

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

04-CR-164-C-1

JEIK D. ROMERO,

Defendant.

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On August 8, 2005, defendant Jeik D. Romero filed a late motion to dismiss counts 1, 2 and 3 of the indictment. Defendant already has had two opportunities to file pretrial motions in this case and has taken advantage of both, with his first attorney on December 10, 2004, see Dkt. Nos. 51-58, then with his second attorney on May 23 and 25, 2005, see Dkt. Nos. 148, 149 and 151. With trial firmly set for August 29, 2005, it is much too late for defendant to be filing new substantive motions; that alone is a basis to deny them. Fed. R. Crim. P. 12(e).

It is clear, however, that defendant insisted on filing these motions and that his attorney acquiesced in the interest of maintaining a working relationship. To forestall any future challenge to counsel's decision not to file a timely dismissal motion, I conclude that defendant's new motion is meritless as well as untimely.

Defendant's challenge to counts 1 and 3 (and to a lesser extent count 2) is based on his claim that the government has no actual evidence of his guilt. Challenging the

government's ability to prove its case cannot lead to pretrial dismissal of charges because the vehicle of summary judgment does not exist in criminal cases. United States v. Thomas, 150 F.3d 743, 747 (7th Cir. 1998). Even if it did, it would not be appropriate here because defendant is challenging the truthfulness of the government's witnesses. It is a jury's duty, not the court's, to determine witness credibility. United States v. Bonty, 383 F.3d 575, 579 (7th Cir. 2004). Defendant will have to wait until trial to attempt to convince the jury that the government's witnesses are not credible and that it is not really defendant's voice on the recorded telephone calls.

Defendant challenges count 2 on the ground that it is based on evidence obtained from court-ordered wiretaps that were illegal because the government's affiant lied in his supporting affidavits. Merely declaiming that an agent lied in his wiretap affidavits will not even obtain a suppression hearing, let alone dismissal of the resulting charges. A defendant is not entitled even to court exploration of such an allegation unless he makes a substantial preliminary showing that the affiant intentionally or recklessly included false statements in his affidavit and that these false statements were material to the court's probable cause determination. United States v. Souffront, 338 F.3d 809, 821-22 (7th Cir. 2003). Defendant has not done that here.

In short, there is no support for any aspect of defendant's motion.

ORDER

For the reasons stated above, IT IS ORDERED that defendant Jeik Romero's motion to dismiss counts 1, 2 and 3 of the indictment is DENIED.

Entered this 10th day of August, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge