

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

1) RICHARD G. CONVERTINO

&

2) HARRY RAYMOND SMITH III

Defendants.

Case: 2:06-cr-20173

Assigned To: Tarnow, Arthur J

Referral Judge: Morgan, Virginia M

Filed: 03-29-2006 At 12:02 PM

INDI USA V. CONVERTINO ET AL (DA)

Violations:

18 U.S.C. § 371 (Conspiracy)

18 U.S.C. § 1503 (Obstruction of  
Justice)

18 U.S.C. § 1623 (False

Declarations)

18 U.S.C. § 2 (Aiding and  
Abetting)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

18 U.S.C. § 371

(Conspiracy to Obstruct Justice and Make False Declarations)

Defendants 1 & 2

I hereby certify that the foregoing is  
a true copy of the original on file in this  
Office.

Introduction

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

By 

Deputy,

1. In or about March, 1990, Defendant RICHARD G. CONVERTINO ("CONVERTINO") took an oath of office as a Federal Prosecutor and joined the Criminal Division of the United States Department of Justice. In or about December, 1995, CONVERTINO became an Assistant United States Attorney in the Eastern District of Michigan.

2. In or about October, 1991, Defendant HARRY RAYMOND SMITH III ("SMITH") took an oath of office as a Special Agent of the United States Department of State. From in or about 1999 to on or about July 1, 2003, Defendant SMITH was an Assistant Regional Security Officer for the Department of State at the U.S. Embassy in Amman, Jordan.

3. At all times material to this Indictment a federal criminal case known as United States v. Koubriti, Case No. 01-80778 (The "Koubriti case"), was pending in the Eastern District of Michigan. Four defendants were charged in the Koubriti case with felony criminal offenses including, Conspiracy to Provide Material Support or Resources to Terrorists (18 U.S.C. §§ 371 and 2339A) and Conspiracy to Engage in Fraud and Misuse of Visas, Permits and other Documents (18 U.S.C. §§ 371 and 1546). At a trial held from on or about March 18 through on or about June 3, 2003 (the "Koubriti trial"), one defendant was acquitted of all charges, one defendant was acquitted of three charges and convicted of one charge, and two defendants were acquitted of two charges and convicted of two.

4. From on or about September 17, 2001, through in or about September, 2003, Defendant CONVERTINO was the lead Assistant United States Attorney prosecuting the Koubriti case. From in or about February, 2002, through in or about April, 2003, Defendant SMITH assisted the investigation of the Koubriti case and was a witness at the Koubriti trial.

#### **Initiation of the Koubriti case**

5. On September 17, 2001, a group of agents from the Detroit Joint Terrorism Task Force ("JTTF") searched an apartment for a subject on the FBI's "Terrorist Watch List". In that apartment, the JTTF team found three of the Koubriti case defendants along with the following items, among others, which became evidence in the Koubriti case: a day planner containing sketches, a videotape, and numerous Arabic language audiotapes.

### **Investigation of the Jordan Sketch**

6. One of the sketches in the day planner found in the apartment (the "Jordan sketch") contained the Arabic words for "Queen Alia" and "Hashemite Kingdom of Jordan" which led investigators to believe the sketch related to a location in Jordan named after Queen Alia.

7. In the last week of February 2002, Defendant CONVERTINO and the lead FBI agent assigned to the case (the "case agent") traveled to Amman, Jordan to further the investigation and prosecution of the Koubriti case regarding the Jordan sketch.

8. While in Jordan, Defendant CONVERTINO and the case agent, along with Defendant SMITH, the FBI agent in Jordan and Jordanian authorities visited several sites, including the Queen Alia Airport, Queen Alia Hotel, a street named Queen Alia and the Queen Alia Military Hospital.

### **Smith Photographs**

9. On or about March 6, 2002, Defendant SMITH took a helicopter trip for the purpose of taking photographs of the Queen Alia Hospital as requested by the case agent and Defendant CONVERTINO. During that trip Defendant SMITH took aerial photographs of Queen Alia Hospital (the "Smith photographs").

10. On or about September 2, 2002, after his assignment in Jordan was over, Defendant SMITH sent an e-mail to his colleague still in Jordan stating, in substance, that he had taken photographs of the Queen Alia Hospital, but that "they never really came out" and he "ended up never sending them" to Detroit. The disposition or whereabouts of the Smith photographs is unknown to the Grand Jury.

### **O'Connor Photographs**

11. On or about September 2, 2002, in his e-mail to his colleague described in paragraph 10 above, Defendant SMITH also stated in substance that he had recently spoken to the case agent about the need to obtain additional photographs of the Queen Alia Hospital. Defendant SMITH asked his colleague to take "as many digital pictures as you can stand" of the hospital and the roads around the hospital and send them to Detroit to be used in the Koubriti trial because "they need these items to help corroborate the map." Defendant Smith also stated that the photographs were "eventually to be released to the defense in discovery".

12. On or about September 12, 2002 and on or about October 1, 2002, a Detroit-based Special Agent of the State Department, Ed Seitz, who was assigned to the same JTTF squad as the case agent and was assisting the case agent, received recently taken photographs of the Queen Alia Hospital by e-mail from Defendant SMITH's replacement in Jordan, S.A. Kevin O'Connor (the "O'Connor photographs").

### **Defendant CONVERTINO Received the O'Connor Photographs**

13. On or about February 6, 2003, Seitz e-mailed the O'Connor photographs to Defendant CONVERTINO, who replied, "thanks Ed, we love ya".

### **The Jordan Sketch at Trial**

14. At the Koubriti trial, Defendant CONVERTINO argued, in substance, that the possession by the defendants of the Jordan sketch was part of the evidence that the defendants possessed tools, documents or information consistent with terrorist trade craft and which therefore tended to prove that they were guilty of providing material support for terrorism.

15. Defendant CONVERTINO presented testimony by the case agent about how the Jordan sketch matched the area around the Queen Alia Hospital. The case agent testified in part and in substance that the Jordan sketch was a “detailed” and “almost exact representation” of the area around the Queen Alia Military Hospital and that a part of the Jordan sketch was “exactly consistent” with an actual location observed by the case agent around the Queen Alia Military Hospital.

16. Defendant CONVERTINO later presented testimony by Defendant SMITH about how the Jordan sketch matched the area around the Queen Alia Hospital. Defendant SMITH testified in part and in substance that a portion of the Jordan sketch was an “exact” match to the location and that the “outlying area” of the Queen Alia Hospital started to match the Jordan sketch “exactly” in his mind.

17. The O’Connor photographs, which Defendant CONVERTINO had received, contradicted parts of the testimony by the case agent and Defendant SMITH about how the Jordan sketch matched the area around the Queen Alia Hospital.

18. Defendant CONVERTINO later presented testimony at the Koubriti trial that the Jordan sketch was consistent with a terrorist casing sketch. That testimony was based, in part, on the earlier testimony of the case agent and Defendant SMITH that the Jordan sketch was consistent with an actual location.

#### **Relevant Defense Positions About the Jordan Sketch**

19. At the Koubriti trial, the defendants’ attorneys challenged the government’s proof that the sketches were terrorist casing sketches.

20. The defendants' attorneys also challenged the government's apparent failure to obtain photographs and suggested through cross examination that if the testimony of Defendant SMITH and the case agent was truthful and accurate about the degree of similarity between the Jordan sketch and the Queen Alia Military Hospital, then the government would have obtained and presented photographs of the real locations to corroborate that testimony.

### **The Conspiracy**

21. From in or about March, 2003 through in or about July, 2004, in the Eastern District of Michigan and elsewhere, the Defendants did combine, conspire, confederate, agree and have a tacit understanding with each other to:

a) corruptly influence, obstruct, and impede, and corruptly endeavor to influence, obstruct and impede, the due administration of justice in the Koubriti case in violation of Title 18, United States Code, Section 1503; and

b) knowingly and willfully make material false declarations under oath, in violation of Title 18, United States Code, Section 1623.

### **Object of the Conspiracy**

22. The object of the conspiracy was to present false evidence at trial and to conceal inconsistent and potentially damaging evidence from the defendants in the Koubriti trial in order to obtain criminal convictions. It was further an object of the conspiracy to conceal the objects of the conspiracy and the acts committed to further it.

### **Manner and Means of the Conspiracy**

23. The conspiracy was carried out through the following manner and means:

a) It was a part of the conspiracy that Defendant CONVERTINO would conceal the O'Connor photographs of the Queen Alia Hospital, and their existence, from the defense and others.

b) It was further a part of the conspiracy that, in order to explain the absence of photographs to support their case, defendants SMITH and CONVERTINO would present false and misleading testimony regarding their inability to obtain such photographs.

### **Overt Acts**

24. In furtherance of the conspiracy and in order to accomplish its objects, the Defendants performed the following overt acts in the Eastern District of Michigan and elsewhere:

a) From in or about the fall or winter of 2002 and 2003, through in or about the spring or summer of 2004, after receiving and reviewing the O'Connor photographs of the Queen Alia Military Hospital, and knowing that such photographs were material to the issues in the Koubriti trial, Defendant CONVERTINO failed to comply with his duty to disclose the O'Connor photographs and their existence to the Koubriti defendants and others.

b) On or about April 1, 2003, Defendants CONVERTINO and SMITH met and prepared SMITH's testimony for the Koubriti trial.

c) On or about April 2, 2003, Defendant CONVERTINO presented the testimony of Defendant SMITH about the degree to which and manner in which the

Jordan sketch matched the Queen Alia Hospital in Jordan, and surrounding areas, when he knew that parts of that testimony were inconsistent with the O'Connor photographs of those sites.

d) On or about April 2, 2003, Defendant SMITH testified falsely at the Koubriti trial, upon direct examination by Defendant CONVERTINO and cross examination by the defense attorneys, that he had not taken photographs of the Queen Alia Hospital and that he and other diplomatic staff could not take such photographs.

e) From in or about April of 2003 through in or about the summer of 2004, Defendant CONVERTINO, knowing that SMITH's testimony was false and misleading, failed to disclose or correct the falsity of that testimony.

f) In or about the spring or summer of 2004, Defendant CONVERTINO, knowing that he had failed to disclose the O'Connor photographs to his co-counsel, falsely claimed that he had shown the photographs to his co-counsel prior to or during the Koubriti trial.

All in violation of Title 18, United States Code, Section 371.

**COUNT TWO**  
**18 U.S.C. §§ 1503, 2**  
**(Obstruction of Justice)**  
**Defendants 1 & 2**

1. Paragraphs 1 through 20 and 24 of Count One of this Indictment are realleged as though fully set forth herein.

2. Beginning in or about February 2002 and continuing through in or about July 2004, Defendants RICHARD G. CONVERTINO and HARRY RAYMOND SMITH III, in the Eastern District of Michigan and elsewhere, aiding and abetting each other, did corruptly influence, obstruct and impede, and corruptly endeavor to influence, obstruct and impede, the due administration of justice in the Koubriti case by presenting false and misleading evidence to and concealing contradictory evidence from the Court, defendants and jurors, and by concealing such acts during a court ordered post-trial review, all in violation of Title 18, United States Code, Sections 1503 and 2.

**COUNT THREE**  
**18 U.S.C. § 1623, 2**  
**(Making a Materially False Declaration before a Court)**  
**Defendants 1 & 2**

1. Paragraphs 1 through 20 and 24 of Count One of this Indictment are realleged as though fully set forth herein.

2. On or about April 2, 2003, in the Eastern District of Michigan, Defendant HARRY RAYMOND SMITH III, while under oath as a witness in the trial of the Koubriti case, in the United States District Court, did knowingly make false material declarations, aided and abetted by Defendant RICHARD G. CONVERTINO, to wit:

a) At the above time and place, the Court and jury were duly assembled and hearing evidence and were duly authorized to swear and hear witnesses;

b) At the above time and place, Defendant SMITH was a Special Agent of the Diplomatic Security Service of the U.S. Department of State who had been stationed at the U.S. Embassy in Amman, Jordan in 2002. Defendant SMITH was called as a witness by the government in the Koubriti case to testify about his observations of the Queen Alia Military Hospital in Amman, Jordan, and how the hospital and surrounding areas matched the Jordan sketch presented as evidence against the defendants on trial;

c) It was material to the determination of guilt or innocence in the case on trial whether photographs had been taken and could be taken of the Queen Alia Military Hospital in Amman, Jordan, as described in paragraphs 14 through 20 of Count One of this indictment;

d) At the above described place and location, Defendant SMITH was asked the following questions regarding taking photographs of the Queen Alia Military Hospital in Amman, Jordan, and provided the following answers, knowing the underscored material declarations to be false and misleading:

**1785 [DIRECT EXAMINATION]  
[BY MR. CONVERTINO]**

1 **Q** Okay. Sir, did you have an opportunity to do an  
2 overhead or aerial view of this site?

3 **A** I did.

4 A short time after Special Agent Thomas  
5 departed country, we had a visited [sic] from Vice-President  
6 Chaney [sic]  
7 to Amman, Jordan. And as you may well know, the Secret  
8 Service protects the Vice-President.

8 And whenever they came into country for a

9 visit, we're responsible for being a liaison for the Secret  
10 Service and providing support.

11 It was on that occasion I had an opportunity  
12 to do an overhead flight of this location.

13 Q Did you take photographs of the site?

14 A I did not.

15 Q Why not, sir?

16 A If I can explain, diplomats serving overseas might have  
17 a lot of perks.

18 One thing we don't do as a diplomat or as a  
19 regular citizen overseas, you never take picture of a  
20 military installation, quasi military installation or  
21 security people. It's just not something you do.

22 It's not something I would jeopardize my  
23 career over. It could cause bigger political implications.

24 If someone knew I took a picture of this, I  
25 would not do it covertly or overtly.

1786

1 I wouldn't jeopardize the working  
2 relationships with the security forces which are there to  
3 protect us.

4 Q Why would that cause a problem if you took a picture of  
5 the site, if you were flying overhead for the purpose?

6 A The purpose of that overhead flight was for the purpose  
7 of Vice-President Dick Chaney [sic].

8 I couldn't justify, in my mind, to ask these  
9 people to fly over the hospital to take a picture.

10 Again, I would have to get higher approval as  
11 high as the Ambassador, again, who would have to pass it off  
12 to the Government of Jordan.

13 I didn't feel I had sufficient justification  
14 to do that.

\*\*\*\*\*

1805 [CROSS EXAMINATION]  
[BY MR. MORGAN]

\*\*\*\*\*

20 Q Okay. People come to visit Jordan?

21 A A lot.

22 Q What do we call them?

23 A VIP's or visiting dignitaries or official Americans.

24 Q Or tourists?

25 A Or tourists.

1806

1 Q Do they bring cameras?

2 A They do.

3 Q People come from all over the world tourists?

4 A All over the world. It's a beautiful place.

5 Q They bring cameras?

6 A Yes, they did.

7 Q They take pictures?

8 A Yes, they do.

9 Q And between August 1999 and July 1, 2002 --

10 A Yes, sir.

11 Q -- did you have a camera?

12 A I did.

13 Q Did you take pictures?

14 A I did.

15 Q Did you take pictures when you're out in the community  
16 with your friends?

17 A I did.

18 Q You did?

19 A But I never took a picture of a security officer, a  
20 military hospital, military installation, or anything  
21 remotely connected to what might be considered a sensitive  
22 site.

23 Q Okay. And when you say "what might be considered a  
24 sensitive site" we're talking about what might be considered  
25 a sensitive site by -- I forgot what we called those two

1807

1 guys you were with?

2 A I'm making that statement to you by me.

3 Q You wouldn't -- you'd consider it sensitive?

4 A I would consider it sensitive.

5 Q Well, how about the *Jordanian Authorities*?  
6 You know if they would consider it sensitive?

7 A I think any well-trained security officer who saw  
8 someone taking a picture of a location, it should set off  
9 alarm bells to them if they thought they were taking  
10 pictures of secured area.

11 Q But they knew you, right?

12 A Yes.

13 Q You knew them?

14 A We were introduced, yes.

15 Q Right?

16 A Uh-huh.

17 Q Did you have a conversation -- what were their names,  
18 by the way?

19 A I have no idea, sir.

20 Q No idea?

21 A *Jordanian Authorities Officers.*

22 Q Okay. What do you call those guys, officer?

23 A *JA.*

24 Q *JA?*

25 A Yes, sir.

1808

1 Q Well, did you have any kind of conversation like, I'll  
2 call them Mr. *JA 1* and Mr. *JA 2*?

3 A Yes, sir.

4 Q Did you say Mr. *JA 1* and Mr. *JA 2*, this is a very  
5 important matter.

6 We got a man here who flew all the way from  
7 Detroit, Mark Thomas. (sic)

8 If we can identify this spot, can we take a  
9 picture?

10 Did you have that kind of conversation?

11 A I did not have that conversation with him.

12 Q No. Okay.

13 A The reason is, because I don't operate with those guys.

14 Again, I deal with the Public Security  
15 Directorate. It was on this particular occasion these two  
16 gentlemen assisted with going to the airport.

17 Q Well, they were cooperative, weren't they?

18 A Yes. Very much so.

19 Q They made it absolutely clear we're here to help you.  
20 We want to help you, right?

21 A Right.

22 But the thing I need to stress, even though  
23 you're a diplomat serving overseas, that doesn't excuse you.

24 You can't get away with taking pictures of sensitive  
25 locations, whether you're a diplomat serving in an embassy or

1809

1 whether your tourist.

2 For example, we have tons of tourists who  
3 drive in Amman, Jordan. If they take pictures of the  
4 embassy, those people were detained, their camera's taken.

5 They were detained, and on some occasions,  
6 taken down to police headquarters, including Americans.

7 Q Is there someone you could have sought permission from;  
8 yes or no?

9 A Yes.

\*\*\*\*\*

1810

1 Q And you didn't feel there was sufficient justification  
2 to ask Ambassador Gnehm, I'd like some permission to take an  
3 aerial photograph.

4 You didn't feel there was sufficient  
5 justification for that?

6 A I did not feel there was sufficient justification,  
7 because that mission in the helicopter was for another  
8 matter.

9 Q Do you think the Secret Service would have been  
10 bothered?

11 A The Secret Service wasn't in the helicopter.

12 Q The pilot would have been bothered?

13 A I'm sure he would be.

14 Q That's one of our pilots, isn't it?

15 A No, sir. It's a Public Security Directorate  
16 helicopter, not an American helicopter.

17 It belongs to the Public Security Director of  
18 the Police.

\*\*\*\*\*

24 Q Okay. But, in any event, you did not feel there was  
25 sufficient justification to ask anyone. Yes or no?

1 A Yes.

2 Q Thank you.

3 Lastly, you think taking a picture of a large  
4 dead tree would cause an international incident?

5 A I think a U.S. diplomat, getting out of the car and  
6 taking a picture anywhere would alarm anyone.

7 And to do that over covertly or overtly, I  
8 wouldn't endanger our working relationship with our security  
9 officers or endanger my job or cause some type of  
10 international incident, because we'd have some officers going  
11 around taking pictures, regardless of what it was.

12 MR. MORGAN: Thank you very much.

13 THE WITNESS: Yes, sir.

e) when in truth and in fact, as Defendant SMITH knew, SMITH did take photographs of the Queen Alia Military Hospital, there was ample justification to seek authority to take photographs, and SMITH and members of the diplomatic staff could and did seek and receive authority to take such photographs.

All in violation of Title 18, United States Code, Sections 1623 and 2.

**COUNT FOUR**  
**18 U.S.C. § 1503**  
**(Obstruction of Justice)**  
**Defendant 1**

1. Beginning in or about July of 2003 and continuing through in or about November 2005, Defendant RICHARD G. CONVERTINO, in the Eastern District of Michigan and

elsewhere, did corruptly influence, obstruct and impede the due administration of justice in a federal criminal case known to the grand jury, by presenting and permitting to be presented false or misleading evidence to the Court in the sentencing of a defendant in that case:

2. Paragraphs One and Three of count one of this indictment is realleged as though fully set forth herein.

3. John Doe was arrested on or about March 29, 2001 and charged with four counts of distribution of a controlled substance and one count of conspiracy to distribute a controlled substance. Those charges were based on undercover operations in which John Doe or his co-defendant sold specified amounts of a controlled substance and delivered them directly to a person working with federal law enforcement agencies.

4. John Doe's case was originally handled by a prosecutor in the narcotics unit of the United States Attorney's office in Detroit. Thereafter, in or about the fall of 2001 or the winter of 2001-2002, Defendant CONVERTINO assumed responsibility for the prosecution of John Doe's case.

5. On or about January 16, 2003, John Doe entered a plea of guilty to one count of distribution of a controlled substance pursuant to a written plea agreement negotiated with Defendant CONVERTINO. The plea agreement further specified that the appropriate sentence to be imposed upon John Doe was eight months of imprisonment. The United States District Judge presiding over the case accepted the guilty plea and ordered that a presentence investigation report be prepared for his use in determining the appropriate sentence.

6. The United States Probation Officer determined that the appropriate range for John Doe under the United States Sentencing Guidelines, which at the time were required to be used by the judge in determining John Doe's sentence, was 108 to 135 months of imprisonment and reported this determination to defendant CONVERTINO, John Doe's attorney and the Court.

7. On or about July 1, 2003, John Doe appeared before a United States District Judge for the Eastern District of Michigan, at a sentencing hearing (the "sentencing hearing").

8. On or about July 1, 2003, at the sentencing hearing, the United States District Judge presiding over the sentencing hearing requested an explanation for the disparity between the Probation Officer's sentencing guidelines calculation and the written plea agreement, stating: "I've never seen such a gross disparity between the sentencing guidelines and the Rule 11 plea agreement. So I must have some very good reasons for the difference."

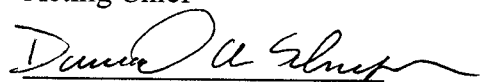
9. On or about July 1, 2003, Defendant CONVERTINO, in an attempt to explain the disparity described in the preceding paragraph and to convince the Court to grant a downward departure from the appropriate legal guidelines range of 108 to 135 months of imprisonment, to 8 months of imprisonment with 3 months of supervised release, made false and misleading representations about the beliefs of a fellow prosecutor about the quantity of controlled substances attributed to John Doe and the nature and extent of John Doe's cooperation with the government.

all in violation of Title 18, United States Code, Section 1503.

A TRUE BILL

FOREPERSON

ANDREW LOURIE  
Acting Chief



By: DANIEL A. SCHWAGER  
EILEEN GLEASON  
Trial Attorneys  
Public Integrity Section  
Criminal Division  
United States Department of Justice