
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : **CRIMINAL COMPLAINT**

v. :

JASON SMITH : Mag. No. 06-3556

I, the undersigned complainant, being duly sworn, state that the following is true and correct to the best of my knowledge and belief. From in or about March 2005 to in or about June 2005, in Newark, in the District of New Jersey, and elsewhere, defendant JASON SMITH,

a member of the United States Grand Jury for the District of New Jersey, empaneled on or about October 21, 2003, willfully disobeyed a lawful order, rule, decree and command of a court of the United States, that is Rule 6(e) of the Federal Rules of Criminal Procedure, by disclosing matters occurring before the October 21, 2003 Grand Jury to unauthorized individuals, and was, therefore, in contempt of the Court's authority,

in violation of Title 18, United States Code, Section 401(3).

I further state that this complaint is based on the following facts:

SEE ATTACHMENT A

continued on the attached page and made a part hereof.

Stephen Jamison, Special Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,

May 10, 2006, at Newark, New Jersey

HONORABLE MARK FALK
UNITED STATES MAGISTRATE JUDGE

Signature of Judicial Officer

ATTACHMENT A

I. Introduction

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI"), assigned to the FBI's Newark Division. I have been a Special Agent for approximately 4 years. For the past 3 ½ years, I have been assigned to investigate various white collar crimes, including securities fraud.

2. I am familiar with the information contained in this Affidavit based on my own personal participation in the investigation; my review of various transcripts, documents, records, and reports; my conversations with other individuals, including law enforcement officers and other witnesses; and my review of a consensually recorded conversation. Because this Affidavit is submitted for the limited purpose of establishing probable cause to charge defendant JASON SMITH with criminal contempt of court, I have not included each and every fact known concerning this investigation. When actions, conversations, and statements of others are related herein, they have been related in substance and in part, except when otherwise indicated.

II. Background

A. The Defendant and the Grand Jury

3. On or about October 21, 2003, a federal Grand Jury was empaneled in the United States District Court for the District of New Jersey (the "Grand Jury"). The Grand Jury sat in Newark on

Tuesdays. In or about April 2005, the term of the Grand Jury was extended for six months--until in or about October 2005.

4. During the term of its service, the Grand Jury heard evidence about, among other things, possible violations of the securities laws by individuals associated with Bristol-Myers Squibb Company ("BMS"). Specifically, the investigation focused on an alleged BMS practice known as "channel stuffing" -- using financial incentives to spur wholesalers to buy BMS products in excess of demand. This alleged practice of channel stuffing -- so called because it pushed BMS inventory into the distribution "channel" -- artificially inflated BMS's reported sales and earnings figures and consequently enabled the company to attain its sales and earnings goals. This alleged practice also created excess wholesaler inventory in BMS products, and cast an increasingly large shadow on future sales and earnings. (This Grand Jury investigation will be referred to as the "BMS Grand Jury Investigation.")

5. On or about June 14, 2005, the Grand Jury returned an Indictment against two former BMS executives, Frederick Schiff and Richard Lane, charging them with conspiracy and securities fraud. The BMS Grand Jury Investigation also resulted in a deferred prosecution agreement between BMS and the United States Attorney's Office for the District of New Jersey.

6. One of the Grand Jurors serving on the Grand Jury

was defendant JASON SMITH. Defendant JASON SMITH was originally selected as an alternate Grand Juror and was made a permanent member of the Grand Jury in or about December 2003. Defendant SMITH was present for many of the sessions in which evidence was presented concerning the BMS Grand Jury Investigation.

7. On or about October 21, 2003, defendant JASON SMITH, along with all the members of the Grand Jury and alternates, were instructed about the functions, duties, and responsibilities of the Grand Jury. For example, they were instructed that Grand Jury proceedings were secret and could never be revealed unless and until the Court ordered otherwise. They were also instructed that they could not tell anyone about that which transpired in the Grand Jury room. Defendant SMITH, along with all the members of the Grand Jury and alternates, also took an oath by which they swore, among other things, to keep secret all matters and things that they learned concerning their Grand Jury service. Additionally, defendant SMITH, along with all the members of the Grand Jury and alternates, were shown a videotape that, among other things, advised the Grand Jurors that they would be sworn to secrecy and that they could not discuss anything that they heard inside the Grand Jury room outside of that room, either among themselves or with others. As discussed on the videotape, any such discussion would violate the oath of secrecy.

B. The New York Insider Trading Investigation

8. I have recently learned that federal authorities in New York have been conducting an investigation into a number of illegal insider trading schemes. Thus far, several people have been arrested and charged in connection with this investigation, including David Pajcin and Eugene Plotkin.

9. David Pajcin is now cooperating with the Government's investigation, and he has spoken at length with federal authorities. Much of what Pajcin has disclosed has been corroborated through independent investigation.

III. The Disclosure of Secret Grand Jury Information

10. As part of his cooperation, David Pajcin has told investigators that defendant JASON SMITH provided him with information about the BMS Grand Jury Investigation while it was ongoing in the Grand Jury.

11. Defendant JASON SMITH and David Pajcin met in the early 1990s while high school students in Jersey City, New Jersey. They have kept in contact since that time.

12. According to Pajcin, Pajcin told defendant JASON SMITH about some of the insider trading schemes in which Pajcin, Plotkin, and others were engaged. Pajcin stated that, in or about the Fall of 2004, Pajcin opened a brokerage account and funded it initially with approximately \$6,000 or \$7,000 provided by defendant JASON SMITH, as well as money obtained, in part, from a bank loan taken by Eugene Plotkin. According to Pajcin,

defendant SMITH provided Pajcin with the money to invest in Pajcin's various insider trading schemes, on the understanding that a portion of any profits made in these schemes would be shared with defendant SMITH. (I have reviewed bank records that indicate that defendant SMITH wrote a check, dated November 5, 2004, to David Pajcin in the amount of \$7,000. The FBI has also obtained records indicating that Plotkin took out a \$20,000 loan from Citibank in or about October 2004. Other records indicate that Plotkin then deposited a portion of these funds into a joint account controlled by Plotkin and Pajcin.)

13. According to Pajcin, in late 2004 or early 2005, defendant SMITH told Pajcin that defendant SMITH was serving on a Grand Jury in New Jersey. At some point thereafter, defendant SMITH informed Pajcin that the Grand Jury was actively investigating accounting problems at BMS. Subsequently, defendant SMITH began providing Pajcin with information about the progress and status of the BMS Grand Jury Investigation. According to Pajcin, defendant SMITH described the nature of the BMS Grand Jury Investigation and told Pajcin that he believed that a particular officer of BMS (the "BMS Officer") would be indicted.

14. Pajcin has stated that defendant SMITH and Pajcin discussed trading BMS stock based on information about the BMS Grand Jury Investigation provided by defendant SMITH. On one

occasion, according to Pajcin, defendant SMITH and Pajcin met with Plotkin in Manhattan to discuss this scheme and, in particular, how best for defendant SMITH to quickly relay information he learned in the Grand Jury to Pajcin and Plotkin. To do so, they devised a method by which defendant SMITH would secretly place a call to Pajcin from the Grand Jury to signal that the Grand Jury was going to indict the BMS Officer. According to Pajcin, defendant SMITH and Pajcin agreed that defendant SMITH would share in any profits made as a result of the trading of BMS stock based on defendant SMITH's information. (As discussed above, defendant SMITH had previously invested funds with Pajcin and Plotkin on the understanding that those funds would be used by Pajcin and Plotkin to invest in their various insider trading schemes.)

15. According to Pajcin, in the Spring of 2005, defendant SMITH informed Pajcin that the BMS Officer testified in the Grand Jury on multiple occasions, and defendant SMITH described some of the testimony. (I have confirmed that the BMS Officer testified in the Grand Jury multiple times in March 2005.)

16. Trading records indicate that, on or about March 18, 2005, Pajcin sold BMS stock short.

17. According to Pajcin, in or about early June 2005, defendant SMITH informed Pajcin that the Grand Jury would likely be issuing indictments at their next session. Defendant SMITH

also informed Pajcin that there had been a press report indicating that the BMS Officer would not be indicted, but that the prosecutors had advised the Grand Jury members to ignore what they read in the papers. According to Pajcin, defendant SMITH advised him that defendant SMITH believed that the BMS Officer would still be indicted. Pajcin stated that, on the basis of this information, Pajcin and several individuals that Pajcin and Plotkin tipped, including one of Plotkin's family members, executed short sales of BMS stock prior to the scheduled Grand Jury session. Pajcin has stated that, besides the Plotkin family member who was tipped by Pajcin and Plotkin, Pajcin also tipped an individual who was trading from a computer in Pomona, New York ("Tippee-1").

18. I have learned that, on or about June 7, 2005, various press reports indicated that BMS had reached a settlement with the United States Attorney's Office for the District of New Jersey and that no current executives, which would have included the BMS Officer, were expected to be indicted. Based on transcripts I have reviewed, I am also aware that, on or about June 7, 2005, an Assistant U.S. Attorney instructed the Grand Jury to disregard press reports concerning the BMS Grand Jury Investigation because, among other things, such reports could be inaccurate and because the Grand Jury should avoid exposure to external information that could possibly influence any subsequent

deliberations by the Grand Jury. I have also determined that, on or about June 7, 2005, the Grand Jury was advised that, at the next session of the Grand Jury, the Grand Jury would be presented with an indictment for the Grand Jury's consideration. I have also determined that, on or about June 9, 2005, the members of the Grand Jury were advised that their next session would take place on June 14, 2005.

19. Trading records indicate that, on or about June 10, 2005, Pajcin, through a foreign account in the name of Pacjin's aunt, Sonia Anticevic, sold BMS stock short. In addition, other trading records indicate that, on or about June 10, 2005, Tippee-1 and the Plotkin family member executed short sales of BMS stock.

20. According to Pajcin, on the day on which defendant SMITH had indicated that the Grand Jury would issue indictments, defendant SMITH called Pajcin and told Pajcin that the BMS Officer would not be indicted by the Grand Jury. Based on this information, Pajcin closed out his short position and was involved in the tipping of others to do the same.

21. I have determined that the Grand Jury met on June 14, 2005. I have also determined that the Grand Jury returned the Indictment against Schiff and Lane on June 14, 2005, but that Indictment was sealed and not made public until June 15, 2005, when the United States Attorney for the District of New Jersey

announced the Indictment of Schiff and Lane, as well as the fact that BMS had reached a deferred prosecution agreement with the United States Attorney's Office for the District of New Jersey.

22. Trading records indicate that Pajcin closed out his short position in BMS stock in the Anticevic foreign account on June 14, 2005, the day on which the Indictment against Schiff and Lane was returned by the Grand Jury, but not yet made public. Other trading records indicate that the Plotkin family member and Tippee-1 closed out their short positions in BMS stock on June 14, 2005.

IV. The April 12, 2006 Telephone Call

23. I have reviewed a recorded telephone call between Pajcin and defendant SMITH that was made on or about April 12, 2006. During this call, Pajcin told defendant SMITH that Pajcin was considering cooperating and that the Government might ask Pajcin about the trading in BMS stock, which could lead Pajcin to tell the Government about that "jury thing." In response, defendant SMITH indicated that he knew what Pajcin was speaking about. Pajcin also told defendant SMITH that it was possible that defendant SMITH would be questioned about his service on the Grand Jury, but that the Government seemed to be interested in bigger trades (referring to other aspects of their insider trading schemes). In response, defendant SMITH, among other things, expressed serious concerns for himself, discussed

possibly fleeing, and asked whether he (defendant SMITH) and Pajcin could just say that they were just friends talking.

24. In sum, I have probable cause to believe that defendant JASON SMITH disclosed matters occurring before the Grand Jury in violation of his Grand Jury oath and his duties as a Grand Juror imposed on him pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure. As a result, I have probable cause to believe that defendant JASON SMITH is liable for criminal contempt of court by virtue of his willful violation of Rule 6(e) of the Federal Rules of Criminal Procedure, in violation of 18 U.S.C. § 401(3).