UNITED STATES DISTRICT COURT
IN THE
SOUTHERN DISTRICT OF FLORIDA

ROGERIO CHAVES SCOTTON,
Petitoner,

vs.

UNITED STATES OF AMERICA,
Respondent.

CASE NO: 12-CR-60049-KMW

PETITIONER'S MOTION TO VACATE HIS JUDGMENT BECAUSE OF FRAUD ON THE COURT TO ASSERT JURISDICTION PURSUANT TO FED. R. CRIM. P.12(b)(2)

Come now, the Petitioner Rogerio Chaves Scotton ("Scotton"), by and through pro se, respectfully moves this Honorable Court with this motion to vacate his judgment because fraud on the Court to assert jurisdiction pursuant to Fed. R. Crim. P. (12)(b)(2),(3) and avers as follows:

As an initial matter, Scotton respectfully requests, as a pro se litigant, that this Court construe his motion liberally, pursuant to HAINES v. KERNER, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), accepts all factual allegations contained herein and as detailed under this motion as true, and evaluates all reasonable inferences derived from those facts in the light most favorable to the Petitioner. TANNENBAUM v. UNITED STATES, 148 F.3d 1262 (11th cir. 1998).

I. JURISDICTION

Subject matter jurisdiction "can never be waived or forfeited. UNITED STATES v. COTTON, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002). Therefore, allegations of defect may be raised at any time. See, Fed.R. Crim. P. 12(b)(2), (3) and are subject to DE NOVO review. See, UNITED STATES v. ISGAR, 739 F.3d 829, 838 (5th cir. 2014).

Scotton further cites Fed. R. Crim. P. 12(c)(3) which states, "A Court may consider the defense, objection or request if the party shows good cause". Below, the Petitioner has demonstrated without any doubt numerous acts of fraud which is a good cause.

II. BACKGROUND

On February 26, 2014, Scotton lost a trial and was therefore ajudicated guilty of twenty seven counts of mail fraud in what was described as a theft of shipping services affecting FedEx, UPS and DHL companies. See, UNITED STATES v. ROGERIO CHAVES SCOTTON, no: 12-CR-60049-KMW.

FedEx, UPS and DHL was not the recipient pursuant to § 1341 nor have they suffered any loss of the 27 packages falsely suggested on the indictment been delivered.

Scotton filed timely his notice of appeal, and on April 12, 2016, the Eleventh Circuit affirmed the conviction based on false judicial findings, and attorney ineffective brief.

On October 20, 2016, Scotton submitted his petition for writ of certiorari without the benefit of a counsel which never passed the Supreme Court's clerk's table and was denied on December 12, 2016.

On December 11, 2017, Scotton filed his petition for habeas corpus

pursuant to 28 U.S.C. § 2255 which this Court wrongfully and unlawfully denied. Despite numerous objections filed by Scotton quoting CASTRO v. UNITED STATES, the Court refused to review and correct Scotton's meritoriously claim under the CASTRO law and insert bias as a nexus to deny his constitutional rights instead to apply the required rule established by the Supreme Court.

Scotton appealed the District Court's denial of his § 2255 on August 24, 2018 which the Court of Appeals for the Eleventh Circuit granted and vacated the unlawful denial on March 7, 2019. On April, 2019, Scotton's § 2255 was re-opened and is currently pending resolution in this Court.

III. ARGUMENT OF THE ISSUE

On Many occasions Scotton submitted for this Court's review claims that the government alleged that FedEx, UPS and DHL is the recipient required under the statute of § 1341 (which is false), and alleged that the government agent and prosecutor conspired to subordinate perjury testimony as well as have presented fabricated and unverified spread-sheets that FedEx, UPS and DHL suffered losses on twenty seven packages falsely claimed on the indictment been delivered.

The trial Court refuse to inquire on whether the government had truly provide to Scotton the business records which the government suggested submitted under the discovery cds, so he could inspect the accuracy of those introduced spread sheets. The Court also refuse to inquire on whether the twenty seven counts was in fact delivered and cause losses for the companies as mentioned on the indictment. The Court ignored the prosecutor's trial fraud which presented that the theft of shipping services for the twenty seven undelivered packages mentioned on

the indictment without quoting losses. And at the same time, claiming that FedEx UPS and DHL was the recipient for the purpose of § 1341.

Under the trial transcripts, the prosecutor wrongfully instructed the jury that "THEFT OF SHIPPING SERVICE" is "MAIL FRAUD". AUSA Mitrani's statement was not only based on false evidence and false theory of twenty seven packages undelivered without loss amount, but violated the EX POST CLAUSE of the constitution.

Scotton appealed under numerous motions. However, this Court as well as the Eleventh Circuit was mistaken in its findings not realizing the government subordinated perjury and accepted the introduction of false theory of mail fraud of twenty seven packages undelivered, fabricated and unverified spread sheets claiming losses over 2.5 millions without establishing the recipient who lost money and property under § 1341 in this case. The government knew that the 27 packages were not delivered and therefore could not cause any losses or established that FedEx, UPS and DHL are the recipient under § 1341 in this case.

The Courts in this case has misunderstood the issue of prosecutorial fraud mentioned by Scotton on many occasions, and it is that fraud on which jurisdiction rests.

The jury instruction in this case, required the jury to find the fraud "affecting the recipient" under those twenty seven counts of the indictment. (emphasis added). The jury has not done that.

THE ONLY REFERENCE AT TRIAL TO A LOSS TO THE COMPANIES WAS UNDER THE FABRICATED SPREADSHEETS

Scotton asserts that the Court has misunderstood that it was the government's presentation of this case that FedEx, UPS and DHL was the

recipients and suffered financial losses under the twenty seven packages falsely mentioned been delivered which was a premeditated fraud, and as such, the Court lacks case matter-jurisdiction for Scotton's criminal case. In fact, government prosecutor agent and defense attorneys were mired in a conspiracy to defraud the Court by either manufacturing evidence of false recipients and twenty seven packages falsely suggesting been delivered.

Scotton had a 28 U.S.C. § 2255 motion pending before this Court under case no: 17-CV-62428-KMW, which the government served this Court with 91 pages response motion containing claims not addressing any one of the substantial constitutional issues raised by Scotton in his request for justice. Amoung of Scotton's claims, he addressed ineffective assistance of counsel, fraud and prosecutorial misconduct.

The fact Scotton's conviction has not already been overturned rests on a Court that either does not understanding the serious fraud committed in this case or finds "contrary to law" by ignoring the Petitioner's constitutional rights, case law and the rules of procedure.

Scotton's now demands his convictions be vacated for a lack of jurisdiction and fraud on the Court to asserts jurisdiction followed by hearing to determine compensation for Scotton's false imprisonment.

IV. ARGUMENT OF AUTHORITY

Scotton avers anything less than an order vacating his judgment of conviction and sentence is an endorsement of a tactical strategy where by fraud on the Court to assert jurisdiction in a crimal case is acceptable.

Furtheremore, anything other than immediantely vacating Scotton's sentence and conviction is a violation of the fourteenth amendment's due

process clause which prohibits the government from knowingly using perjured or false testimony at trial which the intire record shows. See, GIGLIO v. UNITED STATES, 405 U.S. 150, 153-54, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); NAPUE v. PEOPLE OF STATE OF III., 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L. Ed. 2d 1217 (1959).

In this case, the government knowingly solicited false testimony to assert jurisdiction in a criminal case.

If the Court continues to endorse the fraud in this case that FedEx, UPS and DHL was the recipient, (which are required by the statute § 1341) that suffered losses under the twenty seven packages mentioned on the indictment, falsely suggested been delivered, then the government has defeated the system, negating the need for Judges, Juries and the Courts in general.

Fraud to assert jurisdiction was premeditated as a tactical strategy, violating Scotton's constitutional rights under the Sixth amendment to a fair trial, and the fourteenth amendment to due process which must be untenable to the public interest and destroys the public reputation of the Court.

The government went further and utilized numerous altered and unverified documents, some of which the Court refuse to address at trial and sentence. (See, § 2255 exhibits and trial records).

In UNITED STATES v. RUSSEL, 411 U.S. 423, 93 S. Ct. 1637, 36 L. Ed. 2d 366 (1973), the Supreme Court recognized that law enforcement conduct could conceivably be "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction". If it violated "that 'fundamental fairness, shoking to the universal sense of justice', mandated by the due process clause of the fifth amendment". 411 U.S. at 431-432 (citation omitted).

The remedy of outrageous government conduct amounting to a constitutional violation is reversal of the conviction that was secured through the misconduct. UNITED STATES v. CISZKOWSKI, 482 F.3d 1264, 1270 (11th cir. 2007).

To reach the level of a constitutional violation, however, the government's conduct must be truly shoking, "so outrageous that it is fundamentally unfair". Id. A due process violation of this type would occur only in "the rarest and most outrageous circumstances. AUGUSTIN, 661 F.3d at 1122 (citation omitted).

When the government agents merely supply contraband or "provide other essential services" to someone who is a willing participant in a criminal scheme, there is no constitutional violation. UNITED STATES v. SANCHEZ, 138 F.3d 1410, 1413 (11th cir. 1998); See also, HAMPTON v. UNITED STATES, 425 U.S. 484, 495 N.7, 96 S. Ct. 1646, 48 L. Ed. 2d 113 (1976)(powell J., concurring)("[t]he cases, if any, in which proof of presiposition is not dispositive will be rare").

Scotton's case was indeed outrageous with government agents doctoring records, and tampering alleged coporate records, creating unverified charts claiming contradictory unproved losses amount of shipping services provided by FedEx, UPS and DHL, and providing perjured testimony of non existent business records.

Prosecutor engaged in an unconcionable plan to violate the law and pervert the course of justice. Initially, by indictment, the government claimed that shipping companies, FedEx, UPS and DHL, not subject to the Court's jurisdiction, had been defrauded twenty seven times under twenty seven packages falsely claimed been delivered, at the same time, presented the same alleged twenty seven packages at trial. No loss amount was mentioned. It was further claimed that the theft of shipping services

are considered by law mail fraud, and that the shipping companies were the recipient, a necessary component for subject matter-jurisdiction.

Scotton have never mailed anything to these companies causing losses of money or property which is required in order to form the offense under § 1341 nor the indictment mentioned any loss amount whatsoever.

The government falsely alleged under twenty seven counts that Scotton defraud FedEx, UPS and DHL under the statute of mail fraud pursuant to § 1341. The allegation on the indictment stated that on twenty seven occasions, Scotton used the companies shipping services without paying the costs of the shipping services. The indictment alleged that the twenty seven packages were delivered. At trial, the government display twenty seven packages claiming to be the same packages alleged on the indictment been delivered. There was no loss amount mentioned of the twenty seven packages nor have the companies offered any invoices or billing of losses. Instead to prove beyond a resonable doubt that Scotton committed a offense of mail fraud pursuant to § 1341 twenty seven counts, the government suggested mail fraud without a recipient which is required to form the base of the offense.

In this case, the government obtained a conviction under perjury testimony of witnesses, falsehoods and misleding statements to this Court. Thus, this Court could not more identify the boundaries of a fraud in this case that Congress could. But have adopted notary, and it depends analysis, by transfering the responsability for defining the federal mail fraud statute in this case for the jury. The jury in this case was forced to decide what legislated fraud was in these twenty seven counts of mail fraud containing no loss amount.

The government failed to provide proper and precise defination of scheme to defraud under the alleged twenty seven packages non-delivered

mentioned on the indictment under § 1341. Specially that the companies did not suffer any losses on the twenty seven counts.

The twenty seven counts was not "money or proper" within the meaning of the mail fraud statute. The shipping services alledged used by Scotton to ship the alleged twenty seven counts to Scotton's clients, which in fact, should be in this case the recipient under § 1341, do not falls under the statute. The jury instruction on the other hand was wrong and invalid. YADE v. UNITED STATES, 354 U.S. 298, 312 77 S. Ct. 1064, 1 L. Ed. 2d 1356.

Scotton's conviction cannot stay because the indictment rests in part, on wrongfully and improper and false construction of "mail fraud" alleging the improper used of shipping service of twenty seven packages undelivered without loss amount. Worse yet, claiming wrongfully that FedEx, UPS and DHL are the recipient required under § 1341. SKILLING v. UNITED STATES, 558 U.S. 130 S. Ct. 393, 175 L. Ed. 2d 267 (2009).

There is no element of crime of mail fraud in this case because under the twenty seven counts there was no recipient been defrauded or any recipient suffering loss amount. Allegations that shipping services used as mentioned in the indictment, and at trial does not rank the purpose of mail fraud under § 1341. WHEYHRAUVH v. UNITED STATES, 97 L. Ed. 2d 292, 483 U.S. 350 (1987); SKILLING v. UNITED STATES; YATE v. UNITED STATES.

Scotton contends that the government lodged false accusations under the indictment and during the trial introduced more false theory of mail fraud different from those mentioned on the indictment based on fabricated unverified charts. In fact, the charts falsely suggested that Scotton opened FedEx account under the company named Citrix, on August 11, 2008 and shipped count two on August 8, 2008. Moreover, the charts

falsely suggested that Scotton opened another FedEx shipping account under the company named, Rio Motor Sport on October 8, 2001 and further alleged that the first packages was shipped under this account on September 18, 2001. For the record, Scotton began his shopping online on 2007.

Despite numeorus objections made by Scotton at trial and under this entire case that the charts was never been provided before trial, and was not provided under the discovery cds as suggested by the government, the trial Judge falsely stated on record that the government had provide the charts and business records to Scotton during the discovery proceedings. Thus, trial records and evidence shows that this is false. (See, DE-511 pg 42; DE-511 pg 126; DE-511 pg 128; DE-470 pg 90-91).

Scotton pointed out that in different motions filed in this Court, he alledged that the twenty seven counts were never mentioned under the charts introduced at trial. However, the jury attention were desviated from the alleged twenty seven counts mentioned on the indictment. The government did not prove losses for the alleged twenty seven counts of conviction under § 1341. And the calculation of losses during the sentence is clear error because the Court only relyed on those unverified charts rather than calculate the losses for the twenty seven counts of conviction. This calculations were wrongfully done during sentence because the twenty seven counts of conviction did not mention loss amounts.

The government's theory and interpretation of mail fraud under § 1341 is rejected by the Supreme Court's opnion in SKILLING v. UNITED STATES, 558 U.S. 130 S. Ct. 393, 175 L. Ed. 2d 267 (2009). Here in this case, the government's theory that the alleged twenty seven counts are false and are not a finding factual element of crime under the meaning of mail fraud. YATE v. UNITED STATES, 354 U.S. 298, 312, 77 S. Ct. 1064, 1

L. Ed. 2d 1356 (1957); SKILLING v. UNITED STATES, 556 U.S. 130 S. Ct. 393, 175 L. Ed. 2d 267 (2009); MCNALLY, 483 U.S. at 358, 97 L. Ed. 2d 242, 107 S. Ct. 2875.

If the Court had subject matter jurisdiction over Scotton's underlying criminal case, because the government falsely alleged that twenty seven packages were delivered without even mentioned loss amounts, the government knew that they lacked proof to support the claim. "Subject matter jurisdiction defined [a] Court's authority to hear a given type of case". UNITED STATES v. MORTON, 467 U.S. 822, 828, 104 S. Ct. 2769, 81 L. Ed. 2d 680 (1984); UNITED STATES v. BROWN, 752 F.3d 1344, 1348 (11th cir. 2014)(citation omitted). For Federal crimes, District Courts are granted original jurisdiction pursuant to 18 U.S.C.§ 3231. See, BROWN, 752 F.3d at 1348. So long as the indictment charges the defendant with violation of a valid federal statute as enacted in the United States code, it allegeds an offense against the law of the United States and, thereby , invokes the District Court's subject matter jurisdiction. Id. at 1354 (citing ALIKHANI v. UNITED STATES, 200 F.3d 732,734-35 (11th cir. 2000)).

So artful and deceitful was this fraud that the government initially presented the indictment, knowing they couldn't meet the bar for evidence. At trial, the government simply constructively amended the indictment which required fraud. However, a jurisdictional defect cannot be procedurally defaulted because a defect in subject-matter jurisdiction cannot be waiver. UNITED STATES v. COTTON, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002)("[s]ubject-matter jurisdiction, because it involves a Court's power to hear a case, can never be forfeited or waiver. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in District

Court".); HOWARD v. UNITED STATES, 374 F.3d 1068, 1071 (11th cir. 2004)("A jurisdictional defect cannot be waived or procedurally defaulted and a defendant seeking post conviction relief need not to show cause and prejudice to testify his failure to raise one"). "[D]effect in subject-matter jurisdiction require correction regardless of whether the error was raised in District Court" and "[t]he lack of subject matter jurisdiction can never be waived by parties to litigation". ALLISON v. SEC'Y, DOC, no. 2:12-CV-11-FTM-29-DNF, 2014 U.S. Dist. Lexis 68487, 2014 WL 2090865, at *3 (M.D. Fla. May 19, 2014)(citation and internal marks omitted)(citing, UNITED STATES v. PETER, 310 F.3d 709, 712 (11th cir. 2002)(per curiam)). See also, SIMMERER v. UNITED STATES, no. 6:07-CV-300-ORL 31 KRS; 6:04-CR-007-ORL-31KRS, 2008 U.S. Dist. Lexis 30772, 2008 WL 897091, at *1 (M.D. FLA. Mar. 31, 2008)(citing UNITED STATES v. COTTON, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002))("[s]ubject-matter jurisdiction can never be forfeited waived because it involves a Court's power to hear a case").

Scotton can raise his challenges to jurisdiction at any time and as such, his federal rule 12 filing is still valid.

The government assert that FedEx, UPS and DHL suffered losses under the twenty seven counts mentioned on the indictment during pretrial. Therefore, Scotton was denied the obvious challenge to jurisdiction pre-trial because it was never asserted the losses of the twenty seven counts of the indictment at trial. Scotton initially cited Fed. R. Crim. P. 12(b)(2) Scotton cites also cites rule 12(c)(3) which states, "A Court may consider the defense, objection, or request if the party shows good cause". There can be no doubt fraud is "good cause" and where the government did not reveal it's unconscionable plan until mid trial, Scotton's motion must be considered timely and such a fraud deemed good

cause. Aside from the fraudulent claim of twenty seven packages delivered without loss amount, the prosecutor's own trial determination that FedEx, UPS and DHL suffered losses over $2.5 million dollars under numerous different fabricated and unverified charts unlawfully and wrongfully alledging mail fraud. Additionally, a violation of the Ex Post Facto Clause of Article 1 § 9 CL3 of the constitution, which forbids Congress and the States from enacting "any law which imposes a punishment for an act which was commited, or imposes additional punishment to that then prescribed". WEAVER v. GRAHAM, 405 U.S. 24, 28, 101 S. Ct. 960, 964, 67 L. Ed. 2d 17 (1981)(quoting CUMMINGS v. MISSOURI, 71 U.S. (4 Wall) 277, 325-326, 18 L. Ed. 356 (1867)(internal quoting marks omitted). Two elements are required "for a criminal or penal law to be Ex Post Facto: It must be retroactive, that is, it must apply to events occuring before its enactive, and it must disadvantage the offender by it". Id. at 29. See also, UNITED STATES v. CAULFIELD, 634 F.3d 281, 283 (5th cir. 2011).

The government knew there was no underlying jurisdiction for this case because they couldn't proove the necessary link of losses to FedEx, UPS and DHL under the twenty seven counts mentioned on the indictment under the mail fraud statute. These three companies couldn't claim to have lost any money under the twenty seven packages falsely mentioned been delivered on the indictment, and had most likely profited by declaring false losses under insurance or false losses under the income taxes. The government knew that the Cd's discovery was empt and that no business records existed to review the accuracy of the numerous fabricated charts introduced at trial.

In summary, this isn't just about a lack of jurisdiction and technical legal failings, it's about a fraud to pervert the course of justice and incarcerate a professional race car driver and member of the

public.

None of the Court's offices in this case have publicly moves to disavow themselves of the frauds committed throughout this case.

Scotton's avers there were more than fifty acts of fraud in this single defendant case including tampering and altering documentary evidence, threatening witnesses, perjury testimony which was required to falsely convict and incarcerate a innocent man. All in violation of the sixth, eight and forteenth amendments of the constitution aside from a plethors of existing criminal statutes.

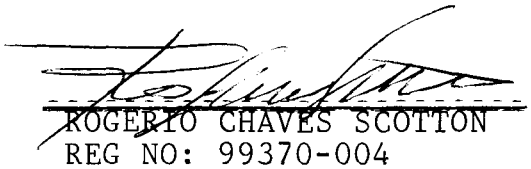
Scotton further asserts the Court's role is limited to judging the merits and as such the government must as a matter of law respond to Scotton's motion. Thus, this conviction must be vacated and the case dismissed.

Respectfully Submitted,

ROGERIO CHAVES SCOTTON
REG NO: 99370-004
D. RAY JAMES C.F.
P.O. BOX 2000
FOLKSTON GA 31537

PROOF OF SERVICE

I Rogerio Chaves Scotton, do certify that on this February 10, 2020, I have served the attached motion to vacate judgment pursuant to Fed. R. Crim. P. 12(b)(2) (which is under the Petitioner's constitutional rights) on the Southern District of Florida in the above proceeding. I have served this motion via, United States Postal Service (USPS) certified mail through, D. Ray James C.F. legal mail.



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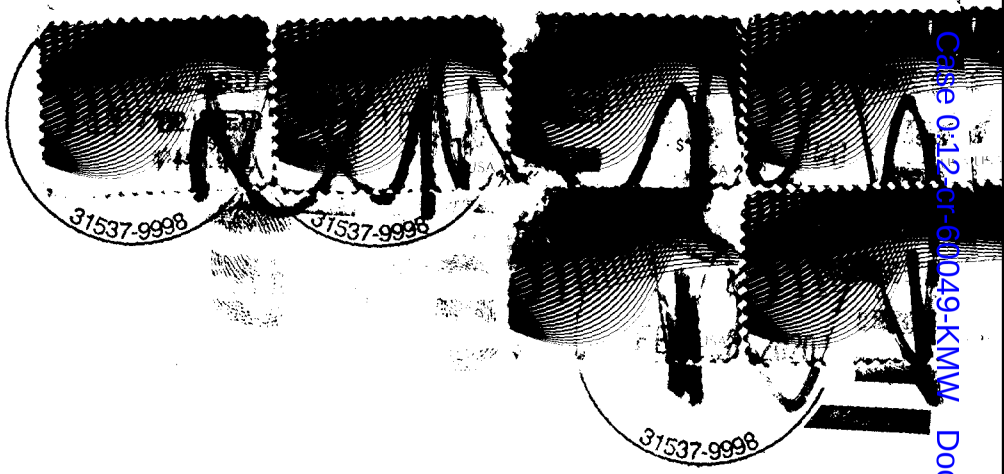

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