

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

UNITED STATES	:	
	:	
v.	:	CRIMINAL NO. 04-CR-611-1
	:	
SHAMSUD-DIN ALI	:	

MEMORANDUM AND ORDER

Kauffman, J.

August 16, 2005

On June 14, 2005, following a jury trial, Defendant Shamsud-din Ali (“Defendant”) was convicted of racketeering, in violation of 18 U.S.C. § 1962(c) (Count One); conspiracy to commit racketeering, in violation of 18 U.S.C. § 1962(d) (Count Two); conspiracy to commit mail fraud and mail fraud, in violation of 18 U.S.C. § 1341 (Counts Three through Six); interstate travel in aid of racketeering, in violation of 18 U.S.C. § 1952 (Count Seven); use of the mails in aid of racketeering, in violation of 18 U.S.C. § 1952 (Counts Eight through Seventeen); bank fraud, in violation of 18 U.S.C. § 1344 (Count Eighteen); and extortion and attempted extortion under the Hobbs Act, in violation of 18 U.S.C. § 1951 (Counts Nineteen through Twenty-One).¹ Presently before the Court is Defendant’s Renewed Motion for Acquittal Under Rule 29, or in the alternative, for a New Trial Pursuant to Rule 33 (“Motion”). For the reasons stated below, the Motion will be denied.

I. Legal Standard

In considering a motion under Federal Rule of Criminal Procedure 29, the Court must

¹ Defendant was acquitted of certain mail fraud counts (Counts Twenty-Three through Twenty-Six) and the jury failed to reach a verdict on charges of conspiracy to commit wire fraud and wire fraud (Counts Twenty-Seven through Thirty-Four).

determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); United States v. Iafelice, 978 F.2d 92, 94 (3d Cir. 1992). On such motions, it is not the province of this Court to weigh the evidence independently or make determinations regarding witness credibility. See, e.g., United States v. Giampa, 758 F.2d 928, 934-35 (3d Cir. 1985).

Under Rule 33, a court may vacate any judgment and grant the defendant a new trial if “the interest of justice so requires.” Fed. R. Crim. P. 33. Courts have interpreted this to mean that a district court may order a new trial when there is a serious danger that a miscarriage of justice has occurred. United States v. Brennan, 326 F.3d 176, 189 (3d Cir. 2003). Unlike consideration of a Rule 29 motion, under Rule 33, the court exercises its own judgment in assessing the government’s case. Id. The granting of Rule 33 motions is not favored and should be done only in exceptional cases. Id.

II. Analysis

A. Rule 29 Motion Based on Failure to Prove RICO Pattern

Defendant raises several objections to his conviction. First, just as he argued in his Motion to Dismiss the Indictment, Defendant contends that the government has not adequately demonstrated the existence of a RICO pattern, because the predicate acts are not sufficiently related. Section 1962(c) of RICO provides “[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity....” To sustain a charge under the statute, the

government must prove: (1) the existence of an enterprise affecting interstate commerce; (2) that the defendant was employed by or associated with the enterprise; (3) that the defendant participated, directly or indirectly, in the conduct of the affairs of the enterprise; and (4) that he participated through a “pattern” of racketeering activity. See, e.g., United States v. Console, 13 F.3d 641, 653 (3d Cir. 1993). Just as with substantive counts, RICO conspiracy under § 1962(d) requires proof of a pattern of racketeering activity. Id.; see also United States v. Salinas, 522 U.S. 52, 62-63 (1997). Here, the government alleged and proved the existence of an association-in-fact enterprise, composed of: Defendant; co-defendant Faridah Ali; the Sister Clara Muhammad School (“SCMS”); Keystone Information & Financial Services, Inc. (“KIFS”); and Hi-Technology Recycling Waste Management, Inc. (“Hi-Tech”). The Superseding Indictment alleged thirteen predicate Racketeering Acts (“Acts”). Of the Acts charged, the jury found that the government had proven Racketeering Acts One through Six and Eleven; the jury ruled that Acts Seven through Ten were not proven and failed to reach a verdict as to Act Twelve. Accordingly, this Court will consider whether Acts One through Six and Eleven constitute a racketeering pattern.

Section 1961(5) defines a “pattern of racketeering activity” as at least two predicate racketeering acts, one of which must have occurred within the last ten years. 18 U.S.C. § 1961(5). Beyond these basic requirements, the Supreme Court in H.J., Inc. v. Northwestern Bell Telephone Co. set out a “continuity plus relationship” test for determining if a RICO pattern exists. 492 U.S. 229, 239 (1989). Under this test, in order to establish the requisite RICO pattern, the government must prove “that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.” H.J., Inc., 492 U.S. at 239.

For the purposes of RICO, predicates will be considered related if they “have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.” H.J., Inc., 492 U.S. at 240 (quoting 18 U.S.C. § 3575(e)). This is intended to be a flexible standard and even if the predicate acts would constitute separate conspiracies under traditional criminal conspiracy law, it is well established that they may be charged as a single “enterprise” conspiracy if they are sufficiently related, either to each other or according to some external organizing scheme (such as the enterprise). See United States v. Riccobene, 709 F.2d 214, 224-25 (3d Cir. 1983); United States v. Eufrazio, 935 F.2d 553, 565 (3d Cir. 1991); see also United States v. Elliot, 571 F.2d 880, 902 (5th Cir. 1978). The Acts considered proved according to the jury included a scheme to defraud the City of Philadelphia out of tax revenue (Act One); a bribery scheme involving AAT Communications Corporation (“AAT”), a city contractor, and KIFS (Acts Two and Three); a scheme to defraud Commerce Bank (Act Four); the extortion and attempted extortion of waste management companies that contract with the City (Acts Five and Six); and a scheme to defraud the Community College of Philadelphia (Act Eleven).

These predicates were adequately established by the government’s evidence and appear sufficiently related to satisfy RICO, based on their overlapping purposes, victims, participants, methods of commission, and their generally interrelated nature. Cf. United States v. McDade, 827 F. Supp. 1153, 1183 (E.D. Pa. 1993). The overarching purpose of all of the Acts is to make money for the enterprise and, in particular, Defendant and co-defendant Faridah Ali. Each of the Acts involved members of the enterprise, with Defendant frequently playing a pivotal role. The different schemes involved similar methods of commission, which succeeded largely based on

Defendant's political influence, or at least perceived political influence, and connections in the City of Philadelphia. Common victims included the City itself, or those with whom the City contracts. Furthermore, Act Four, the scheme to defraud Commerce Bank, was essential to the enterprise, as maintaining KIFS as an ostensibly legitimate, viable business was necessary to allow Defendant to effectuate the schemes in Acts One, Two, and Three.

Next, the government has adequately demonstrated continuity. Continuity for the purpose of a RICO pattern can be proved in two forms: (1) closed or (2) open-ended continuity. H.J., Inc., 492 U.S. at 241. The purpose of the continuity requirement is to ensure that RICO is not directed at "sporadic" criminal activity, but is instead employed to combat an ongoing or extended threat of wrongdoing. Id. at 239. A criminal scheme constitutes a closed pattern of racketeering if it involves a series of related predicate acts extending over a substantial period of time. Id. at 242. A scheme meets the requirement for open-ended continuity if it involves the "distinct threat of long-term racketeering," stemming from predicates that evince a "specific threat of repetition extending indefinitely into the future." Id.

The government presented substantial evidence of racketeering comprising seven schemes and approximately forty separate criminal acts, which extended over a four-year period. In addition, as required, the government presented evidence of the existence of the enterprise above and beyond the pattern of racketeering activity (including the testimony of drug-dealer Rodney Saunders, from whom Defendant obtained money), which demonstrates that the enterprise may have been functioning as early as 1997. This combination of multiple schemes and numerous criminal acts over a multi-year period establishes closed continuity. See, e.g., Tabas v. Tabas, 47 F.3d 1280, 1293 (3d Cir. 1995) (holding continuity present when crimes span

more than one year and are sufficiently numerous); Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1412 (3d Cir. 1991); Hindes v. Castle, 937 F.2d 868, 873 (3d Cir. 1991).

In addition, evidence at trial also demonstrated an open-ended pattern of continuity with a specific threat of criminality extending indefinitely into the future, in that the charged predicate acts clearly represented “an ongoing entity’s regular way of doing business.” H.J., Inc., 492 U.S. at 242. With a tax collection contract in place, Defendant and KIFS were poised to secure additional proceeds from the City (and, indeed, were attempting to do so according to taped conversations between Defendant and co-defendant John Christmas), even though there is no indication that the business was capable of handling legitimate tax collection work. See Government’s Exhibits (“Exhibits”) I-114; I-132. The testimony of Ms. Batchelor and Leonard Wideman confirmed that KIFS had no legitimate business activity or the capacity to engage in actual debt collection starting in the spring of 2001.

Furthermore, Acts Two and Three included bribery payments intended to extend indefinitely into the future, with co-defendant Richard Meehan actively seeking additional contracts on which he, KIFS, and Defendant could receive payment. Finally, the actions of Defendant and co-defendant John Johnson established under Acts Five and Six evince an ongoing tendency on the part of Hi-Tech to conduct business through extortionate means. The evidence outlined above is an indication that racketeering represented KIFS’s and Hi-Tech’s regular way of doing business. In sum, the government has adequately established that the charged predicates were not merely “sporadic” criminal events, but rather the connected and continuous pattern of a functioning criminal enterprise headed by Defendant. Thus, the government has proved the existence of a pattern of racketeering and Defendant’s Motion as to

RICO must be denied.

B. Rule 29 Motions Related to Individual Racketeering Acts and Counts

1. *Act One(A) (Mail Fraud)*

Defendant argues that Act One(A) fails to state the offense of mail fraud because the “property” involved in the mailing was a letter representing a contract for services or licensing agreement with the City (hereinafter “Agreement”), which he contends is not actually “property.” Defendant’s argument mistakes the government’s proof on this Act and the nature of the mail fraud statute. An individual commits the federal offense of mail fraud when

having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises ... for the purpose of executing such scheme or artifice or attempting so to do, [he] places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier ...

18 U.S.C. § 1341. Accordingly, to prove mail fraud, the government must establish that Defendant (1) knowingly and wilfully participated in a scheme to defraud; (2) acted with the specific intent to defraud; and (3) used or caused the mails to be used in furtherance of this scheme. See, e.g., United States v. Hedaithy, 392 F.3d 580, 590 (3d Cir. 2004); United States v. Pharis, 298 F.3d 228, 234 (3d Cir. 2002). In this case, the government proved that Defendant and his co-conspirators developed a scheme to defraud the City and obtain an unearned tax collection commission of \$60,595.61, and caused the use of the mails as part of this scheme. The government alleged several specific mailings, each of which was proved. While the mailing of the Agreement by the City was made pursuant to and in furtherance of this fraudulent scheme, the mailed documents themselves were only an incremental part of the scheme’s aim; the

ultimate intent was to defraud the City of money, as described above. As a result, the question of whether any of the mailings were licenses or property is irrelevant to the government's proof of mail fraud. Furthermore, there was adequate evidence presented at trial from which a reasonable jury could conclude that Defendant knowingly and wilfully devised this scheme, caused the use of the mails in furtherance, and profited as a result. Consequently, Defendant's Motion will be denied as to this Act.

2. Acts Two and Three, Counts Seven through Seventeen (ITAR and Commercial Bribery)

Defendant next argues that the government failed to prove commercial bribery under Pennsylvania law because he was not shown to have the requisite culpable state of mind, and because certain payments were accepted in New Jersey, rather than in Pennsylvania. To prove bribery, the government must show that (1) the defendant conferred, offered or agreed to confer a benefit on an employee who owed a duty of care and loyalty to his employer; (2) the employee solicited or accepted this benefit without the consent of his employer; and (3) the employee solicited or accepted the benefit with the understanding that the benefit would influence his conduct in his employer's affairs. See 18 Pa. Cons. Stat. Ann. § 4108(c); United States v. Parise, 159 F.3d 790, 798 (3d Cir. 1998), habeas relief granted Parise v. United States, 2000 WL 876894 (E.D. Pa. June 20, 2000). There is no requirement that the government prove the employee's actions were actually adverse to the employer, or that a defendant know specifically which provision of the law his conduct violates. See id.

Accordingly, the government presented substantial evidence from which a reasonable jury could conclude that Defendant had engaged in bribery under state law. Defendant made payments to Richard Meehan, an employee of AAT who owed that company a duty of loyalty,

with the understanding that these payments would influence Mr. Meehan's actions in affairs related to his employment. See Exhibits I-165; I-85. In addition, there is a sufficient jurisdictional nexus with Pennsylvania because the evidence at trial established that (1) the agreement resulting in the kickbacks was reached in Pennsylvania; (2) the kickback payments from Defendant to Mr. Meehan originated in this state; and (3) certain payments were accepted by Mr. Meehan here.

3. Act Four and Count Eighteen (Bank Fraud)

Defendant next argues that he cannot be guilty of bank fraud, as charged in Act Four and Count Eighteen, because (1) Defendant's former accountant and co-defendant John Salter created the allegedly forged documents from available records; (2) Mr. Salter created the documents after Commerce Bank had already renewed the loan, meaning that the Bank could not have relied upon any false information contained therein; and (3) Defendant did not expend any of the line of credit funds himself.

In order to establish bank fraud, the government must prove that a defendant knowingly executed or attempted to execute a scheme or artifice to defraud a financial institution or to obtain any of the money, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution by means of false or fraudulent pretenses, representations, or promises. See 18 U.S.C. § 1344; see also United States v. Thomas, 315 F.3d 190, 195-96 (3d Cir. 2002). At trial, the government presented ample evidence, including the testimony of Mr. Salter, from which a reasonable jury could conclude that Defendant intentionally submitted false documents to Commerce Bank, pursuant to a scheme designed to maintain and extend KIFS's line of credit. Furthermore, bank representative John Finley's

testimony made clear that, while some documents were produced after the line of credit was technically extended, the bank relied on the financial documents submitted by Defendant (or their promised production) in deciding to extend the line of credit. Finally, it is irrelevant who spent the money obtained through the line of credit; the relevant question before the jury was whether Defendant had knowingly and wilfully executed a scheme to extend the line of credit by defrauding the bank. Accordingly, the Court finds that the government presented sufficient evidence on this issue, and the Motion will be denied.

4. Acts Five and Six, Counts Nineteen through Twenty-One (Hobbs Act Violations)

Defendant objects to his conviction on these Counts, arguing that there is no evidence to substantiate allegations of Hobbs Act violations. To the contrary, however, the government submitted testimony from the extortion victims, as well as tape recordings between Defendant and his co-conspirator, John Johnson, discussing their efforts to obtain payment from WMPI. While Defendant argues in his Motion, as he did throughout trial, that the additional payment was merely a “bonus” for work that the defendants completed for WMPI (and not the result of extortionate threats), this question hinges on the interpretation of the evidence and witness credibility, matters clearly for the consideration of the jury. Similarly, the government presented evidence that defendants conceived a scheme to attempt to obtain money via extortion from another waste management company, WMPA. While Defendant characterizes these efforts as a “sales pitch,” a reasonable jury could conclude, based on the testimony of the would-be victim company’s owner, that they were in fact extortionate threats. As a result, there is no basis for granting a Rule 29 Motion.

5. Act Eleven (Scheme to Defraud Community College of Philadelphia)

Defendant objects to his conviction on this Act, arguing that the evidence failed to connect him to Faridah Ali's actions to defraud the Community College of Philadelphia. As a general rule, a conspirator is liable for all acts and declarations of coconspirators made or done in furtherance of the conspiracy, including those occurring prior to his or her joining the conspiracy. United States v. United States Gypsum Co., 333 U.S. 364, 393 (1948). There is adequate evidence from which a reasonable jury could conclude that Defendant entered into a conspiracy with Mrs. Ali. First, Defendant was involved at the SCMS as its Director and there was evidence that he was the chief administrator, handling certain everyday school functions. Next, the government presented evidence that Defendant was aware of the CCP courses taught at SCMS (or supposed to be taught there), as announcements and solicitations regarding these classes were made at the afternoon prayer services over which he presided. Finally, the government presented incriminating conversations between Defendant and Mrs. Ali. Based on this evidence, a rational jury could conclude that Defendant conspired with Mrs. Ali in defrauding the College, and the Rule 29 Motion must be denied.

C. Motion for New Trial Under Rule 33 Based on Evidence Related to Drug Proceeds

Defendant moves for a new trial under Federal Rule of Criminal Procedure 33, arguing that evidence of his acceptance and solicitation of payments from drug dealers resulted in grave and undue prejudice against him, and a miscarriage of justice. During trial, Defendant repeatedly objected to this evidence, arguing that it was irrelevant, given that he was not charged with a drug crime, and unduly prejudicial. Defendant now contends that admission of such evidence warrants a new trial because there is nothing illegal about taking payments from drug dealers and

because this “unsound allegation” likely caused the jury to find an enterprise and convict Defendant on some invalid theory of liability.

As this Court ruled during trial, this evidence of payments from drug dealers was relevant and its probative value outweighed any undue prejudice. The evidence was offered by the government to help prove the existence of an enterprise and substantiate how it functioned as an ongoing, organized unit, above and beyond the charged pattern of racketeering activity. See, e.g., Eufrazio, 935 F.2d at 573 (ruling that government may introduce evidence of uncharged crimes to prove the existence of a RICO enterprise). As the government demonstrated at trial, money solicited from drug dealers was filtered through the SCMS to be used for the benefit of Defendant and Mrs. Ali, and this evidence helped establish both the means of the enterprise and Defendant’s knowing participation in its ongoing affairs. The legality of this conduct is not particularly significant, as an enterprise need not be an illicit organization or be engaged in illegal activity (other than racketeering) to be the vehicle for a RICO violation. See, e.g., United States v. Turkette, 452 U.S. 576, 586-87 (1981).

Furthermore, there is no allegation of specific prejudice or indication that this evidence “tainted” the jury’s overall deliberations. This Court repeatedly ruled that the evidence was relevant, carefully circumscribed the government’s use of the evidence, and gave numerous appropriate instructions throughout trial clarifying the precise, limited purpose of the evidence and admonishing the jury against any broader interpretation. Defendant’s theory that admission of this evidence resulted in “severe prejudice” and jurors who had “their minds made up early on” is undermined by the fact that Defendant was acquitted on several Counts (and the related Acts), and that the jury failed to reach a verdict on others. Rather than being blinded by

prejudice, the verdict indicates that the jury carefully considered the evidence and arguments of each side before rendering its verdict. Additionally, as the Court has described above, the verdict was amply supported by the evidence presented.

Finally, Defendant makes a blanket request for a new trial because the evidence “overwhelmingly demonstrates Ali’s innocence.” Motion at 14. As indicated, Rule 33 motions are to be granted sparingly, when a miscarriage of justice is obvious. No such injustice is apparent here; to the contrary, the evidence presented by the government overwhelmingly affirms Defendant’s guilt on each Count on which he was convicted.

III. Conclusion

For the foregoing reasons, Defendant’s Motion will be denied. An appropriate Order follows.

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

UNITED STATES

v.

SHAMSUD-DIN ALI

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CRIMINAL NO. 04-CR-611-1

ORDER

AND NOW, this 16th day of August, 2005, upon consideration of Defendant's Renewed Motion for Acquittal Under Rule 29, or in the alternative, for a New Trial Pursuant to Rule 33 (docket no. 230), the government's response thereto, and following a hearing on July 20, 2005, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

s/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.