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

UNITED STATES	:	
	:	
v.	:	**CRIMINAL NO. 04-CR-611-1**
	:	
SHAMSUD-DIN ALI	:	

MEMORANDUM AND ORDER

Kauffman, J. **April 14, 2005**

Defendant Shamsud-din Ali ("Defendant") is charged in a Superceding Indictment with multiple counts including: mail fraud, in violation of 18 U.S.C. § 1341; interstate travel in aid of racketeering, in violation of 18 U.S.C. § 1952; wire fraud, in violation of 18 U.S.C. § 1343; bank fraud, in violation of 18 U.S.C. § 1344; Hobbs Act extortion, in violation of 18 U.S.C. § 1951; tax evasion, in violation of 26 U.S.C. § 7201; and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968. Presently before the Court is Defendant's Motion to Dismiss Certain Counts of the Indictment. For the reasons stated below, the Motion will be denied.[1]

I. Legal Standard

The Federal Rules of Criminal Procedure require that an indictment be a plain, concise and definite written statement of the essential facts constituting the offense. Fed. R. Crim. P. 7(c)(1). An indictment is sufficient if it includes the elements of the offenses charged, apprises the defendant of what he or she must be prepared to defend against at trial, and enables the

[1] All references to the Indictment refer to the Superceding Indictment, issued on February 2, 2005.

defendant to show with accuracy to what extent he or she may plead an acquittal or conviction as a bar to subsequent prosecutions. See Hamling v. United States, 418 U.S. 87, 117 (1974); United States v. Galati, 853 F. Supp. 152, 154 (E.D. Pa. 1994). "[N]o greater specificity than the statutory language is required so long as there is sufficient factual orientation to permit the defendant to prepare his defense and to invoke double jeopardy in the event of a subsequent prosecution." United States v. Rankin, 870 F.2d 109, 112 (3d Cir. 1989). In deciding a pretrial motion to dismiss an indictment, a court should not consider the sufficiency of the government's evidence. See United States v. DeLaurentis, 230 F.3d 659, 660 (3d Cir. 2000); Galati, 853 F. Supp. at 154. Instead, a court must accept as true all facts properly pled in the indictment and may grant the motion only where the allegations in the indictment are insufficient to sustain a conviction for the offenses with which defendant is charged. See United States v. Besmajian, 910 F.2d 1153, 1154 (3d Cir. 1990); United States v. Hedaithy, 392 F.3d 580, 589 (3d Cir. 2004); see also United States v. Panarella, 277 F.3d 678, 684 (3d Cir. 2002) (noting that an indictment may be defective for omitting essential elements of a charged offense or if the facts alleged in the indictment do not satisfy the elements of the charged offense as a matter of law).

II. Analysis

A. Racketeering Act One (Mail Fraud)[2]

Racketeering Act One (Counts Four through Six) charges Defendant with violations of

[2] The organization of the Indictment in this case is as follows: Count One charges Defendants Shamsud-din Ali and Faridah Ali with racketeering, in violation of 18 U.S.C. § 1962(c). In setting out the factual basis of this charge, the Indictment describes thirteen predicate Racketeering Acts. The facts and crimes alleged in these predicate Racketeering Acts form the basis of the remaining fifty-four counts in the Indictment and are incorporated accordingly. As a result, this Court will refer to both the pertinent Counts and Racketeering Acts when discussing Defendant's objections to the Indictment.

the mail fraud statute, 18 U.S.C. §§ 1341 and 2, pursuant to a scheme designed to enable Defendant, through his company, Keystone Information & Financial Services, Inc. ("KIFS"), to claim a commission from the City of Philadelphia for bringing in a delinquent taxpayer. According to the Indictment, Defendant worked in concert with Defendants John Christmas and Steven Vaughn to represent falsely that KIFS had collected overdue taxes from Bowman Properties, Ltd. ("Bowman"), when in fact KIFS had performed no such services. Indictment at 9-10. The government charges that, in furtherance of this scheme, Defendant caused several mailings to be made, including (1) a letter from the City to Defendant on June 28, 2001 (Count Four); (2) a letter and proposed settlement agreement from the City to RS, Bowman's general partner, on December 24, 2001 (Count Five); and (3) a letter and copy of a Provider Agreement from the City to Defendant on December 27, 2001 (Count Six). Defendant moves to dismiss Count Five of the Indictment arguing that the government cannot prove that Defendant "caused" the mailing of the proposed settlement agreement on December 24, because this was a necessary step in the completion of the City's tax enforcement action against Bowman, and would have taken place regardless of Defendant's involvement.

The Indictment charges that "having devised and intending to devise a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises ... for the purpose of executing and attempting to execute the foregoing scheme ... [Defendant] knowingly caused to be delivered, and aided and abetted the delivery of, by the United States mail" the above-described mailings. Indictment at 81-82. The allegation tracks the language of 18 U.S.C. § 1341 and the included facts properly charge the elements of the mail fraud offense, namely that Defendant (1) knowingly and wilfully

participated in a scheme to defraud, (2) acted with the specific intent to defraud, and (3) used or caused the mails to be used in furtherance of this scheme. See, e.g., Hedaithy, 392 F.3d at 590; United States v. Pharis, 298 F.3d 228, 234 (3d Cir. 2002) (ruling that all that is required for mail fraud is that a defendant knowingly participated in a scheme to defraud and caused a mailing in furtherance of that scheme). Defendant's objection that the government cannot establish that he "caused" these mailings essentially seeks to test the evidentiary sufficiency of the case, rather than the legal validity of the charges. It is therefore premature. See DeLaurentis, 230 F.3d at 660 (stating that a pretrial motion to dismiss the indictment is "not a permissible vehicle for addressing the sufficiency of the government's evidence").

Defendant next argues that Count Six should be dismissed because the mailing on December 27 was not incident to an essential part of the alleged mail fraud scheme. Accepting as true all factual allegations in the Indictment, this mailing was incident to an essential element of the scheme because it memorialized the commission agreement between the City and KIFS. See Schmuck v. United States, 489 U.S. 705, 710-711 (1989) (ruling that mailing need only be incident to an essential element or a step in the plot); Pharis, 298 F.3d at 234. The Indictment alleges that Defendant's goal was to obtain a 10% commission from the City by falsely representing that KIFS had helped secure payment of certain overdue taxes. Indictment at 9-10. The formalization of such an agreement in a written contract would certainly be an important and foreseeable step in furtherance of the successful realization of the scheme. See, e.g., United States v. Maze, 414 U.S. 395, 400 (1974); cf. Schmuck, 489 U.S. at 712. Moreover, at the time that the letter was mailed, the alleged scheme was still on-going, as Defendant had not yet officially delivered the delinquent payments or received any actual commission. See Indictment

at 24-25; cf. Maze, 414 U.S. at 400 (discussing significance of whether scheme was on-going when the mailings were made). Accordingly, Counts Five and Six properly allege mail fraud and related offenses and the Motion to Dismiss will be denied.

B. Racketeering Acts Five and Six (Violations of the Hobbs Act)

Racketeering Acts Five and Six (Counts Nineteen through Twenty-One) charge Defendant with violations of the Hobbs Act, 18 U.S.C. § 1951. The Indictment alleges that Defendant extorted money from two companies, Waste Management & Processors, Inc. ("WMPI") and Waste Management of Pennsylvania ("WMPA"). See Indictment at 51, 56. Defendant moves to dismiss these Counts, claiming that there is no allegation of an impact on interstate commerce as required by the Hobbs Act. The Hobbs Act provides that "[w]hoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion ...." shall be guilty of a violation of the statute. 18 U.S.C. § 1951(a). "Extortion" is defined as the "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). Therefore, the elements of a Hobbs Act violation include (1) that the defendant induced the victim to part with property (2) that the defendant did so by extortionate means and (3) that interstate commerce was affected. See United States v. Traitz, 871 F.2d 368, 390 (3d Cir. 1989).

The allegations of the Indictment closely track the language of the statute and the included facts are legally sufficient to state a violation of the Hobbs Act. See Indictment at 51, 89-91. The Indictment alleges that Defendant extorted money from WMPI and WMPA by threatening to use his power and influence with city officials to affect the ability of the

companies to maintain certain contracts with the City. See Indictment at 47, 54. In addition, the Indictment specifically alleges that both affected entities are engaged in interstate commerce. See Indictment at 47 ("At all times relevant to this indictment, [WMPI], of Frackville, Pennsylvania, was a business engaged in interstate commerce."); id. at 54 ("At all times relevant to this indictment, WMPA was located in Morrisville, Pennsylvania, and engaged in interstate commerce."). This assertion of an effect on interstate commerce is sufficient. See United States v. Mazzei, 521 F.2d 639, 642 (3d Cir. 1975) (finding sufficient proof of effect on interstate commerce where payments to defendant depleted assets of an interstate business); United States v. Addonizio, 451 F.2d 49, 76-77 (3d Cir. 1971); see also United States v. Fineman, 434 F. Supp. 189, 195 (E.D. Pa. 1977) (finding minimal alleged impact on interstate commerce sufficient for purposes of motion to dismiss an indictment); United States v. Barna, 442 F. Supp. 1232, 1234 (E.D. Pa. 1978). Accordingly, the Motion to Dismiss will be denied as to these Acts and Counts.[3]

C. Racketeering Acts Seven Through Ten (Mail Fraud)

Defendant next moves to dismiss Racketeering Acts Seven through Ten (Counts Twenty-Two through Twenty-Six), charging mail fraud in violation of 18 U.S.C. §§ 1341 and 2. The allegations in this portion of the Indictment involve a scheme by Defendant to obtain money by soliciting contributions through the mail pursuant to a false representation that the funds would

[3] While Defendant has noticed his intention to argue that a substantial effect on interstate commerce is necessary to sustain a conviction under the Hobbs Act, this Court will follow the rule of the Third Circuit – and virtually every other Court of Appeals to consider the issue – that only a de minimis effect on interstate commerce is necessary. See United States v. Clausen, 328 F.3d 708, 710-11 (3d Cir. 2003); see also United States v. Capozzi, 347 F.3d 327, 336 (1st Cir. 2003) (collecting cases).

be directed exclusively to the Sister Clara Muhammad School. In fact, the Indictment alleges, at least some of these funds were diverted to Defendant and co-defendant Faridah Ali's personal use. Indictment at 58-60. Defendant argues that these Counts fail to state mail fraud because the Indictment does not specify that Defendant and Ms. Ali diverted specific mailings to personal matters and because only a small portion of the solicited funds were allegedly redirected.

As stated above, the elements of mail fraud include that Defendant knowingly devised a scheme to defraud or obtain money by false pretenses, that he acted with the specific intent to defraud, and that he used or caused the mails to be used in furtherance of this scheme. See Hedaithy, 392 F.3d at 590. Again, for the purposes of the Motion to Dismiss, it is sufficient for the government to allege that Defendant "caused" the use of the mails in furtherance of the devised scheme; it is not necessary for the government to allege that Defendant himself committed any of the mailings, that he received any mail, that he redirected any mail, or even that he directly used the mails in any way. See Pereira v. United States, 347 U.S. 1, 8-9 (1954); Schmuck, 489 U.S. at 707; United States v. Bentz, 21 F.3d 37, 40 (3d Cir. 1994); see also United States v. Clapps, 732 F.2d 1148, 1150 (3d Cir. 1984) (holding that each participant in a scheme is responsible for use of the mails in furtherance of the scheme regardless of whether he knew about or agreed to a specific mailing). Here, the government adequately alleges a scheme, whereby Defendant and Ms. Ali solicited funds on behalf of the school ("causing" mailings to be made), but in fact redirected certain money for personal use. See Indictment at 57-60. Therefore, the Indictment properly alleges mail fraud in these Counts and the Motion to Dismiss will be denied.

D. Racketeering Act Twelve (Wire Fraud)

Racketeering Act Twelve (Counts Twenty-Seven through Thirty-Four) charges that Defendant engaged in a wire fraud scheme, in violation of 18 U.S.C. §§ 1343 and 2, to defraud the Cherry Hill Mercedes-Benz and the Mercedes-Benz Credit Corporation by submitting fraudulent financial information in order to secure an extension of credit for the purchase of a new vehicle. The communications at issue include several telephone conversations between Defendant, Ms. Ali, and a Mercedes-Benz salesperson, as well as facsimile transmissions sent by Ms. Ali and Defendant. Indictment at 70-71. Defendant seeks to dismiss this Act, and the incorporated Counts, arguing that the only wrongdoing alleged in the Indictment was committed by his wife, Ms. Ali. Defendant's argument is two-pronged: First, he claims that the allegedly fraudulent actions, including the faxing of a false pay stub, were committed solely by Ms. Ali. Second, he argues that his involvement in the incident, including speaking to a salesperson over the phone about a vehicle and faxing proof of insurance to the dealer, was purely innocent.

Defendant's arguments misapprehend the nature of mail and wire fraud crimes. As described above, to establish guilt of a mail or wire fraud offense, the government need not prove that Defendant used the mails or wires himself. See, e.g., Bentz, 21 F.3d at 40; Clapps, 732 F.2d at 1150. Here, the Indictment adequately charges that Defendant and Ms. Ali "devised a scheme to defraud Cherry Hill Mercedes-Benz and Mercedes-Benz Credit Corporation ... to obtain money and property by means of materially false and fraudulent pretenses, representations and promises ... [and] for the purpose of executing the scheme, knowingly caused to be transmitted, and aided and abetted the transmission of, by means of wire communication in interstate commerce ...." certain communications. Indictment at 70. Assuming the government's

allegations to be true, Defendant and Ms. Ali together devised a scheme to obtain this automobile for his use by misrepresenting her income. Under these facts, Defendant would be liable whether or not he employed the wires, provided he "caused" their use.

Furthermore, contrary to Defendant's assertions, there is no requirement that the wire transmissions contain false or fraudulent information. See, e.g., Schmuck, 489 U.S. at 715 (finding the requirement of mailings may be satisfied by mailings that are routine and innocent in and of themselves). Accordingly, Defendant's wire transmissions fall within the purview of the statute. Finally, Defendant's transmission of proof of insurance was clearly incident to an essential element of the scheme charged by the government because it was necessary to the successful realization of the scheme's goal, i.e., actually obtaining a vehicle. Cf. id. Accordingly, the Indictment properly alleges violations of the wire fraud statute and the included facts fall within the law's ambit. Therefore, Defendant's Motion to Dismiss this Act and the included Counts will be denied.

E. RICO and RICO Conspiracy

Finally, Counts One and Two of the Indictment charge Defendant with RICO and RICO conspiracy, in violation of 18 U.S.C. §§ 1962(c) and 1962(d), respectively. Section 1962(c) provides "[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity...." In order to sustain a charge under the statute, the government must prove: (1) the existence of an enterprise affecting interstate commerce; (2) that the defendant was employed by or associated with the enterprise; (3) that the defendant participated, directly or

indirectly, in the conduct of the affairs of the enterprise; and (4) that he participated through a "pattern" of racketeering activity. See, e.g., United States v. Console, 13 F.3d 641, 653 (3d Cir. 1993). Similarly, RICO conspiracy under § 1962(d) requires proof that an individual knowingly agreed to participate in an enterprise through a pattern of racketeering activity. Id.; see also United States v. Salinas, 522 U.S. 52, 63-63 (1997). Here, the government charges participation by Defendant in a pattern of racketeering activity through an association-in-fact enterprise, composed of: Defendant; Ms. Ali; the Sister Clara Muhammad School ("SCMS");[4] Keystone Information & Financial Services, Inc. ("KIFS");[5] and Hi-Technology Recycling Waste Management, Inc. ("Hi-Tech"), a business with which Defendant is associated. See Indictment at 1-8.

Defendant does not dispute that the enterprise is validly alleged. Instead, Defendant argues that the thirteen alleged predicate racketeering acts do not constitute a "pattern" under RICO. Section 1961(5) defines a "pattern of racketeering activity" as at least two predicate racketeering acts, one of which must have occurred within the last ten years. 18 U.S.C. § 1961(5). Beyond these basic requirements, the Supreme Court in H.J., Inc. v. Northwestern Bell Telephone Co. set out a "continuity plus relationship" test for determining if a RICO pattern exists. 492 U.S. 229, 239 (1989). Under this test, in order to establish the requisite RICO pattern, the government must prove "that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." H.J., Inc., 492 U.S. at 239.

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[4] Defendant is the Director of Education at SCMS and Ms. Ali is the Assistant Director of Education.

[5] Defendant owns 40% of the authorized and issued shares in KIFS, and acted as President and Vice President; Ms. Ali owns 10% of the shares.

Both continuity and relatedness are apparent from the face of the Indictment. According to the Supreme Court, continuity for the purpose of a RICO pattern can be proved in two forms: (1) closed or (2) open-ended continuity. Id. at 241. The purpose of the continuity requirement is to ensure that RICO is not directed at "sporadic" criminal activity, but is instead employed to combat an on-going or extended threat of wrongdoing. Id. at 239. A criminal scheme constitutes a closed pattern of racketeering if it involves a series of related predicate acts extending over a substantial period of time. Id. at 242. A scheme meets the requirement for open-ended continuity if it involves the "distinct threat of long-term racketeering," stemming from predicates that evince a "specific threat of repetition extending indefinitely into the future." Id.

Here, the government's allegations meet RICO's requirements for closed continuity.[6] The thirteen predicates charged in the Indictment extend over five years, include over fifty alleged criminal acts, and involve numerous serious allegations and multiple criminal schemes including mail fraud, wire fraud, Hobbs Act extortion, and bribery. See, e.g., Tabas v. Tabas, 47 F.3d 1280, 1293 (3d Cir. 1995) (collecting cases and finding sufficient continuity when crimes span a period of more than one year and are sufficiently numerous); Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1412 (3d Cir. 1991) (finding proof of multiple criminal schemes highly relevant to question of continuity); see also Hindes v. Castle, 937 F.2d 868, 873 (3d Cir. 1991) (stating that courts in the Third Circuit may consider the factors set out in Barticheck v. Fidelity Union Bank, 832 F.2d 36 (3d Cir. 1987), in determining whether RICO's continuity requirement is satisfied, including the number of unlawful acts, the length of time over which

[6] Because the government has adequately alleged closed continuity, this Court need not consider open-ended continuity.

they span, the similarity of the acts, and the number of perpetrators and victims). These allegations of repeated criminal activity in this case over a substantial period of time, involving several schemes, are clearly sufficient to demonstrate closed continuity for the purposes of RICO. See Hindes, 937 F.2d at 875 (noting rulings of closed continuity where predicate acts spanned several year periods); see also Curtin v. Tilley Fire Equipment, Co., 1999 WL 1211502, at *4-5 (E.D. Pa. Dec. 14, 1999).

Next, relatedness for the purposes of a RICO pattern is found where criminal acts "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." H.J., Inc., 492 U.S. at 240 (quoting 18 U.S.C. § 3575(e)). This is intended to be a flexible standard and even if the predicate acts would constitute separate conspiracies under traditional criminal conspiracy law doctrine, it is well established that they may be linked as a single "enterprise" conspiracy if they are sufficiently related and the other RICO elements can be proven. See United States v. Riccobene, 709 F.2d 214, 224-25 (3d Cir. 1983); United States v. Eufrasio, 935 F.2d 553, 565 (3d Cir. 1991); see also United States v. Elliot, 571 F.2d 880, 902 (5th Cir. 1978). Finally, provided a link to the RICO enterprise can be established, the fact that different associates are employed for different predicates is not dispositive of relatedness. See United States v. McDade, 827 F. Supp. 1153, 1183 (E.D. Pa. 1993); see also United States v. Minicone, 960 F.2d 1099, 1106 (2d Cir. 1992) (explaining that RICO predicates must bear some relationship to one another, as well as be related to the overall enterprise).

Although the predicates alleged in this Indictment are diverse, they are sufficiently related to meet the requirements of RICO. Put simply, the predicates all represent the repeated efforts by

Defendant and Ms. Ali, working through the alleged enterprise, to use their ostensibly legitimate businesses and connections within the City of Philadelphia to secure illegal income through various fraudulent schemes. The predicates evince a common purpose – securing illegal income for the members of the enterprise – and common methods of commission, including mail fraud, wire fraud, extortion, and the threatened use of improper influence within the City. Cf. McDade, 827 F. Supp. at 1183 (sustaining RICO relatedness where predicates shared common purpose, results, and methods of commission). There are common actors in each of the predicates, with Defendant himself playing a prominent role in the majority of the schemes. Furthermore, a common victim in several of the charged predicates is the City of Philadelphia, or those with whom the City contracts. Finally, each predicate is clearly related to the conduct of the affairs of the alleged enterprise. Cf. Eufrasio, 935 F.2d at 565 (ruling that nexus with the enterprise can be illustrative of the relatedness required to prove a RICO pattern); United States v. Corrado, 227 F.3d 543, 554 (6th Cir. 2000). While the overlap is not perfect, the charged crimes are sufficiently related to constitute a pattern of racketeering activity under RICO.

III. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss Certain Counts of the Indictment will be denied as to all Counts. An appropriate Order follows.

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v.	**:**	**CRIMINAL NO. 04-CR-611-1**
	:	
SHAMSUD-DIN ALI	**:**	

ORDER

AND NOW, this 14th day of April, 2005, upon consideration of Defendant's Motion to Dismiss Certain Counts of the Indictment (docket no. 61), the government's Response thereto, and Defendant's Reply, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.