

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

**FILED**

AUG 03 2016

  
CLERK

UNITED STATES OF AMERICA  Plaintiff,  vs.  VAL DEMARS  Defendant.	5:15-mj-00130-DW  ORDER GRANTING MOTION TO AMEND CFR SUBSECTION ON CVB TICKET
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The United States filed a Motion to Amend C.F.R Subsection on CVB Ticket, which provides notice that the United States intends to amend the subsection from 36 C.F.R. § 261.10(b) to 36 C.F.R. § 261.10(1) pursuant to FED R. CRIM. P. 7(e).(Doc. 15). The United States filed the motion on March 23, 2016. On March 28, 2016, counsel for the Defendant contacted the court via email indicating that the Defendant did not object to the amendment. On June 9, 2016, the Defendant filed a response objecting to the motion (Doc. 33).

The Defendant argues that the proposed amendment results in a different offense being charge and that FED. R. CRIM P. 7(e) does not apply to the petty offense citation.

FED R. CRIM. P. 58 governs petty offenses and other misdemeanors. Specifically, Rule 58(a)(2) provides that "In a case involving a petty offense for which no sentence of imprisonment will be imposed, the court may follow any provisions of these rules that is not inconsistent with this rule and that the court considers appropriate." FED R. CRIM. P. 58(a)(2). FED R. CRIM. P. 7 (c) and (e), which govern citation errors and amending the charging documents, are not inconsistent with FED

R. CRIM. P. Chapter 58. The court considers FED R. CRIM. P. 7(c) and (e) appropriate in considering whether to allow the amendment.

For a petty offense, a defendant may be charged in an indictment, information, complaint, citation, or violation notice. FED R. CRIM. P. 58(a)(2). Here, the defendant is charged in a violation notice. The violation notice states the time and date of the offense as 06/16/2015 at 16:37 for violating 36 C.F.R. 26110B, and describes the offense as "Improving Spring to Transfer Water Course." 36 C.F.R. 261.10(b) prohibits the following: "Constructing, reconstructing, improving, maintaining, occupying or using a residence on National Forest Service lands unless authorized by a special-use authorization or approved operating plan when such authorization is required."

Whereas, the proposed amended charge found in 36 C.F.R. 261.10(a) prohibits the following: " Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, significant surface disturbance, or other improvement on National Forest System lands or facilities without a special-use authorization, contract, or approved operating plan when such authorization is required."

The charging documents "must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. FED R. CRIM. P. 7(c)(1). In the case at hand, the alleged criminal conduct is described as Improving Spring to Transfer Water Course, which would be consistent with the prohibited conduct of 36 C.F.R. 261.10(a). Thus, the government has made a citation error in the charging documents. FED R. CRIM. P. 7(c) addresses citation errors. It provides, "Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction." FED R. CRIM. P. 7(c)(2).

Here, the defendant has not been misled or prejudiced by the citation error. The conduct at issue, which forms the basis of the petty offense, has not changed. The defendant has been on notice since March 23, 2016, that the government seeks to prosecute him for a violation of, "Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, significant surface disturbance, or other improvement on National Forest System lands or facilities without a special-use authorization, contract, or approved operating plan when such authorization is required." Furthermore, the defendant's pleadings overwhelmingly establish that he is aware of the nature of the charge against him and the conduct of which he is alleged to be in violation. The government isn't seeking to add an additional charge or charge a different offense. It is merely seeking to fix a citation error to reflect consistency with the description of the offense. There is no substantial right of the defendant prejudiced, as he has had adequate time to prepare a defense. Accordingly, the United States' Motion to Amend C.F.R. Subsection is hereby GRANTED.

Dated August 3, 2016.

BY THE COURT:



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DANETA WOLLMANN  
MAGISTRATE JUDGE