew the excavator was owned by the United States and that he knew he did not have any authorization to use the excavator.

B. Verdict

On this record, therefore, the Court finds Defendant Jake Ryan **GUILTY** of Tampering with Vehicles and Equipment as charged in Count Three of the Misdemeanor Information.

COUNT FOUR: TAMPERING WITH VEHICLES AND EQUIPMENT **DEFENDANT DARRYL WILLIAM THORN**

In Count Four Defendant Darryl William Thorn is charged with Tampering with Vehicles and Equipment (in particular, a "front-end loader") in violation of 50 C.F.R. § 27.65.

I. Standard

In order for Defendant Darryl William Thorn to be found guilty of Count Four consistent with the Legal Standards set out above, the government must prove beyond a reasonable doubt that on or between January 2, 2016, and January 27, 2016, Thorn:

(1) entered or started the front-end loader; (2) on a wildlife refuge; (3) without authorization; and (4) a reasonable person in Thorn's circumstances would have known he did not have authorization to enter or to start the front-end loader.

As a threshold matter, Thorn contends the record reflects the equipment that he is alleged to have entered and started was not a "front-end loader" as described in the Misdemeanor Information but instead, based on the testimony of MNWR Director Chad Karges, it was a "backhoe." As a result, Thorn argues he must be acquitted of Count Four of the Misdemeanor Information.

Based on the dictionary definition of "front-end loader" and the testimony of FBI Special Agent Ronnie Walker in which he described the equipment as a front-end loader, the government, however, argues the machine that Thorn is driving in Exhibit 407 is, in fact, a "front-end loader" even if it also can be fairly described as a "backhoe." The government also contends the evidence does not materially vary from the offense charged in the Misdemeanor Information because the machine that Thorn is driving in Exhibit 407 can properly be described as either a "front-end loader" or a "backhoe."

II. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. In Exhibit 407 Thorn is depicted in a video recording

as driving a piece of heavy machinery at the MNWR.

2. The heavy machinery that Thorn is driving in Exhibit 407 has a large shovel-like implement on the front that is partially covered by a tarp and that appears to be hydraulically-operated. See, e.g., Ex. 407 at 00:20, 01:02.

3. The heavy machinery also appears to have an implement on the rear end that may be a backhoe. See, e.g., Ex. 407 at 00:31, 00:50.

4. Chad Karges, Director of the MNWR, identified the machine that Thorn is driving in Exhibit 407 as a "backhoe."

5. Although Special Agent Walker answered questions that described the machine depicted in Exhibit 407 as a "front-end loader," he did not specifically testify the machine is a "front-end loader."

6. Whether the machine depicted in Exhibit 407 is, in fact, a "front-end loader" is not sufficiently a matter of common, lay knowledge that this factfinder can conclude beyond a reasonable doubt on this record that Exhibit 407 depicts Thorn entering or starting a "front-end loader" as alleged in the Misdemeanor Information.

III. Verdict

On this record, therefore, the Court finds Defendant Darryl William Thorn **NOT GUILTY** of Tampering with Vehicles and Equipment as charged in Count Four of the Misdemeanor Information because

the government failed to prove beyond a reasonable doubt that the machine that Thorn operated was the alleged front-end loader.

COUNT FIVE: TAMPERING WITH VEHICLES AND EQUIPMENT
DEFENDANT DARRYL WILLIAM THORN

In Count Five Defendant Darryl William Thorn is charged with Tampering with Vehicles and Equipment (in particular, an all-terrain vehicle) in violation of 50 C.F.R. § 27.65.

I. Standard

In order for Defendant Darryl William Thorn to be found guilty of Count Five consistent with the Legal Standards set out above, the government must prove beyond a reasonable doubt that on or between January 2, 2016, and January 27, 2016, Thorn: (1) entered or started the all-terrain vehicle; (2) on a wildlife refuge; (3) without authorization; and (4) a reasonable person in Thorn's circumstances would have known he did not have authorization to enter or to start the all-terrain vehicle.

II. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. A man is pictured driving an all-terrain vehicle on the MNWR during the occupation in Exhibit 67. The facial features visible in Exhibit 67 are consistent with Thorn's appearance, and the clothing the driver is wearing in Exhibit 67 is consistent

with the clothing that Thorn is photographed wearing in various other exhibits, including Exhibits 47 and 124.

2. Thorn is the person driving the all-terrain vehicle in Exhibit 67.

3. Chad Karges, Director of the MNWR, identified the all-terrain vehicle depicted in Exhibit 67 as property of the United States and as a vehicle that MNWR employees regularly use and keep at the MNWR. The Court credits Karges's testimony and finds the all-terrain vehicle depicted in Exhibit 67 is the property of the United States.

4. As already established, throughout the armed occupation of the MNWR headquarters compound individuals participating in the occupation regularly used vehicles and equipment that are owned by the United States and ordinarily used by the MNWR employees.

5. There is not any evidence in the record from which the Court could find without speculation that Thorn could have reasonably believed the all-terrain vehicle was owned by a private individual from whom he had authorization to use it.

6. Thorn did not have authorization to use the government-owned all-terrain vehicle.

7. A reasonable person in Thorn's circumstances would have known he did not have any such authorization.

8. In the alternative, the Court finds beyond a reasonable

doubt that Thorn knew he did not have authorization from the United States to operate the all-terrain vehicle.

III. Verdict

On this record, therefore, the Court finds Defendant Darryl William Thorn **GUILTY** of Tampering with Vehicles and Equipment as charged in Count Five of the Misdemeanor Information.

COUNTS SIX AND SEVEN: APPLICABLE LEGAL STANDARDS **DEFENDANTS JASON PATRICK AND DUANE LEO EHMER**

Before trial the parties agreed the elements of Counts Six and Seven were that the particular Defendant: (1) knowingly destroyed, injured, defaced, disturbed and/or removed public property; (2) knowing that property was public property; and (3) knowing he was not authorized to do so. As it did with respect to Counts Two through Five, however, the government changed its position after closing arguments as to the elements of Count Six and Seven and now contends it does not have to prove the particular Defendant knew the relevant property is the property of the United States.

Section 27.61 provides: "The destruction, injury, defacement, disturbance, or the unauthorized removal of any public property including natural objects or private property on or from any national wildlife refuge is prohibited." Under the explicit terms of this regulation, therefore, the government must

prove the property that is the subject of Counts Six and Seven is either public or private property. See *Tait v. United States*, 763 F. Supp. 2d 786, 792-94 (E.D. Va. 2011).

Moreover, as with Counts Two through Five, the government's late change in position requires the Court to determine which *mens rea* standard applies to Counts Six and Seven. Although § 27.61 does not contain a *mens rea* requirement on its face, the same penalty provisions apply to Counts Six and Seven as applied to Counts Two through Five. Accordingly, for the same reasons the Court applied a *mens rea* of simple negligence to Counts Two through Five above, the Court applies a *mens rea* of simple negligence to Counts Six and Seven. The Court also makes alternative findings as to a "knowing" mental state.

COUNT SIX: DESTRUCTION AND REMOVAL OF PROPERTY
DEFENDANT JASON PATRICK

In Count Six Defendant Jason Patrick is charged with Destruction and Removal of Property (in particular, a fence on the MNWR) in violation of 50 C.F.R. § 27.61.

I. Standard

In order for Defendant Jason Patrick to be found guilty of Count Six, the government must prove beyond a reasonable doubt that on or about January 11, 2016, Patrick: (1) destroyed or injured; (2) public or private property (in particular, a barbed-

wire fence); (3) on a national wildlife refuge; (4) without authorization; and (5) a reasonable person in Patrick's circumstances would have known he did not have authorization to destroy or to injure the property.

II. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. During the occupation Patrick intentionally cut a portion of a barbed-wire fence that marked the border of the MNWR. See Ex. 442 at 01:55-02:12.

2. The Court credits the testimony of MNWR employee Jess Wenick that the fence is the property of the United States and is located on the boundary of the MNWR and, therefore, finds the fence is the property of the United States.

3. Patrick knew the fence was the property of the United States. The Court notes in the video received as Exhibit 442, Patrick stated "some foreign entity came and just roped off some property." Ex. 442 at 00:15-00:44. In the context of the video it is clear that the "foreign entity" to which Patrick refers is the United States government.

4. Patrick did not have authorization from the United States to cut, to damage, or otherwise to remove the fence.

5. A reasonable person in Patrick's circumstances would know he did not have such authorization from the United States to

cut, to damage, or otherwise to remove the fence.

6. In the alternative, the Court finds Patrick knew he did not have such authorization from the United States.

III. Verdict

On this record, therefore, the Court finds Defendant Jason Patrick **GUILTY** of Destruction and Removal of Property as charged in Count Six of the Misdemeanor Information.

COUNT SEVEN: REMOVAL OF PROPERTY **DEFENDANT DUANE LEO EHMER**

In Count Seven Defendant Duane Leo Ehmer is charged with Removal of Property (in particular, a maroon pouch that contained checks belonging to the Friends of the Malheur National Wildlife Refuge (Friends), government-owned credit cards and gasoline cards, a government identification card, and cash) in violation of 50 C.F.R. § 27.61.

I. Standard

In order for Defendant Duane Leo Ehmer to be found guilty of Count Seven, the government must prove beyond a reasonable doubt that on or about January 27, 2016, Ehmer: (1) removed; (2) public and/or private property (in particular, a maroon pouch that contained checks belonging to the Friends, government-owned credit cards and gasoline cards, a government identification card, and cash); (3) from a wildlife refuge; (4) without

authorization; and (5) a reasonable person in Ehmer's circumstance would have known he did not have authorization to remove the maroon pouch or its contents.

II. Findings of Fact

The Court finds the following additional facts beyond a reasonable doubt:

1. Sometime during the night of January 26, 2016, or morning of January 27, 2016, Ehmer took the maroon pouch from inside an office building in the MNWR headquarters compound and placed it under a seat in his truck. See Ex. 87.

2. At the time that Ehmer took the pouch, it contained both public property belonging to the United States government and private property belonging to the Friends, a nonprofit organization. In particular, the maroon pouch contained checks belonging to the Friends, and credit cards, gasoline cards, and a government identification card belonging to the government.³ See Ex. 88.

3. The pouch had a sticky note taped to the front of it that read "New Money." See Ex. 88.

4. Throughout the occupation of the MNWR several individuals donated money to assist those occupying the MNWR.

³ The maroon pouch also contained cash, but the government did not prove beyond a reasonable doubt whether the cash within the pouch belonged to the government, to the Friends of the MNWR, or represented cash donations made to the occupiers.

Ammon Bundy kept those donations in his sleeping quarters in one of the office buildings in the MNWR headquarters compound. Ehmer may have believed the pouch contained such donations.

5. The outside of the pouch appears to bear the logo of a local bank, but there is not any marking or any other indication on the outside of the pouch to identify it or its contents as belonging to the United States government or to the Friends. See Ex. 88.

6. On the night of January 26, 2016, and the morning of January 27, 2016, the situation at the MNWR was chaotic as numerous individuals, including Ehmer, were deciding whether to remain at the MNWR or to leave the MNWR in the aftermath of the arrest of several of the occupation leaders and the fatal shooting of Lavoy Finicum by law enforcement.

7. On January 27, 2016, Ehmer departed the MNWR with the pouch under a seat in his truck. There is not any evidence from which the Court can find that Ehmer opened the pouch while it was in his possession or otherwise knew the pouch contained property belonging to the government or to the Friends.

8. Ehmer did not have authorization from either the United States government or the Friends to remove the pouch or its contents.

9. In light of the lack of evidence that Ehmer opened the pouch; the label on the front of the pouch that read "New Money";

and the lack of markings associating the pouch with the United States government, the MNWR, or the Friends, the government has failed to prove beyond a reasonable doubt that Ehmer knew or should have known that the pouch or any of its contents belonged to the United States and/or to the Friends.

10. The government, therefore, has failed to prove beyond a reasonable doubt that Ehmer knew or should have known that he did not have authorization to remove the pouch from the MNWR.

III. Verdict

On this record, therefore, the Court finds Defendant Duane Leo Ehmer **NOT GUILTY** of Removal of Property as charged in Count Seven of the Misdemeanor Information.

CONCLUSION

For these reasons, the Court enters the following Verdicts on the counts in the Misdemeanor Information:

I. Count One: Trespassing

Defendant Jason Patrick: **GUILTY**

Defendant Duane Leo Ehmer: **GUILTY**

Defendant Darryl William Thorn: **GUILTY**

Defendant Jake Ryan: **GUILTY**

II. Count Two: Tampering with Vehicles and Equipment

Defendant Jason Patrick: **GUILTY**

III. Count Three: Tampering with Vehicles and Equipment

Defendant Duane Leo Ehmer: **GUILTY**

Defendant Jake Ryan: **GUILTY**

IV. Count Four: Tampering with Vehicles and Equipment

Defendant Darryl William Thorn: **NOT GUILTY**

V. Count Five: Tampering with Vehicles and Equipment

Defendant Darryl William Thorn: **GUILTY**

VI. Count Six: Destruction and Removal of Property

Defendant Jason Patrick: **GUILTY**

VII. Count Seven: Removal of Property

Defendant Duane Leo Ehmer: **NOT GUILTY**

IT IS SO ORDERED.

DATED this 21st day of March, 2017.



ANNA J. BROWN
United States District Judge