

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

10-cr-135-bbc

JACOB STADFELD,

Defendant.

On August 11, 2010, the grand jury indicted defendant Jacob Stadfeld on eight counts of wire fraud, among other charges. Defendant moved under Fed. R. Crim. P. 12(b)(3), to dismiss counts 3, 4 and 8, which are wire fraud charges, on the ground that they fail to state an offense. Dkt. # 9. Although the court recently granted defendant's motion to replace his attorney, this replacement was tactical and did not moot the pending motion to dismiss. In his motion, defendant offers his interpretation of the facts underlying the challenged counts, arguing that the charged acts do not advance the execution of the alleged fraud scheme.

As the government points out in response, the challenged wire fraud counts state the elements of the offense, apprise defendant of the charges and enable defendant to plead the judgment as a bar to future prosecution for the same offense. This is all that is required. United States v. Sandoval, 347 F.3d 627, 632 (7th Cir. 2003). What defendant is asking is that the court determine before trial that the facts underlying the challenged counts are

insufficient to establish the charged fraud. This would be the equivalent of summary judgment in a civil case, a procedure that not only would not be supported under the circumstances, but which does not even exist in a criminal case. United States v. Thomas, 150 F.3d 743, 747 (7th Cir. 1998) (Easterbrook, J., concurring). In short, defendant is not entitled to dismissal of these counts.

ORDER

It is ORDERED that defendant's motion to dismiss counts 3, 4 and 8 of the indictment is DENIED.

Entered this 9th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge