

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Case No. 11-cr-0228(2) MJD/JJK

UNITED STATES OF AMERICA,  
Plaintiff,

v.

GERALD JOSEPH DURAND,  
Defendant.

**DEFENDANT GERALD DURAND'S  
REPLY TO GOVERNMENT'S POSITION  
WITH RESPECT TO SENTENCING AND  
MOTION FOR EVIDENTIARY HEARING**

Defendant above-named, by and through his undersigned counsel, Brian Toder, replies and responds to the Government's Position with Respect to Sentencing (Dkt. No. 356) and the Government's Motion for an Evidentiary Hearing Regarding Durand (Dkt. No. 359). Since the bulk of the government's position pleading consists of concocted inferences, conveniently calculated to support Mr. Durand's "dying in prison," and since the Court has seen for itself what the evidence really was, this submission will focus on what the Court has not seen: Christopher Pettengill's final opportunity to tell one more lie.

Mr. Pettengill lied to the victim-investors. He lied under oath when he testified before the Securities and Exchange Commission. He lied to the FBI investigators. He lied to the IRS investigators. He lied to the government counsel he bargained with. He lied to his former counsel. He lied under oath when testifying in the instant matter. He now, on the eve of sentencing, lies again in a grand finale alleging murder. Real murder.

If the Court grants the hearing sought by the government, Mr. Durand will testify. He will tell the simple truth; there was never a conversation between him and Mr. Pettengill discussing the murder of Mr. Beckman or anyone else. Mr. Pettengill is lying again, and if he in fact told his

former lawyer back in December of 2009 that Mr. Durand made such a proposal, Mr. Pettengill was lying then.

Mr. Pettengill alleges that Mr. Durand's plan to murder Mr. Beckman was presented in a meeting between Mr. Pettengill and Mr. Durand in December of 2009. Subsequent to that date, Mr. Pettengill met with IRS and FBI investigators and government counsel at least eight times, and there was never mention of such a plan by Mr. Durand even though revelation of such an event would have been very helpful to the government and to Mr. Pettengill.<sup>1</sup> It wasn't mentioned, because it never happened.

Nor was it mentioned in the meeting between Mr. Durand and Mr. Pettengill on May 7, 2011, when at the government's direction Mr. Pettengill surreptitiously recorded their conversation.<sup>2</sup> It wasn't mentioned, because it never happened.

Mr. Pettengill, now more than ever, has a motive to lie. He owes Mr. Durand over \$200,000. He is receiving the benefit of U.S.S.G. § 5K1.1 where the government determines how helpful he was, and the government has repeatedly demonstrated that it finds helpful any opportunity to cast Mr. Durand in a bad light. See for example Govt. Exh. 302 (Mr. Durand falling off a chair); the testimony of government witness Tina Faulkner who testified that Mr. Durand never graduated from college; the smoke, but no fire regarding the testimony of Misty Watkins; and finally, the government's arguments about Mr. Durand's ulterior motives when he visited LaVelle Hughes.

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<sup>1</sup> See Declaration of Carol A. Dawson filed concurrently which collects memoranda of the meetings between Mr. Pettengill and government agents and counsel.

<sup>2</sup> Transcript of Proceedings Between Chris Pettengill and Jerry [sic] Durand (Dkt. No. 266-1).

The government failed to even acknowledge the presence of Mr. Durand's legal argument respecting the distinction between guilt, liability and accountability. The government ignored the inconvenient fact that there was no determination of when the jury could have established that Mr. Durand entered the conspiracy. Instead the government, at the eleventh hour, has its snitch cry bloody murder.

On a final note if the Court grants the hearing, the Court is beseeched to not permit hearsay and hearsay within hearsay, i.e., not permitting officer Tschida to describe what attorney Klein described about what Mr. Pettengill described about what Mr. Durand said.

### **CONCLUSION**

Given the untrustworthiness of Mr. Pettengill's potential, self-serving testimony, coupled with his natural disposition towards prevarication, the Court should not allow an evidentiary hearing and declare the allegations involving the imagined murder plot to be excluded from the Court's consideration.

Dated: December 27, 2012

Respectfully submitted,

**CHESTNUT CAMBRONNE PA**

By /s/ Brian N. Toder \_\_\_\_\_

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