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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA)
v.)
LOUIS DANIEL SMITH,)
KARIS DELONG,)
TAMMY OLSON, and)
CHRIS OLSON)
No. CR-13-14-RMP-1-4
RESPONSE IN OPPOSITION TO
MOTIONS TO DISMISS
6/09/2014
Without Oral Argument 6:30pm

Defendants.

The United States of America, by and through the undersigned counsel, respectfully requests that this Honorable Court deny Defendant Louis Daniel Smith’s Motions to Dismiss for Lack of Jurisdiction and for Breach of Attorney Client Privilege. In support, the government avers the following:

Background

Defendant Louis Daniel Smith, along with his coconspirators, was indicted by federal grand jury on January 25, 2013. ECF 1. The indictment alleges all four defendants were involved in a conspiracy to, among other things, manufacture,

1 market, and distribute a misbranded drug in interstate commerce. Id. The
2 indictment charges multiple overt acts committed within the Eastern District of
3 Washington and elsewhere. Id. On May 9, 2014, defendant Louis Daniel Smith
4 filed two motions to dismiss, arguing: (1) That the indictment failed to allege
5 federal jurisdiction for the conspiracy charge; and, (2) that the government, through
6 the use of a privilege review team, violated his Sixth Amendment rights. ECF322,
7 323. As detailed more fully below, neither of these motions is supported by the law
8 or the facts. Therefore, both must be denied.

9 Lack of Federal Jurisdiction

10 In his first motion, defendant Smith argues that this Court has no jurisdiction
11 to enforce federal criminal statutes unless the criminal acts were committed upon
12 federal lands, or the State of Washington ceded jurisdiction to the federal
13 government. ECF 322 at 7. In making this frivolous argument, the defendant
14 ignores the laws of jurisdiction and venue, and conflates numerous irrelevant
15 statutes.

16 The district courts of the United States shall have original jurisdiction,
17 exclusive of the courts of the States, of all offenses against the laws of the United
18 States. 18 U.S.C. § 3231. Here, the defendant was charged with Conspiracy to
19 Commit an Offense against the United States and Conspiracy to Defraud the United
20 States, both pursuant to 18 U.S.C. § 371. ECF 1. Venue is proper in any district
21 where an act in furtherance of the conspiracy occurred. United States v. Angotti,
22 105 F.3d 539, 545 (9th Cir. 1997). The indictment alleges numerous overt acts
23 committed by the defendant and his coconspirators within the Eastern District of
24 Washington. ECF 1. As the defendant was properly charged with an offense
25

1 against the laws of the United States, and venue in this district was proper, his
2 motion lacks merit and should be denied.

3 Breach of Attorney-Client Privilege

4 In his second motion to dismiss, the defendant makes the unfounded
5 accusation that the government violated his Sixth Amendment right to counsel by
6 failing to properly shield the prosecution team from potentially privileged attorney-
7 client material. ECF 323.

8 In order to demonstrate a Sixth Amendment violation in these circumstances
9 the defendant must first make a “prima facie showing of prejudice.” United States
10 v. Danielson, 325 F.3d 1054, 1071 (9th Cir. 2003) (quoting United States v.
11 Mastroianni, 749 F.2d 900, 908 (1st Cir. 1984)). The defendant must also
12 demonstrate that government agents acted affirmatively to intrude into the attorney-
13 client relationship and thereby obtained the privileged information. Id. Only after
14 the defendant meets this burden does the burden shift to the government to
15 demonstrate there was no prejudice to the defendant. Id. The defendant attempts to
16 avoid his burden by urging the adoption of a “per se” rule of prejudice, and cites
17 Briggs v. Goodwin, 698 F.2d 486 (D.C. Cir. 1983) in support. However, the Ninth
18 Circuit considered such a rule and squarely rejected it in favor of the current two-
19 prong test. Danielson, 325 F.3d at 1071.

20 The defendant argues that links between various agents and attorneys
21 demonstrate that his Sixth Amendment rights were violated. ECF 323. Whether
22 agents or attorneys work together in the same office, or have collaborated on
23 investigations in the past is not the proper examination. Rather, it is whether the
24 prosecution team was properly shielded from any potentially privileged material.
25 Danielson, 325 F.3d at 1072-73 (Looking with favor upon the government’s use of

1 unaffiliated agents to screen potentially privileged materials). The prosecution team
2 avoids its burden where it employs “firewalls” to insulate itself from potentially
3 privileged trial strategy. Id.

4 Here, the prosecution team employed Department of Justice Trial Attorney
5 Kathryn Drenning, who is unaffiliated with this prosecution, as a firewall. Attorney
6 Drenning carefully examined the emails obtained by search warrant prior to any
7 review by the prosecution team, promptly notified the defense and the Court of the
8 presence of potentially privileged material, and filed various motions with the Court
9 regarding her findings. See ECF 32, 297. The government, in conjunction with
10 defendant Smith’s codefendants, also advocated the appointment of a special master
11 to further review the potentially privileged material prior to any disclosure to the
12 prosecution team or codefendants. ECF 198.

13 Here, the defendant offers nothing more than false accusations and
14 speculation. He has not made a prima facie showing of prejudice, as required by
15 Danielson. Furthermore, the prosecution team was carefully screened from any
16 potentially privileged material in accord with the Ninth Circuit’s favored practices.
17 Where there has been no communication of privileged material to the prosecution
18 team, and where there is no tainted evidence, there is no Sixth Amendment
19 violation. Weatherford v. Bursey, 429 U.S. 545, 558 (1977).

20
21 WHEREFORE, the government respectfully requests this Honorable Court
22 deny the defendant’s motions to dismiss the indictment.
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1 DATED: May 16, 2014

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 16th day of May, 2014, I caused a true and correct copy of the foregoing **RESPONSE IN OPPOSITION** to be served via the District Court's Electronic Filing System and upon counsel of record listed below:

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