

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

United States of America,	)	
	)	
Plaintiff,	)	<b>ORDER DENYING DEFENDANT’S</b>
	)	<b>MOTION TO CONTINUE TRIAL</b>
vs.	)	
	)	Case No. 1:17-cr-16
Redfawn Fallis,	)	
	)	
Defendant.	)	

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Before the Court is the Defendant’s “Fourth Motion for Continuance of Trial and Related Filing Deadlines” filed on December 27, 2017. See Docket No. 148. The Defendant requests a continuance for “a minimum of 90 days,” asserting defense counsel needs additional time to craft jury instructions, prepare motions in limine, file several pretrial motions, complete discovery, and secure expert witnesses. See Docket No. 148. The Government filed a response in opposition on December 29, 2017. See Docket No. 161.

The Defendant was originally charged by a complaint on November 9, 2016. See Docket No. 1. An indictment was subsequently filed on January 5, 2017, and a superseding indictment was filed on March 1, 2017. See Docket Nos. 26 and 40. Trial was originally set for March 7, 2017. See Docket No. 30. Defense counsel has previously moved to continue the trial three (3) times, and all of the requests were granted. See Docket Nos. 36, 38, 65, 69, 88 and 89. On September 25, 2017, the Court granted the Defendant’s third motion to continue trial and set trial for January 29, 2018, in Fargo.<sup>1</sup>

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<sup>1</sup> On September 13, 2017, the Court granted the Defendant’s motion for change of venue and transferred the jury trial to the Eastern Division in Fargo, North Dakota. See Docket No. 86.

This is not a complex case. The charges brought against the Defendant relate to events that took place on Highway 1806 near Cannonball, North Dakota, on October 27, 2016, in the midst of pipeline protest activity in Morton County. The allegations that form the basis for the three charges the Government has chosen to pursue against the Defendant relate to events that occurred during an approximate 15 minute time frame beginning around 6:00 p.m. on October 27, 2016. Although the amount of discovery disclosed to date is extensive, as are the demands for additional discovery, the reality is that the heart of this case rests upon less than five (5) minutes of chaotic activity in the midst of an overall lull in protestations. The parties have now had more than a year to: (1) review the evidence; (2) review approximately 780 videos, 167 audio recordings, 5,750 images, and 2,188 pages of documents the Government states it has turned over to date; (3) research issues concerning the factual basis for the charges and the appropriate venue; (4) research the legal issues relative to the charges of “civil disorder” and “discharging a firearm in relation to a felony crime of violence;” and (5) consider pre-trial motions in limine, jury instructions, and a verdict form.

Both parties filed motions in limine on December 29, 2017. See Docket Nos. 152, 156-160. The Court carefully reviewed the motions in limine over the New Years Eve weekend, and is prepared to promptly rule on the motions within one day after a response is filed by the opposing party. Therefore, all motions in limine will have been addressed long before trial.

Both parties also filed proposed jury instructions on December 29, 2017. See Docket Nos. 153 and 163. The undersigned had already prepared a set of proposed preliminary jury instructions which will be sent to the parties for their consideration by on or before January 5, 2018. Most of the proposed preliminary jury instructions are pattern Eighth Circuit approved instructions the

undersigned has used in hundreds of criminal cases tried over the past sixteen (16) years. The parties will have three weeks to cerebrate over the proposed preliminary instructions.

Again, this is far from a complex criminal case. By the time the trial commences on January 29, 2018, both parties will have had more than one year to focus their attention on less than five (5) minutes of critical activity, statements, videotapes, pictures, and other images of the sequence of events that occurred around 6:00 p.m. on October 27, 2016. Both parties are well-represented by competent and experienced counsel. The Court believes the Government has been reasonable and cooperative in the pretrial process, and has made a good faith effort to search for and disclose relevant discovery to date. The Government certainly has an obligation to continue to produce all exculpatory and impeachment material pursuant to *Brady*, *Giglio*, and their progeny, and the Court will ensure it does so.

Finally, and for the benefit of all parties and their clients, the trial of this matter will focus on the events that occurred on or near Highway 1806 on October 27, 2016, around the 6:00 p.m. timeframe—when the Defendant, Redfawn Fallis, arrived on site riding an ATV and the subsequent arrest, search, and seizure. The trial will not concern the following subject matters that have no relevance to this particular criminal case:

- Historic treaty agreements; the 1851 and 1868 Fort Laramie Treaties; or the necessity of the DAPL pipeline protest movement as a defense;
- The pipeline protest activities, and the actions of law enforcement officers in addressing those protest activities, that occurred in the days, weeks, and months leading up to October 27, 2016;
- The number(s) of pipeline protestors who obstructed law enforcement officers, engaged in or incited riotous behavior, or who were arrested in the days, weeks, or months leading up to October 27, 2016;
- Those ill-advised persons who apparently made a conscious choice to “cross the line” and were allowed on occasion to penetrate a line of law enforcement

officers prior to October 27, 2016, because they considered themselves to be “arrestable.”

In other words, this trial will focus on the activities that occurred on or near Highway 1806 during the late afternoon hours of October 27, 2016. The Court will allow some limited, preliminary, background evidence for the purpose of providing some context and an explanation for why there were law enforcement officers and pipeline protestors on Highway 1806 during the late afternoon hours of October 27, 2016. However, any efforts made by counsel for either party to broadly expand the scope of the testimony, on direct or cross-examination, into the prohibited areas outlined above would be ill-advised.

Accordingly, in the broad exercise of the Court’s discretion, and after careful consideration of all relevant factors set forth in *United States v. Jones*, 662 F.3d 1018 (8th Cir. 2011), the Defendant’s motion to continue trial (Docket No. 148) is **DENIED**. The jury trial will proceed as scheduled on Monday, January 29, 2018, at 1:00 p.m. (10 days, #1 on calendar).

**IT IS SO ORDERED.**

Dated this 2nd day of January, 2018.

/s/ Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court