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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 10-00320-19-CR-W-DGK
	)	
MUHAMMAD IBRAHIM ROLLIE,	)	
	)	
Defendant.	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT MUHAMMAD IBRAHIM ROLLIE'S MOTION TO SEVER

The United States of America, by Beth Phillips, United States Attorney, and the undersigned Assistant United States Attorney, both for the Western District of Missouri, respectfully submits this response[1] to the defendant's Motion to Sever, filed February 24, 2012.

In support of its objections, Government counsel submits the following: Rapid Transcript,

I. SEVERANCE GENERALLY

Rule 14, Federal Rules of Criminal Procedure, governs the severance of defendants in a single indictment. There is a preference in the federal system for joint trials of defendants who are indicted together. *Zafiro v. United States*, 506 U.S. 534, 537 (1993). This presumption can only be overcome if the prejudice is "severe or compelling." *United States v. Lewis*, 557 F.3d 601, 609 (8th Cir. 2009). Furthermore, even if prejudice is shown, Rule 14 does not require severance, but rather leaves the tailoring of the relief to be granted, if any, to the district court's sound discretion. *Id*. at 538-9. In *Zafiro*, the Supreme Court stated a district court should only grant

[1] The United States gratefully acknowledges the extensive work of Charlie Regan, J.D. Candidate, University of Kansas Law School, Class of 2013, Summer Law Intern, WDMO, in the preparation of this motion.

a severance under Rule 14 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." *Id*. at 539. The Court also stated that even if prejudice is shown, less drastic measures, such as limiting instructions, will often suffice to cure any risk of prejudice. *Id*.

Joint trials promote efficiency and serve the interest of justice by avoiding the scandal and inequity of inconsistent verdicts. *Zafiro*, at 538. The United States Supreme Court has held that severance should be granted "only if there is a serious risk that a joint trial would compromise a specific trial right of a properly joined defendant or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro*, 506 U.S. at 538. It is well settled that defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials. *Id*. A motion for severance is addressed to the discretion of the court [hearing the motion]. *Zafiro*, 506 U.S. at 541; *United States v. Shivers*, 66 F.3d 938, 939 (8th Cir.), *cert. denied*, 516 U.S. 1016 (1995).

Where the evidence in each set of counts is mutually admissible to show the defendant's motive, intent, and pattern of criminal behavior, refusal to sever is proper. *United States v. Provost*, 237 F.3d 934, 938 (8th Cir. 2001); *Running Horse*, 175 F.3d 635, 637; *United States v. Brooks*, 174 F.3d 950, 957 (8th Cir. 1999). When the evidence against other defendants and this defendant is not only mutually admissible but would be necessary in separate trials, if they were to be ordered, severance would be a tremendous waste of judicial resources.

While Federal Rule of Criminal Procedure 14 does permit severance where joinder will result in unfair prejudice, "whether or not prejudice occurs depends primarily on whether the jury could compartmentalize the evidence against each defendant." *United States v. Nevils*, 897 F.2d

300 (8th Cir.), *cert. denied*, 498 U.S. 844 (1990). The roles played by the various defendants in this case, as described in the indictment, are sufficiently distinct to preclude prejudice from spillover. The standard instructions to the jury to compartmentalize the evidence against the defendants should be more than sufficient in this case. Rule 14 even countenances some prejudice to a defendant from a joint trial, and severance is not required simply because a defendant might have a better chance of acquittal in a severed proceeding. *United States v. McConnell*, 903 F. 2d 566, 571 (8th Cir. 1990), *cert. denied*, 499 U.S. 938 (1991); *United States v. O'Meara*, 895 F. 2d 1216, 1218-1219 (8th Cir. 1990), *cert. denied*, 498 U.S. 943 (1990).

The test for severance in the case of disparity in evidence is whether the proof against an individual defendant's co-defendants is far more damaging, and thereby denies him a fair trial. Where the potential for a prejudicial "spillover" in evidence does exist, instructions to the jury to compartmentalize the evidence are generally sufficient to cure any conflicts in the weight of the proof. *United States v. Davis*, 882 F.2d 1334, 1340 (8th Cir. 1989). The Court in *Zafiro* also stated out that juries are presumed to follow their instructions, and determined in that case that the instructions to the jury to consider the evidence against each defendant separately and to determine each defendant's guilt or innocence solely on the evidence presented against them sufficed to cure any prejudice. *Zafiro*, at 539.

Where defendants are joined in a conspiracy trial, even a gross disparity in evidence does not necessarily require a severance, since the government is entitled to prove the entire scope of a conspiracy even in a severed trial; the proof would not be restricted to establishing the limited involvement of the severed defendant. *United States v. Haldeman*, 559 F.2d 31, 72 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 1977; *accord*, *United States v. Gutberlet*, 939 F.2d 643 (8th Cir.

1991); *United States v. Kindle*, 925 F.2d 272, 277 (8th Cir. 1991); *United States v. Knife*, 592 F.2d 472, 480 (8th Cir. 1979). The court in *United States v. Jackson* stated that as a general rule, "persons charged in a conspiracy should be tried together, particularly where proof of the charges against the defendants is based upon the same evidence and acts." *United States v. Jackson*, 549 F.2d 517, 523 (8th Cir 1977). Severance will only be allowed upon a showing of real prejudice to a defendant. *Id*. A defendant must show something more than the mere fact that his chances for acquittal would have been better had he been tried separately. *Id*. at 524. The preference for joint trials of defendants, who were indicted jointly, especially where conspiracy is charged, is not limited by any requirement that the quantum of evidence of each defendant's culpability be equal. *Id*. at 525. Also, a defendant is not entitled to severance merely because the evidence against a co-defendant is more damaging than the evidence against him. *Id*. There is no requirement in joint trials that the evidence of each defendant's culpability be "quantitatively or qualitatively equivalent." *United States v. Jones*, 880 F.2d 55, 63 (8th Cir. 1989)(*citing*, *United States v. O'Connell*, 841 F.2d 1408, 1432 (8th Cir.), *cert. denied*, 487 U.S. 1210 (1988)).

The Defendant's motion makes no mention of an argument of irreconcilable defenses, but does argue that evidence in this case will be difficult for the jury to compartmentalize. "In assessing the jury's ability to compartmentalize the evidence against joint defendants, we consider [1] the complexity of the case; [2] if one or more of the defendants were acquitted; and [3] the adequacy of admonitions and instructions by the trial judge" *United States v. Lewis*, 557 F.3d 601, 610 (8th Cir. 2009). In *United States v. Frank*, the Eighth Circuit held that the jury was able to compartmentalize the evidence against two defendants in a six-day trial involving 51 counts. *United States v.* Frank, 354 F.3d 910, 920–21 (8th Cir. 2004). While there are currently 19

defendants in this case, plea offers are pending on all defendants, one has set a plea date, and another has requested a plea date and several more are anticipated to do the same shortly. Therefore, by the date of trial, the number of defendants at trial is highly likely to be significantly reduced. Additionally, there are only two (2) counts in this indictment.

The Defendant cited *Kotteakos v. United States* in his severance motion. However, that case involved a showing by evidence that there were multiple groups committing separate distinct conspiracies. *Kotteakos v. United States*, 328 U.S. 750 (1946). That situation hasn't even been alleged, much less has the defendant produced any proof of such a situation.

The Defendant also cited *United States v. Massa*, 740 F.2d 629, 649 (8th Cir. 1994), in his severance motion, stating that the case shows that severance is appropriate in this type of case. However, in that case, the court determined there was no reason that the jury could not compartmentalize the evidence, noting that defendant had not cited such any such reason.[2]

This is a crack cocaine case.[3] Rollie was arrested in possession of a large amount of crack cocaine shortly after his brother, Ceruti, was arrested at the same location and time; which was right after Ceruti had been followed directly from the source (Marron) following an intercepted call between Ceruti and Marron about acquiring drugs from Marron. Rollie is referenced on the intercepted wire calls following his and Ceruti's arrest. Ceruti calls co-defendant Juan Marron and discusses the arrest and Rollie's actions (caught with ball of crack) to reassure Marron that there is nothing to worry about with respect to the arrest. Rollie and Ceruti are followed the

2 The Government was unable to locate page 649 of this case, which is the page referenced by the defendant in his motion.

3 Rollie, and the other co-defendants, are charged in a crack cocaine conspiracy (along with marijuana and powder cocaine), Marron sold crack cocaine to confidential informants, and Rollie, Ceruti and others were arrested in possession of crack, powder cocaine, and marijuana.

month before their arrests in a similar type of pattern that occurred the day of their arrests. Additionally, Rollie was arrested again after that, again in possession of crack.

II. CO-DEFENDANT CERUTI

Rollie's severance request in reference to co-defendant Ceruti having his suppression motion granted is not only factually inaccurate it is legally insufficient as to this motion to sever. As this Court ruled, Ceruti's motion was granted only to the extent of the search of the car following his arrest.[4] Neither Ceruti's arrest or subsequent statements at the police department following his *Miranda* rights were suppressed. If Rollie is intimating he wants to call Ceruti as a witness, his motion to sever should be denied unless Rollie shows that his co-defendant (Ceruti) is likely to testify at a separate trial and the testimony would exculpate him. See *United States v. Wofford*, 562 F.2d 582, 586 (8th Cir. 1977); *United States v. Graham*, supra, 548 F.2d at 1311 & n.9. A defendant is not entitled to severance on the weight of an "unsupported possibility" that a co-defendant's testimony might be forthcoming at a separate trial. *United States v. Graham*, supra, 548 F.2d at 1311 & n. 9. Rollie does not establish by affidavit or otherwise that his co-defendant brother will, in fact, testify and provide exculpatory evidence, only the insinuation that such an opportunity could be lost because of a joint trial. His pure speculation as to possible exculpatory testimony from a co-defendant is insufficient to demonstrate the "clear" or "substantial" prejudice required for severance under Rule 14. *United States v. Blum*, 65 F.3d 1436, 1444 (8th Cir. 1995), *cert. denied*, 516 U.S. 1097 (1996)(defendant seeking separate trial must show testimony adduced from co-defendant at separate trial would be "substantially exculpatory").

4 The Court also suppressed Ceruti's un-mirandized statement to police at the scene that the only thing in the car was "two pounds of weed".

III. CONCLUSION

"The presumption against severing properly joined cases is strong." *United States v. Delpit*, 94 F.3d 1134, 1143 (8th Cir. 1996). For the reasons set forth herein, the defendant has failed to overcome this strong presumption because he has failed to show that he will suffer "clear" or "substantial" prejudice in a joint trial with his co-defendants. Accordingly, the defendant's Motion for Severance should be denied.

Respectfully submitted,

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By ***/s/ Bruce Rhoades***

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on March 2, 2012, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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