

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION  
CRIMINAL NO. 3:19-CR-00024-RGJ**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**VS.**

**KENNETH LLOYD THOMAS**

**DEFENDANT**

**ORDER**

Before the Court is Defendant Kenneth Lloyd Thomas’s (“Defendant’s”) Motion for Disclosure of Grand Jury Proceedings. (DN 69). The United States (“Plaintiff”) has not filed a response, and the time to do so has passed. Pursuant to 28 U.S.C. § 636(b)(1)(A), the District Judge referred this motion to the undersigned for disposition and all necessary hearings. (DN 72).

On February 20, 2019, Defendant was indicted in the Western District of Kentucky on one count of being a felon in possession of a firearm. (DN 1). The Court later dismissed Defendant’s criminal action upon the request of the United States. (DN 66; DN 68). Now, nearly three years later, Defendant is seeking the “Grand Jury proceedings’ records, transcript, and evidence obtained and used in connection with the investigation and findings for True Bill as to COUNT 1 (Felon in Possession of Firearm) ...for his use in adjudicating the civil claims in the pending case styled *Thomas v. Mayo et al.*, case 3:21-cv-00549-RGJ-RSE.” (DN 69, at PageID # 404–405). Defendant’s civil case raises claims arising from the events of his criminal case.

Grand jury proceedings operate under a “‘General Rule of Secrecy’ that normally prohibits disclosure.” *In re Grand Jury Proceedings*, 841 F.2d 1264, 1267–68 (6th Cir. 1988) (citing *United States v. Procter & Gamble*, 356 U.S. 677, 681–82 (1958)). However, an exception exists under the Federal Rules of Criminal Procedure, whereby grand jury proceedings may be disclosed “preliminarily to or in connection with a judicial proceeding.” Federal Rule of Criminal Procedure

6(e)(3)(E)(i). “A litigant seeking grand jury transcripts must show that the transcripts are ‘needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that [the] request is structured to cover only the material so needed.’” *United States v. Arrick*, No. 18-3479, 2018 U.S. App. LEXIS 33444, at \*2 (6th Cir. Nov. 28, 2018) (quoting *Douglas Oil Co. of Cal. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979)). However, “[a] generalized desire to inspect the transcripts in hope that beneficial evidence will be discovered is insufficient to establish a particularized need.” *Atkins v. Schneider*, No. 19-2463, 2020 U.S. App. LEXIS 18164, at \*2 (6th Cir. June 9, 2020). Additionally,

[t]he fact that the grand jury documents are relevant or that production . . . would expedite civil discovery or reduce expenses for the parties is insufficient to show particularized need when the evidence can be obtained through ordinary discovery, i.e., subpoenaing the documents from other sources, or pursuing other routine avenues of investigation.

*Littlepage v. Dukes*, No. 4:17-CV-00041-JHM, 2019 U.S. Dist. LEXIS 7067, at \*9 (W.D. Ky. Jan. 15, 2019) (quoting *Fed. Deposit Ins. Corp. v. Ernst & Whitney*, 921 F.2d 83, 86-87 (6th Cir. 1990)) (citing *Cullen v. Margiotta*, 811 F.2d 698, 715 (2d Cir. 1987)). “The district court has substantial discretion when considering a request to disclose grand jury testimony.” *In re Antitrust Grand Jury*, 805 F.2d 155, 161 (6th Cir. 1986).

Here, Defendant fails to overcome the general rule of secrecy in grand jury proceedings. Use of grand jury materials “in adjudicating the civil claims in the pending case” does not establish a particularized need or compelling necessity. (DN 69, at PageID # 404–405). The mere assertion that the disclosure is sought in connection with another judicial proceeding, and that the civil case in question arose from the same events as the criminal case, does not outweigh the secrecy of grand jury proceedings. (DN 69, at PageID # 405). Further, Defendant makes no attempt to demonstrate that he would suffer injustice without the disclosure of grand jury materials. Because Defendant

fails to establish a compelling necessity or particularized need for grand jury disclosure, the request is insufficient.

**IT IS THEREFORE ORDERED** that Defendant's Motion for Disclosure of the Grand Jury Proceedings (DN 69) is **DENIED**.

A handwritten signature in black ink, appearing to read 'RSE', is written over a faint circular seal of the United States District Court.

Regina S. Edwards, Magistrate Judge

United States District Court

Copies: Counsel of Record

July 21, 2023