22-6341

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SUPREME COURT, U.S.

No. 22-

In the
Supreme Court of the United States

Angela Schmid,
Petitioner,
v.
The United States of America,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

Petition for a Writ of Certorari

Angela Rae Schmid
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Question Presented

1. Whether Angela Schmid made a prima facie case of prosecutorial misconduct at the Grand Jury stage sufficient for a pre-trial evidentiary hearing in the District Court.

Related Proceedings

District Court of Colorado

- United States v Angela Schmid, No: 2:18-CR-202-CMA-GPG
- United States v Angela Schmid, No: 2:20-CR-315-CMA-GPG

10th Circuit Court of Appeals

- United States v Angela Schmid, No: 21-1402

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Angela Schmid did not file this direct appeal based exclusively on her ability to circumvent the plea bargain. Angela Schmid, also, specifically appealed the District Court's order denying her Motion to Withdraw her Guilty Plea. Therefore, an appeal on the merits is appropriate in this case.

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Petition For a Writ of Certiorari

Petitioner Angela Schmid Respectfully asks for a writ of certiorari to Review the judgment of the 10th Circuit Court of Appeals.

Opinions Below

1.) June 1, 2022: Order to Enforce an Appeal Waiver (App 19a) (10th Circuit)

2.) October 27, 2021: Order Denying Motion to Withdraw Guilty Plea and Motion to Dismiss Case (App. 596a) (District of Colorado)

Jurisdiction

Petitioner Respectfully seeks a writ of certiorari to Review a decision of the 10th Circuit under 28 U.S.C. 1254(i).

The 10th Circuit issued its opinion on June 1, 2022. On August 16, 2022, Justice Gorsuch extended the time to file this petition until Sept. 27, 2022. (See Angela Schmid v United States, No 22A 141.)

On October 5, 2022, Justice Gorsuch denied my Request to file a petition in excess of 40 pages. (See No. 22A288.) Therefore, I corrected the Petition and filed it on October 17, 2022.

On October 21, 2022, the Court Clerk asked me to Remove an illustration from the body of the Petition. I Resubmitted this Petition for filing on December 7, 2022, and mailed the Appendix back on 12-14-22.

Statutory Provisions Involved

A statutory provision is not being reviewed in this case. Instead, the Supreme Court for the United States of America is asked to exercise its supervisory power and Remand this case back to the District Court of Colorado for a pre-trial evidentiary hearing pursuant to the authority in Rule 10(a):

> wherein - "... a United States Court of Appeals... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power..." -Supreme Court Rule 10(a)

Introduction

My name is Angela Schmid... soon to be Angela Livermore. I am 41 years old and I have been arrested for the distribution of methamphetamine 6 times in the last 13 years. If I win this case, it will be the 6th time that I've won a case against the govt. If I don't win this case, it will be the 5th time that I've won.

Sometimes when a person beats the govt that often, the govt tries to obtain a conviction unfairly. In an effort to convict me in the present case, the govt went to extreme lengths. Some of those lengths include the following:

1.) The govt fabricated a conspiracy charge against me using a Confidential source who was paid $16,800. (pg. 6)

2.) The govt introduced (2) federal cases against me that were Completely devoid of the Documentary Evidence necessary to prove the charges. (pg. 8)

3.) The govt created 3morgasbord controlled buys: which means the govt took "some" evidence and falsely corroborated it to a fake date. (pg. 13)

4.) The govt fabricated a false photograph of my automotive shop in a search warrant affidavit in order to corroborate an Undercover Police Officer's lies about an alleged drug transaction. (pg. 16)

5.) During other incidents, the police officers made up the events that allegedly occurred during the drug transactions and then tried to force Confidential Sources to corroborate the police officer's false statements. (pg. 18)

6.) And finally, the govt withheld videotapes from drug transactions. That evidence would have alerted my co-defendant's attorneys to the govt's deception. (pg. 21)

• And yet... this case does not come to the Supreme Court based on the govt misconduct I just mentioned. This case comes to the United States Supreme Court based on Judicial Misconduct.

In particular, I presented an overwhelming prima facie case of govt misconduct to the District Court of Colorado and the 10th Circuit Court of Appeals.

And, the Judiciary Refused to Review.

I suggest this inaction on behalf of the Court made the Judiciary complicit in the govt's misconduct and I object. I am asking the Supreme Court of the United States of America to overturn my conviction and Remand my case back to the District of Colorado for a pre-trial evidentiary hearing to Review the question of whether or not my cases (#18CR202 + #20CR315) should be dismissed for prosecutorial misconduct at the Grand Jury Stage.

• I appreciate you consideration of these matters. Thank you.

Dean Schorus and Aaron Hampton - Safety Valve Disclaimer

It was Really hard for me to write this Petition because I did not want to "call out" Dean and Aaron as being witnesses against me at trial. It is so common for people to make a safety valve or 5K.1 Statement these days. Dean and Aaron did the exact same thing 9 out of 10 people are doing to get below mandatory minimums. It is just their blind, bad luck that they ended up with me - a co-defendant who wasn't content to take a deal and go home. Still, I want the whole world to know Dean and Aaron are honorable men. They have my deepest Respect and very best wishes. GOD bless.

Statement of the Case

I. Angela Schmid makes a prima facie case of prosecutorial misconduct in Federal Cases #18CR202 + #20CR315.

(A.) In May of 2021, I asked the District Court of Colorado for permission to submit a global pre-trial presentation in Federal Cases #18CR202 + #20CR315. (App. 25a-504a) At the time, I did not call it a "Motion to Dismiss for Prosecutorial Misconduct at the Grand Jury Stage. Instead, I wrote the following:

* (1) count of conspiracy + (1) count of distribution in each case

#1) My Motions in Limine will 1st focus on asking the Court to determine what evidence has been fabricated in this case. I will ask the Court to preclude the use of fabricated evidence.

#2.) I will then question the authenticity of the video exhibits.

#3.) And, the meth the govt intends to introduce.

#4.) There is more. (See App. 48a)

In support of this request, I included a 117-page handwritten document and 156 exhibits. This document was called "Angela Schmid's Statement of Facts" and it contained numerous specific allegations of prosecutorial misconduct at the grand jury stage. I contend this document (App 25a-App 503a) (Doc #420) created an overwhelming prima facie case of prosecutorial misconduct... and the Court was required to review.

(B.) The govt did not file a response.

(C.) On May 19, 2021, the District Court of Colorado denied my Request for a global pre-trial evidentiary hearing - with a Minute Order only - and struck "Angela Schmid's Statement of Facts" from the Record. In particular, judge wrote:

"These attachments contain matters that Defendant must elicit at trial either as direct evidence, or during cross-examination of witnesses and are inappropriate for the Court to Review before trial." (App 506a) (Doc# 429)

Some of the factual allegations of prosecutorial misconduct I presented to the District Court include the following items:

1. The govt fabricated a conspiracy charge against me using a confidential source who was paid $16,800.

On March 29, 2018, the govt executed my federal arrest warrant and (2) search warrants. One search warrant was executed at my home in Somerset, CO and the other search warrant was executed at my automotive shop in Montrose, CO.

- No guns, money, or drugs belonging to Dean or Angela Schmid were found at either location. (App. 129a)
- It is also relevant a phone tap was put on my - then husband - Dean Schmid's cell phone from Feb 8, 2018 to Feb 20, 2018. This phone tap did not produce evidence of drug distribution either. (App. 397a)

On April 24, 2018, the Grand Jury Returned a 10-count indictment against me and (13) co-defendants. (App 195a) (Federal # 18CR202)
On June 1, 2020, the govt submitted a James Proffer (App 298a) In it, the govt suggests Dean and Angela Schmid were married. They sold meth to Aaron Hampton at their automotive shop in Montrose, CO. Aaron Hampton then transported that meth to Andy Seltzer in Grand Junction, CO for distribution.

- It is relevant that as my case proceeded to a trial date on July 19, 2021, my co-defendants were set to testify in opposition. Aaron Hampton and Dean Schmid were asked to testify - for the govt - that the conspiracy DID exist. While Andy Seltzer was set to testify - for the defense - that the conspiracy did NOT exist.

However, this credibility issue is not the inquiry in this case.

- In particular, when the govt presented the above alleged conspiracy to the Grand Jury, the govt used a controlled buy that was sourced from a different source of supply. The govt told the Grand Jury: Andy Seltzer was linked to Dean Schmid based on a controlled buy that allegedly occurred on Feb. 28, 2018. (App. 116a) And yet, that controlled buy was documented to have occurred between Andy Seltzer and Jessica Monnarez. Andy and Jessica were charged for this alleged transaction in a separate Federal Indictment Case # 18CR201 (App 342a; 112a) Then, the District Court of Colorado sentenced them in this alternate "sister" case # 18CR201. (App 618a) That's it. I win. Let me show you what I mean.

On April 24, 2018, TFO Richard Tifft and AUSA Jeremy Chaffin made the following presentation to the Grand Jury:

Q: As part of that investigation, did you learn that a person named Andy Seltzer was working with Dean Schmid to distribute methamphetamine?
A: Yes.
Q: During that investigation, did you conduct a controlled buy with Andy Seltzer?
A: Yes, we did.
Q: When did that occur?
A: I believe February 28th, 2018
(App 117a) (Grand Jury transcripts: Page 4; Line #1-9) (App. 377a)

This sequence of questions suggests Andy Seltzer was linked to my 1st alleged conspiracy through the Alleged Feb. 28, 2018 Controlled Buy... and he wasn't. I shouldn't have mentioned the Confidential Source. She was paid $16,800. (App. 118a) Still, that part of this argument gets complicated. And, that part of this argument only "confirms" my assertion of actual innocence - alibi defense - for my Motion to Withdraw. Therefore, we can just begin and end our Grand Jury inquiry - here.

2.) The govt introduced (2) federal cases against me that were completely devoid of the Documentary Evidence necessary to prove the charges.

When I tell you my cases are "completely devoid" of the Documentary

Evidence necessary to prove them, I am not suggesting to you that there are (1) or (2) holes in the govt's chains of custody. I am telling you I can shred these cases - completely - in their entirety. For every single charge, I can shred the meth and/or the video tape and/or the eye witness and/or the location and/or the date. The govt's use of "spliced" video recordings is autrocious. (App 120a) (App 147a) (App. 590a) There aren't Fed Ex tracking #'s verifying the exhibits. (App 571a) And, one way or the other, I can demolish every single charge in both of my cases (#18CR202 + #20CR315) absolutely.

The problem with all of that is: when the govt brought these charges to the Grand Jury, the Grand Jury only asked (1) question - "Could a good defense attorney beat your evidence?" (paraphrased.)

The Grand Jury was asking the govt: Do you have the Documentary Evidence to sustain these charges? The govt lied when they said - yes. (App. 590a) (App. 571a) (App. 568a)

Here is an overview and then I'll give you just a few examples. In my 1st Federal Case #18CR202, the govt suggests it obtained meth on (8) separate occasions: (6) controlled Buys and (2) traffic stops.

Alleged Controlled Buys

1. May 16, 2017 (App 64a)	4. Nov 21, 2017 (App. 87a)
2. June 7, 2017 (App. 67a)	5. Jan 11, 2018 (App. 97a)
3. August 23, 2017 (App 75a)	6. Jan 30, 2018 (App. 107a)

Alleged Traffic Stops #18CR202

1. October 2, 2017 (App. 82a)   2. December 4, 2017 (App. 94a)

Then, in my 2nd Federal Indictment #20CR315, the govt alleges (2) controlled buys and (2) traffic stops. (App. 417a)

- Alleged February 27, 2020 Controlled Buy (App. 144a)
- Alleged March 3, 2020 Controlled Buy (App. 153a)
- Alleged April 12, 2020 Traffic Stop (App. 136a)
- Alleged June 12 2020 Traffic Stop (App. 158a)

So, let's look at just a few examples of how the govt handled the evidence in my cases:

a.) The 1st three controlled buys do not have any physical evidence.

- Alleged May 16, 2017 Controlled Buy (App. 62a)
- Alleged June 7, 2017 Controlled Buy (App. 67a)
- Alleged August 23, 2017 Undercover Buy (App. 80a)

There is no video recording of these alleged events. There aren't any surveillance photos of these alleged events. The police officers didn't keep a record of the "buy money". The police officers didn't even write their Incident Reports about these alleged transactions until February of the following year:

- May 16, 2017 written Feb. 27, 2018 (App. 66a)
- June 7, 2017 written Feb. 27, 2018 (App. 75a)
- August 23, 2017 written Feb. 27, 2018 (App. 81a)

And then - the methamphetamine allegedly obtained wasn't placed in a SSEE bag (Self-Sealing Evidence Envelope) until months after the alleged event. We are talking: these events allegedly occurred in May, June, and August. And yet, the meth allegedly obtained wasn't placed in a sealed evidence envelope until March of the following year. Then... when the evidence was placed in a sealed envelope, it wasn't the correct weight.

- May 16, 2017 sealed March 2, 2018 (App. 64a)
- June 7, 2017 sealed March 2, 2018 (App. 73a)
- August 23, 2017 sealed - NEVER (App. 81a)

b.) Let's talk about the Alleged Nov 21, 2017 Controlled Buy. This event needs live testimony at trial to "potentially" obtain a conviction. It is unsustainable based on Documentary Evidence alone. There is no video Recording of this alleged event. A police officer Incident Report was written on February 27, 2018. (App. 91a) And, the meth allegedly obtained during this event is inadmissible. It is a complicated argument, but the "metadata" actually suggests the exhibit linked to this event is meth obtained from a different person on a different day. (App 93a; App 129a; App 162a)

There is a surveillance photo linked to this alleged event, but it shows the back of a cowboy hat and an unidentified man. Therefore, there is no way that photograph can be used to conclusively link Dean Schmid, Angela Schmid, or Aaron Hampton to this alleged event. (App 89a). Here's the problem: Dean Schmid and/or Aaron Hampton's "potential" live testimony about this event - at trial against Angela Schmid - is complicated by the fact: a police officer allegedly observing this event did not report Angela entered the camper. (App. 92a) c.) In total, the govt alleges (6) controlled buys in my 1st Indictment. (5) of those controlled buys do not have video tape evidence - at all. Then... the (1) controlled buy that does have a video tape (the Alleged Jan. 11, 2018 Controlled Buy) shows a "spliced" Recording of the wRong Confidential Source. (App. 99a)

d.) The traffic stops in my 1st Indictment share the same "physical" methamphetamine evidence. What do I mean by that? On October 2, 2017, the police say they obtained (1) gram of cocaine and (2) bags of meth: 83 grams & 22 grams. (App. 85a) However, the "photographs" from the December 4, 2017 traffic stop show "that" evidence... instead of... the 122 grams they are suppose to show. (App. 86a).

e.) In my 2nd Indictment, the cops wrote an arrest warrant for Adam Livermore 10 days AFTER a traffic stop the cops let him walk away from. (App. 133a)

f.) And then, on June 12, 2020, the cops tried to charge me for the distribution of methamphetamine for some Random something where the cops can't even decide if there was (1) bag of meth OR three.. (App. 166a)

- I could write you 30 more pages just trying to explain to you the mockery the gov't made of the evidence in my cases... culminating in the govt's use of Smorgasbord Controlled Buys which we will talk about next.

3.) The govt created Smorgasbord controlled buys: which means the govt took "some" evidence and falsely corroborated it to a fake date.

There is direct evidence the govt "created" (2) Smorgasbord controlled buys in my cases and indirect evidence supporting that same inference in Regards to (2) additional events.

Alleged Feb. 27, 2020 Controlled Buy

On Feb 27, 2020, the govt suggests a confidential source bought 14 grams of meth from Adam Livermore... while Adam was at his house... located at 60415 Hwy 50. (App 46a) The problem is: the audio Recording of this alleged transaction suggests the event occurred at my "new" automotive shop... which was located at 58940 Carnation Road. The other problem is: I hadn't met Adam yet on Feb. 27, 2020. So, there is no way Adam could have been at my automotive shop on Feb. 27, 2020. (App. 148a) That means the date stamp on this video Recording has been fabricated. I don't know when this alleged event actually occurred, but it had to have been some time months after Feb. 27, 2020. (App. 144a)

Here is some evidence supporting my suggestions:

a.) The Confidential Source who allegedly performed the Alleged Feb. 27, 2020 Controlled Buy knew Adam Livermore very well. And yet, in the Recording for this alleged event, the CS is heard asking, "Am I in the Right place?" (App 144a) THIS CS would not have been asking THAT question if the location for the controlled buy had actually been Adam's house:

b.) The Alleged Feb. 27, 2020 Controlled Buy was not mentioned at my 6-19-20 Revocation hearing. (App. 134a)

c.) 7th JDTF Agent Chance Davidson does not talk about the Alleged Feb 27, 2020 Controlled Buy on June 16, 2020, but he does on July 1, 2020. (App 152a)

Therefore, I suggest the police officers "mushed together"... "fabricated" their Documentary Evidence supporting this alleged event sometime between 6-16-20 and 7-1-20.

Alleged March 3, 2020 Controlled Buy

On March 3, 2020, the govt suggests it obtained 61 grams from Adam Livermore... while Adam was at his house... located at 60415 Hwy 50. The govt suggests I dropped Adam off at his residence and then left. (App. 442a) This is the event the govt is trying to use to link Adam and I to the quantity element of the conspiracy charge. The problem is: the video tape Recording of this alleged transaction shows somebody else's garage... the Confidential Source's garage - in fact... which is located in Montrose, CO. AND this alleged transaction actually occurred sometime months after March 3, 2020.

Here is some evidence supporting my suggestion that the Alleged March 3, 2020 Controlled Buy did not occur on March 3, 2020 -OR- at Adam's house:

a.) I was at Adam's house on March 3, 2020. That is "why" the govt tried to "mush" it's documentary evidence together to confirm this false date. March 3, 2020 is the one and only time I was ever at Adam's house. • However, there was a fight at Adam's house on March 3, 2020 and Adam got stabbed in the back. (App. 147a-150a; App 451a) AND Adam and I were at his house on March 3, 2020 after dark. This timeline is inconsistent with the govt's Documentary Evidence (App 147a)

b.) In addition, the police officers and AUSA did not talk about the Alleged March 3, 2020 Controlled Buy at my revocation hearing on June 19, 2020. (App. 134a)

Alleged February 28, 2018 Controlled Buy

Circumstantial evidence supporting a negative inference: The police officers suggest this alleged transaction occurred during the day. (App 126a) However, there are night-time surveillance photos. (App. 383a) And, the police officers say Andy Seltzer was wearing sweat pants, but the photos show him wearing jeans. (App. 384a; App 377a)

Alleged January 11, 2018 Controlled Buy

Circumstantial evidence supporting a negative inference: police officers suggest CS-5 drove to the bottom of Dean & Angela Schmid's property. However, the police mixed up their stories. It was a different CS who allegedly drove to the end of the property on a different day. (App 101a; App 269a)

3. The govt fabricated a false photograph of my automotive shop in a search warrant affidavit in order to corroborate an Undercover Police Officer's lies about an alleged drug transaction.

I made the following argument to the 10th Circuit Court of Appeals (App 9a):

"In my 1st Federal Indictment, there was an Undercover Police Officer who testified in front of the grand jury. In his incident report, this Undercover Police Officer said he came to my automotive shop and bought a ¼ pound of meth from the man I was married to at the time - Dean Schmid. This Undercover Police Officer was joined by just (1) other witness in front of the Grand Jury... the Search Warrant Affiant... a Special Agent with the DEA. Now let me show you how these (2) witnesses worked together with the United States Atty to mislead the Grand Jury, Defense Attorneys, and the Court.

In this instance, the Undercover Police Officer said he came to my automotive shop and parked in front of a garage door. Except... the garage door the undercover police officer "said" he parked in front of didn't exist anymore. Dean Schmid and I remodeled our automotive shop. We removed the garage door and the place where the garage door use to be located became a solid wall.

Therefore, based on the "actual - physical alteration" of this building, the Undercover Police Officer's testimony was a lie. And yet, the Search Warrant Affiant located old photographs of my automotive shop and used those old pictures in the Search Warrant Application. Then, the United States Attorney withheld the video tape of the alleged transaction to hide the police officer's lies." (App. 9a - 10a) (Angela Schmid's Response to the Gov't's Motion to Enforce an Appeal Waiver)

- I made this same argument to the District Court on several occasions. (App 59a-60a; App 572a; App 588a)

Compare the bottom photograph found at App. 589a to the photograph the Affiant put in the Search Warrant Application at App. 199a.

- A photograph of where the Undercover Officer did park can be seen at App. 224a. The most relevant fact displayed in that photograph is the fact that there is no "man door" located on that end of the building. Therefore the Undercover Police Officer lied when he said he saw the drug transaction occur in the doorway... from where he sat in his vehicle.

5.) During other incidents, the police officers made up the events that allegedly occurred during the drug transactions and then tried to force Confidential Sources to corroborate the police officer's false statements.

I suggest the police officers acted with the intention of deliberately forcing confidential sources to lie about the events that occurred during controlled purchases on multiple occasions.

The most obvious and best examples I have for you are the following events:

#18CR202

- Alleged June 7, 2017 Controlled Buy (App. 67a)
- Alleged August 23, 2017 Undercover Buy (App. 75a)

#20CR315

- Alleged February 27, 2020 Controlled Buy (App 144a)
- Alleged March 3, 2020 Controlled Buy (App 153a)

However, we are only going to talk about one of those events - here: the Alleged June 7, 2017 Controlled Buy. The Rest of the events we have already discussed.

- During the Alleged June 7, 2017 Controlled Buy, the govt intended to purchase 1/4 pound of meth OR 112 grams. The Confidential Source Returned with 105 grams. The cops Realize their numbers don't match. So, the Task FORCE officer concocts a completely fabricated story about "what" happened on June 7, 2017.

The cops decide: We will just say Dean Schmid weighed out (2) bags of meth and the CS kept one. But, they did such a bad job of telling this lie. The cops wrote:

"DEAN then asks the CS if he/she has a calculator on their phone, they Reply yes. DEAN then asks the CS to enter 112 minus 110.16. The CS informed DEAN this equals 1.84. In the video, I can see DEAN hand the CS a baggie, which contains a crystalline like substance. DEAN remains in the same area and appears to be putting some additional meth in a separate baggie, DEAN hands the CS another baggie and says "1.195". The CS thanks DEAN and then leaves the camper." (App. 69a; App. 213a)

This is a lie. This entire statement is a lie. The thing that the cops tried to force the CS to lie about: was: that he left my automotive shop with (2) bags of meth. The police confronted CS-1 on August 16, 2017 and tried to force him to say Dean Schmid gave him (2) bags. (App. 215a) But, on August 16, 2017, the CS said he only Received (1) bag. (App. 215a) The CS Reiterated the fact that he only Received (1) bag - to me - in February 2019. AND, CS-1's claim that he only Received (1) bag of meth is corroborated by the actual footage seen on the video tape for the Alleged June 7 2017 Controlled Buy. - the video tape the police withheld. (App 71a)

In Regards to the other (3) events, my suggestion that the cops are forcing confidential sources to lie - is supported by the blatant falsity Reported about these transactions.

On August 23, 2017, the Undercover Officer (UC) said he parked in front of a garage door. A garage door doesn't exist. Therefore, the UC would "need" the CS to lie to corroborate his false statement.

Same thing in my other case. The cops say the alleged event on Feb 27, 2020 happened at Adam's house. It actually happened at my automotive shop on a different day. • The cops say the alleged event on March 3, 2020 happened at Adam's house. It actually happened at the CS's garage on a different day. Therefore, the cops would "need" the CS to lie to corroborate their false statements about these alleged events.

6.) And finally, the govt withheld the videotapes and surveillance photographs from drug transactions. That evidence would have alerted my co-defendant's attorneys to the govt's deception.

- In this case, I claim a Brady violation against the govt for withholding exculpatory evidence. My argument is: the video tape and surveillance photographs of the following events would not support the govt's "version" of this case. Therefore, the govt withheld those items. Neither the Court nor the AUSA Responded to my objection in any way. Some of the items I am Referring to include the following events: (App. 515a)

- CS1's video of the Alleged May 16, 2017 Controlled Buy
- CS1's video of the Alleged June 7, 2017 Controlled Buy
- Surveillance Photos of the Alleged August 23, 2017 Undercover Buy
- CS1's video of the Alleged August 23, 2017 Undercover Buy
- UC1's video of the Alleged August 23, 2017 Undercover Buy
- CS2's video of the Alleged Nov. 21, 2017 Controlled Buy
- CS's video of the Alleged Jan. 30, 2018 Controlled Buy.

II. The District Court of Colorado denied Angela Schmid's Request for a Trial Continuance - which she asked for - Specifically in order to hold a pre-trial evidentiary hearing

(A.) On June 28, 2021, I asked for a 3 month trial continuance... "for the express purpose of holding a pre-trial evidentiary hearing. (App 509a)

#1.) At the time, I still didn't call it a "Motion to Dismiss for Prosecutorial Misconduct at the Grand Jury Stage."

a.) Instead I wrote the following:

"I would like to file a Motion to Dismiss for Outrageous Govt Conduct and use 'Angela Schmid's Statement of Facts' [ ] [Doc#420; App 25a-503a] as the factual basis supporting a pre-trial evidentiary hearing. The 10th Circuit has recognized the defense of outrageous govt conduct. (United States v Spivey, 508 F.2d 146 (10th Cir 1975) And, I assert the substantive due process Right to a fair trial as a fundamental Right which includes the Right to be free from unreasonable seizures (unlawful pretrial detention); the Right not to be prosecuted without probable cause; and the Right not to be deliberately and intentionally framed for a crime by fabricated, suppressed, and withheld evidence." (App 513a) (Doc#445; 6-28-21) (Motion to Continue)

(i.) In making this argument, I was suggesting the govt's use of smorgasbord controlled buys represented "the creation of a crime." (App. 514a)

(ii.) And, there were more than just (2) contexts where an outrageous govt conduct "inquiry" is relevant. (App. 514a)

b.) Still, I did suggest the fabrication of evidence was "egregious" and exclusion was an insufficient Remedy. (App. 514a) c.) And, the govt's misconduct was not an isolated event.

(i.) In particular, I alleged the govt had used smorgasbord controlled buys in (2) separate investigative lines of interest OR, in other words, against (2) separate sources of supply. (App. 578a)

(ii.) And, the govt used smorgasbord controlled buys in both #18CR202 and #20CR315. Whereas, there is a span of 2½ years between those cases. (App. 578a)

(iii.) I should have included District Court of Colorado Federal Case #18CR201 against Jessica Monarrez in my list.

#2.) In my Motion for a Trial Continuance (Doc# 445; App 508a), I also specifically asserted a Brady violation against the govt for withholding exculpatory evidence. (App 515a).

#3.) I Raised a 3rd issue in my Motion for a Trial Continuance. In particular, I suggested the govt's misconduct Represented an elaborate form of witness tampering - by the govt - against me. I would develop this argument further in later motions. In those later motions, I pointedly suggest the govt is specifically obtaining indictments - based on unsustainable charges - for the express purpose of "leveraging" live testimony at trial. (App. 532a) However, at this early juncture, my argument was as follows:

"Federal Case #18CR202 is also unique for one other reason. This is not a case where the evidence against Angela Schmid is overwhelming and the govt intends to limit it's trial presentation to the - Alleged Nov. 21, 2017 Controlled Buy; and the Alleged Jan. 11, 2018 Controlled Buy - ONLY. Therefore, Aaron Hampton's testimony in Regards to the Alleged Nov 21, 2017 Controlled Buy; and Dean Schmid's testimony - in Regards to the Alleged Jan. 11, 2018 Controlled Buy - may be case dispositive. And yet, Dean Schmid and Aaron Hampton do not know about the govt's misconduct... Therefore, I suggest the govt's misconduct in this case is almost an elaborate form of witness tampering - by the govt - against me." (App. 520a)

B.) The govt did not file a response to my Motion to Continue.

C.) On July 6, 2021, the Court denied my request for a trial continuance. (Appendix #6: App. 524a: Doc#446)

1.) The Court did not require the govt to respond to my allegations of prosecutorial misconduct - in any way. Nor did the Court itself respond to my assertion of a substantive due process violation in it's Denial order.

2.) The Court did not require the govt to respond to my allegations of a Brady violation - in any way. Nor did the Court itself address this issue in its Denial Order.

3.) The Court did not require the govt to respond to my allegation of witness tampering by the govt. Nor did the Court itself respond to this allegation either.

4.) Instead... the Court listed (5) reasons why it denied my request for a trial continuance. The essence of those reasons are as follows:

- My case had been pending for 3 years and, sometime during that 3 year period, I had asserted the right to a speedy trial. (App. 525a)
- My request for a trial continuance occurred 3 weeks before trial and subpoenas had already been issued. (App. 525a)
- My trial was not complex and I had not established good cause for filing further pre-trial motions. (App. 526a)

III. Angela Schmid pleads guilty

A.) On July 8, 2021, I pled guilty in order to avoid going to trial on July 19, 2021. (See Change of Plea Transcript; App. 1662a-1690a.) However, I did not do so without making numerous verbal objections. (App. 1662a) They are as follows:

THE COURT: On July 6, 2021, she filed with this Court a notice of disposition and requested that this matter be set for a change of plea hearing.

Now, Ms. Schmid, you case was scheduled to go to trial on July 19th, but you do not wish to go to trial; is that correct?

THE DEFENDANT: You Honor, I would not be pleading guilty today if you had granted my trial continuance.

THE COURT: That is not my question, Ms. Schmid. Do you wish to go to trial on the 19th or not?

THE DEFENDANT: Well, I would like -- would you allow -- I need 3 weeks.

THE COURT: No. This is my hearing on you change of plea. You either want to enter a plea of guilty or you want to go to trial.

THE DEFENDANT: May I offer this in writing to you then, later?

THE COURT: Well, I just want you to answer my questions right now so we can get through this change of plea hearing.

So, you case is schedule to go to trial on July 19th unless you enter a plea of guilty. You do not wish to go to trial, do you, on the 19th?

THE DEFENDANT: I would like 3 weeks for motions. Is that not an option for me?

THE COURT: That is not an option.

THE DEFENDANT: Okay. Then, yes, I would like to enter to change my plea.

THE COURT: Because I won't vacate a trial until a plea is entered. You are appearing before me via VTC because you do not wish to go to trial on the 19th; is that correct?

THE DEFENDANT: That is correct. I am going to file this in writing since you won't hear me right now, but, yes, ma'am.

THE COURT: All right. So the Court finds that the defendant has knowingly, voluntarily, and for good cause waived her right to appear before me in person and agrees to proceed to hearing on this matter via video conference because she does not wish to go to trial on July 19th.

The Court further finds that this hearing cannot be further delayed without serious harms to the interest of justice, and as such it is appropriate to conduct these proceedings by video teleconference

*** Did you notice the Court slid in that part about me waiving my Right to appear in person? I didn't know I had that right or catch this until I wrote the present motion.

• My change of plea hearing concluded with a final objection, as well. (App. 189a)

(B.) On July 8, 2021, I filed the "verbal" statements I wanted to make at my Change of Plea Hearing... in writing. I called them a Motion to Reconsider my Request for a Trial Continuance. (Appendix #7; App 522a - 534a) (DOC # 454)

1.) In particular, I Requested the "same type of protection provided to a defendant at a suppression hearing." (App 530a) Specifically, I wrote:

"This suggests a pre-trial hearing is appropriate - most especially in my case - where a pre-trial hearing is necessary to preserve my ability to (what I am going to call) "Remain innocent" at trial. What I am asking the Court for is the same type of protection provided to a defendant at a suppression hearing because what is happening is: as I am defending myself against the substantive charges, I am convicting myself of the conspiracy.

Consider in #18CR202 and #20CR315, my argument is similar: The govt has a video tape that allegedly shows me selling meth. However, I know for a fact that that event didn't occur on March 3rd which means the govt fabricated the date stamp on the video tape and the photographs for this event. Therefore, the physical evidence in Regards to both... the meth... the video tape... and the audio is NOT what the govt purports it to be.

And yet, in making this defense - I convict myself of the conspiracy because the govt's Response has to be - so what. So what if those things didn't happen on that particular day or at that particular location - they did happen.

So, the question is: what level of deception is the Court willing to tolerate to obtain a conviction?

Therefore, I invoke the supervisory power of the Court to protect the integrity of the judicial process and a secondary claim that the govt is violating all of my due process Rights pursuant to United States v Russell, 411 US 423 + People v Auld, 815 P.2d Colo. App. 1991)(App. 530a)

2.) I also further enunciated my witness tampering charge. And asked the Court to make my co-defendants (Dean Schmid & Aaron Hampton) fully aware of the govt's misconduct so they can Reconsider their decision to testify." In particular, I wrote:

"Second, the govt is bolstering its inadequate documentary and physical evidence by using live testimony at trial. And yet, the govt is obtaining its live witnesses by charge stacking - unconvictable crimes - and using deceit. At this time, I would like to assert an Ineffective Assistance of Counsel claim on behalf of my co-defendants Dean Schmid, Aaron Hampton, Andy Seltzer, and Adam Livermore pursuant to United States v Morrison, 449 US 361; United States v Valencia, 541 F.2d at 618; United States v Horn, 811 F. Supp. 739; and the 5th + 6th Amendments.

At the barest minimum, I am suggesting to the Court that my co-defendants and their counsel should be made fully aware of the govt's misconduct so they can Reconsider their decision to testify. Anything less amounts to the prosecution's substantial interference with a witnesses free and unhampered decision to testify and violates my due process Rights pursuant to United States v Crawford, 707 F.2d 447." (App. 532a)

(C.) On July 19, 2021, the Court denied my Requests as moot. (Doc #460) (See Appendix #8; App 535a-537a)

IV. Angela Schmid withdraws her guilty plea and simultaneously moves to Dismiss the Indictment for Prosecutorial Misconduct at the Grand Jury Stage

(A.) On October 15, 2021, I filed a Motion to Withdraw my Guilty Plea. (Doc #471) (Appendix #9; App. 538a-541a) In particular, I wrote:

"... the outstanding issues that remain in this case are meritous issues that directly reflect my innocence and the innocence of my co-defendants. That is a fair and just reason for you to allow me to withdraw. If you deny this Motion to Withdraw, I will raise it and all of the issues outlined in "Angela Schmid's Motion to Dismiss Fed. Case #18CR202..." ... on appeal." (App. 540a)

(B.) Simultaneously, on October 15, 2021, I filed a Motion to Dismiss Fed. Case #18CR202 for Outrageous Gov't Conduct. In that Motion, I listed (5) Standards of Review:

- Prosecutorial Misconduct at the Grand Jury Stage (App. 556a-563a)
- Brady violations (App 582a-585a)
- Co-defendants ineffective assistance of counsel (App 582a-585a)
- Gov't interference with witnesses (App. 582a-585a)
- Outrageous Gov't Conduct (App. 586a-588a) (DOC #472)

1.) I didn't raise my prosecutorial misconduct argument perfectly.

(i.) I was trying to request relief based on both the Court's supervisory power and my due process Rights. In Retrospect, I think I should have cited to United States v Mechanik, 475 US at —, 106 S.Ct. at 941-43, also: (ie, asserted the 1st prong of Kilpatrick, also) This is what I did write: "In Regards to the Court's supervisory power, I follow the standard set out in United States v Udziela, 671 F.2d 995 (7th Cir 1982). And, in Regards to the 5th Amendment's Due Process, I assert the 2nd prong in United States v Kilpatrick, 821 F.2d 1456 (10th Cir 1987)" (App. 557a)

• Actually, I wrote a lot. I said a lot (App. 553a-563a) Including the following:

> "In this case, I contend the prosecutor presented perjured testimony to the Grand Jury and the police officers fabricated evidence while the govt withheld exculpatory evidence. I suggest the govt did this to circumvent the constitutional safeguards of the grand jury and the govt's actions interfered with the grand jury's exercise of its own unbiased judgment." (App. 545a)

(ii.) I also think every claim I Raised in my Motion to Dismiss could have... and perhaps should have... been Raised under prosecutorial misconduct alone. I asserted (23) specific lies to the Grand Jury; (3) Brady violations; and (5) outrageous govt conduct issues. (App. 543a-552a)

2.) I summarized the judicial Misconduct issue as follows:

"My last argument also Relates to my outrageous govt conduct defense. However, it is delicate and I hope I will never have to use it. Not everything we are going to talk about in this motion was hidden and my co-defendant's lawyers still chose not to defend. While at the same time, I brought these issues to the attention of the Court as early as May 2021 and my Judge chose not to Review. I do not know how to adequately articulate the mistrust this created in judicial integrity, as well. (App 543a-545a) (App 592a-594a)

3.) I asked for an evidentiary hearing and for the govt to file a Response. (App. 543a) The govt did not.

V. The District Court of Colorado denies Angela Schmid's Motion to Withdraw her Guilty Plea.

On October 20, 2021, I filed a Motion to Withdraw my Guilty Plea based on an assertion of actual innocence." (Doc# 471; Appendix #9; App 538a) The District Court of Colorado did not Review my assertion of "actual innocence" on the merits (See Denial Order, Doc # 480; Appendix #11, App. 596a)

1.) Instead... the Court suggested I had a "choice" to Remain silent during my Change of Plea -

while still pleading guilty. Therefore, the fact that I "chose" to speak meant I could not be actually innocent of the charges. In making this argument, the District Court of Colorado specifically misquoted the transcript of my Change of Plea Hearing in an effort to make this argument stick.

* Compare the District Court's "cut" version of my Change of Plea transcript - found in the Court's Denial Order (App. 604a - 605a) - to an "uncut" copy of the transcript found at App 666a.

* I specifically raised this issue in my November 2, 2021 Motion to Reconsider. (See Doc# 483; Appendix 12; App 609a)

1.5.) I also challenged the fact that the Court's Change of Plea transcript is factually incorrect based on the name "Cody Lee." (App. 626a-627a)

2.) Then, the Court Referred to the Reconsideration Motion I filed for the trial continuance. (App. 530) Judge wrote:

"Ms. Schmid then Reaffirmed her admission of guilt ... in her Motion for Reconsideration in which she stated, "I convict myself ... [t]hose things... did happen. Doc#454, pg4" (App. 531a)

(*) In making this particular statement, I suggest the Court did (4) things:

a.) First, the Court quoted me incorrectly. (I gave the full quote to you in this petition on page 28.) In particular, I said "... the gov't's Response has to be - so what. So what if those things didn't happen on that particular day or at that particular location - they did happen." (I argue this at App 622a-624a.)

b.) Second, the Court misrepresented my pre-trial case arguments, made as a pro se defendant, to be party admissions. (I argue this at App. 622a)

c.) Third, the Court denied me the pre-trial protection I specifically Requested... similar to what a Defendant Receives at a Suppression Hearing. (App 530a)

d.) And finally, the Court decided it "would" tolerate this level of deception to obtain a conviction against a drug dealer. The Court's Reasoning suggests...

Because, at some unknown time, under some unknown circumstances, these things did happen, then Angela Schmid cannot be "actually innocent" of the charges in the indictment.

VI. The District Court also denied that Angela Schmid had made a prima facie case of prosecutorial misconduct at the grand jury stage and continued to maintain there were credibility issues Angela could raise only at trial.

Judge wrote: "Moreover, even if Ms. Schmid's motion were not moot, untimely, and unjustified, it would nevertheless fail for lack of support. Ms. Schmid's motion consists almost entirely of unsupported accusations that the Govt's witnesses lied to the grand jury. If Ms. Schmid wished to challenge the credibility of the Govt's witnesses, she could have done so through cross-examination at trial. Instead, she elected to waive her Right to a trial and to accept a plea deal. In so doing, she forfeited the opportunity to cross-examine the Govt's witnesses. Thus, Ms. Schmid's unsupported, last-minute credibility challenge must fail." (App. 607a)

(C.) I filed a Motion to Reconsider. (Appendix #12; App 609a-630a) (Doc# 483)

1.) In it, I objected to the Court's assertion that I failed to make a prima facie "showing" of prosecutorial misconduct (App. 614a-618a) And, the Court's determination that there were credibility issues only. (App 619a)

2.) I also Raised a technical clarification. In the Court's Denial Order, Judge wrote: "Ms. Schmid offers no authority to suggest that the Court can dismiss the indictment after a guilty plea has already been entered." (App. 607a)

I explained: "that isn't what I am asking you to do. I want the Court to Reinstate my trial dates in #18CR202 + #20CR315, Then address my Motion to Dismiss (Doc #472) pre-trial." (App. 611a)

(D.) The Court denied my Request for Reconsideration (Appendix #13; App 633a-635a) (Doc# 484)

VII. The 10th Circuit Court of Appeals Refused to Rule on the substance of Angela Schmid's prosecutorial misconduct objections. Instead, the 10th Circuit dismissed Angela's appeal based exclusively on her appeal waiver.

(A.) The 10th Circuit dismissed my appeal based on my appellate waiver (App. 20a) Most especially, the Court of Appeals determined I had not made an "allegation that enforcing the appeal waiver would result in a miscarriage of justice." (App 24a; 722a)

The 10th Circuit is correct: I used a different word. What I did say was that my conviction was "manifestly unjust."

I wrote: "In the instant of my failure, will you please invoke the very "highest" Standard of Review and consider my case from the perspective of - whether or not the govt's actions were manifestly unjust - before you proceed to dismiss my appeal." (App. 4a)

(B.) The 10th Circuit also wrote: "That said, we see nothing suggesting that enforcing the appeal waiver will Result in a miscarriage of justice, as Hahn defines that phrase." (App. 24a)

In making this statement, the 10th Circuit's position is not perfectly clear. It is possible the 10th Circuit was Referring to their Recent 2019 (Winberg) opinion. In Winberg, the 10th Circuit said:

"Finally, although the Winbergs do not explicitly contend [plea] waiver should be excused as being "otherwise unlawful," id., they argue enforcing the waiver would be a miscarriage of justice because they are actually innocent. We need not decide whether actual innocence would satisfy Hahn's "miscarriage of justice" exception because the Winbergs' innocence claim lacks merit." (US v Winberg, 786 Fed. Appx 753, 2019) Lexis # 26666

Regardless of the 10th Circuit's Reasoning Regarding my appellate waiver, those questions are not the inquiry in this case.

Argument

Angela Schmid did not file this direct appeal based exclusively on her ability to circumvent the plea bargain. Angela Schmid, also, specifically appealed the District Court's order denying her Motion to Withdraw her Guilty Plea. Therefore, an appeal on the merits is appropriate in this case.

In my Response to the Govt's Motion to Enforce an Appeal Waiver (App 1a), I cited the following Appellate Standard of Review and made the following statement:

"We Review the denial of such a motion [Motion to Withdraw Guilty Plea] under the deferential abuse-of-discretion standard and "will not Reverse a district court's decision unless the defendant can show that the court acted unjustly or unfairly." United States v Sanchez-Leon, 764 F.3d 1248 (10th Cir 2014) (internal quotes omitted). "We Review factual findings for clear error and "legal conclusions de novo." Id. (App 14a)

"We have held that an assertion of innocence must "tend [ ] to either defeat the elements in the govt's prima facie case or make out a successful affirmative defense." - United States v Marcelino, 819 F.3d 1267 (10th Cir 2016) (App 14a)

"In this situation, I contend "Angela Schmid's Motion to Dismiss Federal Case # 18CR202 based on the Govt's Outrageous Conduct" (Doc #472) [App 542a-595a - which incorporated - App 25a - 504a] did both. It defeated the elements in the govt's prima facie case and made out a successful "alibi" defense in Regards to the conspiracy alleged." (App. 15a)

- Therefore, I suggest the 10th Circuit Court of Appeals was Required to consider the District Court of Colorado's "legal conclusion" that I could not be "actually innocent" de novo.

- And, the District Court of Colorado's factual findings for clear error. This would Require a Remand to the District Court because the District Court didn't make any factual findings (App. 620a)

Conclusion

The issues I Raised in this Petition are the very Sharpest, Leading Edge Problems "WE the People" see in our Judiciary and the Department of Justice, today. And yet, I have this vision of our gov't that is very different from the details I described. I continue to see you in your very best light.

- In this case, I am asking the United States Supreme Court to grant my Motion to Withdraw my Guilty Plea - in the first instance - and Remand this case back to the District Court for a pre-trial evidentiary hearing on my Motion to Dismiss the Indictment for Prosecutorial Misconduct at the Grand Jury Stage.

- Alternatively, I am asking the United States Supreme Court to Remand my case back to the 10th Circuit for an "Appeal on the Merits" Regarding my Motion to Withdraw my Guilty Plea and the Prosecutorial Misconduct in this case.

- OR... any other relief... as the Supreme Court deems it is appropriate. Thank you.

Respectfully submitted on December 7, 2022
by Angela Schaud