

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES
OF AMERICA

v.

ROBERT ALLEGRA

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No. 15 CR 243

Judge: Elaine E. Bucklo

OBJECTION AND MOTION TO QUASH SUBPOENA

NOW COMES Defendant, ROBERT ALLEGRA, by and through his attorney, Eva W. Tameling, of Tameling & Associates, P.C., and presents to this honorable Court, his OBJECTION AND MOTION TO QUASH SUBPOENA, and in support thereof, states as follows:

I. INTRODUCTION

On or about, August 8, 2023, the United States Attorney's office, for the Northern District of Illinois, issued a Subpoena to produce documents.

Robert has the following objections to this Subpoena: 1) The United States of America has no standing to issue or enforce the subpoena; and 2) this subpoena is void with no force or effect. Therefore, Robert requests that this Honorable Court quash the aforementioned Subpoena.

On or about April 29, 2015, a federal grand jury returned a one count indictment against Robert Allegra for violation of 21 U.S.C. § 846, which normally would have invoked Subject Matter Jurisdiction onto this court, however, a review of the indictment

filed in this case, will prove to show that the indictment was and is void and therefore invalid because the indictment itself, fails to state required facts and elements that are required by statutes 21 U.S.C. § 841-846.

On or about, August 18, 2018, Judgment was entered against Robert Allegra, in this court, and as a matter of law, that judgment is VOID, not voidable, but VOID as a matter of law and that judgment has no force or effect.

Because this court could not, and cannot invoke Subject Matter Jurisdiction in the instant case, the Judgment is VOID as a matter of law, with no force or effect, the Government does not have standing to issue or enforce any subpoena related to Robert Allegra.

II. SUBJECT MATTER JURISDICTION

1. The Supreme Court has ruled that subject matter jurisdiction may be raised at any time during litigation. *Arbaugh v. Y & H Corp.*, 546 US 500 (2006), states, "The objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12 (b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment, Rule 12(h)(3)." *Arbaugh* at 500, also citing *Kontrick v. Ryan*, 540 U.S. 443.

2. In 2012, the Supreme Court held "When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented." See *Gonzalez v. Thaler*, 565 US 134 (2012), also citing *United States v. Cotton*, 535 U.S. 625, 630 (2002).

3. The Supreme Court has also held, "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and

statute, see *Willy v. Coastal Corp.*, 503 U.S. 131, 136-137 (1992)...It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).

4. The Statute, 21 U.S.C. § 841-846, has certain elements that must be alleged to invoke subject-matter jurisdiction onto this court. Specifically, §841(a) states, "Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally – (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance." Furthermore, §846 states, "Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

5. A review of the indictment will prove to show that it fails to list any of the essential facts necessary to invoke jurisdiction onto this court, notably, a search of the docket will prove to show that the government fails to produce a "bill of particulars" to support the invalid indictment.

6. In *United States v. Cotton*, 535 U.S. 625 (2002), the Supreme Court held that an unpreserved *Apprendi* error need not be corrected on plain error appellate review if the trial evidence of the allegations missing from the indictment was "overwhelming" and "essentially uncontroverted" a defect in a complaint is not one of mere form, which is waivable, nor simply one of notice, which may be deemed harmless if a defendant was

actually aware of the nature of the accusation against him or her, but, rather, is one of substantive subject matter jurisdiction, which may not be waived or dispensed with.

United States v. Cotton, 535 US 625 (2002).

7. In the instant case, the indictment fails to notify the defendant, Robert Allegra, of any cognizable offense.

8. The Seventh Circuit has held "[I]f an indictment has not been challenged at the trial level, it is immune from attack unless it is so obviously defective as not to charge the offense by any reasonable construction." *United States v. Sandoval*, 347 F.3d 627, 633 (7th Cir. 2003)(emphasis added) (citing *United States v. Anderson*, 280 F.3d 1121, 1124 (7th Cir. 2002)). "[T]ardily challenged indictments should be construed liberally in favor of validity." *United States v. Harvey*, 484 F.3d 453, 456 (7th Cir. 2007) (citing *United States v. Smith*, 230 F.3d 300, 306 n. 3 (7th Cir. 2000)). In the case at bar, the court could not favor validity of the indictment because all allegations of drugs were removed from the indictment.

Under Rule 7(c)(1) of the Federal Rules of Criminal Procedure, an indictment must be "a plain, concise, and definite written statement of the essential facts constituting the offense charged. . . ." Fed. R. Crim. P. 7(c)(1). We have held that an indictment is constitutionally sufficient and satisfies Rule 7(c)(1) if: (1) the indictment states all of the elements of the crime charged; (2) it adequately apprises the defendant of the nature of the charges so that he may prepare a defense; and (3) it allows the defendant to plead the judgment as a bar to any future prosecutions for the same offense. *Harvey*, 484 F.3d at 456 (citing *United States v. Agostino*, 132 F.3d 1183, 1189 (7th Cir. 1997)). As a general matter, "[i]ndictments are reviewed on a practical basis

and in their entirety, rather than in a hypertechnical manner." Id. (quoting Smith, 230 F.3d at 306 n. 3).

9. In this case, the indictment does not meet the standard and cannot withstand scrutiny of Rule 7(c)(1), it simply does not state any crime and fails to adequately apprise Robert Allegra of the nature of the charges, further, the indictment was obtained through fraud.

10. The indictment itself states "a controlled substance containing a detectable amount of cocaine" this is demonstrably false, in fact, a government agent testified that the suitcase contained "vests and books", the government at the plea hearing withdrew the "quantity allegation" simply because they could not prove there were ever any drugs associated with Robert Allegra.

11. The undeniable fact, that there were never any drugs present, voids this court of subject matter jurisdiction, and this honorable court must quash the invalid subpoena issued by the government.

III. BURDEN OF PROOF

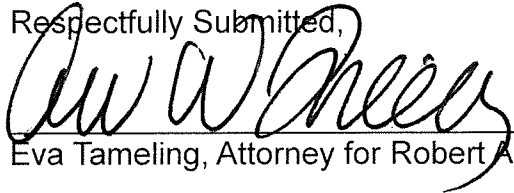
Once subject matter jurisdiction is challenged, the burden of proof is on the Plaintiff to prove that jurisdiction is proper.

III. CONCLUSION

A review of this case will prove to show that this case is rife with misconduct and has a myriad of constitutional violations. This court need not address those issues, but only look at the indictment itself.

The indictment fails to comply with Rule 7(c)(1), and it cannot invoke jurisdiction onto this court. Further, this court has a duty to *sua sponte* vacate this judgment and conviction in the instant case for lack of subject matter jurisdiction.

Respectfully Submitted,


Eva Tameling, Attorney for Robert Allegra

Date: 8/28/23