

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

Docket No. 16 CR 457 (NGG)

STUART SCOTT,

Defendant.

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THE GOVERNMENT’S MOTION TO DISMISS INDICTMENT

Pursuant to Federal Rule of Criminal Procedure 48(a), the United States respectfully moves the court to dismiss the indictment against defendant Stuart Scott with prejudice.

Counsel for Mr. Scott consents to this motion.

**PROCEDURAL BACKGROUND**

An indictment returned on August 16, 2016 alleged that Mr. Scott and his co-defendant, Mark Johnson, defrauded a Scottish energy trading firm in connection with a massive foreign currency trade that occurred in December 2011. Dkt. 9. In January of 2017, the United States filed with the U.K. Secretary of State for the Home Department a request to extradite Mr. Scott from the United Kingdom. Dkt. 307-1, Exhibit 1.

In the fall of 2017, while the United States’ request to extradite Mr. Scott was pending, Mr. Johnson’s case was tried to a jury. Several of the most significant witnesses – including the HSBC trader who executed the foreign currency exchange, the HSBC sales representative who helped prepare the bank’s sales pitch to the victim, and the treasurer of the victim company (to whom Messrs. Johnson and Scott made false statements) – traveled

from overseas to testify at trial. The jury convicted Mr. Johnson of nine counts and the Court imposed a sentence of 24 months' imprisonment. Dkt. 239.

In July of 2018, the U.K. High Court of Justice ruled that Mr. Scott was not extraditable to the United States. Dkt. 307-1, Exhibit 3. On October 23, 2018, the prosecution team advised the Court that the United States' efforts to obtain Mr. Scott's appearance through extradition were unsuccessful. Dkt. 259. Mr. Scott filed a motion to dismiss the indictment on April 1, 2022. Dkt. 301-1. That motion is pending.

### LEGAL STANDARD

Rule 48(a) permits the United States to dismiss an indictment before trial "with leave of court." "A court is generally required to grant a prosecutor's Rule 48(a) motion unless dismissal is clearly contrary to manifest public interest." *United States v. Pimentel*, 932 F.2d 1029, 1033 n.5 (2d Cir. 1991) (internal quotation omitted). "The rationale behind this general rule is that the 'Executive remains the absolute judge of whether a prosecution should be initiated and the first and presumptively the best judge of whether a pending prosecution should be terminated.'" *United States v. Doody*, 01-cr-1059-SAS, 2002 WL 562644 at \*2 (S.D.N.Y. Apr. 16, 2002) (quoting *United States v. Cowan*, 524 F.2d 504, 513 (5th Cir. 1975)). The Supreme Court has held that the "principal object of the 'leave of court' requirement [in Rule 48(a)] is apparently to protect a defendant against prosecutorial harassment, e.g., charging, dismissing, and recharging, when the Government moves to dismiss an indictment over the defendant's objection." *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977). Courts presume the good faith of prosecutors seeking to dismiss an indictment under Rule 48(a). *United States v. Rosenberg*, 108 F.Supp. 2d 191, 203 (S.D.N.Y. 2000).

## ARGUMENT

The United States respectfully seeks the Court's leave to dismiss this matter because it has concluded that further efforts to secure Mr. Scott's appearance are futile. The United States has exhausted extradition avenues and Mr. Scott shows no sign of leaving the U.K. while charges against him are pending. *See* Dkt. 301-1 at Exhibit 2 (documenting Mr. Scott's avoidance of jurisdictions which may honor the United States' extradition request). We submit that the vanishingly small probability of securing Mr. Scott's appearance is insufficient to justify keeping this matter on the Court's docket.<sup>1</sup>

Finally, dismissal presents no possibility that Mr. Scott will be subjected to the harm against which Rule 48's "leave of court" requirement is designed to protect: vexatious dismissal and re-filing of charges. *See Rinaldi*, 434 U.S. at 29 n.15. This is because the United States seeks dismissal with prejudice and because, in any event, the conduct at issue is outside the statute of limitations for wire fraud.

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28 U.S.C. § 515

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<sup>1</sup> Last month, the Supreme Court invalidated one of the two theories of wire fraud upon which the government planned to proceed when it held in *Ciminelli v. United States* that "the right-to-control theory cannot form the basis for a conviction under the federal fraud statutes." 598 U.S. \_\_\_, 143 S.Ct. 1121, 1129 (2023).

By: /s/ Lauren Elbert  
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