

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>AARON SCHOCK,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 16-CR-30061</p>
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ORDER

This case is before the court for ruling on the last pending motion related to discovery. The issue before the court concerns the use of a confidential informant (“CI”) in the employ of Defendant, a United States Congressman at the time the information was collected.

DISCOVERY REGARDING CONFIDENTIAL INFORMANT

DEFENDANT’S POSITION

On March 28, 2017, Defendant filed a Motion for Discovery Regarding Use of Confidential Informant (#61) and a lengthy, detailed Memorandum of Law in Support (#62). In his motion, Defendant states that he is making his request for additional information pursuant to Rule 16 of the Federal Rules of Criminal Procedure, the court’s inherent power to order discovery, and the Government’s obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). Within his motion, Defendant asks this court to order the Government to produce a lengthy list of documents and information related to the Government’s CI in this case. Defendant acknowledges that the Government has “provided the defense with a large volume of

discovery." However, Defendant argues that the additional discovery he is requesting is necessary because the discovery already provided by the Government discloses, in the view of Defendant, *prima facie* violations by the Government of Defendant's Fourth and Fifth Amendment rights.

More specifically, Defendant argues that the CI's intrusion upon Defendant's office violated the Constitutional privilege against executive interference granted all members of Congress by the Speech or Debate Clause. Defendant refers to the CI as a "fairly junior staffer" in Defendant's District Office in Peoria, which was located in the United States Federal Courthouse. However, Defendant, despite this classification, admits that the CI served as the office manager. Defendant states that the CI monitored and recorded conversations with Defendant and other staff members, attempted to obtain documents which were work product prepared by the law firm Jones Day, engaged in the theft of documents from Defendant's office, including from the desk of District Chief of Staff Dayne LaHood, and engaged in the theft of emails from "house.gov" email accounts, including Shea Ledford's emails. What is unknown to Defendant, and what the Government has refused to disclose, "is the full extent to which the prosecutor and the investigating agents directed the CI to engage in illegal and/or improper activities, *and* what use the government made of the ill-gotten fruits of the CI's efforts." Defendant argues that this further discovery would inform the degree to which the CI's actions, in violation of Defendant's constitutional rights, were either affirmatively directed or tacitly approved by the Government.

GOVERNMENT'S POSITION

On April 18, 2017, the Government filed a Response (#69) to this Motion and also provided documents in support (#70, #71, #72, #73), which have been filed under seal. The Government argues in response that Defendant has not made even a preliminary showing of governmental misconduct and should be denied the extraordinary relief he seeks. In summary, the Government points out that the CI in this case was the office manager of Defendant's Peoria Congressional office and had unrestricted access to the entire Peoria office. The Government further states that none of the offices in the Congressional office were locked, and the CI was issued keys for the offices and maintained keys for every door. In addition, the CI was often required to gather or review documents from other offices, including from the Chief of Staff's office.

As concerns the emails, the CI and all other staff members had email accounts on the computer network maintained by the House of Representatives in Washington, D.C. The Government states that, when Shea Ledford resigned from employment in Defendant's office, he provided the CI with his password from his official email account in case the CI needed access to Ledford's emails as part of the CI's office duties. The Government strongly disagrees with Defendant's characterization of documents provided by the CI as "theft" because the CI had access to all of the documents and emails because of his position as office manager. The Government argues that, because the CI did not exceed his authority, there simply is no issue.

Near the conclusion of its argument, the Government then states that, although it is confident that records produced by the CI during the course of the investigation were lawfully obtained, the Government, “in the abundance of caution, did not make use of the records during the grand jury investigation, nor were the records presented to the grand jury.” The Government further states that, at this time, it does not intend to present any of the information produced by the CI at trial. Further, although it may present one or more of the CI’s recordings of conversations with Defendant at trial, it does not intend to present in its case-in-chief any of the recordings with other staff members when Defendant was not present, unless needed for impeachment.

DEFENDANT’S REPLY

On April 20, 2017, Defendant filed a Reply (#80) in support of his Motion for Discovery (#61). In his Reply, Defendant argues that “Members of Congress have constitutional privileges, the violation of which is potentially fatal to an indictment.”¹ Defendant further argues that the Government’s “bare denial affords no basis to negate the premise presented for discovery of additional information relevant to possible misconduct that has prejudiced [Defendant].”

¹ An issue perhaps best addressed by the pending Motion to Dismiss Indictment (#76).

ANALYSIS

This court spent considerable time reading and reviewing Defendant's Motion and Memorandum, the Government's Response and supporting documents, Defendant's Reply and the relevant case law.² Following this thorough review, this court concludes that the Government has provided much more than a "bare denial" to the allegation of misconduct of the use of the CI by the Government. Accordingly, the court concludes that Defendant has not shown he is entitled to the additional discovery concerning the CI which he is requesting. Indeed, the Government's arguments do not merely deny Defendant's assertion, they go far beyond what was necessary to respond to a straight-forward discovery request, a matter committed to this court's sound discretion. *See United States v. Bastanipour*, 697 F.2d 170, 175 (7th Cir. 1982); *United States v. Owens*, 2016 WL 7351270, at *4 (E.D. Wis. 2016).

First of all, this court notes that the Government states that no records provided by the CI were presented to the grand jury and also that it does not intend to present at trial any of the documents provided by the CI.³ Therefore, this court sees no reason to

² In some part, due to the documents being filed under seal (which the court believes is appropriate at this stage of the proceedings), the court is necessarily limited in discussing many of the factual details underlying its conclusions.

³ The court notes that as a practical matter, it is unsure how either side could believe the court could possibly monitor this issue in a meaningful manner during a trial with potentially millions of pages of documents.

provide additional discovery regarding documents which are not going to be used and cannot possibly prejudice Defendant.⁴

Next, the recorded conversations. The Government states that it presently intends to use one or more of the CI's recordings of conversations with Defendant. The court reviewed the transcripts of these recordings and concludes there is nothing improper about the recordings made by the CI. Therefore, the Government's intent to use the recordings provides no basis for ordering the Government to provide additional discovery concerning the CI.

The court finds that the CI, the office manager of Defendant's Peoria office with keys and access to the entire office, properly recorded conversations with Defendant and other staff. When an "informant discovers information from where he is lawfully entitled to be, the use of a recording device to accurately capture the events does not vitiate the consent or otherwise constitute an unlawful search." *United States v. Thompson*, 811 F.3d 944, 949 (7th Cir. 2016), citing *United States v. Jones*, 565 U.S. 400, 409 (2012). Because the CI was where he was entitled to be, his recording of his

⁴ This court therefore does not believe it needs to address Defendant's strenuous arguments that he "owned" the documents in a personal capacity, as established by the law of the case in this matter and two hundred years of House precedent and practice.

Interestingly, the issue in question is *not ownership* but is instead the expectation of privacy. The expectation of privacy does not extend to "[w]hat a person knowingly exposes to the public, even in his own home or office." *United States v. Thompson*, 822 F.3d 944, 949 (7th Cir. 2016), quoting *Katz v. United States*, 389 U.S. 347, 351 (1967). "Nor does a person have a privacy interest in what he voluntarily discloses to an informant." *Thompson*, 811 F.3d at 949.

conversations did not violate the constitution. See *Thompson*, 811 F.3d at 949. As the court stated in *Thompson*:

[H]owever strongly a defendant may trust an apparent colleague, his expectations in this respect are not protected by the Fourth Amendment when it turns out that the colleague is a government agent regularly communicating with the authorities.

Id., quoting *United States v. White*, 401 U.S. 745, 749 (1971). “If a defendant consents to the presence of a person who could testify about a meeting and is willing to reveal what occurs, the defendant relinquishes any legitimate expectation of privacy with respect to anything the testimony could cover.” *Id.* quoting *United States v. Lee*, 359 F.3d 194, 201 (3d Cir. 2004).

Defendant argues, strenuously, about potential violations of his Speech and Debate privilege. In response, the Government compellingly states that Defendant has claimed a privilege under the Speech and Debate Clause concerning the information produced by the CI but consented to the production of more than *three million* pages of documents from the House, including most information (or perhaps *all* of the relevant information) provided by the CI.⁵

Moreover, and of particular importance to the court in the context of a discovery request, the Government represents that it *does not* intend to present any potential Speech or Debate materials at trial. Thus, this court agrees with the Government that

⁵ Also, it appears the specific information obtained by the CI has been provided to Defendant.

there is simply no additional information concerning the use of the CI to which Defendant is entitled. As a result, the court finds that Defendant has not made the necessary showing that he is entitled to discovery in addition to the voluminous discovery already provided by the Government.

IT IS THEREFORE ORDERED THAT:

(1) Defendant's Motion for Discovery Regarding Use of Confidential Informant (#61) is DENIED.

(2) Defendant's Motion to Dismiss Indictment (#76), Motion to Dismiss Counts 14-18 of Indictment (#78), and Motion to Dismiss Count 11 as Duplicitous (#86) remain pending while awaiting full briefing.

ENTERED this 7th day of June, 2017.

s/COLIN S. BRUCE
U.S. DISTRICT JUDGE