

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
DANTE SEAN WOOTEN	:	NO. 19-455

MEMORANDUM

Bartle, J. December 23, 2019

Before the court is the motion of defendant Dante Sean Wooten ("Wooten") to sever and to try separately counts one through three of the indictment from counts four through nineteen pursuant to Rules 8 and 14 of the Federal Rules of Criminal Procedure.

Defendant Wooten has been charged with fifteen counts of wire fraud in violation of 18 U.S.C. § 1343, three counts of aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1), one count of access device fraud in violation of 18 U.S.C. § 1029(a)(1), and aiding and abetting in violation of 18 U.S.C. § 2. The Government alleges in counts one through three of the indictment that, on or about July 18, 2016, Wooten fraudulently used an American Express credit card issued to an individual identified in the indictment as J.J. to pay for a room at the Ritz-Carlton Hotel in Philadelphia. The Government also alleges that Wooten, while employed by Comcast Corporation ("Comcast"), fraudulently created bank accounts to appropriate for his own

personal use corporate funds intended for two former Comcast employees. Such scheme is the subject of counts four through nineteen of the indictment.

I

The indictment sets forth the following as to counts one through three. On or about July 17, 2016, Wooten arrived at the Ritz-Carlton and attempted to rent a room under a false name. Because Wooten's name did not match the name on the reservation, the hotel clerk refused to rent the room to him. Wooten then had the hotel room reservation altered to include his name and produced as payment for the room an American Express credit card. The card showed his own name on the faceplate but contained the credit card number of another individual, victim J.J., in the magnetic strip. The indictment charges wire fraud in violation of 18 U.S.C. § 1343, aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1), and access device fraud in violation of 18 U.S.C. §§ 1029(a)(1) and (c)(1)(A)(i) with respect to the Ritz-Carlton incident.

In counts four through nineteen, the indictment recites that Wooten was employed from on or about July 22, 2013 through on or about February 6, 2016 by Comcast as a shared services representative in the Employee Service Center ("ESC"), otherwise known as the HR Shared Services Department. As an ESC employee, Wooten assisted current and former Comcast employees

with payroll distributions and was permitted access to confidential personnel records of these employees, including names, social security numbers, and dates of birth.

D.F. and J.S., retired employees of Comcast, had been receiving semi-monthly payments from Comcast by way of wire transfer to their respective bank accounts. On or about October 5, 2015, Wooten telephoned the ESC posing as victim D.F. Wooten stated that he would like to "update [his] direct deposit" and requested an authorization form. Thereafter, Wooten submitted to ESC a fraudulent authorization form requesting that a portion of D.F.'s funds be deposited into a Metabank account established by Wooten using the name and social security number of D.F. From approximately October 30, 2015 through March 8, 2016, Wooten received and used these funds siphoned from D.F. On or about May 13, 2016, Wooten executed a similar scheme as to victim J.S. Wooten telephoned the ESC posing as J.S. and succeeded in having a portion of J.S.'s payments from Comcast diverted into a Metabank account opened by Wooten in the name and social security number of J.S. For his purported conduct at Comcast related to D.F. and J.S., Wooten is charged in counts four through nineteen of the indictment with wire fraud in violation of 18 U.S.C. § 1343 and aggravated identity theft in violation of 18 U.S.C. §§ 1028A(a)(1) and (c)(5).

Wooten was arrested on July 18, 2016 at the Ritz-Carlton Hotel for the offenses charged in counts one through three of the indictment related to the allegedly fraudulent hotel reservation. At that time, police seized numerous credit and debit cards from Wooten.¹ The cards seized included the debit cards associated with the Metabank accounts opened by Wooten in the names of D.F. and J.S.

II

Wooten first contends that, under Rule 8(a) of the Federal Rules of Criminal Procedure, counts one through three of the indictment were misjoined with counts four through nineteen. According to Wooten, these two sets of offenses are wholly unrelated and should be severed.

Rule 8(a) provides:

Joinder of Offenses. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged--whether felonies or misdemeanors or both--are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

The purpose of Rule 8 is "to promote economy of judicial and prosecutorial resources." United States v. Gorecki, 813 F.2d 40, 42 (3d Cir. 1987). By its plain language, Rule 8 provides for the joinder of offenses of "same or similar character."

1. On December 20, 2019, the court denied Wooten's motion to suppress this evidence. See Doc. # 30.

Fed. R. Crim. P. 8(a). The offenses need not be identical. United States v. Hudgins, 338 F. App'x 150, 152 (3d Cir. 2009). The standard under Rule 8 is flexible. It is sufficient if the charges have some logical relationship. United States v. Brooks, No. 07-705, 2009 WL 116967, at *2 (E.D. Pa. Jan. 15, 2009).

Counts one through three and counts four through nineteen of the indictment charge offenses of a "same or similar character," that is, wire fraud and aggravated identity theft. Both sets of charges involve Wooten's use of fraudulent or counterfeit bank cards for his own purposes. And, in both instances, Wooten used the personal identification information of other individuals without their permission. The conduct underlying the Ritz-Carlton charges occurred during the same time period as the conduct underlying the charges related to his employment at Comcast. Evidence of Wooten's alleged fraud against D.F. and J.S. was seized from Wooten at the time of his arrest at the Ritz-Carlton on July 18, 2016. Thus, witnesses related to Wooten's allegedly fraudulent room reservation and his arrest at the Ritz-Carlton would likely also be called by the Government as witnesses on the Comcast-related charges. We therefore conclude that joinder of counts one through three with counts four through nineteen was appropriate.

Wooten also asserts that, even if properly joined, this court should exercise its discretion under Rule 14 of the Federal Rules of Criminal Procedure to sever counts one through three from counts four through nineteen because joint trial of the two sets of charges would be unfairly prejudicial. Rule 14 provides in relevant part:

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.

Thus, Rule 14 permits the court, in its discretion, to sever charges that are otherwise properly joined where a consolidated trial would result in prejudice to the defendant. United States v. Walker, 657 F.3d 160, 170 (3d Cir. 2011). A defendant claiming improper joinder under Rule 14 must demonstrate "clear and substantial prejudice." Gorecki, 813 F.2d at 43 (quoting United States v. Sebetich, 776 F.2d 412, 427 (3d Cir. 1985)). The court should grant severance under Rule 14 "only if there is a serious risk that a joint trial would compromise a specific trial right of [the defendant] or prevent the jury from making a reliable judgment about guilt or innocence." Zafiro v. United States, 506 U.S. 534, 539 (1993). A defendant is not entitled to a severance merely because he may have a better chance of acquittal through separate trials. Id. at 540.

Wooten contends that joinder may impede the jury's ability to compartmentalize the evidence related to counts one through three from that related to counts four through nineteen and will cause the jury to conclude that Wooten has a propensity to commit fraud. Instructions to the jury to consider each count separately will minimize the risk of spillover and will alleviate the concern that the jury will not compartmentalize the evidence. See, e.g., Zafiro, 506 U.S. at 539-41; Walker, 657 F.3d at 170-71. Juries are presumed to follow such instructions. See, e.g., United States v. Lore, 430 F.3d 190, 206 (3d Cir. 2005). We conclude that, give the availability of such instructions, Wooten has not met his burden to show clear and substantial prejudice warranting severance. See, e.g., Gorecki, 813 F.2d at 43.

Accordingly, the motion of Wooten to sever under Rules 8 and 14 of the Federal Rules of Criminal Procedure will be denied.

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ORDER

AND NOW, this 23rd day of December, 2019, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant for a severance (Doc. # 18) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.