UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 12 CR 723, 13 CR 703, 15 CR 487
v.	)	
	)	Hon. Sharon Johnson Coleman
ADEL DAOUD	)	

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO CASE CONSOLIDATION AND ACCEPTANCE OF *ALFORD* PLEA

The UNITED STATES OF AMERICA, by and through its attorney, JOHN R. LAUSCH, JR., United States Attorney for the Northern District of Illinois, hereby submits this memorandum objecting to defendant's proposal to consolidate the three pending cases and, only thereafter, to enter a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

First, reassignment is improper under the Local Rules because (1) the two cases pending before this Court and the third case pending against defendant in a different Court involve different events that cannot be tried together, and (2) given the uncertain nature of defendant's *Alford* plea, the cases are not presently susceptible of disposition in a single proceeding. Second, this Court should reject defendant's request for an *Alford* plea in the cases pending before the Court because a jury determination would increase public trust in the proceedings and show defendant, the community, and the public at large that his entrapment claims are without merit. Finally, this Court should not render an advisory opinion on whether it would accept an *Alford* plea in the third case if it were reassigned.

I. Background

On September 14, 2012, defendant attempted to detonate a car bomb in downtown Chicago. Defendant's goal in doing so was to kill hundreds of people and make international news. Because of this conduct, defendant was charged with terrorism-related offenses in 12 CR 723, which was assigned to this Court.

Approximately two months later, while in custody, defendant attempted to arrange the murder of a Federal Bureau of Investigation special agent. Defendant discussed the murder with his cellmate, agreed to pay $20,000 for the killing, and placed a telephone call ordering the hit. When told that the agent's execution had been carried out, defendant expressed relief and a desire to hear details of the murder. Because of this conduct, defendant was charged with offenses in 13 CR 703. That case was initially assigned to Judge Robert Gettleman, but was reassigned to this Court upon defendant's motion based on the relatedness of the offenses.

On or about May 23, 2015, defendant fashioned weapons out of toothbrushes and attacked a fellow inmate, attempting to kill him because the inmate had drawn pictures of the Prophet Muhammad. Because of this attack, defendant was charged in 15 CR 487. That matter was initially assigned to Judge Samuel Der-Yeghiayan and, upon his retirement, reassigned to Judge Robert Dow. This third case was assigned to this Court for the limited purpose of defendant's competency determination. However, as the two matters are unrelated, there was no basis for consolidation under Local Rule 40.4 or Local Criminal Rule 50.1.

Based on the defenses proffered by defendant—entrapment as to the first two cases and an insanity claim as to the third—it does not appear that the aforementioned facts are in dispute. Instead, defendant claims that he was induced by the FBI to kill hundreds of people and a federal agent, and he only attacked the inmate because, as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or the wrongfulness of his acts. *See* 18 U.S.C. § 17. On November 14, 2018, defendant filed a "Motion for Leave to Enter Guilty Pleas Pursuant to *North Carolina v. Alford* Following the Court's Order Reassigning Case No. 15 CR 487 as Related and Request for Same." Docket No. 295. In his motion, defendant asks the Court to permit him to consolidate the cases and plead guilty to each of these offenses while maintaining his factual innocence.

II. Argument

A. Reassignment of the third case is improper under the Local Rules.

The Local Rules only allow a criminal case to be reassigned based on relatedness if the case can be disposed of "in a single proceeding." Local Cr. R. 40.4(b)(4). Defendant has not asked for a single trial on all three charges, and in any event, it is too late for the trials to be consolidated without further delaying the proceedings. Because defendant retains the right not to plead guilty up and until the time he actually enters a plea, the possibility of such a plea does not mean the cases will in fact be resolved in a single proceeding. Here, defendant has not even expressed an intent to plead guilty, but seeks only permission from the Court to enter an *Alford*

plea—a request the government opposes, and one that it would be improper for this Court to rule on in a case not currently assigned to it.

In addition, the Local Criminal Rules require that related cases "involve the same property," "involve some of the same issues of fact or law," or "grow out of the same transaction or occurrence." Local Rule 40.4(a) (applicable to the reassignment of criminal cases pursuant to Local Criminal Rule 50.1 and Local Rule 40.4(c)(1)). None of those criteria applies here. The third case against defendant involves completely unrelated charges—the stabbing of a fellow inmate—and the proffered defenses are also different—entrapment in the first two cases, versus insanity for the third. Docket No. 295 at 10. For these reasons, detailed further next, this Court should deny defendant's motion for reassignment.

1. Applicable Rules

Reassignment of criminal cases in the Northern District of Illinois is governed by Local Criminal Rule 50.1 and, by incorporation, Local Rule 40.4. More specifically, Local Criminal Rule 50.1 notes that "[t]he procedures set out in LR 40.4(c) and (d) shall be followed where the reassignment of a criminal case based on relatedness is sought."

Local Rules 40.4(c) and (d) provide as follows:

> (c) Motion to Reassign. A motion for reassignment based on relatedness may be filed by any party to a case. The motion shall—
>
> (1) set forth the points of commonality of the cases in sufficient detail to indicate that the cases are related *within the meaning of section (a)*, and

(2) indicate the extent to which *the conditions required by section (b)* will be met if the cases are found to be related.

(d) Ruling on Motion. The judge to whom the motion is presented may consult with the judge or judges before whom the other case or cases are pending. The judge shall enter an order finding whether or not the cases are related within the meaning of the rules of this Court and, if they are, whether the higher-numbered case or cases should be reassigned.

(Emphases added.) In other words, Local Rules 40.4(c) and (d) incorporate by reference Local Rules 40.4(a) and (b). Those rules, in turn, state as follows:

(a) Definitions. Two or more civil cases may be related if one or more of the following conditions are met:

(1) the cases involve the same property;

(2) the cases involve some of the same issues of fact or law;

(3) the cases grow out of the same transaction or occurrence; or

(4) in class action suits, one or more of the classes involved in the cases is or are the same.

(b) Conditions for Reassignment. A case may be reassigned to the calendar of another judge if it is found to be related to an earlier-numbered case assigned to that judge and each of the following criteria is met:

(1) both cases are pending in this Court;

(2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort;

(3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and

(4) the cases are susceptible of disposition in a single proceeding.

2. Analysis

Given that the requirements of Local Rule 40.4(a) are incorporated into the reassignment analysis by reference in Local Rule 40.4(c)(1), there are no grounds for reassignment here. The cases pending before this Court and the case pending before Judge Dow do not involve the same issues of fact or law, or grow out of the same transaction or occurrence.

In addition, this Court should deny defendant's motion for reassignment because the three pending cases are not currently susceptible of disposition "in a single proceeding," as required by Local Rule 40.4(b). As noted above, defendant has not asked to proceed by trial in all three cases. Instead, defendant asks this Court to authorize him to plead guilty pursuant to *North Carolina v. Alford* in both the cases currently before the Court (12 CR 723 and 13 CR 703) as well as the case currently before Judge Dow (15 CR 487). But the case pending before Judge Dow is not currently assigned to this Court. As a result, this Court cannot authorize a disposition via *Alford* plea in that matter; defendant's request instead must be raised before Judge Dow. Essentially, defendant asks this Court to issue an advisory opinion: to conclude that it will accept an *Alford* plea in a case currently not assigned to this Court, in order to facilitate reassignment of the matter pending before Judge Dow, so that this Court can then accept defendant's *Alford* plea. Not only is defendant requesting that the Court improperly exercise its jurisdiction, but defendant's request is improper under the rules, which require that matters be capable of disposition in a single proceeding *before* reassignment is made.

To be sure, defendant represents that the three cases can be disposed of in a single proceeding via his *Alford* plea proposal. But as this Court well knows, not all anticipated pleas comes to fruition. Just as a defendant can elect to testify or not to testify up until the final moments of a trial, a defendant has until the final moments of a plea colloquy—after he actually pleads guilty and a court accepts that plea—to demand a trial. Because defendant holds that right until the end of the plea colloquy, even in an *Alford* context, the Court is not in a position to find reassignment of the matter before Judge Dow proper in mere anticipation of a plea.

United States v. Brighton Bldg. & Maintenance Co., 431 F. Supp. 1115 (N.D. Ill. 1977), has relevance here. Although that case involved a negotiated plea rather than a contemplated *Alford* plea, it nonetheless counsels against defendant's motion where that motion invites the Court to condition reassignment of a case on the acceptance of a plea. Writing as a district judge in *Brighton Building*, Judge Flaum rejected the parties' joint request to reassign a case for the purpose of resolving it via a change of plea. Although the district court's analysis emphasized the prohibition on its participation in plea discussions set forth in Federal Rule of Criminal Procedure 11, Judge Flaum, in comments nonetheless instructive here, noted:

> It is not unusual, indeed it often occurs, that defendants enter pleas in multiple indictments before different judges and each judge imposes the sentence deemed appropriate, taking into consideration the complexity of the cases and the dispositions by his fellow judges.

Id. at 1117. Defendant claims that he faces a dilemma by having matters pending before two different judges (Docket No. 295 at 10), but as the court noted in *Brighton Building*, this is neither an unusual nor a problematic situation.

If defendant wishes to resolve all three cases, he can file his request to enter *Alford* pleas before each court. Defendant has failed to do so, and his motion creates the appearance that he is trying to have a particular forum resolve his contested motion to enter an *Alford* plea. Again, as *Brighton Building* observed:

> While the court does not suggest that the parties have agreed to seek this transfer to avoid having any particular judge sentence defendants Bowler and Krug, to grant such requests might, in the mind of the public we serve, create the appearance of impropriety. . . . [T]o grant the present motion in order to facilitate the entry of these defendants' guilty pleas could create the future possibility of attempted manipulation of the court's procedures under the aegis of "plea bargaining". . . .

Id. at 1117-18.

Both the Local Rules and the need to avoid actual or apparent forum shopping require that defendant's motion for reassignment should be denied.

B. The Court should deny defendant's request to enter an *Alford* plea in the cases currently pending before it.

For years, defendant has claimed that the federal government induced him to murder hundreds of Illinoisans and one of its own agents. Defendant has informed the Court of his intent to put "the FBI on trial." Defendant's claims serve to foster public distrust of the government and the judicial system. In his motion, defendant argues that it is the prejudicial nature of the charges against him and the fear of prejudice by jurors against his Islamic faith that compel him to seek an *Alford* plea. Docket No. 295 at 10. A plea premised on such a claim is an attack on our system of justice.

1. Legal Background

In *North Carolina v. Alford*, the Supreme Court held that the Constitution does not require a defendant to admit guilt in order to plead guilty: "an individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the crime." 400 U.S. at 37. The right to plead guilty pursuant to *Alford* is not absolute, however. As the Seventh Circuit explained in *United States v. Cox*, 923 F.2d 519, 524 (7th Cir. 1991), *Alford* "did not hold that the constitution required" trial courts to allow *Alford* pleas. *Id*. "In fact, the Court expressly left room for the *discretion* of trial courts." *Id*. (emphasis in original). Indeed, *Alford* itself recognized this principle:

> Our holding does not mean that a trial judge must accept every constitutionally valid guilty plea merely because a defendant wishes so to plead. A criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the Court . . . . *Cf.* Fed. R. Crim. P. 11, which gives a trial judge discretion to 'refuse to accept a plea of guilty.' We need not now delineate the scope of that discretion.

400 U.S. at 38, n.11.

In *Cox*, the Seventh Circuit highlighted some of the reasons why discretion on the part of trial courts is important in the *Alford* plea context, citing reasoning from the First Circuit's opinion in *United States v. Bednarski*:

> We see at least two reasons why the [trial] court must have discretion whether or not to accept a plea even though a strong case may be made as to its voluntariness. The first is that a conviction affects more than the court and the defendant; the public is involved. However legally sound the *Alford* principle, which of course we do not dispute, the public might well not understand or accept the fact that a defendant who denied his guilt was nonetheless placed in a position of pleading guilty and going to jail . . . .

> [Restricting the district court's discretion to reject '*Alford* pleas'] could produce even more direct difficulties. We could not support a principle under which, if the [trial] court refused to accept a plea, the defendant after trial and a conviction and a sentence not to his liking could return and freely litigate the correctness of the court's finding that the requirements of Rule 11 had not been fully met.

Cox, 923 F.2d at 524-25 (quoting *Bednarski*, 445 F.3d 364, 366 (1st Cir. 1971)). *Cox* reiterated that nothing in the "controlling precedent precludes a district court, in the exercise of its sound discretion and in a[n] appropriate case, from rejecting a plea allowed by *Alford*." *Id*. at 525. In short, this Court has discretion to accept or reject defendant's proposed plea.

2. Department of Justice policy

Department of Justice policy reflects the concerns about *Alford* pleas that were raised in *Cox*. As a result, government attorneys are generally prohibited from entering into a plea agreement with a defendant that maintains his innocence with respect to the charge to which a defendant seeks to plead guilty. *See* Justice Manual 9-16.015, 9-27.440.

There is a strong rationale underpinning the policy: involvement by attorneys for the government in the inducement of guilty pleas by defendants who protest their innocence may create an appearance of prosecutorial overreaching. DOJ policy notes:

> [I]t is often preferable to have a jury resolve the factual and legal dispute between the government and the defendant, rather than have government attorneys encourage defendants to plead guilty under circumstances that the public might regard as questionable or unfair. For this reason, government attorneys should not enter into *Alford* plea agreements, without the approval of the United States Attorney and the appropriate Assistant Attorney General.

Comment to JM 9-27.440.

3. Analysis

In exercising its discretion whether to accept or reject defendant's contemplated plea in the cases now pending before it,[1] this Court should not only generally consider the concerns about *Alford* pleas set forth above, but especially consider the manner in which these concerns are amplified in this particular matter.

Defendant has spent the past six years emphasizing in court appearances and filings and during press conferences what he views as the impropriety of the government's actions, its policies, and its agents' conduct. Defendant has claimed—and through his proposed resolution would continue to claim—that the federal government induced him to murder hundreds of Illinoisans and one of its own agents. In the very same proceeding during which defendant asked this Court to accept an *Alford* plea, he also informed the Court that he intended to put "the FBI on trial." Defendant's claims serve to foster public distrust of the government—indeed that is the very reason defendant makes them. Moreover, defendant also impugns the fairness of the entire judicial system. In his motion, defendant argues that it is the nature of the charges against him and evidence regarding his Islamic faith and beliefs that compel him to plead guilty. Docket No. 295 at 10. He asks for the Court's permission to be able to continue to argue that he is only pleading guilty due to the weight of the government pressure and societal prejudice against him, as opposed to the overwhelming evidence proving his guilt.

[1] As noted earlier, this Court cannot determine whether an *Alford* plea is appropriate in the matter currently assigned to Judge Dow.

Given defendant's asserted positions, there are strong policy reasons for the Court to reject his request to proceed with an *Alford* plea. First, defendant maintains his factual innocence, and a jury determination of that issue would increase the public trust in the proceeding. Instead of defendant's claim that he is compelled to plead guilty by forces distinct from his proffered defenses, a jury would decide whether he committed the offenses as charged. Second, an open trial would provide the public with the opportunity to see and hear the evidence against defendant. Public confidence in the outcome of these matters will be increased once the overwhelming nature of the government's case is revealed.[2]

The government also asks this Court to consider, when exercising its discretion whether to accept or reject defendant's plea, the circumstances of each offense. Because the facts and circumstances of the current cases before this Court and the case before Judge Dow greatly differ, the Court's analysis and ultimate decision with regard to each case may differ. Indeed, an *Alford* plea in the first case certainly has a different impact on the public than in the third case. Moreover, in both the solicitation and attempt murder cases, there are actual victims for whom an *Alford* plea may impact their sense of closure and justice. Additionally, the reasons the

[2] The government acknowledges that it will be able to present evidence against defendant in other ways. For example, if the Court does accept defendant's *Alford* plea, the government intends to present a fulsome factual basis at the time of the plea, *see* Fed.R.Crim.Pro. 11(a)(3), and to present evidence at sentencing regarding the facts and circumstances of defendant's criminal conduct. The public would therefore have some opportunity to learn the specifics of the evidence against defendant at that time. However, there are significant differences in the procedures employed at sentencing and the amount of evidence that the Court would likely permit in a sentencing hearing, which would presumably only be allotted two to three days, as opposed to a multi-week trial.

defendant has proffered for why this Court should accept an *Alford* plea in each case differ. With regard to the first case, defendant has argued that the nature of the terrorism charges and prejudices of the citizens of the Northern District of Illinois weigh in favor of an *Alford* plea. With regard to the third case, the defendant has proffered the defendant's mental health implications as a reason for this Court to accept an *Alford* plea.[3] Defendant has put this Court in an untenable position by offering to consolidate the cases *only i*f this Court will accept an *Alford* plea in all three distinct cases. Defendant's all-or-nothing proposition undermines the individual analysis called for in each case.

Resolution of these cases in the manner requested by defendant also cause concern for defendant's rehabilitation and future dangerousness. The adage that acceptance of responsibility is the first step toward rehabilitation applies here. While a jury conviction on the pending charges does not have the same impact as a guilty plea (*i.e.*, one in which the defendant acknowledges his criminal conduct, as opposed to an *Alford* plea), it does serve as a public repudiation of the notion that defendant only committed the offenses due to FBI inducement or his own insanity. Moreover, the government is greatly concerned about defendant's support structure upon his eventual release into the community. The government's evidence shows that his family, his friends, and certain members of both his school and mosque were aware, albeit to differing degrees, of defendant's infatuation with violent jihad. Impressing

[3] Notably, defendant has not proffered any justification for this Court to accept an *Alford* plea in the second case.

upon them, as members of the general public, the true nature of defendant's conduct—the result of his own desires and beliefs as opposed to those foisted upon him by the government—is of paramount importance. If defendant is not provided the community structure to challenge his violent jihadist views (because the community members do not believe they are truly held), and if his community members are unwilling to alert law enforcement to signs that defendant is again interested in committing an attack (again, incorrectly believing that such interest never existed outside of defendant's interactions with the government), then the danger defendant will present upon his release will be further increased. In short, defendant's support system needs to appreciate the nature of his criminal conduct in order to provide him a structure for rehabilitation and decrease the danger he presents. The Court's acceptance of an *Alford* plea would blunt the impact of a plea of guilty or a conviction by a jury of his peers on defendant's community.

III. Conclusion

WHEREFORE, the government requests that the Court deny defendant's request to consolidate the cases and present a plea pursuant to *United States v. Alford* and instead proceed to trial as scheduled.

Respectfully submitted,

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