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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 16-CR-30061-CSB
	)	
AARON A. SCHOCK,	)	
	)	
Defendant.	)	

GOVERNMENT'S COMPLIANCE WITH THE COURT'S OCTOBER 3, 2017 ORDER AND MOTION TO RECONSIDER

The United States of America, by Acting United States Attorney Patrick D. Hansen, for its response to this Court's Order of October 3, 2017, respectfully states:

Background

Aaron Schock is charged with wire fraud, 18 U.S.C. § 1343 (counts 1-9); mail fraud, 18 U.S.C. § 1341 (count 10); theft of government funds, 18 U.S.C. § 641 (count 11); making false statements, 18 U.S.C. § 1001(a)(2)(c)(1) (counts 12-13); falsifying filings with the Federal Election Commission, 18 U.S.C. § 1519 (counts 14-18); and filing false tax returns, 26 U.S.C. § 7206(1) (counts 19-24). The indictment was returned following an investigation lasting over 18 months, and involved two separate grand juries.

A. Schock's Motion for Grand Jury Minutes

In March 2017, Schock filed a motion for discovery and a supporting memorandum of law. (R.63, R.64) Therein, Schock requested that this Court direct the United States to produce, among other items, the transcripts of the minutes of the second grand jury that contained "any discussion or instruction regarding Schock testifying or his decision not to testify." (R.63 at 2) Schock alternatively requested that this Court conduct an *in camera* inspection of these materials. *Id.*

As the sole support for this request, Schock filed the handwritten declaration of a third party, dated February 23, 2017, concerning the third party's alleged conversation with a former grand juror, which occurred three months earlier, in November 2016. (R.64-1 at 2) In the declaration, the declarant asserted that the former grand juror "remarked that he was more free to talk about the case because the grand jury had been dismissed." *Id.* According to the declarant, "The [former grand juror] . . . told us that the prosecutor told the grand jury that Aaron Schock and his attorney were requested to appear and that no one had shown up." *Id.* Schock argued in his discovery motion that the declarant's statement entitled him to either disclosure of the grand jury minutes or the Court's in camera review of the minutes. (R.64 at 2-3, 15-18)

B. Government's Response to Defendant Schock's Motion for Grand Jury Minutes

As an initial matter, and to put the government's response to that motion in context, unless there is some showing of substantial need, it is not the practice of the U.S. Attorney's Office in Central Illinois to request the transcription of grand jury minutes. In reviewing Defendant Schock's initial motion, it is evident that the sole basis for Schock's motion was an allegation supported only by a single hearsay statement. Based on this, and the request for the extraordinary remedy of disclosing the minutes of the second grand jury to the defense (or putting the Court through the time and effort reviewing such minutes), the government chose to respond directly to Schock's allegation. Because government counsel did not make the specified alleged statement either to the first grand jury or to the second grand jury that returned the indictment, in its opposition to Schock's March 2017 motion, the government "unequivocally" denied the allegation (R.69 at 60). Specifically, the government stated:

> According to the witness, the grand juror stated that the government advised the grand jury that Defendant Schock was 'requested to appear and that no one had shown up.' (Aff. Attach. to GJ Mem.) The government unequivocally submits to this Court that this allegation is false. It did not happen. Defendant Schock's speculation that it happened is not a 'compelling necessity' to invade grand jury secrecy. (R.69 at 60)

C. This Court's Order Denying Defendant Schock's Motion for Grand Jury Minutes

In its May 18, 2017, order denying Schock's motion, this Court quoted the government's response and further stated:

> Defendant also presents a handwritten note of a person who describes a conversation with another person who said he was a member of the grand jury and then described *a statement* allegedly made by the prosecutor before the grand jury.

(R.95 at 9) (emphasis added) This Court characterized the declarant's statement as "triple hearsay" (R.95 at 4 n.3) and held that such statement was insufficient for this Court to examine the inner workings of the grand jury. (R.95 at 10)

The Court stated that it "is comfortable concluding that [selected witness testimony] and a triple hearsay note are simply not enough to require the extraordinary relief Defendant is requesting." (R.95 at 10) Based on this Court's order, the government reasonably understood that the Court, like the government, was addressing the sole support for Schock's motion, namely, the triple hearsay allegation that a specific improper "statement" (R. 95 at 9) was made to the grand jury, and that this, without more, was simply insufficient to grant the extraordinary relief requested.

D. Defendant Schock's Motion to Dismiss Indictment

In August 2017, Schock filed a motion to dismiss the indictment, again based solely on the same third party declaration. (R.100) This motion, however, was not simply requesting that the government produce the grand jury minutes to the defense or to the court, but that the matter be dismissed due to alleged misconduct before the grand jury. (R.100) He also requested the authority to subpoena the grand juror to testify whether the statement occurred and the impact it had on the grand juror's decision-making process. (R.100, R.101)

E. Government's Response to Defendant Schock's Motion to Dismiss Indictment for Violation of Fifth Amendment Rights

Partly due to the broader request in the defendant's motion to dismiss, the government, in its motion for extension of time to file its response to the motion to dismiss, advised the Court that "due to the repeated allegations (albeit with no additional support) regarding Fifth Amendment issues, and to reflect the government's complete transparency with the Court, the government has requested the grand jury minutes for both the initial and charging grand juries (which total more than 2,000 pages) and will make the minutes available to the Court in camera, as the Court deems necessary." (R.111 at 3)

Upon receipt of the grand jury minutes, several government attorneys conducted a review and confirmed the veracity of its prior representation that

the government did not inform the grand jury that "Defendant Schock was requested to appear and that no one had shown up." (R.69 at 60)

However, due to the breadth of the allegation (albeit with no additional support) and request to dismiss the indictment due to allegations of governmental misconduct before the grand jury, the undersigned also determined it was necessary for the government to supplement and clarify its previous response to insure there was no misunderstanding. (R.119 at 4) (citing Illinois Rules of Professional Conduct 3.3) (the obligation of candor towards the tribunal). In retrospect, it is clear that this was necessary as this Court understood the government's initial narrow representation to be a much broader assertion.

To be clear, in its response to Schock's motion to dismiss, under my signature as the Acting U.S. Attorney, the government did not intend to suggest that it had previously made a knowing and material misrepresentation to the Court. Instead, the intention was (1) to confirm to the Court that the government did not make the statement alleged in the declarant's affidavit that Schock appended to his motion for disclosure of the grand jury minutes; and (2) to address what the government viewed as the broader claim in Schock's motion to dismiss – i.e. whether the government commented in any manner on Schock's right not to testify. Further, the Court should place no additional significance to the filing of

the response under my name, versus that of AUSA Bass. The fact that I filed the response was due to the need to spread the workload in the case and, significantly, that I made one of the quoted statements in the response to the charging grand jury.

In an attempt to clarify the matter, the government provided the Court with the relevant excerpts of the grand jury minutes for both the initial and charging grand juries and fully addressed the issue of Schock's testifying or decision not to testify before either grand jury in an effort to put this matter to rest. Unfortunately, the government's efforts complicated the issue further.

As the government noted in detail in its response to the motion to dismiss, on eleven occasions—seven times before the first grand jury and four times before the second grand jury—government counsel commented on or addressed Schock's testifying or decision not to testify before the grand jury, typically in response to inquiries by the one or more grand jurors. (R.119 at 4-15) The excerpts of the grand jury minutes also conclusively confirms that at no time did the government make the statement that Schock claimed the government made in his motion for disclosure of grand jury minutes, that is, "Defendant [Schock] was requested to appear and that no one had shown up." (R.95 at 5; R.69 at 60)

I. Compliance With Order

Pursuant to this Court's Order of October 3, 2017, the Acting U.S. Attorney has reviewed all of the pending pleadings, and respectfully submits the following as its statement of compliance: The undersigned is confident that there are no intentionally false or misleading material claims made by the government. That being said, it is important that my representation be put in context, as many items that may be classified as "claims" or "statements" may be expressions of opinion, may be argument regarding disputed matters, and/or may be statements based on ordinary standards of practice or care.

(1) Statements Based on Ordinary Practice and Standards

The claims and statements made in all of the matters pending before the Court were made in good faith, using due care under the ordinary practice in the United States District Court. The government submits this caveat, as it is acutely aware of the possible repercussions should these statements be viewed using any different or greater standard. This concern is highlighted by the Court's footnote (numbered 3) in its October 3 order, referring to the claim that the Department of Justice has authorized the charges in this case. The Court expressed concern whether such authorization was made with "full knowledge of the occurrences before the Grand Jury" as set forth in the Government's response to Schock's Motion to Dismiss. Simply put, the transcripts of the grand jury minutes were

not provided to the officials at the Department of Justice, and were, therefore, not within the knowledge of those officials in approving the indictment. In fact, those transcripts did not exist until approximately August 2017.

While it would have been well outside the standard of practice for the entire transcript of the Grand Jury proceedings to have been submitted for review, or for such a review to have taken place, nevertheless, the undersigned can state the charges in this matter were thoroughly reviewed by officials in the U.S. Department of Justice Criminal Division, Public Integrity Section and Office of the Deputy Attorney General. Substantial material was submitted by the government investigators as well as from the defense, both in writing and in person. After such review, the United States Attorney was authorized to seek an indictment against Schock.

(2) Statements or Arguments Made Regarding Disputed Matters

The government is certainly aware that Schock has made numerous allegations regarding the government's conduct during the course of the investigation. These allegations go all the way back to the very first pleading filed during the course of the investigation, which, among other things, accused the government attorney of violating the rules of ethics because a grand jury subpoena for Schock was served on him. It is with this understanding, and with the full understanding that Schock disputes many statements, that the

undersigned certifies that there are no intentional misrepresentations or intentionally false or misleading claims in any of the government's filings.

A good example of such a disputed statement is the government's representation made in response to an accusation that government counsel inquired of witnesses regarding Schock's sexual orientation. (R.108 at 76) The government has represented that "[t]his allegation is completely erroneous," (R.127 at 38); has agreed with Mr. Schock that this matter was the subject of "gossip" (R.108 at 76) in the media that pre-existed the grand jury investigation, and that it "also was of interest prior to the grand jury investigation among his friends and staff members." (R.127 at 39) It is also correctly represented that "the government did not inquire about it." (R.127 at 39) We further stated that out of more than 100 witness interview reports possessed by the government, only 4 contained references to Mr. Schock's sexuality, "and those references were initiated by the witness, not by the government." *Id*. In fact, the defendant has claimed that based on its own investigation, "that government reports for two other witnesses omit information regarding these types of inquiries." (R.108 at 78) The government has made requests to the defense for the source of this information so that further inquiry or explanation can be made, but the defendant has chosen to not share its interview summaries, reports or information with the government, or to identify the source for such declarations.

I therefore certify the accuracy of the government's representation with the knowledge that the defendant claims to possess information to the contrary. However, I make this certification following inquiry of the agents involved in the investigation of the matter, and with information provided by attorney J. Steven Beckett, who represented several of the witnesses in this matter, and who is prepared to testify that such questions were not asked by the prosecutors or agents in his presence." Per Attorney Beckett, "the government acted 'professionally' at all times." (R.127 at 35)

(3) Allegations of Harassment of Witnesses

A similar quandary is present when discussing claims and statements regarding allegations that certain witnesses "felt" harassed. In response to Mr. Schock's claims of the government "concocting a theory," presenting "false" evidence, "misleading" the grand jury, or "influencing the witness's testimony" (R.108 at 36), the government argued that they are "completely meritless." In support of this argument, the government presented the grand jury transcripts of numerous witnesses to the Court, represented that Mr. Schock had "insert[ed] an inaccurate document into his memorandum[,]" (R.127 at 30), and further represented that there was not "a single prospective witness before the grand jury [who has] contended in his or her affidavit [or otherwise] that the so-called

'threats' by the government officials had caused him to testify falsely before that body." (R.127 at 37)

The government reaffirms these statements and is prepared, if the Court deems it necessary, to present further evidence in support of these statements, including the attorney(s) who represented several of these witnesses and was present during many of the interviews of the witnesses. However, should this Court hold a hearing and find otherwise, such would not make the government's statements or claims either false or misleading (presuming the witnesses testify consistent with their prior representations), it would simply mean that the Court disagrees with the conclusion.

There are several statements and claims throughout the government's pleadings, which rely on conclusions, legal and otherwise, reached following an assessment of the facts, the law, or both. Statements regarding the reasonableness and legality of the CI's actions[1], for example are supported by reports authored by law enforcement agents. Similarly, statements regarding the government's efforts to comply with its discovery obligations[2] are made in good faith, based on

[1] *See e.g.* R. 69, p. 53 ("Although Defendant Schock suggests that it is inappropriate for a government attorney to act as an 'alter ego' for law enforcement agents…there is no evidence to support that assertion because it simply did not occur.")

[2] *See e.g.* R.128, p.13 ("The government has complied with its Rule 16 obligations and the defendant's requests for materials to a remarkable extent, providing significantly more discovery than its legal requirement.")

the knowledge available at the time. Should it become evident, however, that an item or category of documents was overlooked and had not been provided, this would not change the fact that the representation (or this certification) was made in good faith and after a reasonable inquiry at the time that it was made.

(4) Expressions of Opinion or Argument

Finally, there are statements in the form of argument which have been reviewed. *See e.g.* R.127, p.22 ("…Schock submits no evidence to support his extreme claims. Defendant Schock's claims are just that – naked claims with inflammatory rhetoric….") Once again, this Court may find that the government is incorrect in these assertions. The statements, however, and those like them, were made in good faith to advance an argument or position believed to be correct, and intended as advocacy to assist the Court in reviewing this position.

II. Request for Reconsideration of This Court's Findings in its October 3 Order

In its October 3, 2017, order, this Court stated that "the Government admitted that a previous claim made by Assistant United States Attorney Timothy Bass was misleading, if not simply false." (Order at 1) The Court noted that the "claim related to an allegation that a Government attorney made comments regarding Defendant's failure to testify before the Grand Jury." (*Id.)* The Court further stated that "the Government has now changed its position" that it "unequivocally submits to this Court that this allegation is false. It did not

happen." (*Id.)* The Court noted that this "clarification" was made by the Acting United States Attorney. Based on these findings, the Court further concluded that "it was misled by the Government[,]" and that the statement made by the government was "false." (*Id.* at 3)

With complete respect to the Court, the government submits that the Court's statements (1) that "the Government admitted that a previous claim made by Assistant United States Attorney Timothy Bass was misleading, if not simply false" and (2) that "the Government has now changed its position" are mistaken. The government respectfully requests that the Court reconsider its findings and withdraw any finding that the government attorney acted to intentionally mislead the Court or intentionally make a false statement.

First, as noted above, prior to filing its response to Schock's motion for grand jury minutes, the government was confident that the alleged specific "statement" (R.95 at 9) was not made to the grand jury. Then, prior to filing its response to Shock's motion to dismiss, the government obtained and reviewed the entire grand jury minutes (more than 2,000 pages) and conclusively confirmed the accuracy of its statement that there was no representation to the grand jury that "Defendant [Schock] was requested to appear and that no one had shown up" (R.95 at 5); (R.69 at 60)

Second, the government's more recent response to Schock's motion to dismiss the indictment (R.119) included language expressing that it was supplementing and clarifying its prior response. This response was not intended to suggest to the Court that the prior statements were false or misleading or that the government was changing its position. Rather, the government provided the supplemental information to the Court to show that, although the government did not make the specific statement Schock alleges the government made, the government did make remarks regarding Schock's testifying or decision not to testify before the grand jury, typically to clarify matters for the grand jury. Further, the government provided the supplemental information to address Schock's request for dismissal for alleged violation of his Fifth Amendment rights (a remedy broader than he previously sought) and, relatedly, to address whether Schock was prejudiced by any alleged violation before the indicting grand jury.

Unfortunately, the government failed to make clear its intent and accepts complete responsibility for any misunderstanding that the government was admitting that it knowingly misled the Court by its unequivocal denial of the accuracy of the declarant's statement. The government apologizes to the Court for causing that misunderstanding.

Third, the government acknowledges that it alone has caused an unintended conflation of (a) the sole allegation in Schock's initial motion for grand jury minutes that the government made a specific improper statement to the grand jury that "Defendant [Schock] was requested to appear and that no one had shown up" (R.95 at 5), on one hand; and (b) the much broader issue of Schock's non-appearance before both grand juries and his Fifth Amendment rights, on the other hand. This was the result of the government's quest for complete transparency in its response to the motion to dismiss for alleged violation of Schock's Fifth Amendment rights, rather than any representation that it had previously misled the Court.

In the government's response to Schock's motion to dismiss, and in an effort to put this matter to rest, we have now fully addressed the broader issue of Schock's non-appearance before both grand juries and, as argued, there was no violation of Schock's Fifth Amendment rights and, alternatively, no prejudice that would warrant dismissal of the indictment.

Fourth, the government acknowledges that it is solely responsible for causing this conflation or misunderstanding of issues. If the Court determines that further criticism of the government is warranted for not going beyond the specific allegation in Schock's motion for grand jury minutes, or not ordering and reviewing all of the grand jury minutes before it responded to Schock's

discovery motion, we fully accept it. If the government had done so, this unfortunate circumstance and the inconvenience it has caused to the Court most certainly would have been avoided. We respectfully submit to the Court, however, that the government has not intentionally made any false or misleading statement to the Court.

Accordingly, the government respectfully requests that the Court reconsider its finding that the government acted to mislead the Court or that any AUSA intentionally made a false statement, and withdraw any such finding.

Conclusion

For the reasons presented, the government respectfully requests that the Court reconsider its previous findings that the government acted to mislead the Court or that its AUSA intentionally made a false statement. Furthermore, that the Acting U.S. Attorney has complied with this Court's Order of October 3, 2017.

Respectfully submitted,

UNITED STATES OF AMERICA

By: /s/Patrick D. Hansen
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CERTIFICATE OF SERVICE

I certify that on October 17, 2017, I caused the government's response to be filed with the Clerk of the Court using the CM/ECF system, which will cause notice to be served on counsel of record.

/s/ Patrick D. Hansen
Acting United States Attorney