

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

UNITED STATES OF AMERICA,

v.

KENNETH HAMPTON, *et al.*,

Defendants.

CRIMINAL ACTION

NO. 15-302

PAPPERT, J.

November 16, 2017

MEMORANDUM

On September 20, 2016, the grand jury returned a Second Superseding Indictment charging Kenneth Hampton, along with his son Terrell Hampton¹ and then fiancée Roxanne Mason, of participating in a scheme to fraudulently obtain apparent title to vacant properties, and to profit from the thefts by occupying, selling, mortgaging and obtaining grants for those properties. Count One charged the Defendants with conspiracy to commit wire fraud, Counts Two through Eighteen charged them with wire fraud based on various communications sent and received among the co-conspirators, including recorded telephone calls from Hampton to his cohorts while he was in federal prison, and Counts Nineteen and Twenty charged the Defendants with aggravated identity theft.

On May 18, 2017, Mason pleaded guilty to Counts 1, 2 through 10, 12 through 14, 16, and 18 through 20 of the Second Superseding Indictment. (ECF No. 248.) She was sentenced on October 6. (ECF Nos. 312, 313.) Hampton went to trial on June 6

¹ For the purposes of this memorandum, Kenneth Hampton will be referred to as Hampton and his son as Terrell.

and was found guilty of all charges against him on June 14.² (ECF Nos. 284, 286.) He filed a timely³ motion for acquittal, or in the alternative for a new trial, arguing that the evidence presented to the jury failed to show (1) that the conspiracy fell within the limitations period, or (2) that he had the requisite criminal intent.⁴ (ECF No. 295.) The Court denies the Motion because the evidence of Hampton’s guilt was more than sufficient—it was overwhelming—and there is no danger, serious or otherwise, that the jury’s well-supported verdict amounted to a miscarriage of justice.

I

A

Rule 29 of the Federal Rules of Criminal Procedure provides that the court, “on the defendant’s motion[,] must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” Fed. R. Crim. P. 29. In considering the motion, the court must “review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence.” *United States v. Smith*, 294 F.3d 473, 476 (3d Cir. 2002) (quoting *United States v. Wolfe*, 245 F.3d 257, 262 (3d Cir. 2001)). The court must “presume that the jury properly evaluated credibility of the witnesses, found the facts, and drew reasonable inferences.” *United States v. Iafelice*, 978 F.2d 92, 94 (3d Cir. 1992) (citing *United States v. Coleman*, 811

² Terrell was severed for trial on June 5, 2017 as a result of injuries sustained in a car accident. (ECF No. 270.)

³ The motion was filed by the date provided in the Court’s June 15, 2017 Order. (ECF No. 282.)

⁴ The argument pertaining to an alleged lack of proof of intent is addressed to all counts of conviction (Mot. ¶ 4), while the statute of limitations argument is directed apparently only toward Count One, (Mot. ¶¶ 2–3).

F.2d 804, 807 (3d Cir. 1987)); *see also United States v. Norris*, 753 F. Supp. 2d 492, 501 (E.D. Pa. 2010) (“The court may not ‘usurp the role of the jury’ by weighing the evidence or assessing the credibility of witnesses.” (quoting *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005))). The defendant carries an “extremely high” burden when challenging the sufficiency of the evidence, *Norris*, 753 F. Supp. 2d at 501 (quoting *United States v. Iglesias*, 535 F.3d 150, 155 (3d Cir. 2008)), and the jury verdict must be sustained “as long as it does not ‘fall below the threshold of bare rationality,’” *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 431 (3d Cir. 2013) (quoting *Coleman v. Johnson*, 566 U.S. 650, 656 (2012)); *see also Brodie*, 403 F.3d at 134 (“A finding of insufficiency should be “confined to cases where the prosecution's failure is clear.” (quoting *Smith*, 294 F.3d at 477)).

B

A more deferential standard of review applies to motions under Rule 33, which permits the Court to grant a motion for a new trial “if the interest of justice so requires.” Fed. R. Crim. P. 33; *see also United States v. Johnson*, 302 F.3d 139, 150 (3d Cir. 2002) (“Unlike an insufficiency of the evidence claim, 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.”). Courts may grant a new trial if “the verdict is against the weight of the evidence,” *United States v. Fattah*, 223 F. Supp. 3d 336, 342 (3d Cir. 2016) (citing *Johnson*, 302 F.3d at 150), and “must consider whether there is ‘a serious danger that a miscarriage of justice has occurred,’” *id.* (quoting *United States v. Silveus*, 542 F.3d 993, 1004–05 (3d Cir. 2008)). Rule 33 motions should be “granted sparingly and only in exceptional cases.”

Gov't of Virgin Islands v. Derricks, 810 F.2d 50, 55 (3d Cir. 1987); *see also Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 365 (3d Cir. 1999) (providing that granting Rule 33 motions is “proper only when . . . the verdict, on the record, cries out to be overturned or shocks our conscience”).

II

A

Hampton’s argument that Count One was untimely fails. The limitations period for conspiracy under Section 371 is five years. 18 U.S.C. § 3282(a); *United States v. Hoffecker*, 530 F.3d 137, 157 (3d Cir. 2008). The operative date for determining whether Count One was timely is April 19, 2011, five years before the First Superseding Indictment was filed, (ECF No. 86). When an indictment is brought, it tolls the statute of limitations for the charges contained therein. *See United States v. Friedman*, 649 F.2d 199, 203–04 (3d Cir. 1981) (citing *United States v. Grady*, 544 F.2d 598, 601 (2d Cir. 1976)). In a case with superseding indictments, “[a]n initial indictment controls for statute of limitations purposes as long as the superseding indictment does not ‘materially broaden or substantially amend’ the charges in the initial indictment.” *United States v. Gordon*, 335 F. App’x. 236, 239 (3d Cir. 2009) (quoting *United States v. Oliva*, 46 F.3d 320, 324 (3d Cir. 1995)). “The Circuits agree that a superseding or new indictment does not materially broaden or substantially amend original charges if the first indictment provided fair notice of the new charges.” *United States v. Kuper*, Crim. No. 05–167–3, 2009 WL 1119490, at *2 (E.D. Pa. Apr. 27, 2009).

There were three indictments filed in this case. The original Indictment was filed on July 7, 2015, (ECF No. 1), and charged the Defendants, along with Ellis Hampton, of wire fraud, identity theft, and conspiracy to acquire and dispose of two houses, the 58th Street and Delancey Street Houses. The First Superseding Indictment, filed on April 19, 2016, (ECF No. 86), expanded the scope of the original Indictment, charging the Defendants with an additional conspiracy count for participating in a broader scheme to acquire and dispose of other houses along with additional counts of wire fraud.

The Second Superseding Indictment was filed on September 20, 2016, principally to remove Ellis as a defendant, who by that time had died. (ECF No. 124.) That indictment did not materially broaden or substantially amend the First Superseding Indictment because it merely merged into a single conspiracy count, naming only the three living Defendants, the two conspiracies charged in the First Superseding Indictment. Thus, the Second Superseding Indictment relates back to the First for statute of limitations purposes, and the First tolled the limitations period because it provided the Defendants with fair notice of the conspiracy charged in the Second Superseding Indictment. *See Kuper*, 2009 WL 1119490, at *2.

B

In order to find Hampton guilty of conspiracy, the jurors accordingly had to find that the conspiracy was still in existence and that at least one overt act was taken in furtherance of the conspiracy after April 19, 2011, five years before issuance of the First Superseding Indictment. *United States v. McGill*, Crim. No. 12-112-01, 2016 WL 48214, at *12 (E.D. Pa. Jan. 5, 2016) (quoting *Grunewald v. United States*, 353 U.S.

391, 397 (1957)); *see also United States v. Jake*, 281 F.3d 123, 129 n.6 (3d Cir. 2002) (“A conspiracy is a continuing offense and a jury may consider each and all of a defendant's actions in furtherance of the conspiracy so long as the indictment is brought within five years of the last overt act.” (citing *United States v. Johnson*, 165 F.2d 42, 45 (3d Cir. 1947))). “[T]he crucial question in determining whether the statute of limitations has run is the scope of the conspiratorial agreement, for it is that which determines both the duration of the conspiracy, and whether the act relied on as an overt act may properly be regarded as in furtherance of the conspiracy.” *United States v. Bornman*, 559 F.3d 150, 153 (3d Cir. 2009) (modification in original) (quoting *Grunewald*, 353 U.S. at 397).

Hampton’s statute of limitations argument attempts to constrict the scope of the conspiracy. Hampton frames the conspiracy as one of “unlawfully filing documents pertaining to various properties” and claims that the objectives of the conspiracy as charged—to commit wire fraud—were plainly consummated prior to the limitations period. (Mot. ¶ 2.) He therefore claims that the acts taken after April 19, 2011 were not in furtherance of the conspiracy, but were simply “individuals unilaterally engag[ing] in fraudulent conduct.” (*Id.*)

However, the conspiracy as charged and the evidence presented at trial showed that the conspiracy was about much more than the initial acquisition of properties and the filing of fraudulent deeds. The purpose of the conspiracy was to obtain abandoned properties in order to *profit* from them through occupancy, resale or other means. *See United States v. Ammar*, 714 F.2d 238, 253 (3d Cir. 1983) (“The distribution of the proceeds of a conspiracy is one of its central objectives, and statements which are

directed to that purpose must be considered to be in furtherance of the conspiracy.”); *United States v. Salmonese*, 352 F.3d 608, 611 (2d Cir. 2003) (“[W]hen a member of a conspiracy whose purpose is economic profit knowingly receives a share of the scheme's anticipated proceeds . . . that conspirator engages in an overt act in furtherance of the conspiracy.”).

At trial, the Government presented evidence that the efforts to profit from the scheme continued until at least as late as October 28, 2014. For example, there was evidence of an April 21, 2011 phone call in which Hampton instructed Terrell to find someone to buy the Delancey Street House, (Prison Call Apr. 21, 2011), and an October 28, 2014 deed purporting to transfer the Delancey Street House from Mason to a third party for \$10,000, (Gov’t Ex. 716). Further, the jury was instructed that the Government was “obligated to prove beyond a reasonable doubt that at least one overt act occurred within the statute of limitations period, that is after April 19, 2011.” (Jury Instruction No. 44.) Based on the evidence of the full scope of the conspiracy presented by the Government, a reasonable jury could have found that the above acts were taken in furtherance of the conspiracy’s profit seeking objective. *See Ammar*, 714 F.2d at 253.

III

Hampton’s second and broader argument is that although he agreed with Terrell and Mason to partake in a real estate business, the jurors could not have reasonably concluded that he possessed the criminal intent required for conviction because they were not presented with sufficient evidence upon which they could find that Hampton was ever aware of the fraudulent conduct undertaken by his co-conspirators. (See Mot. ¶ 3 (“[T]he record is bare in regard to proof that the defendant had knowledge that his

codefendants engaged in fraudulent conduct.”)) During much of the conspiracy, Hampton was incarcerated. He argues that the Government failed to present any evidence to suggest that he was informed by his co-defendants that they were creating and recording fraudulent deeds. Nor was any evidence presented showing that Hampton told his conspirators to forge signatures or commit any other fraudulent act in procuring houses. (See Mot. ¶ 3.) Hampton is effectively arguing that the Government did not present *direct* evidence of intent. However, direct evidence is not required. *Caraballo-Rodriguez*, 726 F.3d at 431.

A

A defendant is guilty of conspiracy under Section 371 if he or she agrees with another “to commit any offense against the United States, or to defraud the United States, or any agency thereof” and one or more conspirators takes an act in furtherance of the conspiracy. 18 U.S.C. § 371. Accordingly, to convict a defendant of conspiracy, the jury must find beyond a reasonable doubt “a unity of purpose between the alleged conspirators, [] intent to achieve a common goal, and an agreement to work together toward that goal.” *United States v. Smith*, 294 F.3d 473, 477 (3d Cir. 2002) (citing *United States v. Gibbs*, 190 F.3d 188, 197 (3d Cir. 1999)). The jury was instructed that “[t]he government must prove beyond a reasonable doubt that two or more persons knowingly and intentionally arrived at a mutual understanding or agreement, either spoken or unspoken, to work together to achieve the overall objective of the conspiracy.” (Jury Instruction No. 23.)

The elements of conspiracy “can be proven entirely by circumstantial evidence.” *Brodie*, 403 F.3d at 134 (citing *United States v. Kapp*, 781 F.2d 1008, 1010 (3d Cir.

1986)). In fact, “[i]t is not unusual that the government will not have direct evidence” and “[k]nowledge is often proven by circumstances.” *Caraballo-Rodriguez*, 726 F.3d at 431 (first modification in original) (quoting *Iafelice*, 978 F.2d at 98); *see also Brodie*, 403 F.3d at 134 (“Indeed, the very nature of the crime of conspiracy is such that it often may be established only by indirect and circumstantial evidence.”). The jury was instructed that they “may consider both direct evidence and circumstantial evidence in deciding whether the government has prove[n] beyond a reasonable doubt that an agreement or mutual understanding existed” and “may find the existence of a conspiracy based on reasonable inferences drawn from the actions and statements of the alleged members of the conspiracy.” (Jury Instruction No. 23.)

Further, “a conspirator does not have to be aware of all aspects or details of the conspiracy,” *Fattah*, 223 F. Supp. 3d at 352 (citing *United States v. Bailey*, 840 F.3d 99, 108 (3d Cir. 2016)), and can be found guilty of an offense committed by a co-conspirator if the offense was “reasonably foreseeable” or reasonably anticipated by the defendant and furthered the objectives of the conspiracy, *United States v. Ramos*, 147 F.3d 281, 286 (3d Cir. 1998) (“A defendant convicted of conspiracy is liable for the reasonably foreseeable acts of his coconspirators committed in furtherance of the conspiracy.” (citing *Pinkerton v. United States*, 328 U.S. 640 (1946))).

B

In any event, Hampton’s contention that he had no knowledge of his co-conspirators’ illegal conduct flies in the face of the mountain of evidence which allowed the jurors to conclude that Hampton, even while incarcerated, called all the shots and led all aspects of the conspiracy. Indeed, jurors saw and heard voluminous evidence

that without Hampton providing repeated and specific instructions by phone, mail and email, the goals of the conspiracy would have gone unmet.

The evidence presented at trial established that Hampton, Terrell and Mason, along with other co-conspirators including Ellis Hampton, carried out their scheme by scouting out vacant properties, filing false, fraudulent or forged deeds to obtain apparent title to these properties, and then exploiting the properties for their benefit. At various points over the course of the conspiracy, they alternately occupied the properties, sold them to unwitting third parties for profit, and attempted to or contemplated obtaining loans or disaster relief payments on the properties. Further, the fraudulent deeds transferring title to the properties purported to be between family members to avoid the applicable real estate transfer tax.

The Government presented evidence that the scheme covered a number of properties, several of which were identified by address or neighborhood. The evidence showed that four properties were actually “obtained” by means of fraudulent deeds and that the conspirators discussed and attempted to “obtain” at least four additional properties. For example, one target of the Defendants’ conspiracy was the house at 6028 Locust Street. The property was titled in the names of CK and LK, a husband and wife. (Gov’t Ex. 801.) CK had passed away and LK, who was elderly, was living in a nursing home when her children discovered that a fraudulent deed had been recorded for her home. The deed, dated June 23, 2005, purported to transfer the property from CK to Myra Walker more than seven years after CK’s death and falsely claimed that LK had predeceased her husband. (Gov’t Exs. 804, 807.)

Another target of the conspiracy was the house at 5357 Delancey Street. On July 8, 2010, Mason filed a deed with the Philadelphia Department of Records claiming that GR and ER, the homeowners, transferred the Delancey Street House to her, as their purported granddaughter, allowing Mason to avoid paying real estate transfer tax. (Gov't Ex. 703). At the time the deed was supposedly signed, both GR and ER had been dead for approximately 20 years. (Gov't Exs. 707, 708.) Later, in October 2014, Mason sold the Delancey Street House to an unsuspecting third party for \$10,000. (Gov't Ex. 716.) The evidence established a similar pattern of conduct by the Defendants with respect to other properties. (See Gov't Exs. 20, 21, 22, 601, 606, 615 pertaining to the "58th Street House"; Gov't Exs. 401, 402, 407, 412, 413, pertaining to the "West Philly House.")

The evidence showed that Hampton led all of these efforts. He instructed his co-conspirators on how to locate prospective properties for acquisition, providing tactics for determining whether properties were truly abandoned and directing his co-conspirators to particular blocks. (See, e.g., Prison Call, May 27, 2010 ("You may have to walk up and, and like ring the bell and look inside of the mail slot. If you see a lot of mail and junk then you know nobody lives there okay?"); Gov't Ex. 507 ("But if no one lives there and its [sic] still in the same name. Then grab it.")) If Mason came into contact with residents while scouting out properties, Hampton instructed her not to make small talk and suggest that she was considering buying in the area, but instead to ask for "Billy" and pretend to be lost. (Prison Call, Nov. 13, 2010.) Further, Mason was instructed to check out the insides of houses by getting in "from side window or back door or back window" or by having someone get in to turn off the alarm "from back door or front

basement window,” (Gov’t Ex. 507) but was not to “mess with houses with pad locks on them” (Gov’t Ex. 7).

Other prison communications revealed that Hampton controlled the disposition of the Delancey Street House and that the acquisition was irregular. Over the course of a series of calls, Hampton instructed Mason that he wanted both her and Terrell’s names on the Delancey Street deed (Prison Call, June 22, 2010), and later that he wanted only Mason’s name on the deed in order to demonstrate his trust in her (Prison Call, July 6, 2010). Mason kept Hampton informed on their attempts to file the deed, and when she informed Hampton that the deed had finally been filed, she told him that she had in fact never even seen the house. (Prison Call, July 10, 2010.)

Further, the Government presented evidence related to the acquisition of the Locust Street House, accomplished before Hampton was incarcerated, that connected Hampton to the transaction and demonstrated his knowledge of the conspiracy’s objectives. United States Secret Service Special Agent Matt Wells testified that two briefcases, recovered from a February 2009 search of 5750 Spruce Street, contained Hampton’s personal and identifying documents as well as incriminating evidence tying Hampton to the Locust Street House. Among the documents found in the briefcases were a collection of blank deeds⁵ and a Campus Copy Center bag containing several iterations of a letter purporting to be from CK gifting the Locust Street House to Myra Walker. (Gov’t Ex. 809.) Some copies of the CK letter bore an altered notary seal with a signature, others bore only the altered seal, and some contained no seal. Also in the

⁵ These deeds were from the same source, John C. Clark, and bore the same number, 752-S, as virtually all of the fraudulent deeds used in this conspiracy. (*Compare* Gov’t Ex. 1, with Gov’t Exs. 407, 503, 703, 804.)

bag were blank sheets of paper bearing only a notary seal. (See Gov't Ex. 809a–809j.) The briefcases also contained evidence that an element of the scheme was to forge documents in dead people's names. The copy center bag contained an "original" copy of the CK letter that had whiteout applied to critical areas, such as the date, which would have established that the letter had been written after CK's death. A bottle of white out was found in one of the briefcases.

The jurors saw and heard evidence showing that Walker was a "straw purchaser" and that Hampton had control over Walker and the Locust Street House. In a series of letters and calls, Hampton: (1) told Mason that she could remain in the Locust Street House if she wanted (Gov't Ex. 810); (2) told Mason that he was selling the Locust Street House because he was "having a lot of problems"⁶ with it (Gov't Ex. 811); (3) told Mason to accompany Walker to the closing of the Locust Street House (Gov't Ex. 811); (4) instructed Mason on how the proceeds from the Locust Street House were to be divided (Gov't Ex. 811); (5) offered to transfer the Locust Street House from Walker to Mason (Gov't Ex. 815); (6) provided Mason with a list of persons in whose names houses could be titled, including Walker (Gov't Ex. 818); and (7) discussed available houses with Walker and acknowledged paying her for her past help with houses (Prison Call July 21, 2010).

Thus, the evidence presented at trial was sufficient to show that Hampton knew of the conspiracy's criminal objectives and joined the conspiracy for the purpose of committing fraud. Hampton's instructions to his co-conspirators evidenced an awareness and intent to illegally "grab" abandoned homes. While Hampton contends

⁶ At trial, this evidence was tied to a notice to quit letter that CK and LK's children sent to Mason three weeks prior in which they demanded that Mason vacate the property. (Gov't Ex. 814.)

that the conduct recounted above could also be consistent with a legal and valid real estate business, the applicable legal standard is not whether there is a remote chance that the evidence can be innocently explained. See *United States v. Iafelice*, 978 F.2d 92, 97 (3d Cir. 1992) (“[T]here is no requirement . . . that the inference drawn by the jury be the only inference possible or that the government's evidence foreclose every possible innocent explanation.” citing *United States v. Sandini*, 888 F.2d 300, 311 (3d Cir.1989)). The standard is whether the evidence, when viewed in the light most favorable to the Government, is sufficient to enable a reasonable jury to find guilt beyond a reasonable doubt. A fair interpretation of the Government’s evidence—not merely one in favor of the Government—shows that Hampton not only knew of the fraudulent nature of the scheme, but orchestrated it.

Hampton’s argument that there was insufficient evidence of his intent with respect to the wire fraud and identity theft counts is similarly unsuccessful. The same evidence that supports the jury’s finding that Hampton had the requisite criminal intent to engage in conspiracy to commit wire fraud establishes his intent to engage in the substantive offenses. For example, the evidence of Hampton’s control over the disposition of the Delancey Street House supports the finding that Hampton intended to engage in wire fraud. Further, under *Pinkerton*, Hampton is responsible for the wire fraud and identity theft as reasonably foreseeable acts of his co-conspirators in furtherance of the conspiracy.

An appropriate order follows.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.