IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **JASON PATRICK, DUANE LEO EHMER, DYLAN ANDERSON, SEAN ANDERSON, SANDRA LYNN ANDERSON, DARRYL WILLIAM THORN, and JAKE RYAN,** **Defendants.**	**3:16-cr-00051-BR** **ORDER SETTING BENCH TRIAL ON CLASS B MISDEMEANOR COUNTS IN CONJUNCTION WITH JURY TRIAL OF FELONY COUNTS**

BROWN, Judge.

This matter comes before the Court on the parties' Joint Statement (#1762) of Authorities: Jury Trial on Class B Misdemeanors, filed January 25, 2017.

At the Status Hearing on January 20, 2017, the Court ruled each of the counts in the Misdemeanor Information (#1628) were Class B misdemeanors and, therefore, qualified as petty offenses to which the right to a jury trial does not attach. *See* Order (#1756) Following January 20, 2017, Status Hearing, issued January 20, 2017. The Court, nonetheless, directed the parties to submit a joint statement of authorities regarding (1) whether the Court nonetheless had authority to provide Defendants with a

trial by jury on the Class B misdemeanor counts; (2) if so, whether the Court should exercise discretion to provide a trial by jury on the misdemeanor counts as part of the trial beginning jury selection on February 14, 2017; and (3) the parties' recommendations as to trial procedure in the event that the Court determines it will conduct a bench trial as to the Class B misdemeanor counts.

After thoroughly considering the parties' respective authorities and opposing positions, the Court concludes the state of the law is uncertain regarding whether the Court has discretion to provide to Defendants a jury trial on the misdemeanor counts notwithstanding the absence of a right to such a trial.

The Court notes the majority of the authorities on which the government relies address the *right* to a jury trial (a matter that the Court has already resolved in this case), and do not directly analyze whether a court has discretion to grant a jury trial when there is not a constitutional right to trial by jury. Moreover, to the extent that the government contends the 1970 Rules for the Trial of Minor Offenses before United States Magistrates contain language that suggests the Court does not have such authority, the Court finds that argument unpersuasive in light of the fact that such language was not carried over to Federal Rule of Criminal Procedure 58 when it was enacted in

1990.

On the other hand, the Court also finds unpersuasive the out-of-district authorities on which Defendants rely. In particular, the Court finds *United States v. Greenpeace, Inc.*, 314 F. Supp. 2d 1252 (S.D. Fla. 2004), to be unpersuasive because it did not adequately account for Congress's knowledge that no right to a jury trial attached to a petty offense or the failure of Congress expressly to grant the federal courts with discretion to nonetheless provide a trial by jury. Similarly, the remainder of Defendants' primary authorities are of limited value because they arise from a period of time when the state of the law regarding a right to jury trial was very different from current caselaw.

The Court finds the significant uncertainty in the law regarding whether it has discretion to provide a jury trial where no right thereto otherwise exists is itself a compelling reason why the Court should not choose to provide a trial by jury on the Class B misdemeanor counts in this case. Simply put, the Court declines to exercise discretion to take an action when it is not at all clear that the Court has such discretion in the first place.

Nevertheless, even if the Court had such discretion in this case, the Court would decline to exercise that discretion. The Court notes Congress explicitly intended the trial of petty

offenses to be tried to the court, and expressly permitted magistrate judges to conduct such trials in order to facilitate their efficient resolution without the process associated with a jury trial. *See* 28 U.S.C. §§ 636(a)(3), 3401(b). In light of the fact that there are eight parties who will present argument and evidence on the Class B misdemeanor counts, the Court concludes the most efficient method of trying the misdemeanor counts is to conduct a trial to the Court. Although some of the evidence relevant to the misdemeanor counts will likely overlap evidence relevant to the felony counts, the parties have also made clear that some evidence and argument will be unique to the misdemeanor counts, and, presumably, to the evidence as applied individually to each Defendant. In light of the fact that 18 citizen jurors will already be devoting an extraordinary amount of time to their jury service, the Court finds adding unnecessary duties to their service is not warranted. The Court, therefore, concludes it will conduct a trial to the Court on the Class B misdemeanor counts contained in the Misdemeanor Information (#1628) in conjunction with the jury trial on the felony counts to begin February 14, 2017.

Defendants alternatively request a separate trial by a magistrate judge in the event the Court determines there will be a trial to the Court on the misdemeanor counts, evidently suggesting a district judge does not have the authority to try

such charges. That argument, however, is without merit. 18 U.S.C. § 3401(f) provides: "The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United States magistrate judge upon the court's own motion." Under all the circumstances, the Court finds an entirely separate proceeding before another judicial officer for the Class B misdemeanor counts would be unnecessarily wasteful, and the process of a magistrate judge preparing to try that separate case would cause unnecessary delay.

Accordingly, this Court on its own motion concludes the trial of all the Class B misdemeanor counts in this matter will be conducted in connection with the jury trial of the felony counts, and this Judicial Officer will preside for both purposes. The parties need not present for a second time evidence that is relevant to the Class B misdemeanor counts, but was already presented in the trial on the felony counts. To the extent that evidence not relevant to the felony counts is needed for the misdemeanor counts, the Court will receive that evidence and conduct all other aspects of the misdemeanor trial outside the jury's presence and after the jury begins its deliberations on the felony counts.

Finally, Defendants state they "will consider filing a motion to recuse" this Judicial Officer if this Judicial Officer intends to conduct a bench trial on the Class B misdemeanor

counts "in light of this Court's presiding over the entirety of the first trial as well as all of the pretrial litigation for both trials." This Judicial Officer is not aware of any basis in the record for recusal, and does not find there is anything about presiding over this case to date that would necessitate disqualification from presiding over the bench trial of the Class B misdemeanor counts in conjunction with a jury trial on the felony counts.[1]

Nevertheless, if any Defendant intends to file a motion for recusal on this basis, he or she must do so **no later than Noon, January 30, 2017.** The government's response to any such motion is due **no later than Noon, February 2, 2017.** The matter will then be referred to Chief Judge Michael W. Mosman, who will determine whether further briefing or oral argument is warranted. While any such motion is pending, this Judicial Officer will continue to preside over this case for all purposes.

IT IS SO ORDERED.

DATED this 26th day of January, 2017.

ANNA J. BROWN
United States District Judge

[1] *See* Order (#1306) issued September 20, 2016; Order (#1501) issued October 27, 2016.