

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

UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-076-02
	:	
v.	:	
	:	
COREY PASLEY	:	

NORMA L. SHAPIRO, J.

OCTOBER 22, 2013

MEMORANDUM

On March 22, 2012, defendant Corey Pasley (“Pasley”) was convicted by a jury on all three counts of his indictment: (Count I) conspiracy to commit robbery which interferes with interstate commerce, in violation of 18 U.S.C. § 1951(a); (Count II) robbery which interferes with interstate commerce, in violation of 18 U.S.C. § 1951(a); and (Count III) using and carrying a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1).

On March 27, 2012, Pasley, filing a timely motion for post-trial relief, moved for entry of judgment of acquittal under Federal Rule of Criminal Procedure 29(c) or, in the alternative, for a new trial under Federal Rule of Criminal Procedure 33. There was sufficient evidence at trial for a reasonable jury to convict Pasley of conspiracy to commit robbery which interferes with interstate commerce, robbery which interferes with interstate commerce, and using and carrying a firearm during a crime of violence. The court will deny the motion for acquittal on Counts I, II, and III. Furthermore, a new trial is not in the interest of justice; the jury’s guilty verdicts were based on evidence from which it could have reasonably concluded beyond a reasonable doubt that Pasley knew of the planned armed robbery and acted to assist his co-conspirator, Amos

Singleton (“Singleton”), in carrying it out, and these findings were not against the weight of evidence. The court will deny the alternative motion for a new trial.

I. FACTS

At trial, Ms. Barbara Jablokov (“Jablokov”) testified that on November 1, 2010, shortly after 4:00 p.m., she was working in the Walnut Lane Apartments office, located at 236 West Walnut Lane, Philadelphia, Pennsylvania, when she was shot by an armed robber. Jablokov stated that: the manager’s office was located in the basement; the office door was always locked; and there was a security camera system installed and operating, as well as a panic (or “holdup”) button located on the right underside of her desk.

Jablokov testified that defendant Pasley had been employed as a security guard at the apartment complex since July 2010. Pasley was familiar with the office security features because he had been given an orientation by Jablokov when his employment commenced. On the date of the robbery, Pasley arrived for work around 4:00 p.m., an hour before the 5:00 p.m. start of his work shift and approximately 30 to 40 minutes earlier than normal. While speaking with Jablokov, Pasley received a call on his cellular telephone and excused himself to answer the call outside the office. Pasley remained outside for less than a minute and, on returning, closed and locked the office door. Then, without any knock, Pasley got up, opened the door, stepped aside and allowed a man, later identified as Singleton, to enter the office with a handgun drawn. Jablokov noted that the gunman took the less-direct route toward her from the right-hand side of her desk where the panic button was located, pulled her up out of her chair, and pressed the muzzle of the gun to her face. The gunman, referring to the panic button, shouted at Jablokov, “Don’t go for it. I know what you have. And don’t, don’t hit it.”

With the gun held to Jablovkov's face, the gunman shoved her back to the rear office where the safe was located, with Pasley following closely behind. Jablovkov testified that the gunman never pointed his gun at Pasley and never paid attention to him during the course of the robbery. She further testified that Pasley was one of only a few people who knew the location of the safe. He was present on previous occasions when Jablovkov had counted rent money and deposited it in the safe.

Inside the back office, the gunman fired the gun into Ms. Jablovkov's right cheek; the bullet destroyed her left eye and caused severe bleeding. The gunman then screamed at her to open the office safe. Though bleeding profusely, Jablovkov, dumping the contents of her purse on the floor, told the gunman the keys were part of the "brown set" and to "go find them." While the gunman was looking for the keys, Jablovkov pulled her handgun from her waist area and attempted to shoot the gunman. Pasley knew that Jablovkov carried a gun while working. The gunman then yelled, apparently at Pasley, "What the **** is she doing?" Jablovkov was unable to see clearly and the gunman was able to take her gun away.

While the gunman emptied the contents of the safe, Jablovkov attempted to run from the room but was blocked by defendant Pasley, who was on the floor in front of the rear office door. Jablovkov testified that when she tried to open the door, Pasley told her, "You can't leave, you have to stay," and held her lower leg. Jablovkov then kicked Pasley in the face and escaped. Ms. Jablovkov told the people helping her and the police that the security guard (Pasley) was "in on it."

On July 6, 2011, Jablovkov was shown a photographic array by FBI Special Agent John Sermons and positively identified the gunman, Amos Singleton. Jablovkov testified that

Singleton stole approximately \$3,500 in cash and money orders from the office safe and her .380 caliber Beretta semiautomatic pistol. Philadelphia Police officers all testified that when they arrived at the apartment, they found defendant Pasley on the front steps. Despite the presence of blood on Pasley's hands and sweatshirt, there was no evidence of any injuries to Pasley. He was transported to Albert Einstein Medical Center, where he was examined by medical personnel and was found to have no physical injuries.

Investigating officers detained Pasley following his release from the hospital and took custody of his cellular telephone. On November 2, Pasley was advised of his *Miranda* rights, signed a written waiver, and gave a statement to Philadelphia Police detectives. Among the personal information Pasley provided to the detectives was his cell phone number, (267) 237-1912. Pasley told investigators that, prior to the robbery, he had stepped outside the manager's office to speak with his friend, "Kim," and he provided detectives with "Kim's" phone number, (267) 622-0709.

Investigating agents obtained search warrants to gather subscriber information and call detail records for Pasley's phone number from T-Mobile, Inc., and for "Kim's" phone number from Metro PCS, Inc. These records showed the (267) 622-0709 number actually belonged to an individual named "Aziz Mahadi" and was affiliated with a Kyocera model S1310 cellular telephone. A person using this phone called Pasley at 4:01 p.m., moments before the robbery. The records further revealed that "Mahadi's" phone and Pasley's phone made contact multiple times between 8:53 a.m. and 3:22 p.m. on November 1, 2010. Further review of "Mahadi's" cell phone records showed a person using this phone placed several calls to a Pennsylvania Department of Public Welfare ("DPW") office in Philadelphia following the robbery. Detective

James Sloan testified that he contacted this DPW office and learned the (267) 622-0709 number was associated with the welfare account of Amos Singleton.

Detective Sloan testified that on November 5, 2010, the Philadelphia Police Department arrested Amos Singleton at his apartment building. He identified himself as “Aziz Hankerson.” Officers recovered a Kyocera model S1310 Metro PCS cell phone from Singleton and the .380 Beretta semiautomatic pistol of Ms. Jablovkova a short distance away from Singleton’s apartment. FBI Special Agent William Shute testified as an expert witness in the area of historical cell site analysis to establish that Singleton’s cell phone was within a few blocks of the Walnut Lane Apartments at 4:01 p.m. on the date of the robbery when the call was made to Pasley’s cell phone.

II. DISCUSSION

A. Motion for Acquittal

Defendant Pasley moves for a judgment of acquittal on Counts I, II, and III under Federal Rule of Criminal Procedure 29. Rule 29(a) provides that a court “must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” A claim of insufficient evidence places an extremely heavy burden on the defendant. *United States v. Dent*, 149 F.3d 180, 187 (3d Cir. 1998). The evidence at trial is insufficient to sustain a conviction only if no rational trier of fact could have found proof of guilt beyond a reasonable doubt. *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005). In reviewing the sufficiency of evidence, a court must review the evidence “in the light most favorable to the Government, and credit all reasonable inferences that support the verdict.” *United States v. Perez*, 280 F.3d 318, 342 (3d Cir. 2002). A court must not “usurp the role of the jury by weighing credibility and

assigning weight to the evidence, or by substituting its judgment for that of the jury,” and should find insufficient evidence only “where the prosecution’s failure [to prove its case] is clear.” *Id.*

Counts I and II charge violations of 18 U.S.C. § 1951(a), criminalizing the obstructing, delaying, or affecting of commerce in any way “by **robbery** or extortion or attempt[ing] or **conspir[ing]** so to do” (emphasis added). Count III charges a violation of 18 U.S.C. § 924(c)(1) and imposes additional punishment upon “any person who, during and in relation to any crime of violence . . . uses or carries a firearm.”

A conspiracy exists where the government proves beyond a reasonable doubt: (1) the existence of an agreement between parties to achieve an unlawful objective; (2) the defendant’s knowing and voluntary participation in the conspiracy; and (3) the commission of an overt act in furtherance of the conspiracy. *United States v. Rigas*, 605 F.3d 194, 206 (3d Cir. 2010). The reasonably foreseeable overt acts of one co-conspirator, committed in furtherance of the crime, are attributable to the other conspirators for the purpose of holding them responsible for the substantive offense. *Pinkerton v. United States*, 328 U.S. 640, 646-48 (1946). Finally, § 1951(a) defines “robbery” as “the unlawful taking or obtaining of personal property from the person . . . against his will, by means of actual or threatened force, or violence . . . immediate or future, to his person or property.”

Pasley argues the evidence submitted at trial is insufficient to sustain the jury’s guilty verdict on any of the three counts on which he was convicted because “[t]here was no direct evidence that he [Pasley] knew that a gun was to be used in the robbery.” Defendant’s Motion for Judgment of Acquittal and for New Trial (“Def.’s Mot.”) at 2. He claims he “did not hold or shoot the gun at any time during the robbery” and asserts there was no direct evidence that he

acted to facilitate the robbery. *Id.*

Pasley can be convicted of violating § 1951(a) and § 924(c)(1) without ever personally possessing or controlling a weapon, provided that he knew of the crime where a weapon was used and had the specific intent of facilitating the crime. See *United States v. Petersen*, 622 F.3d 196, 208 (3d Cir. 2010) (citing *Pierre v. Attorney General*, 528 F.3d 180, 189 (3d Cir. 2008) and *United States v. Gordon*, 290 F.3d 539, 547 (3d Cir. 2002)). It is undisputed that Singleton carried and used a gun during the robbery; Pasley is liable for this offense whether or not he possessed or controlled the firearm or knew it would be used so long as Singleton's use was reasonably foreseeable and committed in furtherance of the crime. *Pinkerton*, 328 U.S. at 646-48. Singleton's carrying and use of a gun during the robbery could have been found by a reasonable jury to be a reasonably foreseeable act because of the nature of the conspirators' objective and the inherently violent means necessary to achieve it. Pasley also knew Jablovkov carried a gun herself while working and spoke with Singleton repeatedly before the crime commenced. Pasley's contention that there was no direct evidence he acted to facilitate the robbery does not prove insufficiency of evidence at trial and provides no basis for judgment of acquittal.

There is more than adequate testimony to support the inference that Pasley was a co-conspirator with Singleton and provided him with assistance and inside information before and during the armed robbery. Relevant facts supporting this inference are:

- (1) On the date of the robbery, Pasley arrived for work 30 to 40 minutes earlier than normal, moments before the robbery commenced;
- (2) On the date of the robbery, the cellular telephones belonging to Pasley and Singleton

were repeatedly in contact with each other, including at 4:01 p.m., moments before the robbery commenced. Singleton's phone can be placed within a few blocks of the crime scene at that time;

(3) Pasley opened the locked door of the management office to allow Singleton to enter with a gun;

(4) Singleton ignored Pasley and took a less-direct route toward Jablov, shouting at her not to hit the panic button, and forcing her at gunpoint to the back office where there were no security cameras. Pasley was one of only a few people with knowledge of the office's security features and the location of the safe;

(5) After Singleton shot Ms. Jablov, and while Singleton was rummaging through the office safe, Jablov attempted to flee but was stopped by Pasley, who physically blocked her from leaving;

(6) When Jablov attempted to open the blocked door, Pasley said, "You can't leave, you have to stay," and held her leg. Jablov was able to escape only after kicking Pasley in the face;

(7) Despite Pasley's assertion that he was an innocent bystander, he was not injured by Singleton but Jablov was nearly killed.

Furthermore, the three cases on which Pasley's motion relies are either inapposite or actually supportive of the government's position. In both *United States v. Gordon*, 290 F.3d 539 (3d Cir. 2002) and *United States v. Price*, 76 F.3d 526 (3d Cir. 1996), the Court of Appeals upheld convictions of defendants charged with armed robberies because the unarmed defendants'

actions furthered the actions of the armed defendants. *United States v. Garth*, 188 F.3d 99 (3d Cir. 1999) is also inapposite; defendant's guilty plea was vacated on habeas review because a change in the legal definition of "use" in the § 924 statute raised the possibility that there may not have been a factual basis for defendant's plea.

Defendant also believes the video evidence admitted at trial has been altered. He claims surveillance tapes taken at the scene of the robbery would show that he was surprised by the attack, attempted to aid Jablovkov and did not conspire with his co-defendant, i.e., it would establish his innocence. Because the original surveillance tapes were available on a hard drive and the AUSA did not object, at the request of defendant, the court authorized the sum of \$2,400 for a forensic analysis as allowed by 18 U.S.C. § 3006A(e). Order of July 9, 2013.

The results of that forensic analysis by Forensic Pursuit, LLC, were inconclusive. A flash drive containing downloaded content from the hard drive was examined, but the hard drive containing original surveillance tape footage was deemed inoperable and beyond the capacity of Forensic Pursuit to repair. There was no explanation for three minutes and six seconds of video that seems to be missing from the flash drive. Forensic Imaging and Analysis Report, pp. 21-24. The forensic analysis report recommended an attempt to repair the hard drive at a cost of about \$2,000. *Id.* at 4. Under 18 U.S.C. § 3006A(e)(3), the maximum amount this court can authorize is \$2,400, unless "payment in excess of that limit is certified by the court . . . as necessary to provide fair compensation for services of an unusual character or duration, and the amount of excess payment is approved by the chief judge of the circuit."

As the services would be rendered in connection with a case disposed of entirely before this court and necessary to provide fair compensation for services of an unusual character, the

court could have requested approval of the expenditure by the chief judge of the Court of Appeals for the Third Circuit. But even if the hard drive could be repaired to show defendant's conduct was not as testified by the victim, the video would not establish innocence. There was no camera in the back office where Jablovkov was shot and Pasley physically restrained her from leaving; no such footage could be found on the hard drive. If the video footage confirmed defendant's contentions, it might affect sentencing, but it would not convince the court that the law required or permitted either acquittal or a new trial. Because the hard drive could not establish actual innocence on any of the counts of conviction, the court did not request the extra \$2,000 expenditure.

Taking all the evidence at trial, viewed in the light most favorable to the government, together with the applicable case law supporting Pasley's conviction, there can be no doubt the evidence was sufficient to sustain a rational jury's conviction on the conspiracy count and the robbery and firearms counts. To conclude otherwise would be to "usurp the role of the jury by weighing credibility and assigning weight to the evidence, or by substituting [the court's] judgment for that of the jury." *Perez*, 280 F.3d at 342.

B. Motion for a New Trial

Defendant Pasley moves in the alternative for a new trial under Federal Rule of Criminal Procedure 33. A district court "may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). A district court can order a new trial on the ground that the jury's verdict is contrary to the weight of the evidence only if it believes that there is a serious danger that a miscarriage of justice has occurred; that is, that an innocent person has been convicted. *United States v. Johnson*, 302 F.3d 139, 150 (3d Cir. 2002) (internal quotation marks

omitted) (quoting *United States v. Santos*, 20 F.3d 280, 285 (7th Cir. 1994)). Motions for a new trial based on the weight of the evidence are not favored. Such motions are to be granted sparingly and only in exceptional cases. *Government of Virgin Islands v. Derricks*, 810 F.2d 50, 55 (3d Cir. 1987) (citations omitted).

There was substantial evidence from which a jury could have reasonably concluded that Pasley knew of the planned armed robbery and assisted Singleton in carrying it out, from the planning stages through the commission of the crime. In light of the highly deferential standard of review, this court rejects Pasley's claim that the jury's guilty verdicts constituted a miscarriage of justice. The interests of justice do not require grant of a new trial. *See, e.g., United States v. Silveus*, 542 F.3d 993, 1002-03, 1004-05 (3d Cir. 2008) (affirming denial of Rule 33 motion based on same facts on which the court affirmed denial of Rule 29 motion).

III. CONCLUSION

The court will deny Pasley's motion for acquittal on Count I, Count II, and Count III; the court will also deny his motion for a new trial. An appropriate Order follows.

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

UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-076-02
	:	
v.	:	
	:	
COREY PASLEY	:	

ORDER

AND NOW, this 22nd day of October, 2013, after consideration of defendant Corey Pasley's motion for acquittal or, in the alternative, a new trial (paper no. 152), and the government's response (paper no. 156), and for the reasons stated in the attached memorandum of today's date, it is **ORDERED** that "Defendant's Motion for Judgment of Acquittal Pursuant to Federal Rule of Criminal Procedure 29(c) and for New Trial Pursuant to Federal Rule of Criminal Procedure 33" (paper no. 152) is **DENIED** as to Counts I, II, and III.

/s/ Norma L. Shapiro

J.