

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

UNITED STATES OF AMERICA,)
v.)
Plaintiff,) Case No. 08-00026-04-CR-W-FJG
CHRISTOPHER L. ELDER,)
Defendant.)

ORDER

This matter is currently before the Court on Defendant Elder's Motion for Reconsideration of the Magistrate's Order (doc #199) Denying Defendant's Motion for Severance on Grounds: 1) That the Indictment Does Not on Its Face State a Basis for Joinder of Counts One and Two and That Even if It Does Joinder is None the Less Highly Prejudicial to Elder Such That Severance is Mandated (doc #201). Defendant Elder argues that there is no basis on the face of the indictment to allow for joinder of Counts One and Two and that the Court's previous order denying severance failed to address this argument.

Contrary to defendant Elder's argument, the Court addressed this argument in its previous Order where it stated: "The conspiracy to commit money laundering with which defendants Rostie, Martin, Solomon and Johnson are charged in Count Two is the laundering of the proceeds of the conspiracy to distribute controlled substances charged in Count One." (Order (doc #199) at 9) While defendant Elder is not charged in the money laundering count (Count Two), the other four defendants are charged in Count Two with laundering proceeds obtained as a result of the conspiracy charged in Count One. As stated in Rule 8(b), Federal Rules of Criminal Procedure, "[a]ll defendants need not be charged in each count."

In United States v. Turrentine, 2008 WL 5274441 (E.D. Mo. Nov. 12, 2008), the court was faced with a similar issue. Defendant Turrentine was charged with both conspiracy to distribute cocaine and conspiracy to commit money laundering. Defendant Turrentine moved to sever the

counts arguing that he would be prejudiced from a joint trial of the charged offenses. Id. at *10. The court denied the motion to sever. Given the government's allegation that it would prove that the funds used in the money laundering count "involved the proceeds of, and that the transactions were in furtherance of, the cocaine conspiracy alleged," the court found joinder proper. Next, the court rejected the defendant's claim of prejudice:

Moreover, the charges involving the money laundering ... are sufficiently different in nature from those related to the cocaine conspiracy, that the jury should not have any problems compartmentalizing the evidence. And any prejudice due to alleged "spillover" may be addressed by proper jury instructions.

Id. at *11.

As in Turrentine, the government has alleged that the funds used in the money laundering count involved the proceeds of the alleged conspiracy to distribute controlled substances. (See Government's Response to Defendant Elder's Motion for Severance (doc #48) at 5 ("Count Two specifically alleges that illegal proceeds were form the sale of hydrocodone, alprazolam, and promethazine with codeine, which are the prescription drugs written by defendant Elder.")) Count Two also alleges that the alleged money laundering transactions involved the "proceeds of specified unlawful activity, that is, conspiracy to illegally distribute and dispense controlled substances ... with the intent to promote the carrying on of the specified unlawful activity ..." (Indictment at 9) The Court finds that the joinder of Counts One and Two is proper as the conspiracy to distribute controlled substances and the conspiracy to commit money laundering are parts of a common scheme.

Defendant's claim of prejudice must also fail. In Turrentine, the court found that the charges involving money laundering are sufficiently different in nature from those related to the cocaine conspiracy that the jury should be able to compartmentalize the evidence, even when both charges are brought against the same defendant. Here, it should be even easier for the jury to compartmentalize the evidence given that defendant Elder is not charged with money laundering. As in Turrentine, any prejudice due to alleged "spillover" may be addressed by proper jury instructions.

Based on the foregoing, it is

ORDERED that Defendant Elder's Motion for Reconsideration of the Magistrate's Order (doc #199) Denying Defendant's Motion for Severance on Grounds: 1) That the Indictment Does Not on Its Face State a Basis for Joinder of Counts One and Two and That Even if It Does Joinder is None the Less Highly Prejudicial to Elder Such That Severance is Mandated (doc #201) is denied.

/s/ Sarah W. Hays

SARAH W. HAYS

UNITED STATES MAGISTRATE JUDGE