

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR-7

Plaintiff,

ORDER GRANTING DEFENDANT
SHAWNA COX'S MOTION FOR
JUDGMENT OF ACQUITTAL ON
COUNT TWO

v.

SHAWNA COX,

Defendant.

This matter comes before the Court on Defendant Shawna Cox's Motion (#1370) for Judgment of Acquittal on Count Two. The Court heard oral argument on Cox's Motion on the record after jury trial proceedings on September 29, 2016. In its written Response (#1377) to Defendant's Motion for Judgment of Acquittal on Count Two, the government confirmed it did not have any additional argument on Cox's Motion.

In deciding a motion for judgment of acquittal, the court "view[s] the evidence in the light most favorable to the government to determine whether any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt." *United States v. Tello*, 600 F.3d 1611, 1164 (9th Cir. 2010). In doing so, the court must determine "whether there was any relevant evidence from which the jury could reasonably find [the defendant] guilty beyond a reasonable doubt." *United States v. Brandon*, 633 F.2d 773, 780 (9th Cir. 1980).

The elements of Count Two are as follows:

- (1) Beginning on or about January 2, 2016, and continuing through February 12, 2016, the particular Defendant possessed or caused to be present a firearm or other dangerous weapon,
- (2) in a federal facility,
- (3) the particular Defendant acted knowingly, and
- (4) the particular Defendant or someone the Defendant intentionally aided and abetted acted with the intent that the firearm or other dangerous weapon be used in the commission of a crime (in this case the Count One charge of Conspiring to Impede Officers of the United States) at least in part within that federal facility.

At the September 29, 2016, oral argument the government contended it had produced a "tapestry of evidence" from which the Court could find the government had established all of the elements of Count Two when viewing the evidence in the light most favorable to the government. In particular, the government asserted Cox aided and abetted others in the possession of

firearms in a federal facility with the intent that such firearm(s) were to be used in the commission of a crime. The government asserted it had introduced evidence that indicated Cox was one of the leaders of the conspiracy alleged in Count One and that many members of that alleged conspiracy possessed weapons at the Malheur National Wildlife Refuge (MNWR) in furtherance of the conspiracy. The government argued Cox was active in assisting those who came to the MNWR for the purpose of joining the alleged conspiracy and encouraging others to come to MNWR. In addition, the government pointed to evidence in the record that Cox's identification together with a firearm and ammunition that was not otherwise associated with Cox were found in a federally-owned vehicle at the MNWR and that ammunition was also found in a different vehicle owned by Cox.

As the Court noted on the record during its consideration of the sufficiency of the evidence in support of the conspiracy charged in Count One, there is substantial evidence in the record from which a rational trier of fact could find the armed takeover and occupation of the MNWR and its attendant displacement of United States Fish and Wildlife Service workers who were assigned there is sufficient to establish an intention to prevent such employees from performing their duties through "force, intimidation, or threats." The government is also correct that there is ample evidence in the record from which a rational trier

of fact could conclude Cox joined the alleged conspiracy with the requisite intent. Accordingly, the Court denied Cox's Motion as to Count One on September 29, 2016. See Order (#1374)(issued Sep. 29, 2016).

The government has not pointed to any evidence in the record, however, that Cox possessed; caused another to possess; or aided, counseled, commanded, induced, or procured any other person to possess a firearm in a federal facility for the purpose of furthering the conspiracy alleged in Count One.

Moreover, although a rational trier of fact could conclude the firearm and ammunition found with Cox's identification are, in fact, attributable to Cox, that evidence does not permit any inference that Cox possessed any weapon within a "federal facility." See 18 U.S.C. § 930(b) ("The term 'Federal facility' means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.").

Having reviewed the entirety of the record in the government's case-in-chief in the light most favorable to the government, the Court concludes there is not sufficient evidence in the record to permit a rational trier of fact to find beyond a reasonable doubt the essential elements of Count Two exist as to Cox, either as a principal or under an aiding-and-abetting theory.

Accordingly, on this record the Court **GRANTS** Defendant Shawna Cox's Motion (#1370) for Judgment of Acquittal on Count Two and **DISMISSES** Count Two of the Superseding Indictment (#282) as to Cox.

IT IS SO ORDERED.

DATED this 4th day of October, 2016.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge