

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

UNITED STATES OF AMERICA

v.

MARCUS JONES,

Defendant.

CRIMINAL ACTION
NO. 12-314-1

OPINION

Slomsky, J.

August 18, 2014

I. INTRODUCTION

Before the Court is Defendant's Motion for New Trial Pursuant to Rule 33 of the Federal Rules of Criminal Procedure. (Doc. No. 158.) On February 28, 2014, following a jury trial, Marcus Jones ("Defendant") was convicted of conspiracy to interfere with interstate commerce by robbery in violation of 18 U.S.C. § 1951(a), (b)(1) and (b)(3), interference with interstate commerce by robbery in violation of 18 U.S.C. § 1951(a), and brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1). The convictions stem from the March 14, 2012 armed robbery of a grocery store.

In his Motion, Defendant argues that he should be granted a new trial because the weight of the evidence presented to the jury was insufficient to establish guilt beyond a reasonable doubt, and prosecutorial misconduct deprived him of a fair trial. (Doc. No. 158 at 3-5.) The Government has responded to the Motion. (Doc. No. 159.) For reasons that follow, the Court will deny Defendant's Motion.¹

¹ In Defendant's Motion, he refers to a "pro se Motion for Judgment of Acquittal pursuant to Fed. R. Crim. P. 29 seeking . . . reversal on the grounds of the Government's insufficient evidence to prove each element of the crimes charged." (Doc. No. 158 at 1.) Defendant is represented by counsel. The only pro se document received by the Court concerning a

II. BACKGROUND

On June 21, 2012, the Government filed an indictment against Defendant, charging him with crimes in connection with the robbery of Aya's Pizza located on 7144 Elmwood Avenue, Philadelphia, Pennsylvania. (Doc. No. 1.) On March 28, 2013, the Government filed a superseding indictment against Defendant and two co-conspirators, Jonte King and Maleek Brown. (Doc. No. 28.) The superseding indictment charged Defendant with crimes in connection with the robbery of Aya's Pizza, and also charged co-conspirators King and Brown and Defendant with crimes in connection with the robberies of Peralta Grocery Store ("Peralta") located at 6935 Dicks Avenue, Philadelphia, Pennsylvania and Golden Kingdom II Restaurant ("Golden Kingdom"), located at 7100 Elmwood Avenue, Philadelphia, Pennsylvania. (Id.)

In total, Defendant was charged with seven offenses including one count of conspiracy to interfere with interstate commerce by robbery in violation of 18 U.S.C. § 1951(a), (b)(1) and (b)(3) (Count One), three counts of interference with interstate commerce by robbery in violation of 18 U.S.C. § 1951(a) (Counts Two, Four, and Six), and three counts of using or carrying a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1) (Counts Three, Five, and Seven). Before trial, King and Brown pled guilty to their involvement in the Peralta and Golden Kingdom robberies. On February 25, 2014, Defendant pled guilty to the crimes associated with the robbery of Aya's Pizza (Counts Four and Five) (Doc. No. 127), but proceeded to trial on the charges relating to the Peralta and Golden Kingdom robberies. (Doc. Nos. 152-56.) After a four-day trial, a jury found Defendant guilty of the crimes relating to the

judgment of acquittal and new trial was a letter dated March 7, 2014. (Doc. No. 140.) In the letter, Defendant states his "intent to file Rule 29 and Rule 33 motions based on insufficient evidence being presented to the jury," but makes no substantive arguments on these issues. (Id.) Later, Defendant's counsel filed the instant Motion. Accordingly, the Court does not interpret Defendant's March 7, 2014 letter as a separate motion, but rather, a notice to the Court of his intention to file a motion. The only Motion properly before the Court is Defendant's Motion for New Trial. (Doc. No. 158.)

Peralta robbery, but not guilty of the crimes relating to the Golden Kingdom robbery. (Doc. No. 138.)

In order to establish Defendant's involvement in the Peralta robbery, the Government presented evidence including: 1) the testimony of Victor Tejada, Peralta's store manager and eyewitness to the robbery; 2) the testimony of Defendant's co-conspirators, King and Brown; and 3) evidence that Defendant owned distinctive blue jeans and sneakers, similar to the blue jeans and sneakers worn by one of the assailants in the Peralta robbery. Each piece of evidence is relevant to the instant Motion for a New Trial, and will be briefly discussed here.

Tejada testified that Peralta sells products from states outside Pennsylvania. (Doc. No. 153 at 55:6-8.) Tejada testified that one product in particular, Newport cigarettes, were sold in his store, and that the cigarettes are manufactured in North Carolina. (Id. at 55:14-56:3.) Tejada also testified that on the night of March 14, 2012, he and his mother were working in the store. (Id. at 57:8-15.) When the Government played at trial surveillance footage taken at the store, Tejada was testifying. He explained that a man, later identified as Brown, entered the store, walked around, made a small purchase, and left. (Id. at 57:18-61:16.) Tejada testified that he thought the man's behavior was bizarre, and he feared that the store was about to be robbed. (Id. at 58:3-5; 61:24.)

About ten minutes later, two men entered the store. (Id. at 63:15-17.) One man, later identified as King, pointed a gun at Tejada's mother. (Id. at 64:1-2.) The second man, Defendant, walked towards the back of the store and pointed a gun at Tejada. (Id. at 63:19-25.) The faces of both men were covered. Defendant walked Tejada up to the front of the store at gunpoint. (Id. at 63:24-1.) Tejada watched as the men stole money and Newport cigarettes. (Id. at 64:4; 71:4-7.)

King and Brown corroborated the events described above. (Id. at 136-205; Doc. No. 154 at 147-209.) King identified Defendant as a robber in both the Peralta and Golden Kingdom robberies. (Doc. No. 154 at 147-209.) Brown, who was only involved in the Peralta robbery, confirmed Defendant's involvement in that robbery, and testified that Defendant told him he had also committed the Aya's Pizza robbery and the Golden Kingdom robbery. (Id. at 136-205.)

Finally, the Government introduced photographs of Defendant committing the Aya's Pizza robbery, to which he pled guilty. In one photo, Defendant is depicted wearing a pair of blue jeans with white patches on the pant legs. In another photo, Defendant is depicted jumping over a half wall in the restaurant to access the cash register. In this photo, his shoes are visible and he is wearing a pair of black sneakers with a neon yellow stripe. The Government called Detective William Farrell, a detective involved in the investigation of the armed robberies, who testified that the day Defendant was arrested, he was wearing similar blue jeans with white patches and black sneakers with a neon yellow stripe. (Doc. No. 154 at 106:11-25.) The Government replayed the Peralta surveillance video of the robbery, pointing out that one of the gunmen was wearing blue jeans with white patches and black sneakers with a neon yellow stripe.

The Government next presented the testimony of Detective Kert Wilson, another detective investigating the cases. (Id. at 248.) Detective Wilson conducted a walk-through of the Peralta robbery, wearing the black, neon yellow striped shoes police confiscated from Defendant after his arrest. (Id. at 265:9-18.) Detective Wilson's walk-through was recorded by the same surveillance video that recorded the robbery. (Id. at 266:9-15; 280:3-8.) The Government then played a video of the Detective's walk-through on a split screen with the video of the actual robbery, highlighting the shoes' similarities. (Id. at 273:1-275-3.) Ultimately, the jury convicted Defendant of the offenses described above.

On July 21, 2014, Defendant filed a Motion for New Trial, alleging insufficient evidence to sustain the convictions and prosecutorial misconduct. (Doc. No. 158.) For reasons that follow, the Court will deny Defendant's Motion.

III. STANDARDS OF REVIEW

A. Motion For a New Trial Based on The Weight of the Evidence

Under Federal Rule of Criminal Procedure 33, a court may vacate a criminal judgment and grant a new trial "if the interest of justice so requires." Fed.R.Crim.P. 33(a). Here, Defendant argues that justice requires a new trial because the verdict was against the weight of the evidence. The Third Circuit has articulated the standard for a motion for a new trial based on the "weight of the evidence" as follows:

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. Unlike an insufficiency of the evidence claim,^[2] when a district court evaluates a Rule 33 motion it does not view the evidence favorably to the Government, but instead exercises its own judgment in assessing the Government's case.

United States v. Johnson, 302 F.3d 139, 150 (3d Cir. 2002) (quoting United States v. Santos, 20 F.3d 280, 285 (7th Cir. 1994); citing United States v. Lacey, 219 F.3d 779, 783–84 (8th Cir. 2000); United States v. Ashworth, 836 F.2d 260, 266 (6th Cir. 1988)) (internal citations omitted). Accordingly, "[m]otions for a new trial based on the weight of the evidence are not favored.

² Under Fed. R. Civ. P. 29(c), a defendant may file a motion for judgment of acquittal based on insufficient evidence presented at trial. When considering a Rule 29 motion, a court must view the evidence and the reasonable inferences drawn therefrom in the light most favorable to the Government, in order to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. See United States v. Brodie, 403 F.3d 123, 133 (3d Cir.2005); United States v. Gonzalez, 918 F.2d 1129, 1132 (3d Cir.1990). Based on the evidence presented at trial as outlined above, the verdict was supported by sufficient evidence and even if a motion had been made pursuant to Fed. R. Civ. P. 29(c), it would have been denied.

Such motions are to be granted sparingly and only in exceptional cases.” United States v. Brennan, 326 F.3d 176, 189 (3d Cir. 2003) (quoting Government of Virgin Islands v. Derricks, 810 F.2d 50, 55 (3d Cir. 1987)).

B. Motion For a New Trial Based on Prosecutorial Misconduct

At trial, Defendant did not object to any statements made by the prosecutor. Where an objection to specific prosecutorial statements was not raised at trial, a later objection is “subject to plain error review.” Id. at 182. (citing Fed. R. Crim. P. 52(b) (“[P]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”)). In order to have affected a defendant’s substantial rights, “the error must have been prejudicial to the defendant and have affected the outcome of the district court proceeding.” Id. at n.2 (citing United States v. Olano, 507 U.S. 725, 734 (1993)). Relief shall not be granted unless “the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” Id. (quoting Olano, at 734; United States v. Young, 470 U.S. 1, 15 (1985)).

The Court has carefully considered each argument made by Defendant in support of his claim that a new trial is warranted. Each one is unpersuasive and the Motion for a New Trial (Doc. No. 158) will be denied for reasons that follow.

IV. THE VERDICT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE AND THE GOVERNMENT DID NOT ENGAGE IN MISCONDUCT

A. The Verdict Was Not Against the Weight of the Evidence

Defendant was convicted of interference with commerce by robbery, also known as a Hobbs Act Robbery, pursuant to 18 U.S.C. § 1951(a). In order to sustain a Hobbs Act Robbery conviction, “the government must prove the element of interference with interstate or foreign commerce by robbery.” United States v. Haywood, 363 F.3d 200, 209 (3d Cir. 2004) (citing Stirone v. United States, 361 U.S. 212, 218 (1960)). This element is established “[i]f the

defendant[’s] conduct produces any interference with or effect upon interstate commerce, whether slight, subtle or even potential, it is sufficient to uphold a prosecution under [§ 1951].” Id. at 209-10 (citing Jund v. Town of Hempstead, 941 F.2d 1271, 1285 (2d Cir. 1991)) (internal citation omitted). “Moreover, a jury may infer that interstate commerce was affected to some minimal degree from a showing that the business assets were depleted.” Id. at 201 (citing United States v. Zeigler, 19 F.3d 486, 493 (10th Cir. 1994)) (internal citation omitted).

At trial, the Government presented a surveillance video of the robbery. (Doc. No. 153 at 59:3-72:17.) The video depicted the robbers stealing money from Peralta’s cash register. (Id.) In addition, Tejada testified that the robbers stole money from the register. (Id. at 64:4; 71:4-7.) This evidence established that the grocery’s “business assets were depleted.” Haywood, 363 F.3d at 201. Further, Tejada testified that products sold in the grocery were shipped in from other states. (Id. at 55:6-8.) Specifically, Tejada testified that the store sold Newport cigarettes which were shipped in from Charlotte, North Carolina. (Id. at 55:14-56:3.) He testified that the robbers also stole the Newport cigarettes. (Id. at 64:4; 71:4-7.) This testimony also was confirmed by the store’s surveillance video. (Id. at 59:3-72:17.)

Defendant contends that the verdict was against the weight of the evidence on the element of interference with interstate or foreign commerce by robbery. The Court disagrees. First, stealing products that travel interstate affects interstate commerce. Second, by stealing money from the grocery, the robbers depleted the grocery’s assets. From the depletion of Peralta’s assets, the jury could have “infer[red] that interstate commerce was affected.” Haywood, 363 F.3d at 201. The weight of the evidence supports the verdict of the jury, and

there is no danger at all that a miscarriage of justice occurred here. Accordingly, Defendant's Motion for a New Trial based on the weight of the evidence will be denied.³

B. Motion For a New Trial Based on Prosecutorial Misconduct

Without reference to specific statements, Defendant contends that “throughout the pendency of the trial [the Government] unlawfully vouched for witness credibility” and “reiterated uncharged crimes that were not the subject of defendant's trial . . . leading the jurors to improperly impute guilt for one crime to guilt for charged crimes at issue.” (Doc. No. 158 at 6.)

A prosecutor improperly vouches for the credibility of a government witness when she “(1) assures the jury that the testimony of a government witness is credible, and (2) . . . bases [her] assurance on either [her] claimed personal knowledge or other information not contained in the record. United States v. Lore, 430 F.3d 190, 211 (3d Cir. 2005) (citing Brennan, 326 F.3d at 183; United States v. Walker, 155 F.3d 180, 187 (3d Cir.1998)) (internal quotation omitted).

Defendant has not established impermissible vouching. At trial, the prosecutor did not assure the jury that her witnesses were credible, let alone claim personal knowledge or any other information concerning their credibility. Accordingly, the prosecutor did not vouch for witness credibility. Her statements during trial were not “plain errors or defects affecting [Defendant's] substantial rights.” Brennan, 326 F.3d at 182. Thus, Defendant has failed to establish prosecutorial misconduct on this issue.

³ Defendant argues that the Government failed to prove that Defendant intended to interfere with interstate commerce. However, having such an intent is not required in order to prove interference with interstate commerce. See United States v. Addonizio, 451 F.2d 49, 77 (3d Cir. 1971) (“It is not necessary that the purpose of the [crime] be to affect interstate commerce, but only that one of the natural effects thereof be an obstruction of that commerce.”) (emphasis in original). Here, the natural effect of the robbery was an obstruction of interstate commerce.

Moreover, under Rule 404(b) of the Federal Rules of Evidence, “evidence of a crime” is not admissible “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character” Fed. R. Evid. 404(b). However, such evidence may be admitted “for another purpose, such as proving . . . identity” Id.

Here, the Government introduced evidence of the Aya’s Pizza robbery, a crime committed by Defendant, for the purpose of establishing his identity under Rule 404(b) of the Federal Rules of Evidence. Specifically, the Government used surveillance photographs from the Aya’s Pizza robbery to show that similar shoes and jeans were worn by one of the robbers in the Peralta robbery.

The Government also used the Aya’s Pizza robbery to establish the credibility of Government witness Maleek Brown. Brown, who participated in the Peralta robbery but not the Golden Kingdom robbery, testified that Defendant told him he had committed both the Aya’s Pizza robbery and the Golden Kingdom robbery. (Doc. No. 153 at 163:4-168:4.) Therefore, Defendant’s commission of the Aya’s Pizza robbery was not introduced to establish Defendant’s propensity to commit robbery. Id.

Additionally, the Court gave the following limiting jury instruction both during the trial and again during the final jury instruction to ensure the jury’s proper use of the evidence:

You have heard testimony that the defendant committed certain crimes and bad acts related to the Aya’s Pizza store robbery prior to the charges being brought in this case. This evidence of other acts and prior crimes was admitted only for limited purposes.

You may not consider this evidence as proof that the defendant committed the charged offenses in regard[s] to the robberies of Peralta Grocery and Golden Kingdom II Restaurant. You may only consider this evidence for the purpose of deciding whether the identity of the – the defendant in the charged crimes is accurate and to determine the credibility of witness Maleek Brown. Do not consider this evidence for any other purpose.

(Doc. Nos. 156 at 104, 154 at 58.) The Government’s use of the Aya’s Pizza robbery evidence was permissible for the limited purpose of establishing identity and assessing witness credibility. Therefore, the introduction of this evidence was not “plain error[] or [a] defect[] affecting [Defendant’s] substantial rights.” Brennan, 326 F.3d at 182.⁴ Accordingly, Defendant has also failed to establish prosecutorial misconduct in this case.

V. CONCLUSION

For the foregoing reasons, Defendant has failed to establish that a new trial is warranted based on the weight of the evidence or prosecutorial misconduct. Accordingly, his Motion for a New Trial (Doc. No. 158) will be denied.

An appropriate Order follows.

⁴ To the extent Defendant is arguing that the Government’s closing statements to the jury were improper, the Court finds that the prosecutor did not make improper statements during her closing argument, and also notes that limiting instructions were given to the jury concerning counsels’ statements during closing arguments. The instruction was as follows:

You must make your decision in this case based only on the evidence that you saw and heard in the courtroom. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence from which you are to find the facts consists of the following: the testimony of the witnesses; documents and other things received as exhibits; and any fact or testimony that was stipulated; that is, formally agreed to by the parties.

The following are not evidence: the indictment; statements and arguments of the lawyers for the parties in this case; questions by the lawyers and questions that I might have asked; objections by lawyers, including objections in which the lawyers stated facts; any testimony I struck or told you to disregard; and anything you may have seen or heard about this case outside the courtroom.

(Doc. No. 156 at 93.) Accordingly, the Court finds that the prosecutor’s statements during closing argument were not “plain errors or defects affecting [Defendant’s] substantial rights.” Brennan, 326 F.3d at 182.