

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
: :
: :
v. : :
: :
WILLIAM BORRELLI : No. 98-57-2

ORDER-MEMORANDUM

Ludwig, J.

AND NOW, this 3d day of July, 2001, defendant William Borrelli's post-verdict motion to dismiss the indictment is denied. Fed. R. Crim. P. 12(b)(2).

On February 4, 1998, defendant was indicted for conspiracy to distribute and possession with intent to distribute more than 500 grams of cocaine base. 21 U.S.C. §841(a)(1), 18 U.S.C. §2. On September 8, 1998, defendant pleaded guilty to both counts. On November 20, 1998, defendant was sentenced to 120 months of custody, eight years of supervised release, and a special assessment of \$200.

Defendant's motion asserts that the indictment was defective because it did not charge all of the essential elements of the offense. Subject matter jurisdiction requires a sufficient indictment, without which an indictment must be dismissed under Fed. R. Crim. P. 12(b)(2). A claim that an indictment does not state an offense is jurisdictional and is not waived by a guilty plea. United States v. Spinner, 180 F.3d 514, 516 (3d Cir. 1999) (quoting United States v. Caperell, 938 F.2d 975, 977 (9th Cir.1991)).

For an indictment to confer subject matter jurisdiction, it must contain the requisite elements of the offense and apprise defendant of the accusation. It

must also be specific enough to support a plea of double jeopardy. United States v. Werme, 939 F.2d 108, 112 (3d Cir. 1991); United States v. Wander, 601 F.2d 1251, 1258 (3d Cir. 1979).

Here, the indictment easily passes the comprehensiveness and specificity tests.¹ It charges the elements of the offenses by setting forth the precise manner and means by which they were committed and the overt acts alleged to have been perpetrated by defendant. Indictment, filed February 4, 1998. According to defendant's motion, the absence of sentencing information – the maximum sentence for the offense is 40 years custody, a \$2,000,000 fine, and supervised release of at least four years – rendered the indictment insufficient as a matter of law. However, sentencing information is extraneous to an indictment's validity.

¹ The indictment:

Count One. From on or about June 18, 1997, to on or about June 20, 1997, in the Eastern District of Pennsylvania, the defendants MICHAEL BELTLE, WILLIAM BORRELLI, ANGEL OTERO, and JUAN FERNANDEZ did knowingly and intentionally conspire, combine, confederate and agree, together and with each other and with others unknown to the Grand Jury to distribute more than [sic] 500 grams, that is, approximately fifteen hundred grams of a mixture or substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841 (a)(1).

Count Two. On or about June 20, 1997, in the Eastern District of Pennsylvania, the defendants MICHAEL BELTLE, WILLIAM BORRELLI, ANGEL OTERO, and JUAN FERNANDEZ did knowingly and intentionally possess with intent to distribute and did aid and abet the possession with intent to distribute more than 500 grams, that is, approximately fifteen hundred grams of a mixture or substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance. In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

Indictment, February 4, 1998.

See Werme 939 F.2d at 112; c.f. United States v. Gibbs, 813 F.2d 596, 599 (3d Cir. 1987) (reference to enhanced penalty statute is unnecessary where indictment specified drug quantity).

Accordingly, there was subject matter jurisdiction over this case. Non-jurisdictional challenges to an indictment must be asserted prior to trial. Fed. R. Civ. P. 12(b). A guilty plea is a waiver of all non-jurisdictional defects. Spinner, 180 F.3d at 516.

Edmund V. Ludwig, J.