

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No. 10-00320-12-CR-W-DGK
)
 DESHAUN L. CERUTI,)
)
 Defendant.)

AMENDED MOTION TO SEVER CASE OF INDIVIDUAL DEFENDANT

COMES NOW THE ACCUSED, DESHAUN L. CERUTI, by and through counsel, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, and moves this Honorable Court to sever his trial from the trial of the co-defendants in the above-styled case. As grounds in support thereof, Mr. Ceruti states:

FACTS

1. DeShaun Ceruti and eighteen co-defendants are charged by Indictment with one count of Conspiracy to Distribute Five Kilograms or More of Cocaine, Fifty Grams or More of Cocaine Base, and One Hundred Kilograms or More of Marijuana in violation of 21 U.S.C. §§ 841(a)(1), 842(b)(1)(A) and (B), and 826 and one count of Money Laundering in violation of 18 U.S.C. §1956(a)(1)(A)(i) and (h).
2. In support of its indictment, the Government alleges:

- a. Mr. Ceruti engaged in a telephone conversation between May 4 and May 5, 2010, wherein Juan Marron instigated a drug transaction from David Montoya to DeShaun Ceruti of one kilogram of cocaine.
 - b. Juan Marron caused half of a kilogram of cocaine to be distributed by telephone from David Montoya to DeShaun Ceruti between May 5 and May 14, 2010.
 - c. Mr. Ceruti ordered one ounce of crack cocaine and two pounds of marijuana from Juan Marron by telephone between May 19 and May 31, 2010.
 - d. After being arrested on June 1, Mr. Ceruti contacted Juan Marron to tell of his arrest and the seizure of alleged controlled substances.
3. Law enforcement officers did not recover cocaine from DeShaun Ceruti between May 4 and May 14, 2010.
 4. Law enforcement officers stopped and searched a vehicle in which Mr. Ceruti was riding on June 1, 2010 and allegedly found two pounds of marijuana and twenty-eight grams of cocaine in a plastic shopping bag in the vehicle.
 5. There is no evidence that Mr. Ceruti had a relationship with any of the co-defendants, except Muhammad Rollie and, arguably, Juan Marron.
 6. There is no evidence that Mr. Ceruti engaged in the sale or distribution of controlled substances.

ARGUMENTS AND AUTHORITIES

7. Federal Rules of Criminal Procedure 8 and 14

The Federal Rules of Criminal Procedure govern the proper joinder of criminal defendants in a single indictment. In determination of whether it is proper to join separate defendants, “[t]he indictment or information may charge 2 or more defendants 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. The defendants may be charged in one or more counts together or separately.” *Federal Rule of Criminal Procedure 8(b)*.

Federal Rule of Criminal Procedure 14(a) provides that “[i]f the 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.”

The appropriate test for severance of defendants is whether a complaining defendant will be unduly prejudiced by the joinder. The *Zafiro* Court elaborated “when defendants properly have been joined under Rule 8(b), a district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” *Zafiro v. United States*, 506 U.S. 534, 539 (1993).¹

¹ Mr. Ceruti is not agreeing that the defendants have been properly joined under Federal Rule of Criminal Procedure 8(b).

8. Mr. Ceruti's trial should be severed from the trial of the co-defendants in this case because joinder of the defendants in this case will violate Mr. Ceruti's right to a fair trial.

The Court in *United States v. Jones*, 880 F.2d 55, 61 (8th Cir. 1989), states that Federal Rule of Criminal Procedure 8(b) is used to join multiple criminal defendants using a single count or related counts; however, “the Rules do not permit [cumulative] prejudice by charging several defendants with similar but unrelated offenses (citing *Cupo v. United States*, 359 F.2d 990 (D.C. Cir. 1966), cert. denied, 385 U.S. 1013 (1967)).

When viewing the evidence in the light most favorable to the Government, Mr. Ceruti is implicated in three drug transactions. At the conclusion of the first two events, law enforcement officers did not seize any drugs from Mr. Ceruti. *See Fact #3 above*. Therefore, only one alleged drug transaction remains.

Based upon the Indictment, there are no less than eighteen other alleged conspiracies included in this single Indictment. If the Court allows the Government to introduce evidence thereof, Mr. Ceruti will not be afforded a fair trial. In *United States v. Butler*, the Government charged multiple defendants with “conspiracy to convert government property and to commit depredation against government property and for various 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 determined 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 a severance”. 494 F.2d 1246 (1974, CA10 Okla). The Court

elaborated that severance is not discretionary with the trial court when “when joinder of either defendants or offenses caused the actual or threatened deprivation of a fair trial”. *Id.*

This same issue is presented in the case at bar. Mr. Ceruti is not involved in nearly ninety percent of the alleged conspiracies presented by Count One of this Indictment. The Government does not allege that Mr. Ceruti even knows or has met the other co-defendants. At best, when viewed in a light most favorable to Plaintiff, the Government may present two connections between Mr. Ceruti and the eighteen charged co-defendants: 1) Juan Marron, by virtue of law enforcement following Mr. Ceruti by vehicle from the home of the latter and 2) a familial connection between Mr. Ceruti and co-defendant Muhammad Ibrahim Rollie. Mr. Ceruti cannot be connected to any other persons involved in this alleged conspiracy or any other conspiratorial acts.

Mr. Ceruti should be tried based only upon the matters attributable to him and the relationships that he kept. The probability that the jury will confuse evidence of Mr. Ceruti’s guilt with evidence of the guilt of the co-defendants is high based upon the enormity of the evidence involving others. Mr. Ceruti’s case should be severed from those of the co-defendants.

9. Severance of joined defendants is necessary to avoid unfair prejudice in the event that one of the defendants exercises his right to testify while another defendant wishes to invoke his Fifth Amendment right.

During trial, statements that will be attributed to co-defendant Juan Marron may contain information about Mr. Ceruti. Mr. Ceruti’s right to call Juan Marron as a witness to contradict those statements or cross-examine him will be impaired; co-defendant Juan Marron retains a

privilege against self-incrimination. Therefore, Mr. Ceruti's trial should be severed from that of Juan Marron.

WHEREFORE, Mr. Ceruti prays this Court will grant his motion to sever his case from those of the co-defendants and will provide such further relief this Court deems fair and just.

Respectfully submitted,

/s/ Kelly M. Connor-Wilson

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Amended Motion was served on AUSA Bruce Rhoades and all defense attorneys of record by CM/ECF this 25th day of July, 2011.

/s/ Kelly M. Connor-Wilson

Kelly M. Connor-Wilson