

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. 3:03CR33(EBB)

RENALDO ROSE :

RULING ON DEFENDANT'S MOTIONS TO SEVER AND TO SUPPRESS

INTRODUCTION

The defendant, Renaldo Rose (hereinafter "defendant" or "Rose"), is charged in a superseding indictment with violations of the Hobbs Act and federal firearms laws connected with an armed robbery of a United States Parcel Service truck and the attempted extortion of Edward Lampert (hereinafter "Lampert"). Defendant moves, pursuant to Fed. R. Crim. P. 12(b), to suppress all evidence seized during a search of his home [Doc. No. 57]. Defendant Rose also moves, pursuant to Fed. R. Crim. P. 8(a) and 14(a), to sever Counts Four and Five of the Superseding Indictment from Counts One through Three [Doc. No. 62]. For the reasons that follow, Defendant's motions to suppress and to sever are DENIED.

BACKGROUND

On February 18, 2003, a federal grand jury returned a

two-count Indictment charging the defendant with violating 18 U.S.C. §1951 (The Hobbs Act), based on the defendant's alleged involvement in the armed abduction and attempted extortion of Lampert. Thereafter, on April 8, 2003, the grand jury also returned a five-count Superseding Indictment charging the defendant with violations of the Hobbs Act and federal firearms laws as a result of his alleged participation in an armed robbery of a United Parcel Service (UPS) truck on December 24, 2002, and the attempted extortion of Lampert between January 10 and January 12, 2003. The indictment is based on the following evidence the government seeks to present and prove at trial:

In October, 2002, the defendant contacted an old friend, Shemone Gordon (hereinafter "Gordon"), to inquire whether he was interested in abducting an individual to obtain money. In or around October, 2002, through December, 2002, the defendant used the Internet to compile a list of individuals whom they could potentially abduct. Through this research, the defendant identified Lampert as a target for abduction, and obtained information regarding ESL Investments, the company Lampert worked for, his investments, and his finances. The defendant and Gordon sought out items necessary to implement the kidnapping and extortion of Lampert, including handcuffs, bulletproof vests and firearms. They also recruited other

individuals, including Devon Harris ("Harris") and a juvenile male (hereinafter "L.J."), to help them.

On or about December 24, 2002, the defendant, Gordon, Harris and L.J. committed an armed robbery of a UPS truck. The government alleges that the robbery was committed, in part, to permit Rose to assess whether Harris and L.J. were capable of carrying out Lampert's abduction.

On approximately January 10, 2003, the defendant, Gordon, Harris and L.J. drove to Greenwich, Connecticut, to the parking lot of the office building in which Lampert worked. They drove in a Ford Expedition, in which they brought flexible plastic restraints, masks, a shotgun, an air pistol, two-way radios, and other items to carry out the kidnapping. When the defendant observed Lampert walking to his car, he ordered Gordon and L.J. via two-way radio to abduct him. The defendant, Gordon, Harris and L.J. brought Lampert to a hotel room, bound and blind-folded, where the defendant informed him that the defendant had been hired to kill him in exchange for \$1 million. The defendant also demanded the payment of a ransom from Lampert for his release. On January 12, 2003, the defendant, Gordon and L.J. drove Lampert to Greenwich, Connecticut and they released him with the understanding that he would deliver to an agreed upon location approximately \$40,000 on January 17, 2003. That same day, Gordon, Harris

and L.J. were arrested. The defendant fled to Canada after releasing Lampert, but sought assistance in retrieving the negotiated ransom from him.

On January 13, 2003, United States Magistrate Judge Holly B. Fitzsimmons issued federal arrest warrants for Rose, Gordon, Harris and L.J. Rose, Gordon, and Harris were charged with conspiring to violate 18 U.S.C. §1951 (a)(Hobbs Act extortion). L.J. was charged with an act of juvenile delinquency, a charge subsequently dismissed in a favor of a state prosecution.

On January 15, 2003, a state court judge issued a search warrant authorizing the Hamden Police Department to search the residence of the defendant, 231 Butler Street, Hamden, Connecticut, in connection with the defendant's participation in a credit card fraud scheme. It authorized law enforcement officers to seize:

All computers, computer data storage systems, credit cards, credit card numbers and addresses and personal information of David Stevens, Palmer Gehring, Paul Rollo and David Hogan. Information on Email addresses of mikel23452003@hotmail.com, longlist22@yahoo.com. Any United States Postal, Federal Express or United Parcel Service information related to receiving items using the above names. Manadnock double cuffs, black hidden masks.

All computer, computer data storage systems will be sent for forensic analysis.

Also on January 15, 2003, a federal search warrant for 231 Butler Street was issued by United States Magistrate Judge

Holly B. Fitzsimmons, in connection with a federal investigation of the defendant's involvement in the extortion scheme. The search warrant authorized law enforcement officers to seize the following items:

1. All firearms, firearm accessories, ammunition.
2. All documents, including, but not limited to, all invoices, receipts, or purchase orders, relating to firearms, firearm accessories, or ammunition.
3. All flexible handcuffs and other types of devices capable of restraining an individual.
4. All documents, including, but not limited to, all invoices, receipts or purchase orders, relating to flexible handcuffs or other types of devices capable of restraining an individual.
5. All credit cards, credit card receipts, and credit card statements for Renaldo Rose.
6. All bank statements, cancelled checks, and check registers for Rendaldo Rose.
7. All documents relating to the lease of a black Ford Expedition.
8. All documents relating to the ownership or possession of a black Chrysler M300.
9. All identification documents, including, but not limited to, military identification documents, bearing the image of Renaldo Rose or other information pertaining to Renaldo Rose.
10. All telephone toll records
11. All documents relating to the purchase of a micro cassette recorder
12. All documents relating to the purchase of hidden face mask hoods or other items capable of concealing an individual's face.

13. All documents containing information about Edward Lampert, ESL Investments, or other companies or entities in which Lampert or ESL Investments have an interest or are associated.

14. All documents reflecting Renaldo Rose's possessory interest in 231 Butler Street.

The Hamden Police Department executed their warrant on January 15, seizing several documents, computer equipment and electronic storage systems, principally from two bedrooms on the second floor and boxes found in the second floor hallway. The search lasted approximately two hours and fifteen minutes. At the same time as the Hamden Police Department conducted its search, federal law enforcement officers, assisted by Hamden officers and officers employed by the Greenwich Police Department, executed the federal search warrant. While conducting the search, the federal officers discovered: (1) scraps of paper bearing the names and addresses of other individuals, some of whom a special agent recognized as prominent residents of Connecticut; (2) a notebook outlining a series of steps consistent with a plan to abduct a person and names of the other co-conspirators involved in the abduction; (3) a rental agreement for a van; (4) a map of Greenwich; and (5) a document containing the name of Bill Crowley, a corporate officer of ESL Investments.

The Government then sought, and United States Magistrate Judge Fitzsimmons issued, also on January 15, a second search

warrant for 231 Butler Street, authorizing law enforcement officers to seize the evidence related to the discoveries listed above. Specifically, the warrant authorized the seizure of the following items:

1. Scraps of paper bearing the names and addresses of prominent residents of Connecticut.
2. A notebook outlining a series of steps consistent with a plan to abduct a person and containing the name "Troy".
3. All agreements for the lease or purchase of cars, including, but not limited to a rental agreement for a van.
4. All maps, including, but not limited to a map of Greenwich.
5. All documents containing the names of individuals associated with ESL Investments, including, but not limited to, a document containing the name of Bill Crowley, a corporate officer of ESL Investments.

The federal search lasted approximately three hours, during which eight items were seized. Those items included a receipt for a firearm, a piece of paper containing Lampert's name, pieces of paper containing the names of several Connecticut residents and their purported addresses, a notebook with the name "Troy" on the front cover, a rental agreement in the name of Arnold Rose, a map of Greenwich, a piece of paper containing the names of William Crowley and others, and a Webster bank statement for Renaldo Rose.

The defendant now moves to suppress evidence seized during the searches of his residence in Hamden, Connecticut,

and to sever his trial on the charges relating to the armed robbery of the UPS truck from his trial on the charges relating to the attempted extortion of Lampert.

LEGAL ANALYSIS

I. Severance Motion

The defendant moves this court to sever two counts of the indictment, asserting that prejudice will result if the two events are tried together. Severance is controlled by Fed. R. Crim. P. 14, which addresses whether the joinder of two or more offenses is prejudicial. See United States v. Lane, 474 U.S. 438, 447, 88 L. Ed. 2d 814, 106 S. Ct. 725 (1986) (citing Schaffer v. United States, 362 U.S. 511, 515-16(1960)).

Severance motions are committed to the sound discretion of the district court. See United States v. Harwood, 998 F.2d 91, 95 (2d Cir. 1993); United States v. Tutino, 883 F.2d 1125, 1130 (2d Cir. 1989). Rule 14(a) provides, in pertinent part:

If the joinder of offenses...in an indictment...appear to prejudice a defendant...,the court may order separate trials of counts...or provide any other relief that justice requires.

Multiple offenses may be charged in the same indictment if they 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." Fed. R. Crim. P.

8(a). Joinder is permitted when there is an overlap of participants and acts, United States v. Attanasio, 870 F.2d 809, 815 (2d Cir. 1989), so that the same evidence constitutes proof for each count. United States v. Amato, 15 F.3d 230, 236 (2d Cir. 1994); United States v. Blakney, 941 F.2d 114, 116 (2d Cir. 1991).

In the present case, the defendant is charged in Counts One through Three with armed kidnapping and extortion of Lampert, and in Counts Four and Five with armed robbery of a UPS truck. Although these are separate acts, the government asserts that the acts involved in each count in this case are components of a common plan or scheme. The government charges the defendant with conspiring to violate the Hobbs Act by extortion, alleging that, as part of the conspiracy, the defendant also conspired with others to commit the armed robbery. According to the government, the robbery of the UPS truck was intended to permit the defendant to assess whether his co-conspirators were capable of carrying out the abduction and extortion also charged in the indictment. In support of this theory, the government presents evidence that the two crimes involved the same group of individuals, employed similar methods of accosting the victims, and used the same types of plastic hand-cuffs, blinders, masks and firearms. Accordingly, this court finds the government has set forth

enough evidence to permit joinder of the offenses based on the allegation of a common plan or scheme. See United States v. Ajlouny, 629 F.2d 830, 842 (2d Cir. 1980) (affirming the district court's conclusion that the government was "not speculative" in attempting to show that the purpose of an act of telephone fraud was to "facilitate the theft and shipments of communications equipment" connected with the stolen property count in the indictment.) (quoting United States v. Ajlouny, 476 F. Supp. 995, 1000 (E.D.N.Y. 1979) . The defendant's motion to sever therefore fails.

II. Suppression Motion

The defendant moves to suppress all items seized during the search of his home at 231 Butler Street, on January 15, 2003. The defendant contends that the law enforcement officers who executed the search went beyond the scope of the warrant, thereby creating an illegal "general" search. (Def.'s Mot. to Suppress, 4.) Law enforcement officers conducting a search must adhere strictly to the limitations set by the search warrant. Marron v. United States, 275 U.S. 192, 196 (1927), *reh'g denied*, 277 U.S. 613 (1928). A search must be confined to the items named in the warrant, instrumentalities of a crime discovered during the search, and property to which a special reason for seizure attaches, such as officers'

safety. Dale v. Bartels, 732 F.2d 278, 284 (2d Cir. 1984).

The defendant claims that the officers conducting the search went beyond the scope of the warrants by "rummaging through all of the defendant's (and other's who lived in the house) possessions." (Def.'s Mot. to Suppress at 14). Beyond this conclusory statement, however, the defendant fails to offer any evidence that the executing officers transformed the search into a "general seizure". Further, the defendant filed no affidavit reciting any supporting facts to his conclusory allegations of wrongdoing. The Second Circuit has made very clear that a defendant seeking to suppress evidence bears the burden of demonstrating disputed issues of fact that would justify an evidentiary hearing. See United States v. Culotta, 413 F. 2d 1343, 1345 (2d Cir. 1969). The required showing must be made by an affidavit from an individual with personal knowledge of the underlying facts. See United States v. Ruggiero, 824 F. Supp. 379, 393-94 (S.D.N.Y. 1993)(finding a motion to suppress not supported by the proper affidavit may be denied without a hearing.).

The defendant failed to make any factual showing whatsoever that the officers were rummaging indiscriminately through his possessions. In fact, all of the articles taken by the officers were specified as items to be seized in the warrants. Therefore, the defendant's contention that the

officers executing the search warrants went beyond the scope of the warrants is meritless, and this Court finds that suppression of the items seized from the defendant's residence is unwarranted.

CONCLUSION

For the preceding reasons, the motion to suppress evidence [Doc. No. 57] and the motion to sever the claims [Doc. No. 62] are DENIED.

SO ORDERED

ELLEN BREE BURNS
SENIOR UNITED STATES DISTRICT

JUDGE

Dated at New Haven, Connecticut this _____ day of January,
2004.