

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI**

**UNITED STATES OF AMERICA**

**Plaintiff,**

**vs.**

**MARCO MURSIA**

**Defendant.**

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**Case No. 10-00320-10-CR-W-DGK**

**DEFENDANT’S MOTION TO SEVER**

COMES NOW Defendant, Marco Mursia, by and through undersigned counsel, and pursuant to Rule 14 of the Federal Rules of Criminal Procedure hereby respectfully moves the Court to sever his trial from the trial of his co-defendants. In support of this motion, the defendant states as follows:

1. The defendant and his co-defendants were indicted on November 17, 2010, with Conspiracy to Distribute Five Kilograms or More of Cocaine, Fifty Kilograms or More of Cocaine Base, and One Hundred Kilograms or More of Marijuana.
2. The government alleges that between January 1, 2006, and November 17, 2010, the defendant, along with his co-defendants, conspired to commit the above conspiracy.
3. The government alleges that Mr. Mursia engaged in various phone conversations, beginning in 2009, with Juan Marron in the attempt to assist Mr. Marron in the distribution of narcotics.

4. During the entire course of the alleged conspiracy, law enforcement officers did not observe the defendant in possession of narcotics, nor did they observe the defendant conducting any transactions with any of his co-defendants.
5. When law enforcement arrested the defendant on this matter, they did not find narcotics.
6. The government used the assistance of a confidential informant to conduct transactions with co-defendants. The confident informant did not conduct a transaction with the defendant Mursia.
7. There is no tangible evidence that the defendant engaged in the sale or distribution of controlled substances.
8. Pursuant to Federal Rule of Criminal Procedure 8(b), defendants may be charged together “if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses.”
9. Federal Rule of Criminal Procedure 14(a) provides that “if joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants’ trials, or provide any other relief that justice requires.”
10. Based on the lack of evidence against the defendant, joinder of his case with the co-defendants would cause unfair prejudice in his matter.
11. The Government alleges the defendant assisted co-defendant in the acquisition of narcotics for distribution. The charged conspiracy involves various alleged transactions in which the defendant Mursia was not involved. Further, in the

transactions in which the government alleges defendant Mursia was involved, there is no corroborative evidence to support the allegations.

12. The government attempts to combine all of the defendants into one massive conspiracy when several of the defendants have little or no connection to one another, including Defendant Mursia. The government has attempted to join multiple alleged conspiracies into one single indictment by merging nearly all the defendants into counts 1 and 2, and the law does not support such tactics. *United States v. Butler*, 494 F.2d 1246, 1255-57 (10<sup>th</sup> Cir. 1974).
13. Severance is appropriate in instances where a joint trial deprives the defendant of the right to call as a witness a co-defendant who would testify to exculpatory evidence. *United States v. Starr*, 584 F.2d 235, 239 (8<sup>th</sup> Cir. 1978). Defendant Mursia intends to call Juan Marron as a witness in his case-in-chief to testify that Defendant Mursia did not supply him with narcotics. Every defendant has a right against self-incrimination and can choose not to testify.
14. Severance is appropriate in instances where the jury cannot reasonably be expected to compartmentalize the evidence as it relates to separate defendants. *United States v. Massa*, 740 F.2d 629, 649 (8<sup>th</sup> Cir. 1994) cert. denied 471 U.S. 1115 (1995). The issue of compartmentalization is of grave concern in this case since the jury will hear evidence relating to the alleged criminal acts of 19 defendants through direct exam and government witnesses. A large portion of the evidence will falsely implicate Defendant Mursia in wrong doing.
15. Defendant Mursia has little or no contact with many of the other named defendants. To join his trial with the trial of the other defendants, and to force to

his alleged him to combat substantial evidence unrelated to his alleged criminal conduct, would be unjust and a violation of his right to a fair trial. See, U.S.C.A. Const. Amend. 6.

16. If the Government is allowed to introduce evidence of the multitude of transactions the defendant was not involved in, the defendant would not be given a fair trial.

17. In *United States v. Butler*, multiple defendants were charged with conspiracy to convert government property and to commit depredation against government property and for various other substantive offenses. In *Butler*, the government only alleged one general conspiracy, but the evidence supported the existence of no fewer than three, with which the complaining defendant was not involved. The Court found that the variance between the indictment and the evidence was harmful error with respect to the complaining defendant, that a curative instruction would not bridge the gap between pleading and proof in the circumstances of the present case, and that the complaining defendant was entitled to severance. *Id at 494 F2d 1246 (1974, CA10 Okla)*.

18. The same issue is present in the instant case. Defendant Mursia is not involved in the majority of the alleged conspiracies presented in Count One of the indictment. The defendant Mursia should be tried based only upon the matters attributable to him. The probability that the jury will confuse evidence of defendant Mursia's guilt with evidence of the guilty of the co-defendant's is high based upon the enormity of the evidence involving others. Defendant Mursia's case should be severed from the co-defendants.

19. During trial, statements that will be attributed to co-defendant Juan Marron may contain information about defendant Mursia. Defendant Mursia's right to call Juan Marron as a witness to contradict those statements or cross-examine him will be impaired due to Mr. Marron's privilege against self incrimination. Therefore, defendant Mursia's trial should be severed from Juan Marron.
20. As the Supreme Court suggested in *Kotteakos v. United States*, 328 U.S. 750, 772; 66 S.Ct. 1239, 90 L.Ed. 1557 (1946), the convenience and possible efficiency of joint trials do not automatically trump the constitutional and historic protections we afford individual defendants. In the instant case, Defendant Mursia's guilt or innocence should be judged based on testimony of all relevant witnesses available to the defense and without the concern that a jury might convict him simply because of the overwhelming evidence of his co-defendants.
21. This Motion is not made to vex or delay the Court, but in the interest of justice.

WHEREFORE, Defendant requests that this Honorable Court grant his Motion to Sever, and for such further relief as the Court deems just and equitable.

Respectfully submitted,

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