THE WMD CHARGES AGAINST WHITE PEOPLE GET THROWN OUT

As Bane of Our Existence and Dirty Masquerade have been noting in comments, the case against the Hutaree Militia has been crumbling in court. Today, Judge Victoria Roberts threw out most of the charges against most of the defendants, based on her judgment that the government had based its conspiracy charges on speculation. Among those charges are the Conspiracy to Use WMD which—as I've noted in the past—was one of the few times white defendants have been charged with what is a garden variety charge against Muslim defendants who are caught in stings.

Some of the case law Roberts relies on for her case is specific to the 6th Circuit. Nevertheless, her opinion lays out principles that would—if applied to Muslims—undermine the cases against brown terrorists are significantly as it has against these white alleged terrorists (not to mention Manssor Arbabsiar and two of the four Waffle House plotters).

First, she lays out that a conspiracy must entail explicit agreement to a specific plot.

> In order to sustain a conviction for conspiracy, the Government must prove that each Defendant: (1) agreed to violate the law; (2) possessed the knowledge and intent to join the conspiracy; and (3) participated in the conspiracy. See United States v. Sliwo, 620 F.3d 630, 633 (6th Cir. 2010); see also Sixth Circuit Pattern Jury Instructions §§ 3.01A, 3.03 (To prove a conspiracy, the government must show that (1) two or more individuals conspired to commit the crime; and (2) that each defendant voluntarily joined the conspiracy, knowing of its main purpose and intending to help advance

> its goals.). In addition, a conspiracy requires a specific plan. See Pinkerton v. United States, 145 F.2d 252, 254 (5th Cir. 1944) (holding that a criminal conspiracy requires (1) an object to be accomplished; (2) a plan or scheme embodying means to accomplish that object; (3) an agreement by two or more defendants to accomplish the object; and (4) an overt act, where applicable); see also United States v. Bostic, 480 F.2d 965, 968 (6th Cir.1973).

Roberts goes on to note that the law requires evidence that each alleged conspirator entered into the conspiracy; guilt by association is not enough.

> The issue of guilt or innocence in a conspiracy is always an individualized inquiry. Kotteakos v. United States, 328 U.S. 750, 772 (1946) ("Guilt with us remains individual and personal, even as respects conspiracies. It is not a matter of mass application."). The government must prove the intent of each individual conspirator to enter into the conspiracy, knowing of its objectives, and agreeing to further its goals. See Sixth Circuit Pattern Jury Instruction § 3.03. Consistent with these principles, it is useful to note that there are two distinct intents required to prove the crime of conspiracy – the basic intent to agree, which is necessary to establish the existence of the conspiracy, and the more traditional intent to effectuate the object of the conspiracy. United States v. United States Gypsum Co., 438 U.S. 422, 443 n.20 (1978); Sixth Circuit Pattern Jury Instruction, Committee Commentary 3.03; 2 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 12.2 (2d ed. 2011).

All the more so, Roberts lays out, when the

alleged conspiracy entails the freedom of assembly.

> Where a conspiracy implicates First Amendment protections such as freedom of association and freedom of speech, the court must make a "specially meticulous inquiry" into the government's evidence so there is not "an unfair imputation of the intent or acts of some participants to all others." United States v. Dellinger, 472 F.2d 340, 392 (7th Cir. 1972). It is black-letter law that "[a] defendant cannot be convicted of conspiracy merely on the grounds of guilt by association, and mere association with the members of the conspiracy without the intention and agreement to accomplish an illegal objective is not sufficient to make an individual a conspirator." Lee, 991 F.2d at 348. Likewise, mere presence at the scene does not establish participation in a conspiracy. United States v. Paige, 470 F.3d 603, 609 (6th Cir. 2006).

Most of Roberts' analysis looks at the seditious conspiracy (the government's theory of which, she notes, has evolved since the indictment). On that charge—and by association, the other conspiracy-related charges—she judges the Hutaree members have engaged in vile speech, but not a seditious conspiracy.

> … while the Government presented evidence of vile and often hateful speech, and may have even shown that certain Defendants conspired to commit some crime – perhaps to murder local law enforcement – offensive speech and a conspiracy to do something other than forcibly resist a positive show of authority by the Federal Government is not enough to sustain a charge of seditious conspiracy. A conspiracy to murder law enforcement is a far cry from a conspiracy to forcibly oppose the

> authority of the Government of the United States.

Now, my sense is that part of the government's problem in this case is that they charged the seditious conspiracy as their base charge rather than—as Roberts suggests might have worked—conspiracy to commit murder. And once the seditious conspiracy failed, the rest did too, for most of the defendants.

Nevertheless, Roberts' ruling places vile, protected speech back at the stance it was before 9/11 turned speech and association into crimes.

At least for white people.