

- Count 4 - Wire Fraud
(18 U.S.C. § 1343)
- Count 5 - Wire Fraud
(18 U.S.C. § 1343)
- Count 6 - Wire Fraud
(18 U.S.C. § 1343)
- Count 7 - Bank Fraud
(18 U.S.C. § 1344)
- Count 8 - False Statement to a Bank
(18 U.S.C. § 1041)¹

Counts 1 through 6 relate to an alleged scheme by Shulick from September 2010 to February 2012 to defraud the School District of Philadelphia, a recipient of federal funds. Shulick had contracts with the School District to provide educational services to high school students with disciplinary or attendance issues. Chaka Fattah, Jr., his employee, is named as an unindicted co-conspirator in some of the counts.

Count 7 alleges a scheme by Shulick, a lawyer, from November 2009 to July 2010 to defraud PNC Bank, and Count 8 asserts his false statement in March 2010 to PNC Bank. Both counts involve his effort to resolve a \$17,000 debt that Fattah, his employee and client, owed to the bank.

According to the

1. The three remaining Counts are:

- Count 9 Filing False Tax Returns (26 U.S.C. § 7206(1))
- Count 10 Filing False Tax Returns (26 U.S.C. § 7206(1))
- Count 11 Filing False Tax Returns (26 U.S.C. §

7206(1))

Defendant does not seek severance with respect to these counts.

indictment, Shulick falsely represented to the bank that Fattah was making very little money when in fact Shulick was paying him \$75,000 annually and had an agreement with Fattah to pay him more money in 2010. Shulick also purportedly deceived the bank by allegedly stating to it that Fattah was making only \$2,500 a month.

Counts 1 through 8 in our view are of a similar character so as to meet the standard required under Rule 8(a) for joinder. Each count involves Shulick's deception and effort to enrich himself or Fattah, his employee and co-conspirator. See United States v. McGill, 964 F.2d 222, 241 (3d Cir. 1992); see also United States v. Fattah, Jr., No. 16-1265, slip op. at 35-36 (3d Cir., June 2, 2017). While the target of Counts 1 through 6 was the School District of Philadelphia and the target of Counts 7 and 8 was PNC Bank, Rule 8(a) does not require that all counts have the same targets or victims to be of a similar character. See United States v. Duran, 563 F. App'x 174, 180 (3d Cir. 2014). Nor does it matter that there is an interval of a few months between the end of the events alleged in Counts 7 and 8 and the beginning of the events alleged in Counts 1 through 6. See United States v. Peterson, 823 F.3d 1113, 1124 (7th Cir. 2016).

In his reply brief in support of his motion to sever,

Shulick for the first time raises the argument that joinder of

Counts 1 through 6 with Counts 7 and 8 is prejudicial to him. As a result, the court permitted supplemental briefing. For this argument Shulick relies on Rule 14(a) of the Federal Rules of Criminal Procedure which provides:

(a) Relief. If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

Shulick maintains that joinder is prejudicial because he desires to testify in his own defense with respect to the charges alleged in Counts 7 and 8 but not as to the charges in Counts 1 through 6. The defendant, of course, has a right under the Fifth Amendment not to testify at his trial, and he also has the right to waive his right against self-incrimination under the Fifth Amendment and take the witness stand. What he does not have a right to do is testify as to some charges against him and to remain silent as to other charges. Once he becomes a witness, he is subject to cross-examination without limitation as to any count in the indictment. United States v. Weber, 437 F.2d 327, 334-35 (3d Cir. 1970).

Shulick is not entitled to separate trials simply because he believes it to be to his tactical advantage. He must establish that joinder of Counts 1 through 6 and Counts 7 and 8

would cause him actual prejudice so as to prevent him from

obtaining a fair trial. United States v. Dixon, 184 F.3d 643, 645 (7th Cir. 1999). Because of statements he has made to the Government as a result of a proffer letter, he maintains he is realistically precluded from testifying with respect to Counts 1 through 6.²

He asserts that there are no such statements to government agents with respect to Counts 7 and 8.

We disagree based on our review in camera of the 302 statements to government agents as well as the handwritten notes of the agents taking the statements. Included is a statement allegedly made by Shulick that would subject him to extremely difficult cross-examination on Counts 7 and 8 if he took the stand. In short, defendant has not established actual prejudice if Counts 1 through 8 are tried together. Id.

Shulick at best articulates his belief that he has a better chance of a favorable outcome if separate trials are ordered. This is not enough to obtain relief under Rule 14(a). See Zafiro v. United States, 506 U.S. 534, 540 (1993).

Accordingly, the motion of Shulick to sever for trial Counts 7 and 8 from Counts 1 through 6 will be denied.

2. Under the terms of the proffer letter, the Government is precluded from using at trial any statements he made to the Government unless he takes the stand and offers contradictory testimony.

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
DAVID T. SHULICK	:	NO. 16-428

ORDER

AND NOW, this 5th day of June, 2017, for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that the motion of defendant to sever for trial Counts 7 and 8 from Counts 1 through 6 of the indictment (Doc. # 16) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.