

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No. 97-55-P-H
)	
CATHERINE DUFFY PETIT, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION ON MOTIONS TO DISMISS COUNT I

Defendants Roland L. Morin¹ and Steven A. Hall have moved separately to dismiss Count I of the indictment in this action on the ground that it is duplicitous, in that it charges several conspiracies instead of a single conspiracy. Docket Nos. 34 & 99. Defendants David Hall and Paul Richard join in Morin’s motion, Docket Nos. 110 & 112, and defendants David Hall, Richard and Morin join in Steven Hall’s motion, Docket Nos. 110, 112 & 114. I recommend that the court deny the motions.

An indictment is defective due to duplicity when it charges more than one offense in a single count. *United States v. Huguenin*, 950 F.2d 23, 25 (1st Cir. 1991). However, “[t]he allegation in a single count of a conspiracy to commit several crimes is not duplicitous, for ‘The conspiracy is the crime, and that is one, however diverse its objects.’” *Braverman v. United States*, 317 U.S. 49, 54

¹ Morin also moves to dismiss Counts 323-343 in this motion, on separate and distinct grounds. Defendant Roland L. Morin’s Motion to Dismiss Counts 1 and 323 Through 343 (“Morin Motion”) (Docket No. 34). That portion of his motion, which is similar to motions to dismiss those counts brought by other defendants as well, will be addressed in a separate recommended decision on those motions to dismiss, which are Docket Nos. 87, 88, 89, 90, 100, and 124.

(1942), quoting *Frohwerk v. United States*, 249 U.S. 204, 210 (1919). The statute that provides the basis for Count I is set forth below.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 371. The use of the word “defraud” is not limited to the common law definition. “It reaches ‘any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government.’” *Dennis v. United States*, 384 U.S. 855, 861 (1966), quoting *Haas v. Henkel*, 216 U.S. 462, 479 (1910).

Asserting that the indictment alleges only “minimal” activity on his part, “essentially independent of the principal thrust of the conspiracy alleged in Count One,” Morin contends that he is therefore entitled to dismissal of Count One as to him.² Morin Motion at 6. This analysis of the indictment leads Morin, by means that are unclear at best, to the conclusion that Count I alleges multiple conspiracies. *Id.*

Steven Hall contends that Count I of the indictment actually alleges five separate conspiracies: one to defraud the United States by impairing and obstructing the function of the bankruptcy court and one each to violate four different federal criminal statutes. Memorandum in Support of Motion to Dismiss Count One (“Hall Motion”) (Docket No. 99) at 2. Like Morin, Steven Hall focuses on an

² Morin’s motion concerning Count I is cast solely in personal terms, that is, how the indictment alleges conspiracy against him. It is difficult to see how defendants David Hall and Richard could join in this motion, as they purport to do.

alleged lack of evidence concerning his liability under each of the elements of the crime of conspiracy.³ Steven Hall also argues that the only possible consequence of a single conspiracy such as that described in Count I would be a violation of state law (theft), which cannot serve as the unifying purpose of a conspiracy charge under section 371. *Id.* at 2-3, [6].

The government responds that Count I alleges a single conspiracy with multiple objects and argues that the question whether a single conspiracy or multiple conspiracies existed is a matter for resolution by the jury, citing *Sepulveda*, 15 F.3d at 1190. Government's Memorandum of Law in Opposition to Defendants' Pretrial Motions (Docket No. 130) at 83. Noting that the government is not required to produce all of its evidence before trial, the government requests that the motions be denied. *Id.*

Proper joinder of numerous offenses in a single conspiracy count is determined from the face of the indictment. *United States v. Hughes*, 823 F. Supp. 593, 607 (N. D. Ind. 1993). To the extent these defendants argue that Count I could or should be divided into unrelated conspiracies, they are reminded that the existence of a single conspiracy is a question of fact that is reserved to the jury. *Id.*

I do not read Count I of the indictment necessarily to charge only a conspiracy to steal money

³ Steven Hall notes that the overt acts he is alleged in Count I to have committed in furtherance of the conspiracy took place two years after the Petit bankruptcy proceeding began and that many of the crimes alleged in the indictment took place before he became involved "with the so-called Petit organization." Hall Motion at 2 & 4. Morin states that the "proof suggests an involvement [on his part] spanning a relatively short portion of the alleged Petit organization's existence and operations, and an involvement limited in scope to the solicitation of investors," that his "alleged activity was both minimal in the scheme of the events as they transpired and constrained to *investor solicitation*," and that the "proof is insufficient to charge [him] with a knowledge of and participation in the global conspiracy charged in count one." Morin Motion at 3 & 6 (emphasis in original). While these observations are all beside the point of the motions, the First Circuit has stated that "in a unitary conspiracy it is not necessary that the membership remain static, or that all members join at the same time, or that a given member knows all his fellow coconspirators. Similarly, the *modus operandi* of a conspiracy may vary over time without negating the existence of a single conspiracy." *United States v. Sepulveda*, 15 F.3d 1161, 1191 (1st Cir. 1993) (citations omitted).

from individuals, a state crime. Contrary to Steven Hall's suggestion, Count I appears to be carefully drawn to allege a single conspiracy with several objects, all of them federal crimes or defrauding an agency of the United States. Nothing more is required in an indictment. Indeed, "[u]nder existing law, the government must charge a single conspiracy which contemplates the violation of two different statutes in the same count; otherwise the indictment would be multiplicitous." *United States v. Licciardi*, 30 F.3d 1127, 1131 (9th Cir. 1994).

Steven Hall argues that Count I must charge the defendants with more than one conspiracy because the allegations concerning bankruptcy fraud fall within the "defraud the United States" prong of section 371 and the remaining allegations fall under the "commit an offense against the United States" prong. Hall Motion at 3-4. My reading of Count I suggests that this is not the only way to read the allegations. In any event, a violation of both prongs of section 371 may be alleged in a single count of an indictment without charging more than one offense. *United States v. Dale*, 782 F. Supp. 615, 617 (D. D. C. 1991); *see also United States v. Smith*, 891 F.2d 703, 712-13 (9th Cir. 1989); *United States v. Williams*, 705 F.2d 603, 623-24 (2d Cir. 1983). In *United States v. Levine*, 750 F. Supp. 1433 (D. Colo. 1990), an indictment alleging conspiracy to defraud the United States during a bankruptcy case, to defraud the Internal Revenue Service and to commit certain criminal offenses against the United States was upheld against a duplicity challenge. *Id.* at 1436-38. The indictment here is not distinguishable from that in *Levine*.

Morin's and Hall's concern with what the government must and can prove under Count I is inappropriate at this time, when the focus is solely on the language of the indictment and whether it adequately charges a single conspiracy. This concern is perhaps due to the fact that the case law cited by the defendants primarily arose from appeals taken after trial where the issue was whether one or

multiple conspiracies had been demonstrated by the evidence. The possibility of a spill-over effect mentioned by Morin, for example, if the proof at trial establishes several conspiracies, some of which did not involve him, citing *United States v. Bertolotti*, 529 F.2d 149, 157-58 (2d Cir. 1975), Morin Motion at 4 & 6-7, can be dealt with by the charge to the jury, *United States v. Cambindo Valencia*, 609 F.2d 603, 625 (2d Cir. 1979). Again, this is a matter to be addressed at trial, not in a motion to dismiss the indictment before trial.

For the foregoing reasons, I recommend that the motions of defendants Morin and Steven Hall to dismiss Count I as duplicitous be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 4th day of June, 1998.

*David M. Cohen
United States Magistrate Judge*