

ROGER STONE ADMITTED TO VIOLATING 18 USC 115 UNDER OATH

Yesterday, Judge Amy Berman Jackson scheduled a phone scheduling hearing to take place on Tuesday, the same day when the government must submit a response to Roger Stone's latest request for a new trial.

MINUTE ORDER as to ROGER J. STONE, JR.
An on-the-record scheduling telephone conference call is set for February 18, 2020 at 11:00 AM in Courtroom 3 before Judge Amy Berman Jackson. In a separate email from the Deputy Clerk, counsel for the parties will be supplied with both the dial in telephone number and pass code to give them access to the call. SO ORDERED. Signed by Judge Amy Berman Jackson on 2/16/20.

Contrary to a lot of the chatter about the meeting, I think it's unlikely to pertain to the withdrawal of the prosecutors who prosecuted the case. More likely, the judge has reviewed the underlying juror questionnaire for Tomeka Hart and assessed the credibility of Stone's concern (and I'd caution that the request may have real merit, even if his lawyers pretty much bolloxed the opportunity to raise it).

But if Stone were really to get a new trial, there would seem to be another factor that ABJ might want to raise for Stone's consideration: how the threat against her – that he admitted to, under oath – would be treated in a new trial.

When ABJ held a hearing last February 21 about whether she should revoke Stone's bail, he repeatedly claimed that he did not intend, by posting a picture of her with crosshairs on it,

as a threat. But she got him to admit, under oath, that the image could have a malicious impact, regardless of his intent.

THE COURT: Why is it consistent with how sorry you were, when you sent the apology, to continue for the next two days to speak publicly about the fact that you're being treated unfairly in this situation as well, that it's really this symbol, that it's really that symbol, it's the media going after you. How is that consistent with your telling me that you're deeply and sincerely sorry?

THE DEFENDANT: Because that was a reference to what I believe was a media distortion of my intent. It was – I did not have a malicious intent, Your Honor.

THE COURT: Do you understand that what you did could have a malicious impact, notwithstanding your intent?

THE DEFENDANT: That's why I abjectly apologized and I have no rationalization or excuse. I'm not seeking to justify it.

After he had made that admission, Stone admitted that he affirmatively selected the image with the crosshairs on it.

THE COURT: Okay. I'm just trying to get to the facts here. We started with somebody else did it and you didn't see it. Then it was, "No, somebody else found it, but I posted it." Now you're telling me somebody else found more than one image and you chose this one, is that correct?

THE DEFENDANT: Just randomly, yes, Your Honor.

THE COURT: You closed your eyes and picked?

THE DEFENDANT: No, I just – I do ten of these a day. I’m – I’m trying to struggle with the situation.

THE COURT: Randomly does not involve the application of human intelligence. You looked at multiple pictures and you chose one, is that correct –

THE DEFENDANT: Yes, but –

THE COURT: – or not correct?

THE DEFENDANT: That is correct.

Stone tried very hard to hide the names of the Proud Boys who were involved in selecting the image, by repeatedly said that up to five of them were, but he persistently named Jacob Engles as the person who had his credentials to be able to post such an image.

Q. On the day of your Instagram post, did you give anyone else your phone?

A. Yes.

Q. Who?

A. Multiple people.

Q. Name them.

A. Let’s see. At some point Jacob Engles, I believe, had it. I really don’t – I’m not certain. I’m sorry. I – my house is a – like a headquarters. I have many volunteers.

THE COURT: I thought you said you had five.

THE DEFENDANT: Five is a lot.

One way or another, Stone’s efforts to claim someone else did this (even after admitting he chose the image) amounted to a claim that it was a group effort.

In issuing her ruling tightening his gag order,

ABJ made it clear she believed the image could incite others to commit violence.

What concerns me is the fact that he chose to use his public platform, and chose to express himself in a manner that can incite others who may feel less constrained. The approach he chose posed a very real risk that others with extreme views and violent inclinations would be inflamed.

She used Stone's own sworn testimony to establish that there was, in fact, nothing ambiguous about his intent.

The defendant himself told me he had more than one to choose from. And so what he chose, particularly when paired with the sorts of incendiary comments included in the text, the comments that not only can lead to disrespect for the judiciary, but threats on the judiciary, the post had a more sinister message. As a man who, according to his own account, has made communication his forté, his raison d'être, his life's work, Roger Stone fully understands the power of words and the power of symbols. And there's nothing ambiguous about crosshairs.

The logic here is precisely the logic prosecutors cited, when discussing Randy Credico's belief that Stone, himself, was not a threat to him but his thuggish friends were. But because this threat happened after Stone's indictment, it was not charged as a threat the same way the threats against Credico were. Instead, they were treated as a 2-level enhancement that adds an additional six months under the sentencing guidelines.

Finally, pursuant to U.S.S.G. § 3C1.1, two levels are added because the defendant "willfully obstructed or

impeded, or attempted to obstruct or impede, the administration of justice with respect to the prosecution of the instant offense of conviction.” Shortly after the case was indicted, Stone posted an image of the presiding judge with a crosshair next to her head. In a hearing to address, among other things, Stone’s ongoing pretrial release, Stone gave sworn testimony about this matter that was not credible. Stone then repeatedly violated a more specific court order by posting messages on social media about matters related to the case.

But threatening a Federal Judge is itself a crime, 18 USC §115.

threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section, with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b).

If I’m understanding the law correctly, a threat like the one Stone made carries a potential sentence of up to 6 years, by itself (treating the tampering with Credico as a threat resulted in a 3 year increase in sentencing range).

While the FBI would have to do some leg work to establish precisely what happened with that post – and which “volunteer” selected the image and whether all of the images selected included some threat – Stone has admitted to his conduct already under oath. Adding that charge would

eliminate the debate about the threats against Credico, because ABJ has made it quite clear that she did consider this a threat that, at the last, posed the risk of inciting others.

Roger Stone might want to think twice before he goes the way of Mike Flynn, where every effort to delegitimize the slam dunk conviction for a crime brings the risk of further time.