

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA]	
]	
v.]	Cr. No. 06-43-01-SM
]	
SHAUN HANSEN]	

NOTICE OF AFFIRMATIVE DEFENSES

The defendant, Shaun Hansen, through counsel, Jeffrey S. Levin, Assistant Federal Defender, files this notice of intent that he may rely at trial upon one or more of the following affirmative defenses: entrapment, derivative entrapment, entrapment by estoppel, good faith, reliance upon the advice of counsel, and/or public authority.

Grounds follow.

Entrapment: Mr. Hansen may assert that the government, or an agent thereof, actually induced the offenses with which Mr. Hansen is charged, and which Mr. Hansen was not otherwise predisposed to commit. *See Jacobson v. United States*, 503 U.S. 540, 118 L. Ed. 2d 174, 112 S. Ct. 1535 (1992). In support of this defense, Mr. Hansen may present evidence that he, Lee Leblanc, and others associated with his now-defunct firm of Mylo Enterprises were induced to commit the offenses through assurances by Messrs. Allen Raymond, Chris Cupit, and an unknown “attorney,” that certain acts that he and his business were contracted to perform in November 2002 were completely legal.

Derivative Entrapment: Mr. Hansen may asserts the defense of “derivative entrapment” in which the government uses a private party as its agent. *See U.S. v. Washington*, 106 F.3d 983, 993, note 6 (D.C. Cir 1997). He may assert that the private parties which the government used as

its agents were Allen Raymond, Chris Cupit, GOP Marketplace LLC, and an unknown “attorney.”

Entrapment by Estoppel: Mr. Hansen may rely on the aforementioned facts and assert the defense of entrapment by estoppel, wherein he may establish (1) that a government official or officials (Messrs. Raymond, Cupit, GOP Marketplace LLC, and an unknown “attorney”) told him the acts he was being asked to perform were legal; (2) that he relied on their advice; (3) that his reliance was reasonable; and (4) that, given the reliance, prosecution would be unfair. *See United States v. Smith*, 940 F.2d 710, 715 (1st Cir.1991); *U.S. v. Ellis*, 168 F.3d 558, 561 (1st Cir. 1999).

Good Faith: Mr. Hansen may assert that he was acting in good faith in committing certain acts in November 2002, in that he had been assured by Messrs. Allen Raymond, Chris Cupit, and an unknown “attorney,” that certain acts that he and his business partner and employees were contracted to perform in November 2002 were completely legal.

Reliance Upon Advice of Counsel: Mr. Hansen may assert that he relied in good faith upon the advice of counsel in committing certain acts in November 2002. Again, in support of this defense he will present evidence that he had been assured by Messrs. Allen Raymond and Chris Cupit that these acts had been vetted by an attorney and were completely legal. Also, he will present evidence that he and his business partner, Lee Leblanc, were parties to a conference call in which Messrs. Raymond and Cupit and an unknown “attorney” provided further assurances that the acts which they and their business were contracted to perform in November 2002 were completely legal.

Public Authority: Mr. Hansen may assert that his actions in this case were taken under

color of public authority, pursuant to Fed. R. Cr. P. 12.3. See United States v. Rosenthal, 793 F.2d 1214, 1236-37 (11th Cir. 1986). Under the public authority defense, a government official makes some statement or performs some act and the defendant relies on it, possibly mistakenly, and commits an offense in so doing. U.S. v. Burrows, 36 F.3d 875, 882 (9th Cir. 1994); U.S. v. Neville, 82 F.3d 750, 761 (7th Cir.), cert. denied, 519 U.S. 899, 136 L. Ed. 2d 177, 117 S. Ct. 249 (1996) (generally, this defense permits an acquittal when the defendant was reasonably mistaken in believing his criminal activity was authorized by the government). Mr. Hansen may assert at trial that he and his business had performed services for GOP Marketplace in the past and, based on its name and the type of work the business had been contracted to perform, he reasonably assumed that GOP Marketplace was a governmental entity or at least that the activities that his business was being asked to perform had been approved in advance by the national Republican party. Mr. Hansen may also present evidence that he and his business partner, Mr. Leblanc, were assured by Messrs. Raymond and Cupit and an unknown “attorney” that the actions they were being asked to perform were legal.¹

Wherefore, the defendant, Shaun Hansen, submits this notice of affirmative defenses that he may rely upon at trial, for the Court’s and opposing counsel’s consideration.

¹It should be noted, in support of this possible defense, that in November 2002, the party in control of the Executive and Legislative branches of government was the Republican Party (aka the Grand Old Party or “GOP”). It should also be noted that a convicted co-conspirator, James Tobin, is alleged to have had telephone contact with the White House during the time period that the phone-jamming scheme was unfolding. Larry Margasak, *Phone Jamming Records Point to White House*, Assoc. Press, April 11, 2006. It appears that Mr. Tobin may have had telephone contact with Ken Mehlman and Alicia Davis in the White House Office of Political Affairs, during the time that the alleged scheme was unfolding. It is not known, however, what involvement, if any, anyone at the White House may have had concerning the alleged scheme to “jam” phones on Election Day in 2002.

Respectfully submitted,

SHAUN HANSEN,
By His Attorney,

/s/Jeffrey S. Levin
Jeffrey S. Levin
NHBA #12901
Assistant Federal Public Defender
Federal Defender Office
22 Bridge Street
Concord, N.H. 03301
(603) 226-7360
Jeff_Levin@fd.org

Certificate of Service

I hereby certify that on this, the 3rd day of July, 2006, a copy of this notice was served on Lily Chinn, Esq., Trial Attorney, United States Department of Justice, Criminal Division, Computer Crime and Intellectual Property Division, and on Nicholas Marsh, Esq., Trial Attorney, United States Department of Justice, Criminal Division, Public Integrity Division, by electronic filing method.

/s/Jeffrey S. Levin
Jeffrey S. Levin