

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff

v.

DU BO,

Defendant

Criminal No. ⁹⁷⁻⁰⁰⁰⁰⁹~~96-00038~~

ORDER:

1) DENYING MOTION TO
DISMISS; 2) DENYING MOTION
FOR GRAND JURY TRANSCRIPT;
3) FINDING DISCOVERY AND
SUBPOENA MOTIONS MOOT

THIS MATTER came before the court on Friday, April 11, 1997, for hearing of defendant's motions 1) to dismiss the indictment, 2) for discovery, 3) for production of Brady material, 4) for issuance of a subpoena, and 5) for an order allowing him to obtain a copy of the grand jury transcript. Plaintiff appeared by and through its attorney, Assistant U.S. Attorney David T. Wood; defendant appeared personally and through his attorney, G. Anthony Long.

THE COURT, having considered the written and oral arguments of counsel, rules as follows:

Defendant's argument that the indictment should be dismissed has several

1 components: that 18 U.S.C. § 1951 does not apply within or to the Commonwealth of the
2 Northern Mariana Islands (CNMI), that the indictment fails to allege intent, that the
3 bringing of the instant indictment is collaterally estopped by the dismissal of the first
4 indictment, and that the composition of the grand jury was unconstitutional.

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6 Defendant's contention that 18 U.S.C. § 1951 does not apply within or to the
7 Commonwealth is wrong. After full implementation of all portions of the "Covenant to
8 Establish a Commonwealth of the Northern Mariana Islands in Political Union with the
9 United States of America" (Covenant), P. L. 94-241, 90 Stat. 263, all federal laws apply
10 within and to the Commonwealth. United States of America, ex rel. James R. Richards
11 v. Lorenzo de Leon Guerrero, "Decision and Order Granting Enforcement of
12 Administrative Subpoena," Misc. No. 92-00001, pp. 54-67 (D.N.M.I. July 24, 1992)
13 (Covenant § 502 was an interim formula, valid until assumption of full sovereignty by the
14 United States, at which point all laws applicable to the several States would be in effect
15 of their own force, unless elsewhere excluded by the Covenant or by Congress), aff'd 4
16 F.3d 749 (9th Cir. 1993).

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19 Next, defendant argues that the indictment is fatally flawed because it does not
20 plead an element--- willfulness--- of the offense charged. He relies for this proposition on
21 United States v. Aguon, 851 F.2d 1158 (9th Cir. 1988) (en banc) and United States v.
22 Soriano, 880 F.2d 192 (9th Cir. 1989). Neither case supports defendant. Aguon
23 deals with the language necessary in jury instructions and Soriano reaffirms that an
24 indictment that tracks the language of the statute is sufficient. United States v. Soriano,
25 880 F.2d at 198.
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1 Likewise, defendant's collateral estoppel argument finds no support in the law.
2 The previous indictment was dismissed on the ground that, as it was presented to the
3 jury, it was not possible to determine if the grand jury had returned a true bill on the
4 attempt or the actual extortion, as both were included in one count. A dismissal of an
5 indictment that is not a ruling on the merits does not collaterally estop further
6 prosecution on the same charge. See e.g. United States v. Cejas, 817 F.2d 595-598-99
7 (9th Cir. 1987). The dismissal of the previous indictment was not a decision on the
8 merits and collateral estoppel does not bar the instant indictment.
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10 The final defect in the indictment alleged by defendant is that the grand jury was
11 not constitutionally assembled. This, because 28 U.S.C. § 1861 et seq. are not applicable
12 to this court, because it is not a "district court of the United States" as that phrase is
13 defined in the statutes. Specifically, defendant argues that the Commonwealth is not a
14 "territory" because the Territorial Clause of the Constitution does not extend to the
15 Commonwealth. This argument fails for the same reasons outlined in United States of
16 America, ex rel. James R. Richards v. Lorenzo de Leon Guerrero, supra.
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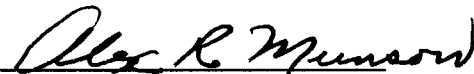
18 Finally, defendant seeks a transcript of the grand jury proceedings. Federal Rule
19 of Criminal Procedure 6 generally prohibits disclosure of such material. However,
20 Fed.R.Crim.P. 6 and 16 outline instances where such materials may be obtained by a
21 defendant and the U.S. Supreme Court identified another instance in Brady v. Maryland,
22 373 U.S. 83 (1963). Rule 16(a)(1)(A) applies only when a defendant has testified before
23 the grand jury. Here, defendant did not testify. Rule 6(e)(3)(C)(ii) provides for
24 disclosure of grand jury transcripts where there exists grounds for dismissing an
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1 indictment due to matters occurring before the grand jury. Defendant has made no
2 showing that such grounds exist. Brady did not create a right of access to grand jury
3 transcripts. Gollaher v. United States, 419 F.2d 520, 527 (9th Cir.), cert. denied, 396
4 U.S. 960 (1969). The government has already agreed to supply any Brady material to
5 defendant in sufficient time for him to make effective use of it. The remaining area
6 involves the Jencks Act, codified at 18 U.S.C. § 3500, and Fed.R.Crim.P. 26.2. Taken
7 together, the statute and rule provide that the government must disclose witness
8 statements, including grand jury testimony, that relate to the subject matter of the
9 witness' testimony. 18 U.S.C. § 3500(e)(3) and Fed.R.Crim.P. 26.2(f)(3). The
10 government has agreed to provide any such material in a timely fashion. Defendant's
11 motion for full grand jury transcripts is DENIED, except for those matters he is entitled
12 to receive.

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15 Because the parties have agreed on the discovery, Brady, and subpoena issues
16 raised by defendant, those issues are deemed moot.

17 IT IS SO ORDERED.

18 DATED this 11th day of April, 1997.

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23 ALEX R. MUNSON
24 Judge
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