

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00162-06-CR-W-FJG
)	
NARICCO T. SCOTT,)	
)	
Defendant.)	

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION
TO DISMISS FOR LACK OF EXCLUSIVE TERRITORIAL JURISDICTION

Comes now the United States of America, through its undersigned attorneys, and offers the following suggestions in opposition to the motion to dismiss for lack of jurisdiction, (D.E. 357), filed by the defendant, NaRicco T. Scott. The Government offers the following suggestions in opposition to Scott's motion.

I. Argument and Authorities

Scott has been charged, by indictment, with : (1) Count One - conspiracy to distribute cocaine, in an amount of five kilograms or more, and crack cocaine, in an amount of five grams or more, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(A) and 846; (2) Counts Four and Five - distribution of some amount of crack cocaine in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C); (3) Count Eleven - possession with intent to distribute crack cocaine, in an amount of fifty grams or more, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A); and Count Twelve - possession of a firearm in furtherance of a drug trafficking crime in violation of Title 18, United States Code, Section 924(c)(1)(A).

Scott claims that this Court does not have exclusive jurisdiction to try his crimes which occurred in Kansas City, Missouri, located in the Western District of Missouri. He argues that this Court only has jurisdiction over criminal proceedings when the criminal acts are committed exclusively within federal territorial jurisdiction, an individual consents to jurisdiction by filing a notice of acceptance, or when the United States government expressly accepts jurisdiction and has authorization from the state. Scott asks for documentation to prove exclusive federal jurisdiction or for the Court to dismiss the indictment.

Scott's exclusive federal jurisdictional arguments have been rejected on numerous occasions by district and circuit courts. In *Arechaveleta v. United States*, No. 3:05-CR-018-N (BF), 3:07-CV-326-N (BF), 2007 WL 2325207 (N.D. Tex. 2007), the district court addressed what appears to be the exact same issues raised in Scott's motion. The district court noted that 18 U.S.C. § 3231 grants district courts original jurisdiction over federal criminal offenses, and 18 U.S.C. § 3232 establishes that venue should be in the district where the offense was committed.¹ *Arechaveleta*, *id.* at *2; *see also United States v. Wheeler*, 435 U.S. 313, 320 (1978) (“[The federal government] has the power, inherent in any sovereign, independently to determine what shall be an offense against its authority and to punish such offenses”).

In *Adams v. United States*, No. 2:07-CV-66, 2:05-CR-194, 2007 WL 778415 (N.D. Ind. 2007), the district court rejected a similar claim, that federal jurisdiction exists only where jurisdiction was ceded by the states. *Adams*, *id.* at *3 (citing *McChurkin v. United States*, 922 F.2d 843, 1991 WL 1921 at *1 (7th Cir. 1991) (table) (“18 U.S.C. § 5 does not require that the

¹In his motion, Scott does not dispute that the illegal activities alleged took place within the Western District of Missouri, which encompasses about half of the State of Missouri.

jurisdiction of the United States be exclusive before territorial jurisdiction will attach”).

Similarly, in *United States v. Correa*, 97-20010-01, 1999 WL 155967 at *2 (D. Kan. 1999) (unpublished), the district court specifically rejected the premise that a showing of United States ownership or state cession of jurisdiction was an element of the offense. *Id.* (citing *United States v. Daily*, 921 F.2d 994, 998 (10th Cir. 1990)).

Two courts of appeals have rejected similar or nearly identical claims as frivolous without discussion. *United States v. Griggs*, 149 F.3d 1188, 1998 WL 196766 at *1 (8th Cir. 1998) (table); *United States v. Swain*, 133 F.3d 919, 1998 WL 24370 at *1 (4th Cir. 1998) (table) (noting the claim was frivolous).

Additionally, Scott heavily relies on the ruling in *Adams v. United States*, 319 U.S. 312 (1943), which holds “[s]ince the government had not accepted jurisdiction in the manner required by....[40 U.S.C. 255], the federal court had no jurisdiction of this proceeding.” *Id.* at 315. However, the issue in that case was narrow dealing with the trial of three soldiers in a military camp. *Id.* Distinguishing from *Adams*, Scott’s crimes do not involve military property or property over which the government was required to formally accept jurisdiction, and therefore Scott’s use of *Adams* is misplaced. Regardless of narrow jurisdictional rulings such as the one in *Adams*, the law clearly states that a defendant should be tried in the district in which “the crime shall have been committed.” U.S. Const. Amend. VI; *United States v. Calhoun*, 566 F.2d 969, 973 (5th Cir. 1980).

Scott simply misapprehends the jurisdictional requirement and ignores the body of case law which contradicts his legal arguments. There are certainly criminal statutes which must be committed within the “special maritime and territorial jurisdiction of the United States,” and

those crimes must be committed on “lands reserved or acquired and under the exclusive jurisdiction thereof . . .” or other areas which are subject to federal jurisdiction. *See, e.g.*, 18 U.S.C. § 1111(b); *see also* 18 U.S.C. § 7(3). However, the crimes to which Scott is indicted for do not have that requirement. *See* 21 U.S.C. § 841(a). Scott simply fails to grasp the distinction between the jurisdiction required for different crimes.

The distinction between the jurisdictional requirements is premised on the interstate nexus inherent in drug crimes. Since drug crimes necessarily impact interstate commerce, even if such activity takes place entirely within the state, “Congress may regulate both intrastate and interstate drug trafficking under the Commerce Clause.” *United States v. Patterson*, 140 F.3d 767, 772 (8th Cir. 1998). As a result, Scott’s argument that this Court lacked subject matter and exclusive jurisdiction is erroneous. *See United States v. Mooring*, 287 F.3d 725, 727 (8th Cir. 2002) (noting that federal district courts plainly possess subject-matter jurisdiction over drug cases under § 3231).

In short, Scott’s jurisdictional claims are utterly without merit and contrary to reported decisions dating back to the 1800s. The United States has authority to enact criminal laws that apply within the entire territory of the United States, whether that territory is also included as part of a state or not, provided that Congress has proper authority in the Constitution to enact the statute. The statutes confer jurisdiction upon this Court for federal criminal offenses. Scott’s argument is frivolous, and should be denied by this Court.

II. CONCLUSION

Therefore, for all of the reasons and authorities previously outlined, the Government respectfully requests that this Court deny Scott's motion to dismiss based on lack of exclusive federal jurisdiction.

Respectfully submitted,

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By */s/ Brent B. Venneman*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 14, 2011, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery and a hard copy mailed to:

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/s/ Brent B. Venneman

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