

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

UNITED STATES OF AMERICA

v.

RANDALL PARSONS,

Defendant.

CRIMINAL ACTION
NO. 13-104

OPINION

Slomsky, J.

February 27, 2015

I. INTRODUCTION

On January 7, 2014, Defendant Randall Parsons pled guilty to Count I of a Superseding Indictment charging him with attempted robbery of a CVS Pharmacy and aiding and abetting the attempted robbery in violation of 18 U.S.C. §§ 1951 and 2. (Doc. No. 117 at 3.) On September 12, 2014, a hearing was held at which Defendant confirmed that he wanted to withdraw his guilty plea, proceed pro se, and file motions to dismiss the charges against him and for other miscellaneous relief. (Doc. No. 182 at 49:25-52:15.) The Court granted his request to proceed pro se, and afforded him the opportunity to file his motions. (Id. at 49:25-50:12, 50:18-52:15.)

Since the September 12, 2014 hearing, Defendant has filed twenty pro se motions, along with numerous affidavits, exhibits, and letters to the Court. On December 29, 2014, the Government filed a Response in Opposition to Defendant's Motion to Withdraw His Guilty Plea (Doc. No. 171) and an Omnibus Response to Defendant's other Motions (Doc. No. 172). On January 7, 2015, Defendant filed rebuttals to the Government's Responses (Doc. Nos. 175, 176).

On February 26, 2015, in accordance with a written Opinion (Doc. No. 183), the Court denied Defendant's Motion to Withdraw His Guilty Plea (Doc. No. 141). Presently before the Court are Defendant's Motions to Dismiss the Superseding Indictment and for other

miscellaneous relief (Doc. Nos. 143, 144, 146, 149, 150, 151, 152, 153, 156, 157, 158, 159, 160, 167, 168, 179, 181.)¹ For reasons that follow, each will be denied.

II. BACKGROUND

In the Court's Opinion denying Defendant's Motion to Withdraw His Guilty Plea, the Court described the facts of this case. This Opinion incorporates the facts as set forth in that Opinion (Doc. No. 183).

III. DISCUSSION

Many arguments that Defendant makes in his Motions are duplicative. The Court therefore will group Defendant's arguments by category, and address each in turn.

A. Count I of the Superseding Indictment Has No Defects that Warrant Its Dismissal

Defendant alleges that there are defects in Count I of the Superseding Indictment that warrant its dismissal. (See Doc Nos. 143, 144, 149, 153, 156, 158, 159.) Defendant's claims in this regard are meritless.

1. Count I of the Superseding Indictment is not duplicitous

Defendant claims that Count I of the Superseding Indictment charges him with both robbery and attempted robbery. He argues that this combination of offenses renders Count I of the Superseding Indictment impermissibly duplicitous. This argument is without merit for two reasons.

First, Defendant's claim that Count I of the Superseding Indictment charges him with both robbery and attempted robbery is incorrect. In relevant part, Count I of the Superseding Indictment reads as follows:

¹ Defendant also filed a Motion to Remove the Separation Order between himself and a codefendant. (Doc. No. 166.) This Motion will be addressed in a separate Order.

On or about February 14, 2011, in Philadelphia, in the Eastern District of Pennsylvania, defendant RANDALL PARSONS and Joseph Meehan and Jonathan Andrews, each charged elsewhere, attempted to obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, and attempted to do so, by robbery, in that, defendant RANDALL PARSONS, Joseph Meehan, and Jonathan Andrews attempted to unlawfully take and obtain, and aided and abetted the attempted unlawful taking and obtaining of, money and prescription drugs belonging to the CVS Pharmacy, in the presence of the employees of that business, and against their will, by means of actual and threatened force, violence, and fear of injury, immediate and future to their person and property, that is, by brandishing and discharging a handgun, demanding money, prescription drugs, and other items of value, and threatening the employees of CVS Pharmacy.

In violation of Title 18, United States Code, Sections 1951(a) and 2.

(Doc. No. 15 at 1-2.)

Count I charges Defendant only with attempted robbery and aiding and abetting an attempted robbery. Count I does not charge him with the substantive crime of robbery. Furthermore, it is permissible for a single count of an indictment to allege—as Count I of the Superseding Indictment does here—that a defendant committed a Hobbs Act offense and aided and abetted the commission of the offense. See United States v. Troutman, 572 F. Supp. 2d 955, 963 (N.D. Ill. 2008) (holding that a single count of an indictment charging a defendant with both attempted extortion and aiding and abetting the attempted extortion was not duplicitous). This is because “aiding and abetting is a different means of committing a single crime, not a separate offense itself.” See, e.g., United States v. Garcia, 400 F.3d 816, 820 (9th Cir. 2005).

Second, even if Defendant’s claim was accurate, he would not be entitled to relief. When a defendant pleads guilty, he is admitting to his factual guilt and waives his right to appeal any non-jurisdictional defect in the indictment. The Supreme Court explained this principle in Menna v. State of New York:

[A] counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from

the case. In most cases, factual guilt is a sufficient basis for the State's imposition of punishment. A guilty plea, therefore, simply renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established.

423 U.S. 61, 62 n.2 (1975). This precept applies to a claim that the indictment is duplicitous.

See United States v. Moloney, 287 F.3d 236, 239 (2d Cir. 2002) (guilty plea waives any challenges to a duplicitous indictment); United States v. Doherty, 17 F.3d 1056, 1059 (7th Cir. 1994) (guilty plea waives right to challenge alleged duplicity in indictment); United States v. Fairchild, 803 F.2d 1121, 1124 (11th Cir. 1986) (alleged duplicity in indictment is a non-jurisdictional claim waived after a guilty plea).

Thus, Count I of the Superseding Indictment properly charges Defendant with attempted robbery in violation of 18 U.S.C. § 1951 and with aiding and abetting the attempt. This charge is not impermissibly duplicitous and Count I will not be dismissed.

2. The Superseding Indictment was properly drafted

Defendant claims that Count I of the Superseding Indictment was improperly drafted because it is confusing, vague, and does not contain an allegation of his mens rea at the time he committed the crime. He asserts that these defects warrant dismissal. This argument is also meritless.

Pursuant to Federal Rule of Criminal Procedure 7(c)(1), an indictment must contain only a "plain, concise, and definite written statement of the essential facts constituting the offense charged." An indictment is sufficient so long as it "(1) contains the elements of the offense intended to be charged, (2) sufficiently apprises the defendant of what he must be prepared to meet, and (3) allows the defendant to show with accuracy to what extent he may plead a former acquittal or conviction in the event of a subsequent prosecution." United States v. Kemp, 500 F.3d 257, 280 (3d Cir. 2007).

Here, Count I of the Superseding Indictment, which is quoted above, sets forth the essential facts of the case and tracks the language of the statute Defendant is charged with violating: 18 U.S.C. § 1951(a) (the “Hobbs Act”). The statute reads as follows:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

18 U.S.C. § 1951(a).

Count I of the Superseding Indictment also includes an aiding and abetting charge under 18 U.S.C. § 2. This statute reads, in relevant part, as follows:

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

18 U.S.C. § 2(a).

Count I of the Superseding Indictment contains the elements of the offenses charged, sufficiently appraises Defendant of what he must be prepared to meet, and is detailed enough to afford Defendant the opportunity to plead a former acquittal or conviction in the event of a subsequent prosecution. Nothing more is required. The mens rea does not have to be alleged in an indictment. See, e.g., United States v. Oliver, No. 01-3223, 2002 WL 31474532, at *1 (3d Cir. Aug. 1, 2002). Accordingly, the requirements of Federal Rule of Criminal Procedure 7(c)(1) are satisfied here, and Defendant’s claim that Count I of the Superseding Indictment is improperly drafted and should be dismissed is without merit.

B. This Court Has Jurisdiction over Attempted Hobbs Act Robberies

Defendant claims that federal courts do not have jurisdiction over attempted Hobbs Act robberies because an attempted robbery does not sufficiently interfere with interstate commerce. (Doc. No. 167.) This argument is unavailing.

“The Hobbs Act, by its own terms, encompasses the inchoate offenses of attempt and conspiracy to extort [or rob]. Convictions for these offenses have been sustained notwithstanding the absence of any evidence of an actual effect on interstate commerce.” United States v. Jannotti, 673 F.2d 578, 592 (3d Cir. 1982). “[I]f defendants’ conduct produces any interference with or effect upon interstate commerce, whether slight, subtle or even potential, it is sufficient to uphold prosecution under [the Hobbs Act].” United States v. Walker, 657 F.3d 160, 179 (3d Cir. 2011); see also United States v. Gonzalez, 470 F. App’x 2, 4 (2d Cir. 2012) (in upholding conviction for attempted Hobbs Act robbery, explaining that the “jurisdictional requirement of the Hobbs Act may be satisfied by a showing of a very slight effect on interstate commerce. Even a potential or subtle effect will suffice.” (citation and internal quotation marks omitted)). Here, Defendant’s attempted robbery of a CVS Pharmacy that sold goods that travel in interstate commerce is sufficient to satisfy the jurisdictional requirement of the Hobbs Act.

C. Defendant Has Not Demonstrated a Particularized Need to Review the Grand Jury Transcripts

Defendant also asks the Court to review the grand jury transcripts for any evidence of abuse by the Government. (Doc. No. 152.) Defendant believes that there must have been governmental abuse because Count I of his original Indictment charged him with robbery,² while Count I of his Superseding Indictment, to which he pled guilty, charges him with attempted

² While Count I of the Superseding Indictment charges Defendant with attempted robbery and aiding and abetting, Count I of the original Indictment appears to charge the same offenses. The language in Count I of the Superseding Indictment has been modified to make abundantly clear that Defendant is charged with attempted robbery and aiding and abetting in violation of the Hobbs Act.

robbery.³ (Id.) Because Defendant has not demonstrated a particularized need for the Court to review these transcripts, his request will be denied.

A party seeking disclosure of grand jury material has the burden of demonstrating a particularized need. See Douglas Oil Co. of Cal. v. Petrol Stops Nw., 441 U.S. 211, 223 (1979). “Disclosure is appropriate in only those cases where the need for it outweighs the public interest in secrecy.” Id. There is a strong public interest in keeping grand jury proceedings secret. As the Supreme Court has stated:

[I]n considering the effects of disclosure on grand jury proceedings, the courts must consider not only the immediate effects upon a particular grand jury, but also the possible effect upon the functioning of future grand juries. Persons called upon to testify will consider the likelihood that their testimony may one day be disclosed to outside parties. Fear of future retribution or social stigma may act as powerful deterrents to those who would come forward and aid the grand jury in the performance of its duties.

Id. at 222.

Here, Defendant has not demonstrated a particularized need, much less one that outweighs the public interest in keeping grand jury proceedings secret. Defendant pled guilty to Count I of the Superseding Indictment charging him with attempted robbery and aiding and abetting attempted robbery in violation of 18 U.S.C. §§ 1951 and 2. The grand jury proceeding that resulted in the original Indictment charging him with robbery only has no effect here.

Additionally, Defendant pled guilty to the crimes charged in Count I of the Superseding Indictment. He admitted, under oath, to engaging in the criminal activity the Government says

³ Defendant also believes that there must have been governmental abuse because the “Offense Conduct” section of his Presentence Report mentions a robbery of the Blue Grass Pharmacy, which his confederates committed before the CVS robbery. Defendant argues that the Blue Grass robbery should not have been mentioned in the Presentence Report because he was not involved in it. (Doc. No. 152.) This argument is unpersuasive. The Presentence Report does not mention that Defendant was involved in the Blue Grass robbery. An objection to the Presentence Report is not a valid basis to support a review of a grand jury transcript by the Court.

he engaged in. (See Doc. No. 117 at 36:2-39:17.) This undermines Defendant's unsupported allegation that the Government committed abuses in presenting its case to the grand jury to secure an indictment.

Moreover, since the Court has not permitted Defendant to withdraw his guilty plea, there will be no trial. Therefore, Defendant has no need for grand jury transcripts to impeach witnesses or otherwise challenge the Government's case against him.

For these reasons, Defendant has not carried his burden to demonstrate a particularized need to review the grand jury transcripts. As such, his request for the Court to review them for abuse by the Government will be denied.

D. Defendant's Motions to Either Adopt or Strike Previously Filed Motions Will Be Denied

Defendant asks the Court to adopt the motions filed by his previous counsel, Nino Tinari, Esquire, and strike from the record the pro se motions he filed while he was represented by counsel. (See Doc. Nos. 146, 150.) Defendant's Motion to adopt the motions filed by his previous counsel (Doc. No. 150) will be denied as moot, since all of these motions have already been ruled upon by the Court.

Defendant's Motion to strike from the record all the pro se motions he filed while he was represented by counsel (Doc. No. 146) will also be denied. Defendant states that he wants to remove these motions from the record so that their contents "may not be used against [him] in a future matter." (Id.) He cites no authority that supports his request.

Defendant publicly filed these pro se motions with the Court on his own accord. Some have been on the record for over a year. All have been ruled on by the Court. Defendant has no basis for now claiming that they should be stricken from the record. Therefore, his Motion to

strike from the record the pro se motions that he filed while he was represented by counsel will be denied.

E. Defendant's Request for Ancillary Services Will Be Denied

Defendant asks the Court to allow him to retain an expert to explore a series of legal questions. (Doc. No. 157.) For reasons that follow, this Motion will be denied.

Defendant's questions are as follows:

1. Whether evidence of an "attempt robbery" is sufficient to support an indictment for "robbery."
2. Whether evidence of an "attempt" robbery is sufficient to support a conviction for "robbery."
3. Whether "attempted robbery" is a[n] element of the "interference with commerce by threats or violence charge" [under] 18 U.S.C. § 1951.
4. Whether a defendant can plead guilty to a charge offered up by the Government [that is] different than [what he] was indicted [for] by the Grand Jury.
5. Whether "attempted robbery" is a different offense than "robbery."
6. Whether the word "attempts" as referenced in the § 1951 statute refers to "obstructs, delays or affects commerce" or "robbery."
7. Whether the Government's two-year delay [in indicting him until] two weeks prior to the start of an alleged co-defendant's trial was a tactical and planned strategy.
8. Whether the Government knowingly and intentionally misled the Grand Jury by offering them information of a crime other than the one alleged in my indictment which was an "attempted robbery" where nothing was taken, specifically the completed "robbery" of the Blue Grass Pharmacy.
9. Whether I will be prejudiced [by] the [Bureau of Prisons] by conduct of a crime that has not one thing to do with me alleged as my offense conduct in my Presentence [Report], specifically the Blue Grass Pharmacy robbery.

(Id. at 1.)

Many of the issues raised by these questions have been ruled upon by the Court in this Opinion or in the Opinion denying Defendant's Motion to Withdraw His Guilty Plea (Doc. No. 183). Moreover, Defendant has had two attorneys over the course of this case. He has dismissed

both with Court approval and elected to proceed pro se. At the September 12, 2014 hearing, the Court thoroughly informed Defendant of the difficulties and risks of proceeding pro se, including that he would be bound by the Federal Rules of Evidence and Criminal Procedure, and that there may be possible legal defenses to the crimes charged that he may not know exist. (Doc. No. 182 at 46:18-50:11.) Defendant elected to proceed pro se with full knowledge of these difficulties and risks. (Id.) Also, Defendant has stand-by counsel who can answer any questions he may have. As such, his Motion to retain an expert to answer his questions will be denied.

F. Defendant’s Sentencing Motion Is Misplaced

Defendant has filed a “Motion to Limit the Probation Officer’s Broad Scope of Relevant Conduct as It Applies to Sentencing.” (Doc. No. 151.) In this Motion, Defendant asks the Court to prohibit the probation officer from making certain sentencing recommendations. The Court will treat this as an objection to the Presentence Report. The Motion will be considered by the Court at sentencing.

G. Defendant’s Discovery Motions Will Be Denied

Defendant has filed Motions to compel the Government to turn over discovery materials, including cellular telephone location data. (Doc. Nos. 160, 179.) He alleges that he has never received discovery from the Government or his prior counsel. As noted in the Opinion denying Defendant’s Motion to Withdraw His Guilty Plea, the Court finds this allegation without merit. (See Doc. No. 183 at 28-31.) Moreover, since Defendant will not be permitted to withdraw his guilty plea, there will be no trial in this case. Therefore, Defendant has no need for discovery to prepare his case.

H. Defendant's Challenges to the Strength of the Government's Case Against Him Are Unavailing

Defendant makes several challenges to the strength of the Government's case against him. (Doc. Nos. 168, 181.) He argues that the facts of his case shows that he is innocent and that the Superseding Indictment should be dismissed. Defendant's challenge to the credibility and strength of the Government's evidence against him were arguments for trial, which Defendant waived when he pled guilty. Moreover, at the guilty plea hearing, Defendant admitted to committing the crimes that the Government says he committed. (See Doc. No. 117 at 36:2-39:17.) As such, his Motion challenging the evidence against him will be denied.

IV. CONCLUSION

For the reasons stated, Defendant's Motions to dismiss his indictment and for other miscellaneous relief (Doc. Nos. 143, 144, 146, 149, 150, 151, 152, 153, 156, 157, 158, 159, 160, 167, 168, 179, 181) will be denied. An appropriate Order follows.