

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

S1 10 Cr. 87 (DAB)  
ORDER

LARRY SEABROOK,

Defendant.

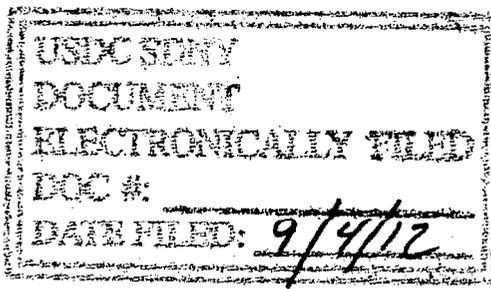
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DEBORAH A. BATTS, United States District Judge.

Now before the Court is Defendant Larry Seabrook's Motion for a New Trial and for a Judgment of Acquittal, brought pursuant to Fed. R. Crim. P. 33 and 29(c).

Defendant argues that he is entitled to a new trial pursuant to Rule 33 because the Government, in summation, argued that Defendant defrauded the City of New York in connection with the Jobs to Build On Initiative (the "Initiative"), while Counts Ten, Eleven and Twelve of the Superseding Indictment (the "Indictment") charge that Defendant conspired to defraud and defrauded a Workers' Organization in connection with that Initiative. This, Defendant argues, constituted an impermissible constructive amendment of the Indictment.

Defendant further argues that he is entitled to a judgment of acquittal pursuant to Rule 29(c), notwithstanding the jury's verdict, because the evidence adduced at trial was insufficient to establish that he committed the crimes of which he was found guilty.

For reasons that follow, Defendant's Motions are DENIED.



I. DISCUSSION

A. Motion for a New Trial

i. Legal Standard

The Federal Rules of Criminal Procedure allow the district court, upon a defendant's motion, to "grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). A motion for a new trial may be based on a constructive amendment of the indictment, and the standard requires the defendant to demonstrate that "the terms of the indictment are in effect altered by the presentation of evidence and jury instructions which so modify essential elements of the offense charged that there is a substantial likelihood that the defendant may have been convicted of an offense other than that charged in the indictment." United States v. D'Amelio, 683 F.3d 412, 416 (2d Cir. 2012) (quoting United States v. Mollica, 849 F.2d 723, 729 (2d Cir. 1988)). There are "two constitutional requirements for an indictment: 'first, [that it] contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, [that it] enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.'" Id. at 416-17 (quoting United States v. Resendiz-Ponce, 549 U.S. 102, 108 (2007)). A constructive amendment is a per se violation of the Grand Jury Clause

requiring that the resulting conviction be vacated, but the Second Circuit has "'consistently permitted significant flexibility in proof, provided that the defendant was given notice of the core of criminality to be proven at trial.'" Id. at 417 (quoting United States v. Rigas, 490 F.3d 208, 228 (2d Cir. 2007)). "[O]n a Rule 33 motion to vacate, the ultimate test is whether letting a guilty verdict stand would be a manifest injustice. . . . In other words, there must be a real concern that an innocent person may have been convicted." United States v. Snype, 441 F.3d 119, 140 (2d Cir. 2006) (internal quotation marks omitted).

ii. Application

Count Ten of the Indictment charges Defendant with conspiracy to commit mail fraud and wire fraud related to the Jobs to Build On Initiative. Count Eleven charges the Defendant with mail fraud in connection with the Initiative, and Count Twelve charges Defendant with wire fraud in connection with the Initiative.

The Indictment charges that Defendant conspired to defraud and defrauded the Consortium for Worker Education ("CWE"), an independent nonprofit worker's organization which administered the City-funded Initiative. Defendant now argues that the

Government constructively amended the Indictment by presenting evidence and arguing at closing that Defendant conspired to defraud and defrauded the City of New York in relation to the Jobs to Build On Initiative.

Defendant's argument is without merit. The core criminality alleged in Counts Ten, Eleven, and Twelve of the Indictment, adduced at trial, and described in the Government's summation is the same: that Defendant conspired to divert and in fact diverted funds intended to support the City's Initiative to a network of fraudulent nonprofit organizations he controlled in order to enrich his friends, family members, and loved ones. Whether the victim of that fraudulent scheme is construed as the City of New York (which funded the Initiative) or as CWE (which administered it) would not alter the jury's consideration of the evidence in any material way, and stray references to one entity rather than the other as victim of Defendant's crimes in connection with the Initiative cannot be said to have called the jury's attention to "a distinctly different complex set of uncharged facts", D'Amelio, 683 F.3d at 421, or to have given rise to a possibility "that the defendant may have been convicted of an offense other than that charged in the indictment", United States v. Ionia Mgmt., 555 F.3d 303, 310 (2d Cir. 2009). To the contrary, on the totality of the evidence and argument at trial, Defendant's

conviction on Counts Ten, Eleven, and Twelve can only have been based on the scheme charged in the Indictment, and his conviction will clearly bar any future prosecution based on the conduct alleged in those Counts.

Defendant's Motion for a new trial pursuant to Rule 33 is DENIED.

## B. Motion for a Verdict of Acquittal

### i. Legal Standard

Federal Rule of Criminal Procedure 29(c)(2) provides that "[i]f the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." Fed. R. Crim. P. 29(c)(2). The standard is strict, and a Rule 29(c)(2) Motion "should be granted only if the district court concludes [that] there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt." United States v. Irving, 452 F.3d 110, 117 (2d Cir. 2007) (citation and quotation marks omitted). To succeed in winning a verdict of acquittal, a defendant proceeding under Rule 29(c)(2) "must show that when viewing the evidence in its totality, in a light most favorable to the government, and drawing all inferences in favor of the prosecution, no rational trier of fact could have found him guilty." Id. (citations omitted).

ii. Application

Defendant argues that insufficient evidence was adduced at trial to support a conviction on any of Counts Four through Twelve. Defendant is incorrect.

The evidence at trial was sufficient for a rational trier of fact to find that Defendant exercised substantial control over the operations and hiring of the nonprofit entities, and that he exercised that control to ensure that his friends and loved ones were hired by the nonprofits as employees and contractors. For example, Gloria Jones-Grant testified that Defendant created the budgets for the NEBRC and Hall of Fame programs, determining both the salaries to be paid to employees and consultants (including Defendant's loved ones, whose hiring he directed) and the inflated rent amounts to be paid by the nonprofits. (Tr. 937-43.) Ms. Jones-Grant further testified that Defendant personally communicated with the actual landlords to obtain the prime leases for the Unity Day Parade, the nonprofit controlled by Defendant to which the other nonprofits paid inflated rent amounts. (Tr. 961.) The landlords testified that Defendant negotiated the leases and riders allowing the Unity Day Parade to sublease to the other nonprofits. (E.g., Tr. 754, 759.) Tyrone "Mitch" Duren testified that Defendant approached him and told him that he would be made Program Coordinator on the Fire Diversity

Initiative. (Tr. 1331-32.) Defendant made the "final decision" on all budget matters related to that initiative. (Id.) Defendant, by his conduct when confronted about Ms. Jones-Grant by Mr. Duren, implicitly acknowledged that Defendant was responsible for Ms. Jones-Grant's hiring and retention as executive director of the nonprofits. (E.g. Tr. 1293 (testimony that Defendant "agreed . . . that he had to identify an appropriate role for [Jones-Grant] somewhere else").) Mr. Duren further testified that Defendant personally directed him to execute rent documents related to the inflated rent scheme (Tr. 1327, 1329); that Defendant placed Ms. Jones-Grant in charge of the FDNY program after acknowledging her incompetence (Tr. 1344); and that Defendant created the program budget and personnel list for the FDNY program, personally deciding to hire Ms. Jones-Grant, Keith Johnson, Priscilla Jenkins, and Dorothy Randolph as employees and consultants (Tr. 1342-45). Philesha Jude testified that Defendant and Ms. Jones-Grant purchased computer equipment at the end of the fiscal year each year - equipment which was not needed and was never used - apparently so that no part of the nonprofits' budget line would remain unspent (Tr. 351-52); that Defendant personally determined the budget lines for rent at the nonprofits (Tr. 370); and that Ms. Jones-Grant was rarely at the office of the nonprofits, but could reliably be found at

Defendant's office. (Tr. 421-22.)

Testimony and other evidence at trial also showed that Defendant was aware that the nonprofits were not fulfilling their contractual obligations and that the individuals Defendant had placed in control of the nonprofits were not competent to do the work required of them. Mr. Duren testified that he confronted Defendant about Ms. Jones-Grant's lack of competence on several occasions, and that Defendant agreed that she was incompetent. (Tr. 1293, 1294, 1300.) Larry Scott Blackmon informed Defendant of the problems at NEBRC and was assured by Defendant "that the organization was taking steps to resolve those issues, that all of the numbers would add up . . . that everything would make sense." (Tr. 1195.) Mr. Duren testified that Defendant sent him, along with Defendant's chief of staff, to an SBS meeting to "see exactly what was going on" with SBS funds allotted to one of the nonprofits, and that Mr. Duren later informed Defendant of the operational problems SBS had identified and detailed with regard to that nonprofit. (Tr. 1298-99.)

The testimony and other evidence also showed that Defendant took substantial steps to ensure that the nonprofits would continue to receive City Council funding and contracts, despite their known failings and their documented inability to fulfil their obligations. John Jay President Jeremy Travis testified

that Defendant personally "vouched" for NEBRC's ability to carry out the goals of the FDNY diversity initiative, and that Defendant never mentioned the substantial problems NEBRC had demonstrated on other contracts or informed him that Ms. Jones-Grant, whom Defendant had made Executive Director of NEBRC, was incompetent. (Tr. 721-22; GX 868.) In 2007, Defendant told Robert Medlock and other CWE executives that they were to use NEBRC as a subcontractor in the Jobs to Build On Initiative, but Defendant never informed CWE of the documented problems at NEBRC. (Tr. 1210-12, 1221.)

In short, the overwhelming evidence of guilt adduced at trial was sufficient that a rational finder of fact could find Defendant guilty on each of Counts Four through Twelve. Defendant's Motion under Rule 29(c)(2) is DENIED.

SO ORDERED

DATED: New York, New York  
September 4, 2012

  
DEBORAH A. BATTIS  
United States District Judge