

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
v.)
)
KEVIN A. RING,)
)
Defendant.)
_____)

No. 1:08-cr-274-ESH

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S
MOTION TO STRIKE EXHIBITS AND EXCLUDE WITNESSES**

Based on recent and timely disclosures made by the government concerning several of its witnesses, defendant Kevin A. Ring asks the Court to strike exhibits and exclude certain witnesses. As the law and the facts militate against the relief Ring requests, the Court should deny the motion. First, and as discussed at length below, the government will prove by a preponderance of the evidence that Robert E. Coughlin II and Ann M. Copland conspired with Ring. Second, the government’s recent witness substitutions will not prejudice Ring, who surely has prepared for Coughlin’s testimony on the same topics. The Court should therefore deny Ring’s motion.

BACKGROUND

I. Coughlin

A. Coughlin’s Admissions and Statements

On April 22, 2008, Coughlin pleaded guilty to violating 18 U.S.C. §§ 208 and 216(a)(2). Among other things, Coughlin admitted under oath that he accepted things of value from Ring, things that Coughlin understood were paid for by Greenberg Traurig LLP (GT). Coughlin also swore to taking official actions that benefited Ring and his clients. For example, as outlined in the factual basis for his proffer,

Coughlin provided information, made recommendations, rendered advice, set up and attended meetings at DOJ and with lobbying clients, expedited DOJ action, strategized about how to reverse a previous DOJ decision about an application for a \$16.3 million grant, and otherwise participated personally and substantially as a government officer, in particular matters in which [Ring] was lobbying DOJ.

(Ex. 1 at 3 (specifying particular official actions).) One of those—helping to expedite review of the Eshkol Academy’s application to the INS to admit nonimmigrant students—predicated the illegal gratuity charged in Count II.

In fact, Coughlin quite pointedly admitted under oath that he “had a financial interest in the particular matters about which [Ring] and [GT] contacted him because [Ring] was providing him with a stream of things of value for and because of Coughlin’s official actions in connection with the successful lobbying efforts.” (Id. at 8.) Coughlin failed to report the things of value Ring gave him, though he was required to do so. (Id.) Coughlin also swore that when he left his position at the DOJ’s Office of Intergovernmental and Public Liaison (OIPL) and was no longer in a position to help, “Ring abruptly curtailed buying him meals, drinks and tickets—only to reconnect as soon as . . . Coughlin returned to Main Justice.” (Id.)

Perhaps most importantly, Coughlin admitted under oath that he “personally received these things of value from [Ring] otherwise than as provided by law for the proper discharge of official duty, for or because of official acts performed or to be performed by Coughlin in his capacity as a DOJ liaison.” (Id. at 8-9.) Coughlin’s factual basis goes on to provide detailed examples of occasions on which Ring gave Coughlin gifts. (Id. at 9). Coughlin has told the government that in hindsight, it is clear to him that Ring gave him many of the things of value as illegal gratuities, an object of the Count I conspiracy. Coughlin also has acknowledged that in hindsight, Ring corrupted him.

As mentioned above, on April 22, 2008, Coughlin admitted under oath in open court that the factual basis was true and correct:

THE COURT: Is there anything about this statement of facts that you wish to correct, change or believe is inaccurate in any way?

THE DEFENDANT: No, Your Honor.

THE COURT: By signing it, you are agreeing basically, it sets out how, when you worked at the Department of Justice, that a lobbyist referred to here as Lobbyist A [i.e., Ring], provided various things of value to you, including meals, tickets to sports events, concerts, golf events; and that you also—it lists here a series of activities that you performed on behalf of, or to help the lobbyist's clients. Those are listed in paragraphs eight through the statement of offense, they go on, eight through paragraph 21 asked that if you performed while at the Department of Justice in your official capacity acts that were helpful to this lobbyist's clients. These are acts committed by you, you agree with them?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you agree that you did receive certain things of value from the lobbyist while you were performing these activities?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And it provides here that Lobbyist A provided you with a stream of things of value for and because of your official actions in connection with the successful lobbying efforts you failed to report these things of value as gifts on your financial disclosure forms for the three years of 2001, 2002, 2003. Is that accurate?

THE DEFENDANT: Yes, Your Honor.

THE COURT: It also indicates that you engaged in discussions while you were doing these things of value for the lobbyist and his clients, that you were engaged in discussions regarding possible employment at the law firm where lobbyist A[] was employed in the months of March and April 2002. Is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is there anything about this statement of offense that you would like to change or correct because it is not accurate?

THE DEFENDANT: No, Your Honor.

(Ex. 2 at 6-8.)

Notwithstanding those sworn admissions, on September 2, 2009, during and immediately after a mock cross-examination by government counsel, Coughlin broadly denied having the intent to commit any federal felony. Coughlin also said, among other things, that he had not

conspired with Ring to commit a crime. By letter dated September 4, 2009, the government completely disclosed Coughlin's statements to Ring's counsel.

B. The Substitute Witnesses

In light of Coughlin's September 2 statements, the government, in addition to making full disclosure, told Ring's attorneys that it no longer planned to call Coughlin. As substitutions for Coughlin, the government identified Daniel J. Bryant, Su Daly, and Gregory P. Harris as possible witnesses.¹ Having had a few days to reflect, the government told Ring's counsel yesterday that it will not call Bryant. Moreover, the government told Ring's lawyers that, to help them prepare for the substitute witnesses, it will not call Stacey Dougan, Stuart Paisano, or a GT ethics officer.

Daly and Harris will say little about Ring's involvement in the criminal acts at issue. Daly will likely testify to her dealings with Coughlin on the Eshkol Academy's INS application. Harris will likely testify to Coughlin's official duties at OIPL. Indeed, rather than calling Harris, the government hopes to call a current OIPL employee to testify only about the official contours of Coughlin's former job. Ring can hardly claim prejudice as he must have prepared for Coughlin to testify about those topics and many others.

II. Copland

On January 28, 2009, prior to her guilty plea, prosecutors interviewed Copland for the first time (FBI agents had interviewed her without prosecutors on an earlier occasion). During

¹ For a different reason, the government also added Jason K. Hickox to its witness list. During a recent status conference, Ring's counsel suggested that he might contest the extent and quality of Julia H. Doolittle's work for Abramoff. While Hickox's testimony may be unnecessary, he will likely testify that Julia Doolittle did little or no work for Signatures.

that interview, Copland admitted that she should not have asked for and received the things of value given to her by Ring and Todd A. Boulanger. Copland also said that she believed Ring and Boulanger were trying to influence her through those things of value. Copland suggested that the tickets were one reason, among others, that Ring and Boulanger had increased access to her. Nevertheless, on that day, Copland did not admit that the things of value she received influenced her, even in part, in the performance of her official duties.

Shortly thereafter, on February 4, 2009, prosecutors and agents sat down with Copland again, this time at her request. Copland began the conversation by apologizing for not being entirely forthcoming on January 28 and went on to admit that the tickets had in fact influenced certain of her official actions. Since then Copland has consistently told the truth: that she conspired with Ring and others to commit honest-services wire fraud. On March 10, 2009, Copland pleaded guilty under oath to that crime.

ARGUMENT

I. The Challenged Exhibits Are Admissible

A statement is not hearsay where it “is offered against a party and is . . . a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.” Fed. R. Crim. P. 801(d)(2)(E). In determining the admissibility of evidence, the Court “is not bound by the rules of evidence except those with respect to privileges.” *Id.* 104(a). The contested exhibits are admissible if the Court finds “by a preponderance of the evidence that a conspiracy existed and that the defendant and declarant were members of that conspiracy.” United States v. Brockenborrough, No. 08-3016, 2009 WL 2408470, at *6 (D.C. Cir. Aug. 7, 2009) (for publication). “The contents of the statement shall be considered but are not alone sufficient to

establish . . . the existence of the conspiracy and the participation therein of the declarant and” Ring. Fed. R. Evid. 801(d)(2).

Importantly, for purposes of admissibility, it is not necessary for the government to establish that the conspiracy was “an unlawful combination.” Brockenborough, 2009 WL 2408470, at *6. “[D]espite its use of the word ‘conspiracy,’ Rule 801(d)(2)(E) allows for admission of statements by individuals acting in furtherance of a lawful joint enterprise.” Id. (citing cases). Rule 801(d)(2)(E), “which derives from agency and partnership law, ‘embodies the longstanding doctrine that when two or more individuals are acting in concert toward a common goal, the out-of-court statements of one are admissible against the others, if made in furtherance of the common goal.’” Id. (alteration omitted) (quoting United States v. Weisz, 718 F.2d 413, 433 (D.C. Cir.1983)).

A. Coughlin’s Out-of-Court Statements Are Admissible Nonhearsay

1. Coughlin and Ring Joined the Count I Conspiracy

Coughlin’s statements on September 2 do not change the fact that his sworn admissions, described above, alone satisfy the preponderance standard required by Rule 104(a). Though he did not plead guilty to conspiracy, Coughlin admitted under oath that Ring provided him “with a stream of things of value for and because of Coughlin’s official actions in connection with” Ring’s successful lobbying efforts. (Ex. 1 at 8.) Coughlin concealed those things of value by failing to report them as required. And, perhaps most importantly, Coughlin swore that he “personally received these things of value from [Ring] otherwise than as provided by law for the proper discharge of official duty, for or because of official acts performed or to be performed by

Coughlin in his capacity as a DOJ liaison.” Coughlin has repeatedly told the government that in hindsight, he understands that Ring was paying him illegal gratuities.

In any event, even putting Coughlin’s sworn admissions to the side, the government’s other evidence easily establishes by a preponderance that Coughlin conspired with Ring. The evidence will show that on a number of occasions, Coughlin passed Ring confidential, internal DOJ information. (See, e.g., GX 546 (Ring emails his colleagues information from Coughlin, describing it as “COMPLETELY confidential”).) In so doing, Coughlin violated his duty of loyalty to the DOJ and violated D.C. Bar Rule of Professional Responsibility 1.6. On other occasions, Ring trusted Coughlin to keep GT secrets from his DOJ superiors. (See, e.g., GX 521 (Ring seeks Coughlin’s help and asks him not to “divulg[e] the info below”); GX 530 (Ring emails Coughlin, “Don’t tell anyone yet, but . . .”).)

Moreover, though Coughlin was not the final decisionmaker, he took an active role in helping Ring overturn the DOJ’s decision to award the Mississippi Band of Choctaw Indians (the “Choctaw”) only \$9 million for a justice center on its reservation, rather than the \$16.3 million for which Ring and the Choctaw were pushing (the “Choctaw jail grant”). For example, Coughlin thought that the Office of Legislative Affairs (OLA) employee assigned to the Choctaw jail grant might be unhelpful because she was “a big lib with Reno and Clinton pictures all over her office.” (GX 502.) Coughlin told Ring that if Ring did not want that OLA employee at a meeting about the Choctaw jail grant, Coughlin would “take care of it.” (GX 503.) Shortly thereafter, Coughlin emailed Ring that they should “talk some more about that Choctaw money. I know we touched on it [over dinner at Olives] but maybe we could come [up] with some

strategy in order to make sure [the Choctaw] get the rest of the money.” (GX 506 at 2.) GT’s clients paid for the dinner at Olives.

The exhibits thus evidence clear examples of Coughlin putting Ring before his loyalty to the DOJ, in violation of his duty of honest services. On their face, the exhibits also reveal Coughlin’s intent to accept gifts from Ring as illegal gratuities. For example, on February 10, 2003, Ring emailed Coughlin to thank him for helping with the Eshkol Academy’s INS application and offered to buy him drinks. (GX 604 at 2.) Coughlin accepted Ring’s offer and the next day asked for “Wizards tickets (4) on the 15th and 18th of March.” (*Id.* at 1.) Ring promptly emailed Abramoff, “[Bob Coughlin h]elped on the [Eshkol Academy] and is now looking for tickets to the Wizards on both March 15 and 18. Do we have 4 tickets available for either or both games?” (GX 603.)

In the same vein, on June 25, 2002, after the DOJ allowed the Choctaw to award the justice center construction to a contractor of its choosing, Ring wrote to his team,

[T]hank your colleagues on the Hill and in the Administration. In fact, thank them over and over this week—preferably for long periods of time and at expensive establishments. Set aside time to think about thanking them. Thank them until it hurts—and until we have a June bill that reflects the fact that our client is about to get a \$16.3 million check from the Department of Justice!!!!

(GX 586.) The same day, Ring emailed Coughlin, “Thanks is not strong enough. We need to celebrate this issue finally being over.” (GX 587.)

Moreover, Coughlin’s and Ring’s actions corroborate the emails. For example, the OLA official whom Coughlin offered to “take care of” (GX 502-03) ended up not working on the Choctaw jail grant. Coughlin also repeatedly agreed to attend meetings on Ring’s behalf, to assist Ring’s lobbying efforts. (*See, e.g.*, GX 503, 512, 533 & 574.) Underscoring the emails’

reliability, Coughlin in fact went to several of those meetings. See Bourjaily v. United States, 483 U.S. 171, 180-81 (1987) (coconspirator Lonardo's statement that a coconspirator friend, having agreed to buy a kilogram of cocaine and distribute it, would be at a hotel parking lot, in his car, and would accept the cocaine from coconspirator Greathouse's car after Greathouse gave Lonardo the keys was corroborated by the coconspirators' actions). While Coughlin was helping Ring in those and other ways, Ring wined, dined, and entertained Coughlin at GT's clients' expense. Finally, Boulanger would likely testify that Coughlin was part of the conspiracy, based on Boulanger's discussions with Ring, the number of things of value that Ring gave Coughlin, and the quality of Coughlin's assistance.

For all of these reasons, Coughlin's statements themselves and the independent evidence supporting them establish by a preponderance of the evidence that he conspired with Ring for purposes of Rule 801(d)(2)(E). The Court should therefore deny Ring's motion to strike the exhibits.

2. Alternatively, Coughlin and Ring Acted Toward a Common Goal

Alternatively, if the Court finds that the evidence does not establish by a preponderance that Coughlin joined the Count I conspiracy, it certainly establishes that Ring and Coughlin acted together in furtherance of a lawful joint enterprise. United States v. Brockenborrough, No. 08-3016, 2009 WL 2408470, at *6 (D.C. Cir. Aug. 7, 2009) (for publication) (“[D]espite its use of the word ‘conspiracy,’ Rule 801(d)(2)(E) allows for admission of statements by individuals acting in furtherance of a lawful joint enterprise.”). Among other things, Coughlin assisted Ring at length with the Choctaw jail grant and the Eshkol Academy's INS application. Without repeating the evidence set forth above, it bears emphasis that as to the Choctaw jail grant,

Coughlin wrote to Ring, “[M]aybe we could come [up] with some strategy in order to make sure [the Choctaw] get the rest of the money.” (GX 506 at 2.) Independent evidence, including Ring’s own words, Boulanger’s likely testimony, and the facts of what actually happened, establish by a preponderance of the evidence that Coughlin and Ring worked toward common goals and that Coughlin’s statements were made in furtherance of those goals. For this independent reason, the Court should deny Ring’s motion to strike the exhibits.

B. Copland’s Out-of-Court Statements Are Admissible Nonhearsay

As discussed above, Copland’s admission of guilt—of conspiring with Ring to commit honest-services wire fraud—has never been called into doubt. Like many people, she did not admit her guilt when she initially met with prosecutors, though she admitted that her acceptance of tickets was wrong. She pleaded guilty to conspiracy and has not wavered since. In addition, Ring’s emails and Boulanger’s and Copland’s own likely testimony corroborate Copland’s statements in the emails, statements in which she asks Ring and Boulanger for thousands of dollars in tickets and other things of value, and takes official actions at their request. In short, statements in furtherance of the conspiracy that she and Ring joined. For these reasons, the Court should deny Ring’s motion to strike the emails.²

² At the last status conference, Ring objected to certain exhibits that show Copland helping Ring and Boulanger with their client, Primedia. Ring argued that he did not have sufficient notice of that issue, as the government’s May 15, 2009 bill of particulars had not stated that Copland would testify about it. Though not mentioned in connection to Copland, the bill of particulars did put Ring on notice that Primedia would be an issue in the case, specifically with respect to the DOJ.

More importantly, on July 30, 2009—almost six weeks before trial—the government emailed the exhibits to Ring’s counsel as part of a larger group of possible Copland exhibits. On August 7, 2009, the government emailed Ring’s counsel a smaller set of numbered Copland exhibits that it intended to introduce, including two exhibits that, on their face, clearly concerned Primedia. (GX 937-38.) Ring did not object to those exhibits, despite knowing three weeks

II. The Court Should Not Exclude the Government's Substitute Witnesses

Finally, Ring argues that the Court should not permit the government to call Daly and Harris. The Court should deny the motion, as no prejudice will flow to Ring if the Court allows Daly and Harris to testify.

Ring's motion fails to mention an important background principle in this area: Ring "has no right to a list of the government's witnesses to be called at trial." United States v. Napue, 834 F.2d 1311, 1318 (7th Cir. 1987); accord, e.g., United States v. W.R. Grace, 526 F.3d 499, 510-11 (9th Cir. 2008) (en banc); United States v. Rosales, 680 F.2d 1304, 1305 (10th Cir. 1981); United States v. Jordan, 466 F.2d 99, 101 (4th Cir. 1972).

A. The Substitutes Will Not Prejudice Ring

Though the government has found little controlling caselaw directly on point, other circuits are clear that Ring must show that he will be prejudiced if the Court allows Daly and Harris to testify. Napue, 834 F.2d at 1323; Rosales, 680 F.2d at 1305; United States v. Kendricks, 623 F.2d 1165, 1168 (6th Cir. 1980) (per curiam); Jordan, 466 F.2d at 102. For the following reasons, Ring cannot establish prejudice and the Court should deny his motion.

Ring casts Daly and Harris as additions, but they are actually substitutions for Coughlin. Moreover, the government has also removed Dougan, Paisano, and a GT ethics officer from its

before the Court considered them that the government might offer them at trial (and almost two weeks before the Court considered them that the government definitely would offer them at trial).

Finally, on March 4, 2009—over six months before trial—the government gave Ring's counsel an FBI 302 memorializing a January 7, 2009 interview of Boulanger. In the report, Boulanger describes lobbying Copland on Primedia's behalf. Ring therefore cannot plausibly claim that he lacks sufficient notice that Primedia would be an issue in the case or that Copland would testify about Ring and Boulanger lobbying her on its behalf. For all of these reasons, the Court should admit GX 983, 986, 988, and 989.

witness list. Ring therefore has one less government witness for which to prepare. Moreover, Coughlin's testimony would have included the issues to which Daly and Harris will likely testify, but would have ranged much farther. Because it will not call Coughlin, the government must have some limited testimony from other DOJ officials on a few discrete issues. See W.R. Grace, 526 F.3d at 514 (noting that trial court, in its discretion, might allow government to add or substitute witnesses for good cause).

Specifically, and as noted above, Daly and Harris will say little about Ring's involvement in the criminal acts at issue. Daly will likely testify to her dealings with Coughlin on the Eshkol Academy's INS application. Harris will likely testify to Coughlin's official duties at OIPL. Indeed, rather than calling Harris, the government hopes to call a current OIPL employee to testify only about the official contours of Coughlin's former job.

Coughlin would have testified about all of those things, so the government has added nothing new in terms of substance. See Napue, 834 F.2d at 1323 ("The government provided Napue prior to trial with considerable information about what it intended to show at trial . . ."); Rosales, 680 F.2d at 1305 (noting that the government "provided files and background material on the principal witnesses for the prosecution"). Indeed, it has removed quite a bit. In short, Coughlin's absence is a windfall for Ring and he will not be prejudiced.

B. A Short Continuance Is a Better Remedy Than Exclusion

If the Court believes that Ring needs additional time to prepare for Daly and Harris, it should grant a short continuance rather than excluding their testimony. "A trial judge should impose the least severe sanction that will accomplish the desired result—prompt and full compliance with the court's discovery orders." United States v. Marshall, 132 F.3d 63, 69 (D.C.

Cir. 1998) (quotation marks omitted). In this context, “the fashioning of a proper remedy to ameliorate any potential prejudice to the defendant’s ability to prepare an effective defense is within the district judge’s discretion.” Kendricks, 623 F.2d at 1168-69. Though a continuance is never ideal, it “tend[s] to mitigate the detrimental effects of unpreparedness.” United States v. Cannone, 528 F.2d 296, 301 (2d Cir. 1975).

The Court has informed the venire that the trial will last six weeks. In fact, the government’s case-in-chief will likely last only two to three weeks. A short continuance would therefore allow Ring to prepare for Daly’s and Harris’s testimony without requiring the organization of a new venire. In sum, though the government does not believe that the

substitution of Daly and Harris prejudices Ring, a short continuance is a less severe, more narrowly tailored remedy than exclusion of their testimony.

CONCLUSION

For all of the foregoing reasons, the Court should deny Ring's motion.

Respectfully submitted,

RAYMOND N. HULSER
Acting Chief
Public Integrity Section

STUART M. GOLDBERG
Acting U.S. Attorney
District of Maryland
Special Attorney to
the Attorney General

STEVEN A. TYRRELL
Chief
Fraud Section

Dated Sept. 7, 2009

By: /s/ MICHAEL FERRARA
Trial Attorney, Public Integrity Section
1400 New York Ave. NW, 12th Fl.
Washington, DC 20005
Tel.: 202-205-2593
Fax: 202-514-3003
michael.ferrara@usdoj.gov

NATHANIEL B. EDMONDS
Senior Litigation Counsel, Fraud Section

MICHAEL J. LEOTTA
Appellate Chief, District of Maryland
Special Attorney to the Attorney General

CERTIFICATE OF SERVICE

I certify that on September 7, 2009, I served a copy of the above opposition on Andrew T. Wise, Esq. and Timothy P. O'Toole, Esq., counsel for defendant Kevin A. Ring, via filing electronically on ECF.

/s/ MICHAEL FERRARA
Trial Attorney