

DISCUSSION

A. Sufficiency of Indictment

Mr. Garcia argues that the evidence presented to the grand jury that issued the indictment was inaccurately described to the jury members by the Government and that the actual evidence does not establish probable cause to indict Mr. Garcia. Mr. Garcia argues that the indictment against him should be dismissed because none of the evidence presented to the grand jury implicates him in the alleged October 1, 2004 murder.¹ For example, Mr. Garcia asserts that several witnesses who testified before the grand jury did not testify about him or any role that he played in the alleged murder. Garcia Memorandum at 2. Mr. Garcia also argues that the grand jury testimony of Agent Stewart with respect to a recorded conversation between Mr. Garcia, another co-defendant and a witness in this case was mis-characterized. Id. Further, Mr. Garcia argues that the evidence of other witnesses who testified before the grand jury implicated Angel Aviles, a co-defendant in this case, and not Mr. Garcia, with the murder. Id. at 3. In short, Mr. Garcia argues that because there was no evidence presented to the grand jury that Mr. Garcia actually committed the murder, and no evidence that Mr. Garcia agreed to the murder, both counts against him must be dismissed.

Rule 12(b)(2) of the Federal Rules of Criminal Procedure states that “[a] party may raise by pretrial motion any defense objection, or request that the court can determine without a trial of the general issue.” FED. R. CRIM. P. 12(b)(2). While Rule 12(b)(2) allows a trial court to dismiss an indictment if its allegations do not support the offense charged, a dismissal may not “be

¹ In his Motion, Mr. Garcia does not cite to any cases in support of his argument. Rather, Mr. Garcia argues that the evidence presented does not support the allegations charged.

predicated upon the insufficiency of the evidence to provide the indictment's charges." United States v. DeLaurentis, 230 F.3d 659, 660-61 (3d Cir. 2000). Thus, a pretrial motion to dismiss an indictment on the basis of insufficient evidence is not permitted. Id. An indictment will be found sufficient if "it contains the elements of the offense charged and fairly informs the defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974).

In deciding whether it is appropriate to issue an indictment against a particular defendant, it is the role of a grand jury to "sift through the evidence in order to determine independently whether probable cause exists to return an indictment or even whether a crime has been committed." United States v. Mahoney, 508 F. Supp. 263, 265 (E.D. Pa. 1981) (citing Branzburg v. Hayes, 408 U.S. 665 (1972)). A grand jury may draw information from a wide variety of sources, and the validity of an indictment is not affected by the character of the evidence considered. United States v. Calandra, 414 U.S. 338, 344-45 (1974); see also United States v. Labate, 270 F.2d 122, 123-24 (1959) (finding that indictment based on hearsay evidence was valid and that defendant could not challenge indictment on ground that it was not supported by adequate or competent evidence). The return of an indictment by a legally constituted and unbiased grand jury is sufficient to establish probable cause and "is enough to call for trial of the charge on the merits." Costello v. United States, 350 U.S. 359, 409 (1956).

In the present case, Count 21 of the Indictment charges Mr. Garcia and three other defendants with conspiracy to commit murder in aid of racketeering, states that the defendants, "conspired and agreed with each other, and with others known and unknown to the grand jury, to

commit . . . knowing and intentional murder.” Indictment at 53. Count 22 of the Indictment charges Mr. Garcia and three other defendants with knowingly using and carrying, and aiding and abetting the use and carrying of firearms during and in relation to conspiracy to commit murder in aid of racketeering. Indictment at 55. These counts of the indictment clearly inform Mr. Garcia of the charges against him and enables him to properly plead his case before the jury. It is not the role of this Court to evaluate the evidence from which the grand jury concluded Mr. Garcia would be charged, and it would be improper for the Court, at this time, to make an assessment of the sufficiency of the evidence against Mr. Garcia. Because the indictment sufficiently informs Mr. Garcia of the charges against him, the motion to dismiss the indictment will be denied.

B. Severance

As an alternative, Mr. Garcia initially argued that if the Court were to deny his motion to dismiss the indictment, his trial should be severed from that of the other remaining defendants because of the danger of “spill over prejudice” that might lead the jury to wrongly convict Mr. Garcia based on the evidence presented against the other defendants. Garcia Memorandum at 5. At the argument with respect to this Motion, Mr. Garcia indicated that he wished to withdraw his request for severance. Therefore, this portion of the Motion also will be denied.

CONCLUSION

For the reasons discussed above, the Motion to Dismiss the Indictment or, in the alternative for Severance, is denied. An appropriate Order follows.

/S/

GENE E.K. PRATTER
United States District Judge

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
CLEMENT GARCIA	:	No. 05-44-9

ORDER

AND NOW, this 17th day of January, 2006, upon consideration of the Motion to Dismiss the Indictment or, in the Alternative, to Sever (Docket No. 418) filed by Clement Garcia, the response thereto (Docket No. 419), and after argument on the Motion, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
United States District Judge