

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA) CRIMINAL ACTION NO. 5:02CR10093
)
v.)
) ORDER
)
RUSSELL W. JONES,)
JOHN DANIEL DEETER, and)
ROBERT N. PERRY,)
Defendants.) JUDGE JAMES H. MICHAEL, JR.

UNITED STATES OF AMERICA) CRIMINAL ACTION NO. 5:02CR10056
)
v.)
)
RUSSELL W. JONES,)
Defendant.)

Currently before the court is Defendant Deeter’s Motion to Reconsider Order Granting Government’s Motion to Consolidate filed on October 11, 2002. Having reviewed the motion and opposition thereto, and for the reasons hereinafter set forth, defendant Deeter’s motion to reconsider shall be DENIED IN PART and GRANTED IN PART as more fully explained below.

I. Background

On July 12, 2002 a grand jury in Abingdon, Virginia returned a one count indictment against Russell W. Jones and John P. Belles charging them with wire fraud, in violation of 18 U.S.C. § 1343. By order of the court on September 12, 2002, the indictment against

defendant Belles was dismissed. Also on September 12, 2002, a grand jury in Abingdon, Virginia returned a four count indictment against Russell W. Jones, John Daniel Deeter, and Robert N. Perry, charging them with conspiracy to obtain money by fraudulent means, to commit wire fraud, to engage in money laundering, and to make false statements, all in violation of 18 U.S.C. § 371. The indictment also charges some of the defendants with securities fraud and witness tampering, and a forfeiture count. The government moved to consolidate the above-captioned matters on September 16, 2002. In the motion to reconsider, defendant Deeter represents that by an oral order of Magistrate Judge Crigler, defendants had until October 11, 2002 to file their oppositions to the government's motion to consolidate. Unaware of the Magistrate Judge's order, and the usual ten-day response time having expired, the court granted the government's motion to consolidate the two matters on October 3, 2002. Nevertheless, given the Magistrate Judge's order, the court finds it proper to reconsider the government's motion to consolidate. Accordingly, it is this day

ADJUDGED, ORDERED AND DECREED

that Defendant Deeter's Motion to Reconsider Order Granting Government's Motion to Consolidate, filed on October 11, 2002, shall be, and it hereby is, **GRANTED IN PART**, insofar as the court shall reconsider its decision to consolidate the above-captioned matters.

II. The Parties' Arguments

I. Defendant Deeter's Motion

The defendant argues that the government has not made the factual or legal showing required to consolidate the two indictments for trial. The defendant alleges that the

government's motion to consolidate the matters, and the court in granting the motion, applied an incorrect legal standard in joining the two indictments for trial. Specifically, the defendant asserts that the standard of Rule 8(b) of the Federal Rules of Criminal Procedure, and not the Rule 8(a) standard, applies to joinder of defendants. (Def.'s Mot. to Recons. Order Grant. Gov'ts Mot. to Consolidate at 2.) Defendant argues that under Rule 8(b), the fact that "both indictments charge schemes to defraud" is insufficient to justify consolidation. (Def.'s Mot. to Recons. Order Grant. Gov'ts Mot. to Consolidate at 3). Finally, the defendant states that for consolidation to be proper, the alleged wire fraud in the Jones/Belles indictment must be part of the conspiracy in the Jones/Deeter/Perry indictment, and that nothing in the government's motion to consolidate, or either indictment, indicates such a connection. *Id.*

II. The Government's Response

The government filed a response to the defendant's motion on October 17, 2002. In the response, the government argues that the consolidation of the two cases was proper under Rule 8(b) of the Federal Rules of Criminal Procedure because all of the defendants were alleged to have participated "in the same series of acts or transactions constituting an offense." FED. R. CRIM. P. 8(b). The government argues that a plain reading of the two indictments at issue reveals that the fraudulent wire transfer alleged in the Jones/Belles indictment is the same conduct alleged in overt act number five of the overt acts committed by defendant Jones in furtherance of the conspiracy charged in Count One of the Jones/Deeter/Perry indictment. The government asserts that joinder of a substantive count with a conspiracy count is proper where the substantive count is also alleged to be an overt act

of the conspiracy.

III. Analysis

Rule 13 of the Federal Rules of Criminal Procedure governs when a court may order two or more indictments to be tried together. Specifically, Rule 13 provides that a court may properly join for trial two or more indictments if “the offenses, **and** the defendants if there is more than one, could have been joined in a single indictment.” FED. R. CRIM. P. 13 (emphasis added). Therefore, the defendant’s argument that in determining the propriety of consolidation, the court and the government’s motion to consolidate erroneously considered whether the Rule 8(a) test was satisfied, is without merit. A plain reading of Rule 13 reveals that to join two indictments for trial, the court must determine that both standards under Rule 8 are satisfied.

A. Joinder of Offenses

Because the defendant does not contest that the offense in the Jones/Belles indictment could be joined with the offenses charged in the Jones/Deeter/Perry indictment, the court will address the issue in a somewhat cursory fashion. Rule 8(a) provides that two or more offenses may be charged in the same indictment if the offenses “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.” The fraudulent wire transfer of money alleged in the Jones/Belles indictment is the act alleged to be an overt act committed by Jones in furtherance of the charged conspiracy in the Jones/Deeter/Perry indictment. Additionally, Count one of the Jones/Deeter/Perry indictment, charges the

defendants with conspiracy to commit wire fraud in violation of 18 U.S.C. § 1343, the identical charge in the Jones/Belles indictment. Accordingly, it is clear that the wire fraud and the conspiracy offenses “are of similar character or are based on . . . two or more acts or transactions connected together [and] constitut[e] parts of a common scheme or plan.” FED. R. CRIM. P. 8(a).

B. Joinder of Defendants

The court similarly finds that the defendants in the instant actions could have been charged in the same indictment. In pertinent part, Rule 8(b) provides that two or more defendants may be named in the same indictment if they “are alleged to have participated . . . in the same series of acts or transactions constituting an offense or offenses.” FED. R. CRIM. P. 8(b). In the motion to reconsider, the defendant states that “to consolidate the two indictments, the wire fraud alleged in the Jones/Belles indictment must be part of the conspiracy alleged in the Jones/Deeter/Perry indictment.” (Def.’s Mot. to Recons. Order Grant. Gov’ts Mot. to Consolidate at 3.) Considering that the wire fraud at issue is specifically referred to in the Jones/Deeter/Perry indictment, and that one of the offenses underlying the conspiracy charge is that Jones, Deeter, and Perry conspired to commit wire fraud, it is puzzling to the court how the defendant can argue that the fraudulent wire transfer is not part of the conspiracy. From the face of the two indictments at issue, the alleged fraudulent wire transfer is one act or transaction in the series of acts or transactions constituting the conspiracy charged in the Jones/Deeter/Perry indictment. *See United States v. Hargrove*, 647 F.2d 411, 414 (4th Cir. 1981) (finding joinder proper where one defendant

was charged with conspiracy and two substantive counts “were also alleged as overt acts of the conspiracy”); *see also United States v. Brugman*, 655 F.2d 540, 543 (4th Cir. 1981) (holding that as referred to in Rule 8(b), “[p]articipation’ in the same series of transactions . . . does not require ‘participation’ in each transaction of the series”).

Defendant is correct in arguing that the mere fact that both indictments charge schemes to defraud is insufficient basis to consolidate the two cases. However, as the discussion above demonstrates, the link between the defendants is much stronger than a mere similarity in charges. Defendant Jones is charged with both the conspiracy and the wire fraud charges. However, the indictments also allege that defendant Jones committed the fraudulent wire transfer in furtherance of the conspiracy charged in the Jones/Deeter/Perry indictment. Jones’s alleged fraudulent wire transfer, and the other offenses allegedly committed by Jones, Deeter, and Perry were all committed with the same goal, to facilitate fraudulent “high yield investment” programs. (Jones/Deeter/Perry Indict. at ¶ 1-3); (Jones/Belles Indict. at ¶ 2); *Cataneo v. United States*, 167 F.2d 820, 823 (4th Cir. 1948) (finding proper joinder where all of the criminal activities alleged on the part of three defendants were logically and intimately connected with one goal). The indictments in the above captioned matters demonstrate that the defendants charged in each of these offenses had a “concert of purpose,” and that the offenses were not independent crimes. *See Whitehead*, 539 F.2d at 1026 (holding that the standard of Rule 8(b) is not satisfied by two defendants “who engage separately and without concert of purpose in independent crimes of the same nature”); *United States v. Chinchic*, 655 F.2d 547, 550-51 (4th Cir. 1981) (holding that a joint trial for two burglaries that involved

some of the same defendants was not proper because the burglaries were “separate and unrelated transactions” and were not “connected [and did not] constitute[] a common plan or enterprise”).

It is accordingly,

ADJUDGED, ORDERED, and DECREED

that Defendant Deeter’s Motion to Reconsider Order Granting Government’s Motion to Consolidate, filed on October 11, 2002, shall be, and it hereby is, DENIED, insofar as it moves the court to vacate its October 3, 2002 consolidation order. The court hereby reaffirms its order of October 3, 2002 and finds that the aforementioned matters were properly consolidated for trial.

The Clerk of the Court hereby is directed to send a certified copy of this Order to all counsel of record and to the defendants.

ENTERED: _____
Senior United States District Judge

Date