

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

---

UNITED STATES OF AMERICA )  
 )  
 v. ) CR No. 07-138 S  
 )  
 SOUVANH KEOSOUVANH )  

---

**DECISION AND ORDER**

WILLIAM E. SMITH, United States District Judge.

On December 16, 2008, Defendant was convicted of nine counts stemming from a reverse government sting operation. Before the Court are his two post-trial motions: (1) Renewal of Motion for Judgment of Acquittal; and (2) Motion for New Trial. For the following reasons, both motions are DENIED.

I. Background

Defendant was indicted on numerous charges following an undercover operation in which ATF Special Agent Wing Chau posed as a drug courier working for Boston drug dealers. During in-person meetings in Providence and telephone conversations between the Defendant and Special Agent Chau in March and April of 2007, the two discussed whether Defendant could provide a "crew" to rob (fictitious) Providence cocaine dealers. During four of these meetings, Defendant delivered ecstasy pills to Special Agent Chau in exchange for money. On April 26, 2007, Special Agent Chau, the Defendant, and his three alleged co-conspirators met and drove in a federal undercover vehicle to a storage facility to prepare for the robbery. The three alleged co-conspirators had firearms and,

once at the facility, Special Agent Chau provided the Defendant (at his request) with a nine millimeter Smith & Wesson semi-automatic pistol (the firing pin had been removed for safety). While Defendant, his "crew" and Special Agent Chau finalized their plans, an ATF Special Response team moved in. When taken into custody, Defendant and two members of the "crew" had bandannas, one had a black ski mask, and all wore latex rubber gloves.

The undercover vehicle Special Agent Chau used at all times was equipped with audio and video recording equipment. On the night planned for the purported robbery, he also wore a recording device on his body. At trial, the Government introduced numerous video and audio recordings of the exchanges between Defendant and Special Agent Chau, as well as recordings and video from the final car ride to and meeting at the storage facility with Defendant and the other men.

After a two day trial, a jury convicted the Defendant of all counts charged in the Indictment: (1) conspiracy to possess with intent to distribute five kilograms or more of cocaine, 21 U.S.C. § 846; (2) possession of a firearm in furtherance of a drug trafficking offense, 18 U.S.C. § 924(c); (3) conspiracy to obstruct, delay and affect commerce by robbery (Hobbs Act), 18 U.S.C. § 1951; (4) possession of a firearm in furtherance of a crime of violence (robbery), 18 U.S.C. § 924 (c); (5) being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1); and (6) - (9) four counts of distribution of methylenedioxymethamphetamine, 21

U.S.C. § 841. Following argument, the Court denied Defendant's Motion for Judgment of Acquittal at the close of the Government's case. Defendant presented no evidence.

## II. Discussion

### A. Motion for Judgment of Acquittal

Defendant renews this motion under Fed. R. Crim. P. 29 on the grounds that the evidence was insufficient to sustain a conviction as to Counts I and II (drug conspiracy and possession of a firearm in furtherance) and Counts III and IV (Hobbs Act conspiracy and possession of a firearm in furtherance). The Court examines whether the Government's evidence -- viewed in the most favorable light -- was sufficient to support a guilty verdict beyond a reasonable doubt. It clearly was.

Defendant challenges the drug conspiracy conviction on the basis that 1) there was no evidence about what Defendant and his "crew" intended to do with the cocaine they stole; 2) the evidence did not support two separate conspiracies; and 3) there was insufficient evidence to find an agreement regarding the amount of cocaine Defendant intended to possess (5 kilograms). None of these arguments have merit. First, the evidence about what Defendant planned to do with the cocaine was contained in the recordings of his conversations with Special Agent Chau in which they discussed the anticipated amount. And, the recorded conversation on the night of the purported robbery confirmed that the others shared this objective: to steal cocaine and sell it. Details about when,

where, and how they intended to sell it are irrelevant. A rational jury could reasonably interpret this evidence as proving a conspiracy to possess with intent to distribute.

Second, sufficient evidence existed for the jury to find Defendant engaged in more than one illicit agreement - possession of cocaine with intent to distribute, and robbery. This Court in its instructions to the jury detailed the separate elements of each distinct conspiracy. Indeed, at the Defendant's request, it added a separate charge entitled "Number of Conspiracies" to emphasize that the jury could find no conspiracy, one conspiracy, or more than one conspiracy.

Third, although Defendant makes much of the cocaine amount at the target of this conspiracy (and did so during trial), the evidence reflects varying references to different amounts, including five or six kilograms. The final recording reveals that Special Agent Chau told Defendant and the "crew" in the car that the dealers usually had four or five kilograms, probably no less than six. The jury had the option to find a lesser amount of cocaine, and it declined to do so. Viewing the evidence in the light most favorable to the Government, the Court cannot say that this was wrong.

Moving on to Count III, Defendant argues there was no evidence that he or his "crew" knew that the cocaine they intended to steal traveled or would travel in interstate commerce. This argument is baseless. Such knowledge is not, by any means, an element of a

Hobbs Act violation that the Government must prove. United States v. Brennicks, 405 F.3d 96, 100 (1st Cir. 2005) (reiterating that "government need show only that the conduct created a 'realistic possibility' of a minimal effect on interstate commerce") (internal citation omitted); United States v. Nelson, 137 F.3d 1094, 1103 (9th Cir. 1998) ("a defendant need not know that his or her crime will have an impact on interstate commerce in order to be found guilty under the Hobbs Act").

Even less needs to be said about Defendant's attack on the firearm convictions. The Government produced more than enough evidence for the jury to reasonably infer that the Defendant intended to use the firearm to possess the cocaine and effectuate the robbery. The fact that the conspiracy may have already been complete upon the making of an agreement, as the Defendant argues, does not mean his later possession of a firearm cannot further the ongoing criminal objective.<sup>1</sup> In sum, there was ample reason to return a guilty verdict on all counts.

#### B. Motion for New Trial

The Court may grant a new trial "if the interest of justice so requires." Fed. R. Crim. P. 33. This blanket statement is all Defendant offers in support of his motion and, as the Government points out, he may have waived such an argument by failing to adequately develop it. Nevertheless, the Court has considered the

---

<sup>1</sup> Defendant's argument about multiple 924(c) convictions relates to sentencing and will be addressed at the appropriate time.

issues raised in Defendant's Motion for Judgment of Acquittal as they relate to whether a new trial is appropriate based on sufficiency of the evidence.<sup>2</sup> The Court has also reviewed the Government's thorough submission on this topic. It agrees that there is no basis in the record to justify a new trial, especially where this remedy "is sparingly used, and then only where there would be a miscarriage of justice . . . and where the evidence preponderates heavily against the verdict." United States v. Indelicato, 611 F.2d 376, 387 (1st Cir. 1979) (internal quotation and citation omitted).

### III. Conclusion

For the foregoing reasons, Defendant's Renewed Motion for Judgment of Acquittal and Motion for New Trial are DENIED.

IT IS SO ORDERED.

---

William E. Smith  
United States District Judge  
Date:

---

<sup>2</sup> Defendant alleges no errors with respect to evidentiary matters or otherwise.