

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DISTRICT**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>No. 4:19CR00031 DPM</b>
	)	
<b>GILBERT R. BAKER</b>	)	

**MOTION IN LIMINE AND TO STRIKE**

Evidence and allegations of efforts to cover up a conspiracy after the central object of the conspiracy has been achieved are inadmissible. Baker moves to prohibit the government from introducing such evidence and to strike paragraphs 78, 79, and 80 from the indictment.

1. The government alleges that contributions to Political Action Committees and straw campaign contributions were efforts to conceal the alleged bribery of former-Judge Michael Maggio. Baker, of course, denies this allegation. The government, however, also alleges that in March 2014 Maggio deleted text messages (paragraph 78) and that he and Baker lied in their testimony to the Arkansas Ethics Commission in June 2014. The government alleges that Maggio made false statements to the Commission that were designed to conceal the alleged bribery conspiracy by testifying that:

- When asked by the Ethics Commission, “Did you and Mr. Baker discuss he pending lawsuit that . . . one of [Individual A’s] nursing homes had in your court?” Maggio responded, “Never.”
- “[H]andling the nursing home lawsuit, we were all painfully aware that that needed to be a big-roped-off area. I didn’t expect a dime from any nursing home.” Indictment ¶79.

Further, the indictment alleges that Baker made false statements to the Ethics Commission that were designed to conceal the alleged conspiracy by testifying:

- “I would not have asked [Individual A] for specific contributions to Maggio unless we were within the appropriate window.”

- “I can’t remember specifically asking [Individual A] for money for these PACs.”
- “[T]hose are not my PACs . . . None of them are, are my PACs . . . I’m not on the PACs. I’m not responsible for the PACs.”
- When asked by the Ethics Commission, “Were you helping [Individual A] buy a positive verdict from Judge Maggio,” Baker replied, “No ma’am. Didn’t know anything about, really, how the verdicts worked or when they were whatever, no.”

2. Baker denies that the above testimony was false. But, the evidence is also inadmissible. In *Grunewald v. United States*, 353 U.S. 391 (1987), the Supreme Court held that efforts to conceal intended solely to cover up an already executed crime are inadmissible. The Court stated:

By no means does this mean that acts of concealment can never have significance in furthering a criminal conspiracy. But a vital distinction must be made between acts of concealment done in furtherance of the *main* criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime. Thus the Government argues in its brief that "in the crime of kidnapping, the acts of conspirators in hiding while waiting for ransom would clearly be planned acts of concealment which would be in aid of the conspiracy to kidnap. So here, there can be no doubt that . . . all acts of concealment, whether to hide the identity of the conspirators or the action theretofore taken, were unquestionably in furtherance of the initial conspiracy . . . ." We do not think the analogy is valid. Kidnapers in hiding, waiting for ransom, commit acts of concealment in furtherance of the objectives of the conspiracy itself, just as repainting a stolen car would be in furtherance of a conspiracy to steal; in both cases the successful accomplishment of the crime necessitates concealment. More closely analogous to our case would be conspiring kidnapers who cover their traces after the main conspiracy is finally ended -- *i. e.*, after they have abandoned the kidnaped person and then take care to escape detection. In the latter case, as here, the acts of covering up can by themselves indicate nothing more than that the conspirators do not wish to be apprehended -- a concomitant, certainly, of every crime since Cain attempted to conceal the murder of Abel from the Lord.

*Id.* at 406-07. See also *United States v. Long*, 952 F.2d 1520 (8th Cir. 1991) (“Acts of covering up, even though done in the context of a mutually understood need for secrecy, cannot themselves constitute proof that concealment of the crime after its commission was part of the initial agreement among the conspirators,” citing *Grunewald*).

3. The most generous reading of the indictment indicates that the central purpose of the alleged bribery scheme ended in February 2014 when the Maggio campaign deposited the last of the campaign contributions. According to *Grunewald*, any alleged efforts to conceal or cover up the already executed alleged scheme after February 2014 are inadmissible. Baker, therefore, moves in limine to prohibit the government from eliciting any testimony of alleged post-offense conduct and to strike paragraphs 78 through 80 of the indictment.

Respectfully submitted by,

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