

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

UNITED STATES OF AMERICA : CRIMINAL  
:   
vs. :   
:   
STEVEN McLAUGHLIN : NO. 98-545-01

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 17th day of June, 1999, upon consideration of the Motion for Dismissal of Indictment and/or Separate Trial for Count 22 of Superseding Indictment (Document No. 81, filed June 7, 1999), and the Government's Response to Defendant Steven McLaughlin's Motion for Dismissal of Indictment and/or Separate Trial for Count 22 of Superseding Indictment and Memorandum of Law, **IT IS ORDERED** that the Motion for Dismissal of Indictment and/or Separate Trial for Count 22 of Superseding Indictment is **DENIED**.

MEMORANDUM

**A. Background**

Defendants, Steven McLaughlin and Nancy Zemo, were officers of their union, American Postal Workers' Union Local #2233 ("Union"). The Grand Jury originally charged defendants in a twenty-one count Indictment with conspiracy to steal Union funds, theft of Union funds, and filing a false Labor Department report. Count One charged defendants with conspiracy to embezzle, steal and unlawfully convert to their own use monies, funds, property, and

other assets of a labor organization of which they were officers and employees during the period 1992-1995, in violation of 18 U.S.C. § 371. Counts Two through Nineteen charged defendants with embezzling, stealing and unlawfully converting to their own use monies, funds, property, and other assets of a labor organization engaged in an industry affecting interstate commerce, or aiding and abetting the same, in violation of 29 U.S.C. § 501(c) and 18 U.S.C. § 2. Count Twenty charged defendant Nancy Zemo with willfully failing to maintain, and aiding, abetting and willfully causing the Union to fail to maintain, books and records regarding the expenditures detailed in Counts Two through Nineteen, in violation of 29 U.S.C. §§ 436 and 439(a), and 18 U.S.C. § 2. Count Twenty-One charged defendants with knowingly failing to disclose a material fact in a report or document required to be filed by the Union with the Secretary of Labor pursuant to 29 U.S.C. § 431, and aiding and abetting the knowing failure to do the same, in violation of 29 U.S.C. §§ 431 and 439(b), and 18 U.S.C. § 2.

Trial began on March 15, 1999. On March 30, 1999, after nine days of testimony and three days of deliberations, the Court declared a mistrial because the jury could not agree. The retrial has been scheduled for September 13, 1999.

On May 27, 1999, the Grand Jury returned a Superseding Indictment which, in addition to the twenty-one counts contained in the original Indictment, charged defendant McLaughlin in Count

Twenty-Two with making false statements under oath during the trial. Defendant McLaughlin now moves to dismiss the Superseding Indictment or, in the alternative, for a separate trial of Count Twenty-Two.

**B. Discussion**

Federal Rule of Criminal Procedure 8(a) provides for joinder of criminal offenses if the offenses charged are "of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan." In this case, the perjury charged in Count Twenty-Two arises directly out of defendant McLaughlin's allegedly perjurious testimony, given in an effort to avoid conviction for theft of Union funds and property charged in Counts One through Twenty-One of the Indictment.

Where a conspiracy or a substantive crime and perjury arise from a common scheme or plan, as in this case, or where it appears that a defendant's perjured statements or actions are designed to cover up the original crime, joinder of the charges is proper and appropriate. See United States v. Winn, 948 F.2d 145, 160 (5th Cir. 1991) (proper to join conspiracy charge with perjury charge where the perjury charge grew out of the defendant's "attempt to avoid implication in and the detection of the conspiracy."); United States v. Bowen, 946 F.2d 734 (10th Cir.

1991) (no abuse of discretion for failure to sever charges against bank president of misapplying bank funds and making false statements to the Federal Deposit Insurance Corporation and federally insured financial institution). See also United States v. Sessa, 853 F.Supp. 159 (E.D. Pa. 1994).

In this case, defendant McLaughlin is accused of creating a false document or causing it to be created - a credit card receipt for a purchase at Staples - and then lying about how it was created in order to attempt to cover up his theft of Union funds. The false statement count, Count Twenty-Two, is therefore directly related to the other crimes charged, notwithstanding the fact that it occurred several years later.

Severance is not required where the offenses joined in the Indictment constitute a single series of related acts or transactions. United States v. Somers, 496 F.2d 723, 730 (3d Cir. 1974). In this case, defendant McLaughlin has not made any showing of inconsistent, mutually exclusive or antagonistic defenses which might warrant a severance in an appropriate case. See United States v. Sandini, 888 F.2d 300, 306 (3d Cir. 1989). Accordingly, the Court will not sever Count Twenty-Two.

Although defendant seeks dismissal of the entire Superseding Indictment, he asserts in his motion absolutely no basis for such a dismissal. Accordingly, that part of the defendant's motion is denied.

**C. Conclusion**

For the reasons set forth above, the Motion of Defendant McLaughlin to Dismiss the Superseding Indictment and/or to Order a Separate Trial for Count Twenty-Two is denied.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**