

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY R. SOLOMON,

Defendant.

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CRIMINAL NO. 08-00026-01-CR-W-FIG

**DEFENDANT TROY SOLOMON'S
MOTION TO QUASH INDICTMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TROY R. SOLOMON, Defendant in the above-entitled and numbered cause, and moves this Court to quash the Indictment issued against him on February 6, 2008, in the Western District of Missouri. In support of his Motion, Mr Solomon respectfully shows:

I.

FACTS & ALLEGATIONS

On February 29, 2008, Mr. Solomon was arrested in Houston, Texas on charges stemming from an indictment issued on February 6, 2008, in the Western District of Missouri, Central Division under Cause No. 08-00026-01-CR-W-FIG. On March 3, 2008, Mr. Solomon made an initial appearance before the United States District Court for the Southern District of Texas, Houston Division. Mr. Solomon appeared for arraignment in the Western District of Missouri, Central Division on April 2, 2008.

Mr. Troy R. Solomon is charged by Indictment with one (1) count of violating Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D), 841(b)(2), 841(b)(3), and 846 for allegedly conspiring to distribute controlled substances, with one (1) count of violating Title 18, United States Code, Sections 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), and 1956(h) and Title 21, United States Code, Section 846 for allegedly conspiring to commit, promote and/or conceal money laundering, and with some ten (10) counts of violating Title 18, United States Code, Section 2, Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D), 841(b)(2), 841(b)(3), for alleged illegal distribution of controlled substances all stemming from transactions involving the sale of prescription medication. Mr. Solomon pleaded not guilty to each and every count of the indictment.

The Indictment filed on February 6, 2008, should be quashed as it fails to sufficiently describe any alleged criminal conduct on the part of Mr. Solomon.

II.

INDICTMENT INSUFFICIENT ON ITS FACE

The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right...to be informed of the nature and cause of the accusation”. With respect to a defendant’s rights under the United States Constitution, the United States Supreme Court has consistently held that of “the criteria by which the sufficiency of an indictment is to be measured” is whether it “sufficiently apprises the defendant of what he must be prepared to meet”. *Russell v. United States*, 369 U.S. 749, 763 (1962); *United States v. Abu-Shawish*, 507 F.3d. 550, 558 (7th Cir. 2007).

Mr. Solomon adopts by reference the arguments, authorities, and evidence submitted in Defendant Martin’s Motion to Dismiss for Failure to State an Offense as to Counts Two and Twenty-

One trough Twenty-Four already on file with this Court.

Additionally, Mr. Troy Solomon asserts that Counts One (1) through Twelve (12) of the Indictment are insufficient as they fail to state the following:

Count One (1) - Conspiracy to Distribute Controlled Substances

1. The specific names of the “other person known” and “unindicted co-conspirator” with whom Mr. Solomon is alleged to have conspired to distribute controlled substances.
2. The alleged connection between Mr. Solomon and Ascensia Nutritional Pharmacy or The Medicine Shoppe.
3. The specific dates, times, locations, and/or persons present or involved during the specific instances that Mr. Solomon is alleged to have conspired to distribute controlled substances.
4. The specific Schedule III, IV, and V controlled substances allegedly distributed by Mr. Solomon for reasons other than a legitimate medical purpose together with the identity of each person to whom such controlled substances were distributed and the date, time, and location of said distribution.
5. How Mr. Solomon did “knowingly” and “intentionally” distribute Schedule III, IV, and V controlled substances for reasons other than a legitimate medical purpose as alleged in the indictment.
6. Which specific prescriptions allegedly distributed by Mr. Solomon where unlawful or invalid together with the identity of each person to whom such controlled substances were distributed and the date, time, and location of said distribution.
7. Which unlawful or invalid prescriptions and refill orders were sent by facsimile from Mr. Solomon to Defendant Rostie as alleged in Count One, Manner and Means §b of the indictment together with the basis for alleging such prescriptions or refill orders were unlawful or invalid.
8. The basis for alleging in Count One, Manner and Means §b, of the indictment that facsimile communications allegedly sent between Mr. Solomon and Defendant Rostie amounted to criminal conspiracy together with the content of each such facsimile transmission and the date and time each such facsimile transmission was sent. Further, fails to identify with particularity the person who actually sent the facsimile transmissions and the person who actually received them.

9. Why shipping controlled substances between licensed pharmacies, as alleged in Count One, Manner and Means §e, of the Indictment amounts to criminal conspiracy together with the identity of each person to and by whom such controlled substances were shipped, the contents of each such shipment, and the date, time, and location of said shipments.
10. The identify of “Dr. B” who is described in Count One, Manner and Means §e, of the Indictment as a medical doctor licensed in Texas together with all the prescription orders that bore his signature and/or DEA number which form the basis of any charges in the Indictment.
11. The dates and times when Mr. Solomon allegedly received shipments of controlled substances from Defendant Rostie, as alleged in Count One, Manner and Means §b of the Indictment together with the alleged contents of each such shipment and the place where the shipment was received.
12. Which communications (date and time) between Mr. Solomon and Defendant Rostie as alleged in Count One, Manner and Means §h, of the Indictment were to arrange illegal delivery of, or payment for, controlled substances, together with the nature and content of all such alleged communications.
13. The identify of all packages sent via United Parcel Service from Houston, Texas to Defendant Martin which form the basis for any alleged illegal activity together with the contents of each such package and the dates and times each such package was sent. *See* Count One, Manner and Means §f, of the Indictment.
14. Why the alleged introduction of Mr. Solomon to Defendant Rostie, as alleged in Count One, Overt Acts §a, of the Indictment amounts to criminal conspiracy.
15. The time, date, and location of the alleged introduction of Mr. Solomon to Defendant Rostie as alleged in Count One, Overt Acts §a, of the Indictment together with the nature of any allegedly criminal conduct involved in such introduction.
16. The nature of the alleged conspiratorial content of the introduction between Mr. Solomon and Defendant Rostie as alleged in Count One, Overt Acts §a, of the Indictment.
17. The identity of any controlled substances, prescriptions, or refill orders discussed during the alleged introduction of Mr. Solomon to Defendant Rostie, which form the basis of conspiratorial conduct alleged in Count One, Overt Acts §a, of the Indictment.

18. The nature of the alleged agency between Mr. Solomon and Defendant Elder as well as the basis for such allegation.
19. The prescriptions of promethazine allegedly ordered, filled, and/or shipped as alleged in Count One, Overt Acts §g, of the Indictment and why the ordering, filling, and/or shipping amounts to criminal conspiracy.
20. The specific dates and times that Mr. Solomon allegedly ordered, filled, and/or shipped promethazine, as alleged in Count One, Overt Acts §h of the Indictment together with the manner and means by which any such shipments were made.

**Count Two (2) - Conspiracy to Commit
Promotional and/or Concealment Money Laundering**

1. The specific names of the “others known and unknown” with whom Mr. Solomon is alleged to have conspired to conceal and disguise the nature and source of any proceeds made the basis of Count Two of the Indictment, together with the specific unlawful activity from which the proceeds were derived.
2. The proceeds and/or financial gains allegedly received by Mr. Solomon in conspiracy to commit money laundering as alleged in Count Two of the Indictment.
3. The identify with particularity, by nature, date, and time, each specific instance of unlawful activity that Mr. Solomon allegedly engaged in that amounts to conspiracy to commit money laundering as well as all persons associated with each such instance as alleged in Count Two fo the Indictment.
4. Each allegedly illegal transaction affecting interstate commerce conducted by Mr. Solomon together with the date, time, location, and persons or entities involved with each such transaction forming the basis of Count Two fo the Indictment.
5. Any and all property involved in financial transaction which represented the proceeds of alleged unlawful activity together with the alleged unlawful activity associated with each such property as alleged in Count Two of the Indictment.
6. The illegal act associated with Defendant Delmon Johnson allegedly residing at a property allegedly owned by Mr. Solomon, as alleged in Count Two §a of the Indictment.
7. The specific content of each and every of the seventy (70) packages identified in Count Two, §a of the Indictment together with Mr. Solomon’s connection thereto, the specific dates each such package was shipped, and the person who sent and received each such package.

8. Each allegedly illegal act associated with using the address of 5833 Sunforest Drive, Houston, Texas, for invoicing packages shipped via United Parcel Service as alleged in Count Two §a of the Indictment, together with the date, time, and persons associated with each such act.
9. Any information indicating that packages shipped via United Parcel Service from Houston, Texas were received by Defendant Martin in Belton, Missouri as alleged in County Two, §a of the Indictment.
10. Each and every specific criminal act associated with shipping packages via United Parcel Service as alleged in Count Two, §a of the Indictment.
11. Each and every specific criminal act associated with shipping prescriptions via Federal Express as alleged in Count Two, §f of the Indictment, together with a description of the date and contents of each such shipment, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription.
12. Any information indicating that prescriptions shipped via Federal Express were received by Mr. Solomon or Mr. Johnson as alleged in Count Two, §f of the Indictment, together with the date and a description of the contents of each such prescription, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription.
13. The location and amount of proceeds allegedly generated in Texas by Mr. Solomon, as alleged in Count Two §b of the Indictment together with the prescription filled, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription..
14. Each and every criminal act allegedly performed by Mr. Solomon, as alleged in Count Two §b of the Indictment, that amounts to conspiracy to commit money laundering together with the identity of each and every person associated with each such act.
15. The specific “filled prescriptions” allegedly mailed to Mr. Solomon, as described in Count Two §f of the Indictment, together with the date and a description of the contents of each such prescription, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription.
16. The specific dates on which “filled prescriptions” were allegedly mailed to Mr. Solomon, as alleged in Count Two §f of the Indictment

Counts Three (3) through Six (6) - Distribution of Controlled Substances

1. Specific information indicating that Mr. Solomon allegedly distributed and/or dispensed Schedule III and IV controlled substances for other than legitimate medical purposes or in the usual course of professional practice together with the dates such controlled substances were dispensed, the persons to whom such controlled substances were dispensed, and any financial gain attributed to such distribution as alleged in Counts Three through Six of the Indictment.
2. The specific illegal conduct or illegal activity allegedly committed by Mr. Solomon, as alleged in Counts Three through Six of the Indictment, that amounts to illegal distribution of controlled substances.
3. Specific information indicating that Mr. Solomon “knowingly” and “intentionally” distributed and dispensed Schedule III and IV controlled substances for illegal purposes as alleged in Counts Three through Six of the Indictment together with a description of the contents of each such controlled substance, the date such substance was distributed or dispensed, the person for whom each such controlled substance was intended, and the identity of each and every person who allegedly received such controlled substance.
4. The specific names of the “others” both “known and unknown” as alleged in Counts Three through Six of the Indictment.
5. Information indicating that Mr. Solomon was present when the controlled substances described in Counts Three through Six of the Indictment were allegedly distributed, or when the prescriptions were written, or when the prescriptions were filled, and the physical location where each such distribution occurred.

Counts Seven (7) through Ten (10) - Distribution of Controlled Substances

1. Specific information indicating that Mr. Solomon allegedly distributed and/or dispensed Schedule III, IV, and V controlled substances for other than legitimate medical purposes or in the usual course of professional practice together with the dates such controlled substances were dispensed, the persons to whom such controlled substances were dispensed, and any financial gain attributed to such distribution as alleged in Counts Seven through Ten of the Indictment.
2. The specific illegal conduct or illegal activity allegedly committed by Mr. Solomon, as alleged in Counts Seven through Ten of the Indictment, that amounts to illegal distribution of controlled substances.
3. Specific information indicating that Mr. Solomon “knowingly” and “intentionally” distributed and dispensed Schedule III and IV controlled substances for illegal purposes as alleged in Counts Seven through Ten of the Indictment together with a

description of the contents of each such controlled substance, the date such substance was distributed or dispensed, the person for whom each such controlled substance was intended, and the identity of each and every person who allegedly received such controlled substance.

4. The identity of the "others" both "known and unknown" as alleged in Counts Seven through Ten of the Indictment.
5. Information indicating that Mr. Solomon was present when the controlled substances described in Counts Seven through Ten of the Indictment were allegedly distributed, or when the prescriptions were written, or when the prescriptions were filled, and the physical location where each such distribution occurred.
6. The full name of patient "H.H." as alleged in Count Seven.
7. The full name of patient "M.P." as alleged in Count Eight.
8. The full name of patient "H.H." as alleged in Count Nine.
9. The full name of patient "M.P." as alleged in Count Ten.
10. The date on which the prescription was allegedly written for patient "H.H." as alleged in Count Seven.
11. The date on which the prescription was allegedly written for patient "M.P." as alleged in Count Eight.
12. The date on which the prescription was allegedly written for patient "H.H." as alleged in Count Nine.
13. The date on which the prescription was allegedly written for patient "M.P." as alleged in Count Ten.

Counts Eleven (11) and Twelve (12) - Distribution of Controlled Substances

1. Specific information indicating that Mr. Solomon allegedly distributed and/or dispensed Schedule V controlled substances for other than legitimate medical purposes or in the usual course of professional practice together with the dates such controlled substances were dispensed, the persons to whom such controlled substances were dispensed, and any financial gain attributed to such distribution as alleged in Counts Eleven and Twelve of the Indictment.

2. The specific illegal conduct or illegal activity allegedly committed by Mr. Solomon, as alleged in Counts Eleven and Twelve of the Indictment, that amounts to illegal distribution of controlled substances.
3. Specific information indicating that Mr. Solomon “knowingly” and “intentionally” distributed and dispensed Schedule III and IV controlled substances for illegal purposes as alleged in Counts Eleven and Twelve of the Indictment together with a description of the contents of each such controlled substance, the date such substance was distributed or dispensed, the person for whom each such controlled substance was intended, and the identity of each and every person who allegedly received such controlled substance.
4. The identity of the “others” both “known and unknown” as alleged in Counts Eleven and Twelve of the Indictment.
5. Information indicating that Mr. Solomon was present when the controlled substances described in Counts Eleven and Twelve of the Indictment were allegedly distributed, or when the prescriptions were written, or when the prescriptions were filled, and the physical location where each such distribution occurred.
6. The date on which the prescription identified in Count Eleven of the Indictment was allegedly written, the date and location of any distribution of a controlled substance for this patient, and Mr. Solomon’s alleged connection thereto.
7. The date on which the prescription identified in Count Twelve of the Indictment was allegedly written, the date and location of any distribution of a controlled substance for this patient, and Mr. Solomon’s alleged connection thereto.

The allegations contained in the Indictment against Mr. Solomon are conclusory statements depicting the usual and typical course of professional practice by which pharmacies distribute controlled substances for legitimate medical purposes. Based on the government’s failure to sufficiently describe in the Indictment any alleged criminal conduct or offense on the part of Troy Solomon, Mr. Solomon moves this Court for an order quashing the Indictment in its entirety.

III.

LEGAL ARGUMENT

For purposes of this section, Defendant SOLOMON adopts the legal arguments and authorities contained within Section II, "Legal Argument", of Defendant MARTIN's Motion to Dismiss for Failure to State an Offense.

IV

PRAYER

WHEREFORE, Defendant TROY R. SOLOMON prays this Court grant his Motion and that all Counts of the Indictment filed on February 6, 2008, against him be quashed and all charges contained therein dismissed. Defendant TROY R. SOLOMON further prays for such other and further relief to which he is justly entitled.

Respectfully submitted,

BANNWART & ASSOCIATES, P.C.

By: 

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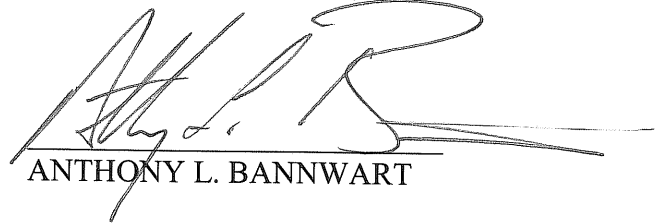
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Defendant Troy Solomon's Motion to Quash Indictment has this day been caused to be served on Assistant United States Attorney Rudy Rhodes for the Western District of Missouri, and other ECF listed counsel through use of the Electronic Court Document Filing System.

SIGNED this 16th day of June, 2008.

BANNWART & ASSOCIATES, P.C.

By:



ANTHONY L. BANNWART

ATTORNEYS FOR DEFENDANT
TROY R. SOLOMON