IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Criminal Action No.
v.	)	09-00112-01-CR-W-ODS
	)	
CLIFTON TAYLOR,	)	
	)	
Defendant.	)	

ORDER

Before the court are defendant's most recent series of pro se filings. In this packet, filed on July 23, 2009, defendant has drafted a criminal complaint listing himself as the plaintiff and his attorney, Travis Poindexter, as the defendant. The counts are listed as violation of due process and entrapment. The packet also includes documents titled as follows (many of which are only one paragraph or even one line long):

- Attention of the Chief Magistrate
- Motion to dismiss charges
- Motion alleging government misconduct
- Motion for evidentiary hearing
- Motion for jury minutes/transcripts
- Motion to suppress evidence
- Motion for discovery
- Motion for offer of proof
- Motion alleging a defect in indictment
- Motion to dismiss

As defendant has been reminded repeatedly, he is not entitled to file pro se motions while represented by counsel. Therefore, all of his "motions" will be summarily denied. However, even on the merits, defendant's pro se motions fail.

A. Criminal Complaint

Defendant's criminal complaint is confusing at best. He alleges that Mr. Poindexter violated defendant's due process rights by failing to notify "plaintiff" of DNA results and by failing to hold a preliminary hearing within the prescribed time. In order to establish a procedural due process violation, a plaintiff must prove that he or she was deprived of "an opportunity ... granted at a meaningful time and in a meaningful manner for [a] hearing appropriate to the nature of the case." Boddie v. Connecticut, 401 U.S. 371, 378 (1971) (quotation and citation omitted). Defendant continually refers to his supposed court appearance scheduled for June 7, 2009; however, June 7, 2009, was a Sunday and there was never any court appearance scheduled for that day. Nor was there any court appearance scheduled in connection with DNA results which, as defendant was informed at the last hearing, are still pending.

Defendant's second count is entrapment. However, entrapment is a defense, not a cause of action. The defense of entrapment has two elements: (1) government inducement of a crime, and (2) the defendant's lack of predisposition to engage in the criminal conduct. United States v. Abumayyaleh, 530 F.3d 641, 646 (8th Cir. 2008). Nothing in defendant's pro se criminal complaint has anything to do with the elements of entrapment.

B. Attention of the Chief Magistrate

In this document, defendant claims that he has "about 29 documents before Judge Larsen". I will interpret this motion as a motion to recuse.

> Recusal is required "in any proceeding in which [the judge's] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "The question is whether the judge's impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case." [United States v.] Dehghani, 550 F.3d [716], 721 [(8th Cir. 2008)] (quotation omitted). "Because a judge is presumed to be impartial, the party seeking disqualification bears the substantial burden of proving otherwise." Id. (quotation omitted). Furthermore, defendants are not "permitted to use such a plot or threat as a judge-shopping device." In re Basciano, 542 F.3d 950, 957 (2d. Cir. 2008), cert. denied, 129 S.Ct. 1401 (2009).

United States v. Beale, --- F.3d ----, 2009 WL 2178444, (8th Cir. (Minn.) July 23, 2009).

Defendant currently has no motions pending. All of his pro se motions have been ruled on the merits, even though they could simply have been stricken or summarily denied because he has an attorney.

Defendant's second reason for requesting recusal is essentially that I will not give him his own way. Defendant asked for a new attorney. I held a hearing on that motion and determined that Mr. Poindexter had done a satisfactory job of representing defendant and that no other attorney would have handled defendant's issues differently. Refusing to terminate an attorney and hire a new one to start all over, without any

plausible grounds at all, does not provide justification for recusal. Were I to grant defendant's request and get him a new attorney, I predict that several months would pass and we would be right back where we are now. There is no competent attorney who would do the things defendant is requesting as they have no basis in the law.

C. Motion to dismiss charges

Defendant requests dismissal of the indictment for the government's failure to hold a preliminary examination within the prescribed time limits. He then brings up the failure of anyone to bring him to court on Sunday, June 7, 2009. Clearly defendant does not understand what a preliminary hearing is.

Defendant cites 18 U.S.C. § 3060(d) in support of his motion. That section reads as follows:

> (d) Except as provided by subsection (e) of this section, an arrested person who has not been accorded the preliminary examination required by subsection (a) within the period of time fixed by the judge or magistrate judge in compliance with subsections (b) and (c), shall be discharged from custody or from the requirement of bail or any other condition of release, without prejudice, however, to the institution of further criminal proceedings against him upon the charge upon which he was arrested.

The time set by § 3060(b)(1) is ten days after his initial appearance, since defendant was in custody. Defendant's initial appearance was March 13, 2009, and his preliminary hearing was held on March 18, 2009 -- clearly within the time limits of § 3060. I note also, however, that even if defendant's preliminary

hearing had not been timely, any dismissal of the complaint would be "without prejudice . . . to the institution of further criminal proceedings against him upon the charge upon which he was arrested." Therefore, the indictment returned on April 8, 2009, could not be dismissed based on this statute.

D. Motion alleging government misconduct

Defendant fails to request any relief in this motion. He merely states that a federal agent provided false material information to the court when he "requested a continuance of defendant's incarceration in order to extract DNA from a cup the defendant used." As defendant was told at the last hearing, this never happened. Defendant's case has never been continued based on any request dealing with extracting DNA. Simply because DNA may be a part of the discovery in his case is not sufficient to establish that any representation was made to the court in order to get a continuance. As I have said before, no continuance has ever been granted based on anything to do with DNA. Furthermore, no government agent has requested a continuance of defendant's incarceration. The government moved to detain defendant without bond pending trial. After a hearing, that motion was granted. Therefore, defendant is in custody until the conclusion of his case without any need by the government agents to request that defendant be kept behind bars.

E. Motion for evidentiary hearing

Defendant requests an evidentiary hearing to "challenge the reliability of witness statements". Defendant has been told before that challenging the reliability of witness statements is not a basis for a pretrial hearing. Whether a witness is to be believed is a jury question. Therefore, the proper forum for this issue is in argument before the jury during the trial.

F. Motion for jury minutes/transcripts

Defendant states that his complaint was "changed" after the indictment was issued; therefore, the indictment was based on capricious allegations. This makes no sense. In federal court a defendant cannot go to trial on a criminal complaint. Every defendant has a right to grand jury review. That was done in this case. The indictment was returned on April 8, 2009. The indictment charged one count of bank robbery -- the exact same charge that was in the criminal complaint.

G. Motion to suppress evidence

Once again defendant argues that evidence should be suppressed because of conflicting witness statements. He cites Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546 (2006), in support. Defendant's motion is without merit. Recuenco dealt with the adequacy of jury instructions, which has nothing to do with any allegation in defendant's motion. I explained to defendant at the last hearing that evidence can be suppressed if

it was gathered in a way that violated the defendant's constitutional rights. Conflicting witness statements have nothing to do with the government violating defendant's rights. An argument regarding conflicting witness statements is properly made before the jury, not pretrial.

H. Motion for discovery

Defendant's motion consists of seven words: "Discovery was reviewed by defendant on 07-13-2009". This is an open-file discovery case, and it appears that defendant has admitted he has seen the discovery.

I. Motion for offer of proof

Defendant offers not one word in support of this motion. He simply includes this as a title. As there is no explanation as to what defendant wants and no request for any relief, this motion is devoid of merit.

J. Motion alleging a defect in indictment

In this motion too, defendant offers not one word in support. He simply includes this as a title. As there is no explanation as to what defendant wants and no request for any relief, this motion is devoid of merit.

K. Motion to dismiss

Defendant's final motion is a motion to dismiss due to "invalid indictment on its face." Defendant says that the indictment alleges he committed the crime of bank robbery against

Veronica Lopez, but "Lopez made [a] statement that the defendant was not the suspect." Defendant again discusses the reliability of witness statements. As has been discussed numerous times in response to defendant's pro se motions, as well as explained to defendant in court, reliability of witness statements is a jury question that is properly argued before the jury during the trial. Unreliable or contradictory witness statements do not provide a basis for dismissing the indictment.

Conclusion

I have dealt with defendant's pro se motions repeatedly, and I will not again rule on the merits of pro se motions raising the same issues over and over again. Defendant is reminded that any further pro se motions will be summarily denied so long as defendant is represented by counsel at the time the pro se motions are filed.

It is

ORDERED that all of defendant's pro se motions are denied. It is further

ORDERED that defendant's "criminal complaint" naming himself as plaintiff and Travis Poindexter as defendant is stricken from the record. It is further

ORDERED that defense counsel provide a copy of this order to defendant either in person or by mail.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
July 25, 2009