

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN (Green Bay)

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-00151-WCG-NJ-11

STEPHANIE M. ORTIZ,

Defendant.

**DEFENDANT'S MOTION FOR SEVERANCE OF HER TRIAL FROM
THAT OF EACH CO-DEFENDANT OTHER THAN RUBEN ORTIZ, JR.**

The defendant Stephanie M. Ortiz, by attorney Thomas G. Wilmouth, moves to preserve a motion for severance of defendants at her jury trial currently scheduled for June 15, 2020. She asks that the Court hold in abeyance any decision on her motion for severance until the parties are aware which of her co-defendants are prepared to proceed to trial. This approach makes particular sense because it is anticipated that Ruben Ortiz, Jr. with whom she is charged in Count Two will not proceed to trial.

Count Two of the superseding indictment, the only count in which Ms. Ortiz is named, charges her and her brother Ruben Ortiz, Jr. with

conducting a financial transaction, namely the purchase of a motor vehicle on or about January 14, 2019, designed in whole or in part to conceal the nature, location, source, ownership and control of the proceeds of a form of unlawful activity, namely a conspiracy to distribute controlled substances, contrary to 18 U.S.C. § § 1956(a)(1)(B)(i) and 2. [R. 13: 3]. The conspiracy to distribute controlled substances is Count One of the superseding indictment, is alleged to have commenced in approximately May 2017, and names Ruben Ortiz, Jr. and eight (8) other defendants. [R. 13: 1-2].

Severance of Counts One and Two would not lie because Count Two considers the alleged unlawful activity that is set forth in Count One. We have a chain or circle that connects at one end Ruben Ortiz, Jr.'s drug dealings in which Ms. Ortiz was not involved and at the other end Ms. Ortiz's alleged laundering of the proceeds of Ruben Ortiz's drug dealing. This linkage satisfies Federal Rule of Criminal Procedure 8(b). *United States v. Marzano*, 160 F.3d 399, 401 (7th Cir. 1988). Federal Rule of Criminal Procedure 8(b) allows an indictment to charge two 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."

Counts Three through Eleven charge various defendants with substantive counts of drug trafficking and firearm offenses during the charged conspiracy, but each occurring on dates after the date set forth in the lone Count charged versus Ms. Ortiz. [R. 1: 4-12]. Counts Three and Four name defendant James H. Parkinson, who is not charged with the Count One conspiracy. [R. 1: 4-5]. There is an argument that defendants other than those named Ruiz are not properly joined for trial under Fed. R. Crim. P. (8)(b). While there is a strong preference that co-conspirators be jointly tried, particularly where they were indicted together,” *United States v. Spagnola*, 632 F.3d 981, 987 (7th Cir. 2011), Ms. Ruiz is not a named co-conspirator.

Under Rule 14(a), the Court has authority to sever co-defendants’ trials when “consolidation for trial appears to prejudice a defendant or the government.” Fed. R. Crim. P. 14(a). A motion to sever lies within the sound discretion of the trial court. *United States v. Stokes*, 211 F.3d 1039, 1042 (7th Cir. 2000).

A defendant who moves for severance must demonstrate that, absent severance, she is likely to be unable to obtain a fair trial. *United States v. Stokes*, 211 F.3d 1039, 1042 (7th Cir. 2000); see also *United States v.*

Donovan, 24 F.3d 908, 915 (7th Cir. 1994) (“The defendant’s burden is to demonstrate ‘severe prejudice’ resulting from the district court’s refusal to sever.” (quoting *United States v. Curry*, 977 F.2d 1042, 1050 (7th Cir. 1992))). To meet his burden, the defendant must demonstrate that “there is a serious risk that a joint trial would compromise a specific trial right...or prevent the jury from making a reliable judgment about guilt or innocence.” *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

This case has been designated as complex. It is a case with massive and complex evidence involving 11 defendants and different degrees of culpability. Depending on who proceeds to trial, there may be a question concerning the jury's capacity to follow admonitory instructions and to keep separate, collate and appraise the evidence relevant only to each defendant, and determine each defendant’s innocence or guilt of the Count charged. *United States v. Hedman*, 630 F.2d 1184, 1200 (7th Cir.1980), *cert. denied*, 450 U.S. 965, 101 S.Ct. 1481, 67 L.Ed.2d 614 (1981). It is anticipated there will be “gross disparity in the weight of the evidence against the various defendants,” particularly Ms. Ruiz, who was involved in no drug trafficking or firearm offenses set forth in Counts Three through Eleven and occurring after her alleged money laundering, which is a viable

ground for severance. *United States v. Jackson*, 860 F.3d 438, 447-48 (7th Cir. 2017) quoting *Oglesby*, 764 F.2d 1273, 1176 (7th Cir. 1985) (collecting cases). The risk of prejudice due to the admission of evidence against a co-defendant that would not be admissible if a defendant was tried alone is heightened when “many defendants are tried together in a complex case and they have markedly different degrees of culpability”). *Zafiro*, 506 U.S. at 539 (citing *Kotteakos v. United States*, 328 U.S. 750, 774-775 (1946)).

The use of limiting jury instructions may spare the Court from granting severance of counts and or defendants. *Id.* at 541. The jury may be instructed to give separate consideration to each individual defendant and to each separate charge against her, and that each defendant is entitled to have her case determined from her own conduct and from the evidence that may be applicable to her. *Id.* (noting the district court properly instructed the jury as to these points). Yet, limiting instructions may be insufficient to cure any prejudice to Ms. Ortiz depending on who proceeds to trial as scheduled.

Ms. Ortiz asks leave of the Court to supplement any argument in support of severance as the parties learn who will be proceeding to trial. A

decision now by the Court granting or denying Ms. Ortiz's motions for severance is premature.

Dated at Green Bay, Wisconsin on February 28, 2019.

Respectfully submitted,

/s/ Thomas G. Wilmouth
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