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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE FLORIDA

UNITED STATES OF AMERICA

V.

Case No: 3:18-cr-89-J-34JRK

KATRINA BROWN
REGINALD BROWN

_____ /

PRO SE DEFENDANT'S MOTION TO DISMISS INDICTMENT

Katrina Brown and Reginald Brown, by and through Prose Defendant Katrina Brown, moves this Court for an order to dismiss the indictment dated May 23, 2019

FACTS

THE UNITED STATES DISTRICT COURT Middle District of Florida, Jacksonville Division – THE UNITED STATES OF AMERICA indicted Katrina Brown and Reginald Brown on thirty-eight separate crimes, called “counts,” Katrina Brown is charged in Counts One through Thirty-Three; and also in Court Thirty-Eight. A copy of the indictment was provided during the grand jury deliberations.

Count One charges that the Defendants knowingly and willfully conspired to commit mail fraud and wire fraud. The Defendants were not charged in Count One with committing a substantive offense—the Defendants are charged with conspiring to commit mail fraud and wire fraud.

Counts Two through Thirty-Three charge that the Defendants committed what are called substantive counts of Aiding and Abetting Mail Fraud (Counts two through Fourteen), Aiding and Abetting Money Laundering (Counts Twenty-Eight through Thirty-Three). Counts Thirty-Four and Thirty-Five charge Katrina Brown with Attempted Bank Fraud. Counts Thirty-Six and Thirty-Seven charge Katrina Brown with Submitting False Documents to a Federally Insured Financial Institution. Count Thirty-Eight charges Reginald Brown with Willful Failure to File a Federal Tax Return.

Witnesses for the government, Craig Castiglia, Special Agent with Internal Revenue Service Criminal investigations; and FBI Agent, Angela Hill improperly authenticated exhibits and records that were not properly authenticated prior to their testimony to the grand jury. An issue in this motion is the indictment was based on the introduction of exhibits and records that contained hearsay and were not properly authenticated.

The prosecution has alleged between 2013 and 2015 Katrina Brown and Reginald Brown

GRAND JURY PROCEEDINGS

In the grand jury proceedings A.USA Tysen Duva introduced exhibits and presented testimonies of Internal Revenue Agent Craig Castiglia, FBI Agent Angela Hill, and witness FP.

DISCUSSION

The indictment in this case should be dismissed for several reasons:

1. The indictment was based on the introduction of exhibits that contained hearsay and were not properly authenticated.

A. Internal Revenue Agent Craig Castiglia, testimony dated (April 18, 2018)

The primary evidence introduced in grand jury by Agent Craig Castiglia were (Exhibits 1 to 7), which were copies of information provided by financial institutions and business entities. The Exhibits 1 to 7 were not properly authenticated.

B. FBI Agent Angela Hill testimony dated (March 14, 2018)

The primary evidence introduced in the grand jury by Agent Angela Hill contains over 500 copies of financial, business, and public records. The 500 pages include 34 exhibits. Some of which are public record. The above-mentioned 34 exhibits were offered by the prosecution for truth of the matter as pertaining to this case.

However, the above-mentioned exhibits were not introduced by a "custodian or qualified witness" who was able to testify about how the information in the exhibits were obtained.

Instead, the exhibits were introduced by FBI Agent Angela Hill, who is not qualified to provide the necessary foundation under Rule 803(6)

C. Witness FP testimony dated (March 28, 2018)

The primary evidence introduced in the grand jury was Exhibit 1, 2A, 2B, 2C, and 2D, which include the SBA authorization Form (Agreement between SBA and Lender BizCapital BIDCO LLC.), and portions of the SBA agreement. The witness FP purports to certify the evidence introduced in the grand jury. However, certification refers only to a portion of the full loan agreement. If authentication from witness FP only authenticated some of the SBA loan agreement, then it is not clear if the complete SBA loan agreement was authenticated at all.

HEARSAY

“- Hearsay is a statement. other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted” Evidence Rule 801(c). “A statement is (1) an oral or written assertion ...if it is intended by the person as an assertion.” Evidence Rule 801(a).

In this case, 24 of the 34 exhibits contained improper hearsay because the exhibits were the statements of various businesses or government agencies, and not the statements of the witnesses. None of the records contained anything that the FBI Investigator Angela Hill had direct knowledge of.

Two possible exceptions to the rule against hearsay are exceptions for business records and public records and reports. However, there was no foundational information presented that would allow the prosecution to avail themselves of either of those exceptions.

In this case 10 of the 34 exhibits were records from governmental entities. The business records exception.Evidence Rule 803(6) provides:

Business Records. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstance of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

There was 10 of the 34 exhibits came from various governmental agencies.

However, only one, sunbiz is identified under public records or reports under 803(8).

The public records and reports exception.

Evidence Rule 803(8) provides...

Public Records and Reports. (a) To the extent not otherwise provided in (b) of this subdivision, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

(b) The following are not within this exception to the hearsay rule (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, public office or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the state in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness. Any writing admissible under this subdivision shall be received only if the party offering such writing has delivered a copy of it or so much thereof as may relate to the controversy, to each adverse party a reasonable time before the trial, unless the court finds that such adverse party has not been unfairly surprised by the failure to deliver such copy.

The commentary to Rule 803(8) provides that the rule recognizes that government records that are compiled for purposes other than presentation on the government's behalf at trial are generally reliable (part (a)). But that reliability is substantially diminished when the government stands to gain an edge in litigation through introduction of a record or report it has prepared (part (b)(ii) & (iii)). Similarly, the rule

differentiates factual findings made by the government in the process of carrying out public responsibilities, which are presumed to be reliable, from factual findings resulting from a special investigation of particular complaint, case or incident, which are not within this exception, since there is no reason to believe that the government would itself rely on its findings outside the litigation contexts (part (b)(iv).

Information about exhibits

Because the exhibits from financial institutions, business and prohibited public records contained improper hearsay information, they should not have been presented in the grand jury.

A. Exhibits and properly authenticated.

Even if any of the challenged exhibits presented by any of the witnesses could qualify as business records or public records or reports, the exhibits should not have been admitted because they were not properly authenticated. (The only exhibits with proper authentication was Exhibits that pertain the proper authentication of documentary which evidence controlled by Article IX of the Rules of Evidence.

Evidence Rule 901. Requirement of Authentication of Identification, provides

The requirements of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims, except as provided in paragraphs (a) and (b) below.

- (a) Whenever the prosecution in a criminal trial offers (1) real evidence which is of such a nature as not to be readily identifiable, or as to be susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud, or (2) testimony describing real evidence of the type set forth in (1) if the information on which the description is based was acquired while the evidence was in the custody or control of the prosecution must first demonstrate as a matter of reasonable certainty that the evidence is at the time of the trial or was at the time it was observed properly identified and free of the possible taints identified by this paragraph
- (b) In any case in which real evidence of the kind described in paragraph (a) of this rule is offered, the court may require additional proof before deciding whether to admit or exclude evidence under Rule 403.

The lack of proper authentication is evident based on the grand jury testimony or/and based on a review of the exhibits.

Evidence Rule 104(b). All the exhibits have information that is purported to be information either said by the entities or defendants or information that is purported to represent conduct engaged in by defendants. However, there was no evidence presented to support the belief that any of the statements or conduct was made or committed This foundational requirement is controlled by Evidence Rule 104(b).

Evidence Rule 104(b) provides:

Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon =, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

Katrina Brown and Reginald Brown does not agree that she made false statements in any form or engaged in conduct that is represented in every single exhibit This case is premised upon the allegations that Katrina Brown and Reginald Brown agreed the various forms of charges listed in the indictment. Instead, the allegations were introduced through the testimony of Investigators and witness who are listed in the indictment.

A. Best evidence rule

The best evidence rule is contained, in part, in Evidence Rule 1002. Rule 1002 provides that: To prove the content of writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by the source, law or other rules promulgated by

The United States Supreme Court Includes a section about the reasons for the best evidence rule, which provides:

...the basic premise justifying the rule is the central position which the written word occupies in the law. Because of the centrality, presenting to a court the exact words of writing is of more than average importance, particularly in the case of operative of dispositive instruments such as deeds, wills or contracts where a slight variation of words may mean a great difference in right. In addition, it is to be considered (1) that there has been substantial hazard of inaccuracy in some of the commonly utilized

methods of making copies of writings, and (2) oral testimony purporting to give the terms of a writing from memory is probably subject to greater risk of error than oral testimony concerning other situations generally. The danger of mistransmitting critical facts which accompanies the use of written copies or recollection, but which is largely when an original writing is presented to prove its terms, justifies preference for original documents.

CONCLUSION

The grand jury indictment in this case should be dismissed because the exhibits that were introduced contained hearsay and were not properly authenticated, The prosecution introduced allegations of _____ and conduct engaged in by Katrina Brown and Reginald Brown but failed to satisfy Rule 104(b) and show that Katrina Brown and Reginald Brown engaged in the conduct . Finally, the prosecution did not properly introduce that Katrina Brown and Reginald Brown is alleged to have committed the crimes as stated in indictment. Because of the improper evidence that was presented before the grand jury, the indictment should be dismissed.

Respectfully submitted at Jacksonville, Florida, this 21st day of August 2019.

Katrina Brown

WHEREFORE, THE Defendant, Katrina Brown, for the above-mentioned reasons respectfully moves this Honorable Court to require the information be provided as requested.

Respectfully submitted,

s/Katrina Brown
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CERTIFICATE OF SERVICE

CERTIFICATION

I hereby certify that on August 21, 2019, I filled the foregoing motion with the Clerk of the Court in person and will deliver a copy to the Assistant United States Attorney Tysen Duva

s/Katrina Brown
Pro Se Defendant