

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
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Plaintiff,)
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v.)
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)
SCOTT CRAWFORD, et al.,)
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)
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Defendants.)

NO. 04-20150 B/An

REPORT AND RECOMMENDATION

Before the Court is Defendant Scott Crawford’s Motion to Dismiss for Selective Prosecution filed on January 4, 2005. United States District Judge J. Daniel Breen referred this matter to the Magistrate Judge for a report and recommendation. For the reasons set forth below, the Court recommends that Defendant’s Motion be **DENIED**.

BACKGROUND

On March 23, 2004 the federal grand jury for the Western District of Tennessee returned a fifteen count indictment for Defendant Scott Crawford (“Defendant”). This indictment includes claims for money laundering and the intent to commit larceny in violation of 18 U.S.C. § 2113(a). Defendant filed this Motion to Dismiss alleging the Government violated his constitutional rights by not prosecuting other similarly situated individuals for committing similar crimes. Defendant notes that the Government has knowledge of other parties committing acts similar to those outlined in Defendant’s indictment in case 04-20150, but Defendant contends that the Government has not indicted or charged other individuals with these crimes.

Defendant argues that “the Government has chosen to prosecute Mr. Crawford simply because of his race, profession, and his failure to act as Government informant.” (Mot. to Dismiss for Selective Prosecution, at 1).

ANALYSIS

A Motion to Dismiss for selective prosecution is “an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution.” *United States v. Armstrong*, 517 U.S. 456, 463 (1996). United States Attorneys retain broad discretion to enforce this Nation’s laws. *See Wayte v. United States*, 470 U.S. 598, 607 (1985) (citations omitted). Prosecutors “have this latitude because they are designated by statute as the President’s delegates to help him discharge his constitutional responsibility to ‘take Care that the Laws be faithfully executed.’” *Armstrong*, 517 U.S. at 464 (quoting U.S. Const. art II, § 3). As such, courts generally presume that prosecutors properly discharge their official duties. *See id.*

A prosecutor’s discretion is subject to constitutional limitations, including those limitations imposed by the Due Process Clause of the Fifth Amendment. *See id.* Specifically, “the decision whether to prosecute may not be based on ‘an unjustifiable standard such as race, religion or other arbitrary classification.’” *Id.* (quoting *Oyler v. Boles*, 368 U.S. 448 (1962)). The burden, however, is on the defendant to present clear evidence that the prosecutor violated equal protection. *See id.* at 465; *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926).

The United States Supreme Court has noted that the claimant must show that similarly situated individuals were not prosecuted. *Armstrong*, 517 U.S. at 464. In the Sixth Circuit, “a defendant must show that the federal prosecutorial policy had both a discriminatory effect and a

discriminatory intent.” *United States v. Jones*, 159 F.3d 969, 976 (6th Cir. 1998). In other words, the defendant “must show that the prosecutorial policy was motivated by racial animus” and that “similarly situated individuals . . . were not similarly prosecuted.” *Id.* at 977. The defendant must prove three factors to the Court:

First, [the prosecutor] must single out a person belonging to an identifiable group, such as those of a particular race or religion, or a group exercising constitutional rights, for prosecution even though he has decided not to prosecute persons not belonging to that group in similar situations. Second, he must initiate the prosecution with a discriminatory purpose. Finally, the prosecution must have a discriminatory effect on the group which the defendant belongs to.

United States v. Armstrong, 923 F.2d 450, 453 (6th Cir. 1991) (citing *Wayte v. United States*, 470 U.S. 598 (1985)).

In this matter, Defendant makes general statements about the Government but offers nothing in support of his statements. Defendant also did not request a hearing on this motion so that evidence in support of his claim could be shown. Defendant cites no authority, other than citing Federal Rule of Criminal Procedure 47, which has to do with filing motions and affidavits. Rule 47 has nothing to do with a motion to dismiss for selective prosecution. Overall, Defendant has not presented “clear evidence” that the Government violated Equal Protection. As such, the Court recommends that Defendant’s Motion be **DENIED**.

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS FROM THE DATE OF SERVICE OF THE REPORT. FAILURE TO FILE THEM WITHIN TEN (10) DAYS OF SERVICE MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.

S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date: _____