IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

ORDER

Plaintiff,

02-CR-0105-C

v.

DAVID H. TEDDER,

Defendant.

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David H. Tedder has filed a timely motion for judgment of acquittal, pursuant to Fed. R. Crim. P. 29(c), challenging his conviction on five of seven counts of the indictment returned against him. Defendant contends that the government did not present sufficient evidence to allow the jury to find beyond a reasonable doubt that he was a member of a conspiracy to violate the wire wagering act (count 1) or a member of a conspiracy to launder money (count 2), or that he laundered money (counts 5 and 6). (I denied defendant's motion for a judgment of acquittal on count 7 in an order entered on July 28, 2003.) In support of this contention, defendant discusses only the evidence that might have persuaded the jury to acquit him, ignoring the evidence that the jury relied upon to find him guilty and

giving only lip service to the deferential standard a reviewing court must apply in assessing the legitimacy of a jury verdict. See, e.g., United States v. Gracia, 272 F.3d 866, 873 (7th Cir. 2001) (court "must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"). Because the government introduced evidence that was sufficient to prove defendant's guilt on counts 1, 2, 5 and 6 beyond a reasonable doubt, the motion will be denied.

A. Count One – Conspiracy to Violate Wire Wagering Act

At the outset, defendant recycles his argument that the jury should have been required to find that he knew that Gold Medal was violating the law in order to find that he knowingly and intentionally joined the conspiracy to violate the Wire Wagering Act, 18 U.S.C. § 1084. He argues also that the jury had no evidence from which it could find that he was involved in any aspect of Gold Medal Sports other than performing legitimate legal services for the corporation and for its owners, Duane Pede and Jeffrey D'Ambrosia. I addressed the first of these arguments at the final pretrial conference and during trial. As I said then, 18 U.S.C. § 1084 does not require the government to prove that defendant knew he was acting in violation of the law when he joined the conspiracy. All it requires in the way of knowledge about the purpose and nature of the conspiracy is that defendant knew

that wires were being used for the transmission of sports bets or betting-type information in interstate or foreign commerce. United States v. Cohen, 260 F.3d 68, 76 (2d Cir. 2001) (holding that government needs to prove only that defendant knowingly committed acts prohibited by § 1084, not that he intended to violate statute or that he knew transmission of betting information was illegal).

The government presented ample evidence to show that defendant knew that Gold Medal Sports was using wires for the transmission of bets and betting information in interstate and foreign commerce and that defendant was doing more than legitimate estate planning for his alleged co-conspirators. For example, both Pede and D'Ambrosia testified that they had told defendant how Gold Medal worked, how the company used the phones for bettors to place bets and how it and Sports Spectrum handled intercompany expenses. They testified that defendant had advised both of them to have Gold Medal open up foreign bank accounts in the Bahamas, how to get around a Western Union ban on sending money to offshore sports books by using a middleman in the Bahamas and how to move money around "to create more layers" between Gold Medal's owners and the money. This testimony belies defendant's assertion that he was not involved in the illegal gambling activities of the corporation and its owners. From this and other evidence, the jury could have found beyond a reasonable doubt that the government had proved the three essential elements of count one: (1) the existence of a conspiracy to violate the wire wagering act; (2)

defendant's knowing and intentional decision to join that conspiracy; and (3) the commission of an overt act by a member of the conspiracy in furtherance of the conspiracy.

B. Count Two - Conspiracy to Launder Money

In support of his motion for judgment of acquittal of this count, defendant describes the evidence he adduced at trial from which the jury could have found that he believed that Pede and D'Ambrosia were engaged in a legal, open and public business enterprise and therefore could not be guilty of conspiring to launder funds derived from an illegal activity. Again, defendant addresses the wrong point. It is not whether he adduced evidence from which the jury could have found in his favor but whether the jury acted unreasonably in finding that the adverse evidence the government introduced was sufficient to prove his guilt beyond a reasonable doubt.

It is true that some of the evidence at trial was favorable to defendant's assertion that he had reason to think that Gold Medal was engaged in legal activities. For example, he showed that prominent accounting firms had worked with Gold Medal Sports, that the president of a bank in Wisconsin was an investor in Gold Medal and that USA Today accepted advertising from Gold Medal. He ignores the evidence the government introduced of (1) his advice to D'Ambrosia to leave the country if he was afraid of prosecution in the United States and move his gambling operation to a country from which he could not be

extradited; (2) his receipt of a mailing from D'Ambrosia that included a press release from the United States Attorney whose office was prosecuting the Cohen case, with a quote from the Attorney General of the United States to the effect that online sports gambling was illegal; (3) his advice to D'Ambrosia not to worry about prosecution because defendant had provided Gold Medal insulation between itself and the money it had made and because Gold Medal was "low on the totem pole" for prosecution; (4) his creation of a corporation (CF Ltd.) to buy D'Ambrosia's shares of Gold Medal Sports after D'Ambrosia told defendant he believed he was a government target and wanted help distancing himself from Gold Medal; (5) defendant's advice to Gold Medal about ways of avoiding the Western Union prohibition on processing money orders to offshore sports books; (6) defendant's failure to tell James Lee in March 2002 about the search of defendant's law offices by the IRS when he was encouraging Lee to invest in a company that would process checks from bettors placing bets with offshore sports books; and (7) defendant's representation to Lee in March 2002 that offshore sports betting was legal.

As was the case with count 1, the jury had ample evidence from which it could have found beyond a reasonable doubt that defendant was well aware that the money Gold Medal, Pede and D'Ambrosia wanted "protected from creditors" was money criminally derived from the illegal venture of online betting.

C. Counts 5 and 6 - Money Laundering

Defendant argues that the jury could not reasonably have found him guilty of count 5 because the evidence showed that he could not have foreseen the transfer to Sports Spectrum of $30,070.16 to pay for advertising costs. According to defendant, he was not involved in the day to day operations of Gold Medal and "it is unlikely" that he had any knowledge about how Gold Medal paid for advertising. As to count 6, he argues that the jury did not have a scintilla of evidence from which they could have found that he knew why it was necessary to transfer $250,000 for a "golden parachute" for a Gold Medal employee, Rick McColley.

The government proceeded under the Pinkerton theory (from United States v. Pinkerton, 328 U.S. 640, 647-48 (1946)), under which a person can be found responsible for a substantive offense committed by a coconspirator if the act was in furtherance of the conspiracy, fell within the scope of the unlawful project and was reasonably foreseeable as a necessary or natural consequence of the unlawful agreement. Although defendant asserts that the evidence failed to provide any basis from which a jury could have found that the transfers to Sports Spectrum and on behalf of McColley were foreseeable to him, the government introduced evidence that Pede and D'Ambrosia had told defendant how Gold Medal worked, how it billed for intercompany expenses and how Sports Spectrum fit into the picture. D'Ambrosia testified that defendant had advised him to put a buffer between

Gold Medal and Sports Spectrum to make the transactions between them look like arm's length transactions and to that end, had created TISS to serve as a middleman for services Sports Spectrum and others provided to Gold Medal. Randy Moreau testified that he had tried to get defendant to set up an employment trust for McColley but when defendant failed to return his call, so he asked a Wisconsin lawyer to set up a bonus for McColley in an account in Wisconsin.

The jury had sufficient evidence from which to find that defendant knew that Gold Medal was paying out money to Sports Spectrum and other vendors and using Gold Medal earnings to pay money to employees. Even if defendant could establish that he did not know about the specific payments charged in counts 5 and 6, he cannot argue with any plausibility that it was unreasonable for the jury to find beyond a reasonable doubt that the payments in counts 5 and 6 were in furtherance of the conspiracy and foreseeable to him.

ORDER

IT IS ORDERED that defendant David H. Tedder's motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29(c) is DENIED for defendant's failure to show that the jury did not have sufficient evidence at trial to support its finding that defendant was

guilty of counts 1, 2, 5 and 6 beyond a reasonable doubt.

Entered this 22nd day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge