UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
V.	*	**Cr. No. GLR-23-026**
RYAN DALES	*	
Defendant	*	
For: RYAN DALES	*	

MOTION TO SEVER

RYAN DALES, by his undersigned counsel, hereby moves this Honorable Court to sever count 1 from counts 2 through 4 and from counts 5 through 7, each group needing to be tried separately, and as grounds states:

FACTS

Defendant Ryan Dales is charged in a seven count superseding indictment with three entirely separate offenses - different in kind, distant in time and unrelated to each other, but for Dales being the defendant in each.

Specifically, count 1 charges a wire fraud scheme beginning in December, 2020, and ending in September 2021, involving alleged fraudulent obtaining of COVID-19 unemployment insurance benefits ("UI fraud") ECF 35. Counts 2 through 4 concern a search of the defendant's residence on January 20, 2023, nearly one and one-half years later in which drugs and guns were claimed to be found; these guns and drugs are unrelated to the wire fraud allegation. Finally, counts 5 through 7 alleged an entirely different fraud scheme involving identity theft that occurred from August, 2022, and

concluded in September, 2022 ("ID fraud"). No factual connection exists between the September, 2022, ID fraud that began over a year after the insurance fraud ended and the UI fraud alleged in count 1; they involved different methods, different goals and different evidence. Each of these groups must be tried separately.

ARGUMENT

Under Fed. R. Crim. Proc. 8(a), joinder of offenses in a single indictment is permitted in three circumstances:

> (a) 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.

Application of this Rule establishes that the current indictment charges three unrelated offenses and, therefore, must be tried in three separate trials.

I. Guns and Drugs Unrelated in Any Way to Fraud Counts

Counts 1 and 5 to 7 alleged two fraud schemes, one occurring from December, 2020 to September, 2021 ("the unemployment fraud"), and the latter occurring a year later from August to September, 2022 ("the ID theft fraud"). Counts 3 and 4 allege possession of guns and drugs. The offense in counts 3 and 4 is alleged to have occurred on a single date - January 20, 2023. There is no allegation in the indictment, or any of the discovery, that the guns and drugs are related in any way to the fraud allegations. The gun/drug counts and the fraud counts and obviously not of a similar character, not part of the same transaction or parts of a common scheme or plan. They are improperly joined in this indictment.

Law enforcement filed two search warrant applications for 900 East Fort Avenue - the first on January 18, 2023, that sought "evidence, fruits, contraband and instrumentalities of wire fraud in violation of 18 U.S.C. sec 1343…" It was only during that search that law enforcement found weapons and substances it believed to be controlled dangerous substances and packing materials for same. By the Government's own filings, the wire fraud and gun/drug charges are unrelated.

The search warrant applications establish that law enforcement did not allege anything related to guns or drugs when they sought a search warrant for Mr. Dales' residence on January 18, 2023. In this first application, the "Items to be Seized" attachment to the application describes in detail that types of documents the affiant expected to find. That attachment is attached hereto as Exhibit A.[1] No guns or drugs are mentioned or expected to be found. Dales was not being investigated for these crimes prior to the execution of the search warrant on January 20.

During the search that started in the early morning hours of January 20, however, law enforcement found suspected guns and drugs.[2] Because such items were not included in the permission of the first warrant, a second warrant was obtained. In this latter warrant the "Items to be Seized" is vastly different - guns, drugs and all evidence related to same

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[1] For Government reference, this exhibit is USA_01-117 to 121.

[2] The affidavit for the second warrant states: "During the execution of the search warrant for the **TARGET RESIDENCE** on the morning of January 20, 2023, law enforcement identified two firearms (handguns), ammunition, and suspected Controlled Dangerous Substances (CDS), as well as suspected CDS packaging materials." (emphasis in original). Warrant appliction at p.3. For Government reference, this quote is from USA_01-127.

were requested to be seized. See attached Exhibit B.[3] Thus, the only time Mr. Dales was connected in any way to the crimes in counts 3 and 4 was the unexpected alleged finding of both in his apartment on January 20, 2023, while agents searched for evidence of the UI fraud.

Therefore, the UI fraud and the guns/drugs charges are not "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." They are not related in type of offense and are alleged to occur 16 months apart. And, nothing in the UI fraud count suggests that the drug/gun counts were part of a common scheme or plan. These counts are improperly joined and must be severed from the UI fraud counts.

For the same reasons, the guns and drugs counts cannot be tried with the later charged ID theft counts. The guns and drugs were located in January, 2023; the ID theft fraud began in August, 2022 and was completed by September, 2022. Other than the name of the defendant, no overlap exists between the guns/drugs charges and the ID theft charges and no such connection is alleged in the indictment or found in the discovery.

The only similarity between the guns/drug counts and the ID theft is that both were unanticipated in the first search warrant. Indeed, the affidavit for the first search warrant has no mention of the ID theft fraud; evidence related to that crime was located for the first time during the January 20, 2023, search.[4] Thus, again, the ID theft and the

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[3] For Government reference, this exhibit is USA_01-131.

[4] Presumably, because the first warrant authorized seizure of records and documents related to fraud, the seizure of such items related to an unexpected crime appeared to fall within the permissive range of the warrant and, therefore, a second warrant to seize these other fraud records was not sought.

guns/drugs charges are not "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." They are not related in type of offense and are alleged to occur 4 months apart. And, nothing in the ID theft count suggests that the drug/gun counts were part of a common scheme or plan. These counts are improperly joined and must be severed from the ID theft counts.

II. The Fraud Counts, Although Similar in Title, Are Unrelated in Kind, Evidence and Time and Should be Severed From Each Other

Assuming, *arguendo*, that the guns/drugs charges are severed from the fraud counts, the Court must then consider whether the UI fraud and ID theft charges are properly joined. Because these latter counts and count one are so different in kind, evidence and timing, they are improperly joined and should be severed.

Count one of the indictment alleges that while Mr. Dales was living at a halfway house in East Baltimore, he submitted false document to obtain unemployment insurance. The application was in his own name; no other names or identity theft is alleged as part of the scheme. And the UI fraud, per the indictment, was completed by September, 2021; actually, all actions involved in applying for the money was completed by the end of 2020 - the remaining time was when the benefits were paid out.

The ID theft fraud, by contrast, did not even start until almost a year later. The UI fraud alleges that Dales submitted, in his own name, an application for unemployment benefits when, in fact, he had not been previously employed and entitled to such benefits. The ID theft counts allege that Dales used the names of others to steal not from the Government, but from retail stores by obtaining retail items using the fraudulent accounts.

The ID theft counts alleged that Dales used drivers licenses in others' names that contained his picture to buy these items. Nothing similar is alleged for the UI fraud - there the allegation is that Dales claimed to have been employed and provided documents the Government believes are false.

As charged, the two alleged schemes thus completely different not only in the time they were committed, but, more importantly, in the manner they were committed and the victims of the offenses and the evidence the Government would introduce for each crime are entirely distinct from one another. There is no overlapping evidence: other than the name of the defendant, nothing in a trial of the UI fraud would be evidence of the ID theft a year later and nothing in the trial of the ID theft would come into a trial to prove the prior unemployment fraud.

III. Under Fourth Circuit Law, These Counts are Improperly Joined

While Rule 8(a) "permit[s] very broad joinder because of the efficiency in trying the defendant on related counts in the same trial", *United States v. Mackins*, 315 F.3d 399 (4th Cir. 2003), when the only connection between the counts is the defendant's name, joinder is not permitted.[5] *United States v. Hawkins*, 776 F.3d 200, 209 (4th Cir. 2009) and *Mackins*, at 412-413. Rather, " joinder is permitted where the events pertaining to each [crime are] inextricably tied to the others." *United States v. Caldwell*, 433 F.3d 378, 385 (4th Cir. 2005) (internal quotation marks omitted). Other than charging the defendant in

[5] But "the less rigorous requirements of Rule 8(a) are not infinitely elastic, and so cannot be stretched to cover offenses ... which are discrete and dissimilar and which do not constitute parts of a common scheme or plan" *Mackins*, at 412-413. (internal quotations omitted).

both frauds, the UI fraud and ID theft charges are not only not "inextricably tied", they are not tied to each other at all.

The distance in time between the offenses also precludes joinder here. In *United States v. Foutz*, 540 F.2d 733 (4th Cir. 1976), the Court found joinder improper where the defendant was charged in two bank robberies that were perpetrated fewer than four months apart. Exactly the same crime, four months apart but not properly joined. In the instant case, the two fraud crimes are entirely dissimilar and nearly 12 months apart. Similarly, *Hawkins* held joinder improper where the defendant was charged with carjacking and possession of a weapon and, "about three weeks later, being felon in possession of a different weapon." *Id*., at 208. Similar offenses, but three weeks was too distant in time for the charges to be brought in one trial.[6]

Even without a temporal connection, joinder may be allowed where one "crime was committed in a manner so similar to that of the offense for which the defendant is being tried that it is highly probable that the same person committed both crimes…" *United States v. Foutz*, 540 F.2d 733, 737 (4th Cir. 1976). This permission also fails here - the UI fraud involved only the defendant's name and company, did not use anyone else's identification and was submitted online. The ID theft charge concerns stealing multiple

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[6] *Hawkins* cited *United States v. Holloway*, 1 F.3d 307 (5th Cir. 1993) with approval. In *Holloway*, the Court found joinder improper where the defendant was charged with robbery and being a felon in possession of a weapn, but the possession charge arose two months after the robbery. The Fifth Circuit held that "on the face of the indictment there is no indication that a connection exists between his possession of the weapon and the alleged robbery conspiracy. Furthermore, there is no allegation that he had planned to use the weapon in a robbery, had used the weapon in a robbery, or that the weapon was in any way connected to the charged robberies or to any robbery." *Hawkins*, at 208, quoting *Holloway*, at 310.

persons' identities, setting up credit in those names and going into stores to purchases retail items. Nothing in these two crimes suggests that they were committed in a manner "so similar" to conclude that the same person must have committed both crimes.

Finally the fact that evidence of the ID theft charges was found during the investigation of the UI fraud offense does not otherwise permit joinder. In *United States v. Caldwell*, 433 F.3d 378 (4th Cir. 2005), the defendant was charged with a murder-for-hire conspiracy and a gun possession; when law enforcement arrived to arrest the defendant and searched his house, they found a gun. The defendant argued "that his gun possession and participation in the murder-for-hire scheme were separate and distinct from one another and thus had no logical relationship under Rule 8(a)." *Id*., at 386. The Government responded that joinder was proper because "the gun and murder-for-hire counts were logically related because the firearm count was based on the seizure of the [gun] during the investigation of the murder-for-hire-scheme." *Id*. The Court quickly rejected this argument: "We do not agree with the Government's argument. …. A contrary holding would effectively read Rule 8(a) to allow limitless joinder whenever the charge resulted from the fruits of a single investigation." *Id*.

CONCLUSION

"One inevitable consequence of a joint trial is that the jury will be aware of evidence of one crime while considering the defendant's guilt or innocence of another. If the rationale of the "other crimes" rule is correct, it would seem that some degree of prejudice is necessarily created by permitting the jury to hear evidence of both crimes." *Foutz*, at 735. The Government has charged three entirely separate charges against Mr. Dales.

Rule 8(a) does not permit joinder of such unrelated offenses - an unemployment fraud in his own name in December, 2020, identity theft charges in others' names in August, 2022, and then guns and drug charges from a single day in January, 2023.

WHEREFORE, defendant RYAN DALES hereby moves this Honorable Court to sever these counts and require separate trials on each.

Respectfully submitted,

_____/s/_____

Richard Bardos
Schulman, Hershfield & Gilden, P.A.
1 East Pratt Street, 9th Floor
Baltimore, Maryland 21202
(410) 332 0850

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th of October, 2023, a copy of the foregoing motion was served electronically by ECF to: Office of the United States Attorney, 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201 and all defense counsel.

_____/s/_____

Richard Bardos