

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA)	Criminal No. 3-95CR-294-R
)	
v.)	Filed: 12/4/95
)	
MRS. BAIRD'S BAKERIES, INC. and)	Violation: 15 U.S.C. § 1
FLOYD CARROLL BAIRD,)	
)	
Defendants.)	

**GOVERNMENT'S RESPONSE TO DEFENDANT
MRS. BAIRD'S BAKERIES, INC.'S MOTION AND BRIEF FOR
DISCOVERY OF GRAND JURY TESTIMONY OF EMILY SLOVAK**

The United States of America, through its undersigned attorneys, hereby responds to Defendant Mrs. Baird's Bakeries, Inc's Motion and Brief for Discovery of Grand Jury Testimony of Emily Slovak. Defendant seeks to invoke Federal Rule of Criminal Procedure 16(a)(1)(A) to compel production of the grand jury transcript of a former secretary, Ms. Emilie Slovak. However, the plain language of Rule 16(a)(1)(A) demonstrates that Defendant's motion fails to meet the minimum threshold of the rule.

Rule 16(1)(A) reads, in pertinent part:

Upon request of a defendant which is an organization such as a corporation, partnership, association or labor union, the government must disclose to the defendant any of the foregoing statements made by a person who the government contends . . . (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as a director, officer, employee, or agent as to have been able legally to bind the defendant in respect to that alleged conduct in which the person was involved.

Fed. R. Crim. P. 16(a)(1)(A)(emphasis added).

The Government does not contend that Ms. Slovak was personally involved in the conduct charged in either Count 1 or Count 2 of the Indictment. Nor does the Government contend that Ms. Slovak was so situated as to have been able legally to bind the defendant with respect to either of the conspiracies charged in the Indictment. Therefore, according to the plain language of the rule the Government is not required to disclose Ms. Slovak's testimony.

Defendant apparently takes the position that it is entitled to production of the grand jury testimony of any former employee concerning any matter even remotely related to this case.¹ However, the "drafters of Rule 16(a)(1)(A) were concerned that corporate defendants should not be entitled to grand jury testimony of former employees in every instance." In re United States, 918 F.2d 138, 140 (11th Cir. 1990). Therefore, the drafters restricted Rule 16

Defendant asserts that transcripts of other Houston grand jury witnesses "have been voluntarily provided by the Government in recognition of the fact that their testimony . . . is relevant . . ." Motion, at 3. Although the government has been purposely overinclusive in selecting transcripts to disclose to defendants under Rule 16, the government does not believe that all disclosed statements are relevant to the charged offenses. Specifically, the Government does not contend that Ms. Slovak's testimony is relevant to any current charge against defendants.

disclosure to two discreet classes of employees,² intending to exclude from disclosure the testimony of employees who legally cannot bind the corporation. Id. See Advisory Committee Notes, Fed. R. Crim. P 16, 18 U.S.C.A. (West Cum. Supp. 1995).

Ms. Slovak's testimony does not fall within the parameters of the rule because Ms. Slovak legally could not bind the corporation with respect to the collusive activity charged in the indictment. Ms. Slovak worked as a secretary for Arthur Baird, who managed Mrs. Baird's Houston bakery. Neither Arthur Baird nor Emilie Slovak were named as co-conspirators in either Count of the Indictment. Moreover, the Government does not allege that the activities of the Houston bakery formed any part of either conspiracy charged in the Indictment. Indeed, the definition of East Texas and West Texas as used in the Indictment clearly excludes the Houston bakery's distribution area. Ms. Slovak's secretarial duties in the Houston bakery simply cannot bind the Defendants with respect to the collusive conduct charged in the Indictment. Compare United States v. Investment Enterprises, Inc., 10 F.3d 263 (5th Cir. 1993)(basing corporate criminal liability on unlawful actions of the corporation's president) and United States v. Bi-Co Pavers, Inc., 741 F.2d 730, 737 (5th Cir. 1984)(basing corporate criminal liability on the actions of its agents as the agents acted within the scope of their apparent authority: apparent authority is "that which outsiders would normally assume the agent to have, judging from his position with the company . . .").

Rule 16(a)(1)(A) also provides for disclosure of statements "made by a person who the government contends (1) was, at the time of the statement so situated as a director, officer, employee, or agent as to have been able legally to bind the defendant in respect to the subject of the statement . . ." This subsection covers employees who make statements while still employed; such statements may be deemed admissions under Federal Rule of Evidence 801(2)(d). Ms. Slovak's testimony does not fall within the purview of this subsection.

Ms. Slovak's testimony, the testimony of a secretary in an office with no connection to the charged offenses, is precisely the type of testimony that Rule 16(a)(1)(A) intended to exclude from disclosure. Therefore, the United States respectfully requests that the Court deny defendant's motion.

Respectfully submitted,

/s/
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ORDER

The Court, having considered the Defendants' Mrs. Baird's Bakeries, Inc. and Floyd Carroll Baird's Motion and Brief for Discovery of Grand Jury Testimony of Emily Slovak and the Government's Response hereby finds that the motion should be denied.

IT IS SO ORDERED this ____ day of _____, 1995.

JERRY BUCHMEYER, CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing Government's Response to Defendant Mrs. Baird's Bakeries, Inc.'s Motion and Brief for Discovery of Grand Jury Testimony of Emily Slovak and Order were mailed via Federal Express on the ____ day of December 1995, to

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