

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

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2
3 UNITED STATES OF AMERICA)
4 Plaintiff)
5)
6 vs.)
7 CHARLEY HILL,)
8 Defendant.)
9 _____)

INDICTMENT NO:
8:17-cr-01187-HMH-1

MOTION TO DISMISS INDICTMENT

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11 PLEASE TAKE NOTICE that counsel for Defendant, Charley Hill, hereby files this Motion
12 to Dismiss the Indictment. This Motion is based on violations of Mr. Hill’s rights to due process and
13 effective assistance of counsel under the Fifth and Sixth Amendments to the United States
14 Constitution.

15
16 The totality of circumstances of this case make an effective defense of this case nearly
17 impossible and have substantially and impermissibly prejudiced Mr. Hill. Specifically, the grounds
18 for this motion are as follows:

- 19 1) The allegations in the indictment of this case are from February 11, 2010 and before. The
20 location of the alleged offense was the United States Victory Base Complex in Baghdad,
21 Iraq. At the time of the alleged offense, the United States was engaged in an active
22 military campaign in Iraq and although combat operations have currently ceased in the
23 country, it remains a problematic and dangerous place for an American citizen to visit.
24 The unique difficulties of the alleged incident location make any independent
25 investigation of the surroundings (i.e. visiting the scene, witness depositions pursuant to
26 Rule 15 of the Federal Rules of Criminal Procedure etc.) unavailable to Mr. Hill.
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1 2) Not only does the location of the alleged offense prejudice Mr. Hill, but also the
2 significant time-delay in the government bringing the instant case. Separate and apart
3 from any statute of limitations arguments that are relevant to this case (and additionally
4 addressed in the previously filed Motion to Dismiss Indictment, Doc. 56), this lengthy and
5 oppressive 8-year delay will cause significant difficulties for Mr. Hill in preparing his
6 defense, locating witnesses, or securing evidence.
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8 Courts have held that the due process clause can be implicated with unreasonable
9 delays such as in this case, the “statute of limitations does not fully define [defendants’]
10 rights with respect to the events occurring prior to indictment.” U.S. v. Lovasco, 431 US
11 783, 788-789 (1977). Even though this is a difficult standard to meet, the Court looks to
12 whether fundamental unfairness is apparent. The government will not be able to
13 adequately explain why this case has taken 8 years when the indictment includes one
14 count of a False Statement in violation of 18 U.S.C. § 1001, which allegedly concluded on
15 February 11, 2010.
16

17 This is precisely such a case where the delay is so unreasonable and unnecessary, that
18 even if the statute of limitations would permit the case to be brought (this issue is still to
19 be decided and certainly not conceded), a constitutional violation exists in this delay.
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21 3) The overwhelming and voluminous discovery provided to defense counsel by the
22 government makes effective representation as guaranteed by the Sixth Amendment near-
23 impossible. As referenced in previous motions, the government has provided undersigned
24 counsel more than 1.8 million pages and more than 150 audio recordings in this case. The
25 government has responded to this argument with their proffer that 30 or less documents
26 would be relevant to their case-in-chief. This “proffer” is not a legal standard. The defense
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1 cannot parse through this mass of paper to determine what constitutes *Brady* material,
2 similarly the defense cannot parse through to determine what is relevant to a motion to
3 suppress or any other like-motion asserting the constitutional rights of Mr. Hill.

4 “In fulfilling its duty to disclose documents to the defense, the government may also
5 be unduly burdening the defense with so much paper that they are incapable of adequately
6 responding in preparation for trial.” United States v. Shaw, 113 F.Supp. 2d 152, 163 (D.
7 Mass 2000) The Court in Shaw recognized that unnecessarily burdensome discovery
8 production can be a due process violation. This is exactly what has occurred in this case.
9 The defense has been unable to determine whether additional issues may be present and/or
10 whether there is further evidence contained in the discovery to support the issues already
11 raised or counter assertions from the government.
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14
15 **CONCLUSION**

16 Each and every one of the above issues raised is sufficient, on its own, to constitute a
17 violation of Mr. Hill’s rights under the Fifth and Sixth Amendments. The combination of all of these
18 violations is so substantial and prejudicial to Mr. Hill that the indictment should be dismissed.
19

20 DATED: April 5, 2018

21 Respectfully submitted,

22 **s/C. Rauch Wise**
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14 CERTIFICATE OF SERVICE

15 This is to certify that I have this day served counsel for the opposing party in the foregoing
16 matter with a copy of the within and foregoing Motions:

17 **DEFENDANT’S MOTION TO DISMISS THE INDICTMENT**

18 By electronic service:

- 19 -Assistant United States Attorney Jessee C Alexander-Hoeppner
- 20 -Assistant United States Attorney Maxwell Barnes Cauthen, III
- 21 -Assistant United States Attorney David Stephens

22 This 5th day of April, 2018.

23 Respectfully submitted,

24 *s/C. Rauch Wise*

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