

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

Eastern District of Kentucky
FILED

MAY 18 2017

AT LEXINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

INDICTMENT NO. 5:17-CR-67-KKC

CHARLES J. SENTER

* * * * *

THE GRAND JURY CHARGES:

INTRODUCTION

At times relevant to this Indictment:

1. CHARLES J. SENTER (hereinafter referred to as SENTER), as a Trooper, and later as a Detective with the Kentucky State Police, participated in the investigation of the murder of Eli Marcum whose body was found in Clay County, Kentucky on or about December 8, 2012, and in doing so had custody of items of physical evidence collected at or near the scene where the body was found, including, a yellow telephone cord and a small silver knife.

2. In November of 2012, Jimmy D. Bengel, Gerald Lee Sizemore and Vernon Renus Delph (hereinafter referred to as Bengel, Sizemore and Delph), along with several co-defendants, were charged by Indictment in United States District Court, London Division, Case Number 12-CR-59-SS-ART, with conspiracy to distribute oxycodone, in violation of Title 21, United States Code, Section 846. Soon after the death of Eli Marcum, and believing his murder was related to the federal case, federal authorities assumed responsibility for the investigation. SENTER, as

lead detective in the murder case, continued to assist the investigation, including by submitting numerous items of evidence to the Kentucky State Police Lab for DNA testing.

3. On March 27, 2013, the Grand Jury for the London Division returned a Superseding Indictment in Case Number 12-CR-59-SS-ART, against Bengé, Sizemore and Delph, which added the charge of conspiracy to kill Eli Marcum with intent to retaliate against him for providing information to a law enforcement officer relating to the commission of a Federal offense in violation of Title 18, United States Code, section 1513.

4. On or about October 1, 2013, SENTERs destroyed the two aforementioned items of evidence taken into State Police custody; namely, the yellow telephone cord and the small silver knife. The items were destroyed without first being submitted to the State Police Lab for DNA testing. When he later informed Federal authorities about the destruction, SENTERs was directed to produce a memorandum detailing his actions. This memorandum was subsequently provided to defense counsel for defendants Bengé, Sizemore and Delph.

5. On May 12, 2014 and subsequent to being provided with the said memorandum prepared by SENTERs, counsel for defendants Bengé and Sizemore filed a motion to dismiss the Indictment in the case, alleging that the government had violated the Constitutional Rights of their clients when it destroyed evidence that could have proven someone else committed the murder of Eli Marcum.

6. Subsequent to the government filing a response, the Court set the issues presented in the motion to dismiss for a hearing on July 24, 2014 in United States District Court in Lexington at which SENTERs, among others, testified. Among the issues material to determination of the motion to dismiss was whether SENTERs had destroyed the evidence in question; that is, the yellow telephone cord and the small silver knife, without first obtaining an agreement that the

evidence was of no evidentiary value and should be destroyed from Clay County Coroner Danny Finley and from Kentucky State Police DNA Analyst Joshua Hynes, and otherwise had acted in bad faith in the manner in which these evidentiary items had been destroyed.

COUNT 1
18 U.S.C. § 1623

7. The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

8. On or about July 24, 2014, in Fayette County, in the Eastern District of Kentucky,

CHARLES J. SENTERS

while under oath in a hearing before the United States District Court for the said District; that is, a hearing on a motion to dismiss the indictment in United States of America v. Jimmy D. Bengé and Gerald Lee Sizemore, Case No. 12-CR-59-S-ART, did make a false material declaration, that is,

TS 46 Q. Is it true, sir, that you talked to Mr. Finley about destroying this knife before you destroyed it?

A. Yes, sir.

Q. You're certain that you talked to Mr. Finley about destroying the knife before you destroyed it?

A. Yes.

TS 48 Q. And you told . . . Mr. Finley that you were going to destroy this evidence because you didn't think it had any value?

A. Yes. I did not think the small knife was consistent with the wounds and the autopsy and (on) that Mr. Finley agreed.

The aforesaid underscored testimony of CHARLES J. SENTERS, as he then and there

well knew and believed, was false in that, SENTERS had not spoken with Clay County Coroner Danny Finley about destroying the small silver knife held in the case by the Kentucky State Police Post in London, Kentucky, prior to its destruction, and Finley had not agreed that the knife was of no evidentiary value, all in violation of 18 U.S.C. § 1623.

COUNT 2
18 U.S.C. § 1623

9. The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

10. On or about July 24, 2014, in Fayette County, in the Eastern District of Kentucky,

CHARLES J. SENTERS

while under oath in a hearing before the United States District Court for the said District; that is, a hearing on a motion to dismiss the indictment in United States of America v. Jimmy D. Bengé and Gerald Lee Sizemore, Case No. 12-CR-59-S-ART, did make a false material declaration, that is,

TS 47 Q. (Reading government brief) Senters confirmed with the Central Lab DNA analyst that the telephone cord would not likely contain any viable DNA evidence.

Did you see that?

A. Yes, sir.

Q. And you did that, as it says in the brief, prior to destruction?

A. Yes, sir.

Q. Is that your testimony?

A. Yes, sir.

Q. Was that Dr. Hynes that you consulted?

A. Yes, it would have been Mr. Hynes.

Q. Okay.

A. Or Dr. Hynes, I'm sorry.

Q. And you would have done that prior to destruction?

A. Yes.

Q. Because it would have been even worse if you hadn't talked to any experts about the evidence?

A. Yes.

Q. That would be really bad, wouldn't it?

A. Yes, it would.

TS 63 Q. Did you actually call him (Dr. Hynes) before you destroyed the evidence (yellow telephone cord)?

A. Yes. I would have called him before. Yes.

Q. Are you certain of that?

A. I'm positive I called him before I destroyed it.

Q. And, it was October 1st that you called him?

A. Yes. It would have been that - - yes. It would have been before I destroyed the evidence, yes.

Q. Detective, did you know that Dr. Hynes keeps a log of his calls?

A. ... I didn't know he did, no.

Q. Okay. Would you be surprised to learn that you actually called him on February 4th?

A. I called him on the day this happened, this time.

Q. You're under oath sir.

- A. I'm positive I called him on the day this happened, because I wouldn't have wrote this stuff in there if I hadn't spoke to him on the day it was destroyed.
- Q. And it's your testimony that despite his call log, the date you called him was October 1st, 2013, not February 4th, 2014?
- A. I'm pretty sure I talked to him, but I did call some - - I did call the lab, and Mr. Hynes has been handling all of this evidence in this case, so I am positive I - - I am 100 percent positive I spoke to him at the Central Lab on the day this was done.

TS 115Q. You're certain that you talked to Dr. Hynes before you destroyed the evidence (yellow telephone cord)?

A. Yes.

Q. Okay.

A. But, I've had other (conversations), yes.

Q. But only one conversation with Dr. Hynes about this case about this subject, right?

A. No. No. I had the conversation with him before I destroyed it, and then later on I e-mailed him so he could go ahead and tell me again, and that's when I turned it over to Mr. Parman and to you guys (the defense team).

The aforesaid underscored testimony of CHARLES J. SENTERS, as he then and there well knew and believed, was false in that SENTERS had not spoken with Kentucky State Police DNA Analyst Joshua Hynes prior to destroying the yellow telephone cord held in the case by the Kentucky State Police Post in London, Kentucky, all in violation of 18 U.S.C. § 1623.

COUNT 3
18 U.S.C. § 1623

11. The allegations contained in the Introduction are incorporated by reference as if fully set forth herein.

12. On or about July 24, 2014, in Fayette County, in the Eastern District of Kentucky,

CHARLES J. SENTERS

while under oath in a hearing before the United States District Court for the said District; that is, a hearing on a motion to dismiss the indictment in United States of America v. Jimmy D. Bengé and Gerald Lee Sizemore, Case No. 12-CR-59-S-ART did make a false material declaration, that is,

TS 44 Q. How did you destroy it (the yellow telephone cord and the small silver knife)?

A. I got my supervisor and explained to him the details of it.

Q. Did you burn it; did you crush it; did you throw it away?

A. Threw it away, yes.

Q. Threw it away. Just put it in the trash?

A. Yeah, at post, yes.

Q. You indicated that you spoke to your supervisor on October 1, 2013, before destroying either of the items?

A. Yes, sir.

Q. Who is your supervisor?

A. Sergeant Starlin Hacker.

Q. As far as you know, he didn't call anyone else - - before you did the actions?

A. No, sir. I explained it to him, and then he was there when I done it, and he signed off on it.

Q. Well, you say he signed off. Just so we're clear - -

A. Yeah, he signed off saying that he witnessed me that . . . I got rid of it, that I destroyed it . . .

Q. He didn't sign any document authorizing you to destroy the items?

A. No. He just signed it - - he just signed it as he was my - - witness to it. He was - - he was there when I done it, yes.

The aforesaid underscored testimony of CHARLES J. SENTER, as he then and there well knew and believed, was false in that, SENTER had spoken with Kentucky State Police Sergeant Starlin Hacker about destroying only one piece of evidence, the small silver knife, and that Hacker did not witness SENTER's destruction of both pieces of evidence, the knife and the yellow telephone cord, all in violation of 18 U.S.C. § 1623.

A TRUE BILL


JOHN E. KUHN JR.
UNITED STATES ATTORNEY
WESTERN DISTRICT OF KENTUCKY
