

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

United States :
 :
v. : No. 3:02cr7(JBA)
 :
Perez et al. :

Ruling on Defendant Pina's Motion
Under Fed. R. Crim. P. 29 & 33 [Doc. #532]¹

In this multi-defendant murder-for-hire case, defendant Raymond Pina was acquitted of the most serious counts (relating to the murder itself) but was convicted of one count of witness tampering, in violation of 18 U.S.C. § 1512(b),² for "corruptly persuading" his girlfriend (Jessica Soler) to give false testimony to the grand jury investigating the murder. Pina's motion for a judgment of acquittal concedes that a jury could have found that he attempted to persuade Soler to be untruthful in her testimony:

¹This Ruling also disposes of defendant Pina's oral motions for the same relief.

²"Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to - (1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce any person to - (A) withhold testimony . . . from an official proceeding; * * * (C) evade legal process summoning that person to appear as a witness . . . in an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned by legal process; * * * shall be fined under this title or imprisoned not more than ten years, or both." Pina was charged with and convicted of "corruptly persuading" Soler, rather than using violence or other means.

Viewing the evidence in the light most favorable to the government, the jury could have found that Raymond Pina requested Jessica Soler not to attend a grand jury session to which she had been subpoenaed and she refused; he then requested that she lie about his whereabouts and her contacts with him, and she assented. He did not use intimidation or physical force; he did not threaten; and he did not bribe her to lie.

Motion [Doc. #532] at 3.³ Pina's motion argues, nonetheless, that because Pina allegedly "did nothing more than request Jessica Soler, politely, to absent herself and to lie," *id.*, no jury could reasonably find that he had corruptly persuaded Soler, and he must therefore be acquitted.

Pina's argument is foreclosed by the Second Circuit's authoritative interpretation of the statute's prohibition of "corrupt persuasion" as proscribing persuasion that is "motivated by an improper purpose." United States v. Thompson, 76 F.3d 442, 452 (2d Cir. 1996) ("Section 1512(b) does not prohibit all persuasion but only that which is 'corrupt[].'" The inclusion of the qualifying term 'corrupt[]' means that the government must prove that the defendant's attempts to persuade were motivated by

³Pina's subsequent argument that Soler's testimony was insufficient to constitute proof beyond a reasonable doubt is therefore without merit, as the Court "will not disturb a conviction on grounds of legal insufficiency of the evidence at trial if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt," United States v. Feliciano, 223 F.3d 102, 113 (2d Cir. 2000) (emphasis in original, internal quotation omitted), and Soler's testimony, if credited, is sufficient to establish each element of the crime.

an improper purpose.") (citations omitted). In Thompson, the Second Circuit approved of the trial court's jury instructions on corrupt persuasion, which accord with this Court's instructions to the jury on this point. Compare Thompson, 76 F.3d at 453 ("To act "corruptly" as that word is used in these instructions means to act deliberately for the purpose of improperly influencing, or obstructing, or interfering with the administration of justice.") (quoting, with approval, district court's charge to jury) with Jury Instructions [Doc. #456] at 84 ("To act 'corruptly' as that word is used in these instructions means to act deliberately for the purpose of improperly influencing, obstructing, or interfering with the administration of justice."). Cases decided subsequent to Thompson have not overruled or limited its holding, and thus Thompson remains binding precedent in this Circuit. Pina's motion for a judgment of acquittal must therefore be denied.

Pina also argues, in the alternative, for a new trial. His first contention is based on testimony inadvertently elicited by the Government on direct examination of another witness that the witness had seen Pina selling drugs in Manhattan, as well as testimony by Soler that obliquely referenced Pina's outstanding warrants. As he did in his oral motion for a mistrial, Pina contends that this testimony was prejudicial and beyond cure by jury instructions. As the Court concluded in denying the motion

for a mistrial, the drug-selling comment was an isolated reference by one witness in the course of thirteen days of evidence; the comment was not solicited or used by the Government; the Court gave an immediate curative instruction; and the Jury Instructions instructed that "neither defendant is on trial for any act or any conduct not specifically charged in the indictment," "both defendants begin the trial with a clean slate," and "You may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers." Any objection to Soler's reference to outstanding warrants was waived when no objection was made and the opportunity for a curative instruction had passed.

Finally, Pina claims that the jury instructions may have allowed the jury to return a verdict that was less than unanimous in that jurors may have reached different conclusions about what, precisely, Pina intended when he corruptly persuaded Soler.⁴ This argument is foreclosed by the Court's general instruction on unanimity,⁵ as such instructions are sufficient unless "the

⁴See [Doc. #532] at 11 ("Some [jurors] may have believed that Mr. Pina sought to persuade [Soler] to absent herself but that he did not ask her to lie; others may have thought that he asked her to lie but did not ask her to absent herself."). No objection was made to the jury charge in this regard.

⁵See Jury Instructions [Doc. #456] at 6 ("[the] presumption of innocence alone is sufficient to acquit [the defendants] unless, after careful and impartial consideration of all the evidence in this case, you as jurors are unanimously convinced beyond a reasonable doubt of the guilt of either or both of the

complexity of the evidence or other factors create a genuine danger of jury confusion," United States v. Schiff, 801 F.2d 108, 814-815 (2d Cir. 1986) (citation omitted), which was not the case in this straightforward case of a defendant corruptly imploring his girlfriend not to appear before a grand jury investigating the defendant's involvement in a crime. See United States v. Shaoul, 41 F.3d 817 (2d Cir. 1994); United States v. Harris, 8 F.3d 943, 945 (2d Cir. 1993).⁶

Defendant's motion [Doc. #532] is DENIED in its entirety.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 29th day of August, 2003.

defendants") (emphasis added).

⁶Pina's suggestion that the line of Second Circuit cases of which Shaoul and Harris are a part has been undermined by Richardson v. United States, 526 U.S. 813 (1999), is without merit because, as the Government notes, the Richardson trial court had specifically instructed the jury that while there must be unanimous agreement "that the defendant committed at least three federal narcotics offenses . . . you do not have to agree as to the particular three or more federal narcotics offenses committed by the defendant," id. at 816 (quotations and alterations omitted), while no portion of the jury instructions in this case contradicted the Court's general admonition that unanimity was required.