

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
Plaintiff, :
 :
v. :
 :
MICHAEL ARMSTRONG, a/k/a :
"MICHAEL ALI," :
Defendant. : No. 99-603-1

MEMORANDUM AND ORDER

J. M. KELLY, J.

MARCH , 2003

Presently before the Court is a Motion to Supplement the Record filed by Defendant Michael Armstrong, a/k/a "Michael Ali" ("Defendant"), and the response of the Government thereto. Pursuant to Federal Rule of Appellate Procedure 10(e)(2),¹ Defendant petitions this Court to supplement the district court record with grand jury transcripts of testimony given by United States Postal Inspector Thomas E. Henderson ("Inspector Henderson") in his appeal to the United States Court of Appeals for the Third Circuit. In response, the Government avers that since Defendant does not claim that the grand jury transcripts were omitted from the record as a result of error or an accident, Rule 10(e)(2) does not support Defendant's request.

Rule 10(e) provides that:

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a

¹ Defendant's motion purports to rely on Federal Rule of Appellate Procedure 10(e)(1)(B). However, since this rule does not exist, we assume that Defendant intended to cite Rule 10(e)(2)(B), which would apply to the instant motion.

supplemental record may be certified and forwarded:

...

(B) by the district court before or after the record has been forwarded.

Fed. R. App. P. 10(e)(2)(B). Rule 10(e)(2) permits correction or modification of the record in order to provide the court of appeals with a record that adequately reflects what occurred in the district court. See United States ex rel. Mulvaney v. Rush, 487 F.2d 684, 687 n.5 (3d Cir. 1973). The Rule, however, does not serve "to facilitate collateral attacks on the verdict" nor does it afford this Court authority to admit new evidence to the court of appeals that was never before this Court in the first place. Shasteen v. Saver, 252 F.3d 929, 935 (7th Cir. 2001); see also United States v. Kennedy, 225 F.3d 1187, 1190 (10th Cir. 2000); United States v. Barrow, 118 F.3d 482, 487-88 (6th Cir. 1997); Mulvaney, 487 F.2d at 687.

Since Defendant neither claims nor demonstrates that the grand jury transcripts containing testimony by Inspector Henderson were omitted from the record as a result of error or accident, Defendant's Motion to Supplement the Record (Doc. No. 163) is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.

