

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA	:	
Plaintiff	:	Criminal No. 2:08-M-6513
	:	
v.	:	Citation Nos.:
	:	F 3690801; F 3690803; F 3690804;
DALE ROBERT KELLOGG,	:	
Defendant	:	DEFENDANT'S EMERGENCY MOTION
	:	TO DISMISS OR FOR MISTRIAL

Now comes the Defendant, Dale Robert Kellogg, acting on his own without counsel, respectfully requesting that the Court subpoena exhibits and discovery materials held by his former attorney, and upon this record moves the Court to dismiss all pending charges, or otherwise to declare mistrial for errors denying equal protection, speedy trial, due process, and representation of counsel, to the prejudice of his defense.

This is presented as an "Emergency Motion" because the Defendant is innocent and under duress, apparently being forced to appear without counsel or adequate notice in an unexpected "motion hearing" on 9/28/09, and immediate remedies are needed to avoid damage to the defense or sanctions for failure to appear.

A. Request for Subpoena and Motion to Dismiss on the Record

1. My plea of Not Guilty is genuine: I have stood by my innocence from the beginning, and declined the U.S. Attorney's proposed plea agreement on this basis. As I stated in a recent filing, *"...I am truly not guilty here and cannot in good conscience accept responsibility for acts that did not take place and I can prove did not take place."*

2. Throughout this case, my attorney predicted that the charges would eventually be dropped, and that the delays made this more likely. For this reason I had witness statements and videos sent to him, to be shown to the U.S. Attorney as a courtesy in support of early dismissals, or presented with a pre-trial motion to dismiss if needed. I did not expect a trial or instruct him to set a date.

3. Former defense counsel Ron Kopriva still holds evidence not presented on my behalf, including the following items:

- Sworn affidavits by eyewitnesses Sheila Shortell, Glen Allen, and Shaarya Witt.
- Interview of eyewitness Robert A. Brennan, on authenticated CD.
- Video tape taken during my arrest.
- Video tape taken after my arrest.
- Statement Defendant made in jail and attempted to deliver to the court.
- Certification by Charles A. Howard, D.C. of Defendant's pre-existing shoulder injuries.

I do *not* know what other exhibits and discovery in this case are in counsel's possession, or whether he sought discovery of LEO videos, radio dispatches, etc., as I requested early on.

4. Since the court granted 'Leave to Withdraw' on 9/4/09, counsel has made no contact or gesture to return defense files to me, and I have no other local lawyer to receive them. I am concerned that these files might be lost or detained, and it is critical to my defense to preserve them and bring the facts they contain into the court record.

Therefore I respectfully ask the Court to act within its discretion and issue a subpoena for these files, as a matter of judicial notice and special need in this case, so that the facts are in the record and available for the U.S. Attorney's review. Then upon the record, I move the Court for dismissal of all charges, as a revised ruling on probable cause or as a pre-trial ruling on the facts. If the Court requires legal arguments in support, please appoint new defense counsel and allow reasonable time for a legal brief to be prepared and submitted at a later date. It is understood that the hearing apparently set for 9/28/09 would properly be held off for consideration of these Motions, and my appearance not required; please confirm this as soon as possible.

B. Motion for Mistrial

5. To my best knowledge, the charges against me resulted from my presence at the Rainbow Gathering in Bridger-Teton National Forest in June-July 2008, and law enforcement tactics to target and intimidate its participants. The same actions in an average parking lot would not have

caused any concern of police officers, much less this kind of violence. There is a pattern of such conduct by LEO's toward the Rainbow Gatherings since the 1980's, and of extreme provocation tactics at this event and others in recent years. The day after my arrest, LEO's created a serious incident at Kid Village, first using assault methods on individuals, attracting a concerned crowd, then moving on them and firing non-lethal weapons. The same methods were used on me, using violence to provoke reactions and justify greater force, but onlookers kept the situation cool. LEO roadblocks and other tactics are openly hostile toward 'Rainbows' in their styles and beliefs, and toward the 'Gatherings' as their form of expression and prayer. They have misused powers in making false criminal charges against participants, including me, knowing that it is difficult for travelers to defend charges far from home, and using prosecutions to intimidate First Amendment exercise and deny equal protection in assembly. *[Attachment 'A']*

6. This case has dragged on for over fourteen months, with long delays as the Court and U.S. Attorney waffled on the charges and setting trial. This only increased the burdens and stretched out the uncertainties I had to deal with as a defendant. The Court has some flexibility in handling minor charges, but when they are left open for over a year these cases are seen as prejudiced in denying speedy trial and punishing First Amendment defendants.

7. I did not fire my attorney; he quit the case on 8/28/09 after I refused the plea deal contrary to the truth and my principles, and I criticized his actions in defense. He immediately filed a 'Motion for Leave to Withdraw', and the Court quickly *Granted* that Motion on 9/4/09 without waiting for me to respond as the Defendant, contrary to the Rules – before I could possibly do so, or even knew what was happening. At the same time, the Court upheld the trial date of 9/28/09, setting me up to proceed without representation. Up to the time of counsel's withdrawal, the plan was to push for fair dismissals before trial... that was the job he was supposed to do, and the outcome he assured. It was never anticipated that this case would go to trial; he never contacted

witnesses or prepared for this, and by the time I received the Court's 9/4 Order, it was too late to arrange for them to appear, or to be ready for a trial defense without a lawyer.

8. My 'Response Opposing Attorney's Motion to Withdraw' was filed timely on 9/10/09, but the Court has not ruled on this, after already granting Leave to withdraw, or even acknowledged it. On 9/14/09 or just after, I submitted an 'Incomplete Exhibit and Witness List', trying to comply with this pre-trial rule, even though Mr. Kopriva still held the originals and had this information. After several calls to the Court, on 9/17/09 the Judge's secretary told me by phone that the trial date has been converted to a "hearing" for motions, and I had to appear in Lander on that date. The Court still had not appointed new counsel for my defense, but I was still expected to appear without representation.

9. On 9/21/09 the Judge's Order issued on 9/17/09 came in the mail: It included four additional citations in the pending case – those which the U.S. Attorney supposedly *dismissed* at the arraignment on 7/7/08, saying he reserved the right to bring them to a Grand Jury. To my knowledge and in court papers since that time, these citations have not been in the case:

F 3690805, F 3690806, F 3690807, and F 3690808.

It is unclear if these charges have been brought back in arbitrarily, or as a result of Grand Jury proceedings, and why this would be done now, creating more confusion, fear, and risks for the 9/28/09 hearing demanded by the Court. This hearing is also improper, since I was not served advance notice as the Rules require, and the stated purpose conflicts with the Court's previous action. I do not have enough time or ability to prepare on my own, and am forced to travel at great difficulty and expense for a proceeding that seems unneeded, putting me under more unfair burdens for no reason. This appearance is less than a week away; I have no way to deal with these problems without representation, and feel that my defense is now threatened.

Therefore the Defendant has been subjected to an irregular targeted prosecution, and deprived of equal protection in First Amendment exercise. There have been serious breaches of due process, the principles of speedy trial, and the Rules of Criminal Procedure, and defense counsel has been denied in the face of a decisive hearing. Because these errors have impeded the Defense and show prejudice in pre-trial proceedings, no conviction on any charge in this case can stand on appeal. Thus as an alternative to the Motion to Dismiss stated above, the Defendant moves for Mistrial in this case.

Respectfully submitted,

Dale Robert Kellogg, Defendant

Certificate of Service

I served a copy of the foregoing Response upon Assistant US Attorney Jason M. Conder, P.O. Box 449, Lander, WY 82520-0449, by regular mail and by Fax transmission this ____ day of September, 2009.

Respectfully submitted,

Dale Robert Kellogg, Defendant