

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

STEPHANIE M. ORTIZ,

Green Bay Division

Defendant.

GOVERNMENT RESPONSE TO MOTION FOR SEVERANCE

The United States of America, by its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, provides the following response in opposition to the defendant's motion to sever charges.

Stephanie Ortiz has filed a motion seeking severance of her case from those of her co-defendants. Ortiz makes a reasonable proposal to hold the motion in abeyance until it is certain which defendants, if any, are proceeding to trial.

Ortiz argues that her joinder with any remaining defendants for trial would be prejudicial. To this, the government responds that the defendants are properly joined and that if prejudice exists, the appropriate limiting instruction to the jury remedies her concerns.

I. ANALYSIS

Rule 8 of the Federal Rules of Criminal Procedure authorizes joinder of both offenses and defendants. Rule 8(a) provides that two or more offenses may be charged in the same indictment if the offenses charged "are of the same or similar character or are based on the same act or

transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."

The offenses charged in the Superseding Indictment include drug, gun, and money laundering charges. More specifically, Ortiz is charged along with her brother, Ruben Ortiz, with laundering drug proceeds gained through the alleged conspiracy to distribute controlled substances. Ortiz used the drug proceeds, funneled through her bank account, to purchase a 2015 Tesla for Ruben Ortiz. Should Ortiz's case proceed to trial, the government would likely seek a Second Superseding Indictment that includes additional money laundering charges related to the 2015 Tesla as well as charges associated with Ortiz's purchase of a 2016 Lexus GS with drug proceeds. These offenses are properly joined as the government is required to prove that the funds Ortiz used to pay for the cars are proceeds from the drug conspiracy.

Rule 8(b) permits two or more defendants to be joined in the same indictment "if they are alleged to have participated in the same act or translation or in the same series of acts or transactions constituting an offense or offenses." Rule 8 is to be interpreted broadly in favor of joinder and a presumption in favor of a single trial for persons jointly indicted exists. *United States v. Moore*, 363 F.3d 631, 642 (7th Cir. 2004).

The rule permitting joinder is designed to promote judicial economy and efficiency by avoiding multiple trials where that can be done without substantial prejudice to the right of the defendants to a fair trial. *Bruton v. United States*, 391 U.S. 123, 131 n.6 (1968). Stated another way, a joint trial reduces (1) the expenditure of judicial and prosecutorial time; (2) the claims the criminal justice system makes on witnesses who need not return to court for additional trials; and

(3) the chance that each defendant will try to create a reasonable doubt by blaming an absent colleague. *United States v. Buljubasic*, 808 F.2d 1260, 1263 (7th Cir 1987).

Federal Rule Criminal Procedure Rule 14(a) provides the district court with discretion to sever defendants who are prejudiced from joinder. When properly joined, however, 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.” *United States v. Souffront*, 338 F.3d 809, 828 (7th Cir. 2003) (other citations omitted). A showing of some prejudice is insufficient to require a severance. *United States v. Madison*, 689 F.2d 1300, 1305, (7th Cir. 1982), cert. denied, 459 U.S. 1117 (1983). There must be "compelling prejudice" against which the court is unable to protect the defendant in order to justify severance. *Id.*

Ortiz claims that prejudice befalls her by joinder with the other defendants since there is greater evidence of their guilt, or, in other words, prejudicial spill-over from them is likely. True, Ortiz is not charged in the drug conspiracy or with specific drug delivery or gun charges. Nonetheless, the government is required to prove the money she used to purchase cars was obtained through drug sales.

To obtain a severance based on prejudicial spill-over of evidence, a defendant must overcome two presumptions, namely that the jury will: (1) capably sort through the evidence; and (2) follow instructions to consider each defendant separately. *United States v. Lopez*, 6 F.3d 1281, 1286 (7th Cir. 1993) *accord* *United States v. Phillips*, 239 F.3d 829, 839 (7th Cir. 2001)(finding that refusal to grant severance was appropriate where court gave limiting instructions).

Ortiz cannot overcome these presumptions for several reasons. First, Ortiz merely speculates that she might suffer prejudice because there exists a “difference in degree of culpability” among the other defendants. Even if she is correct as to weight of evidence, Ortiz’s conclusory allegations of prejudice are insufficient to overcome this first presumption, particularly since she fails to explain why a jury in this case, as opposed to juries in other multi-defendant trials, would find it especially difficult to perform its obligation as a fact finder. Mere speculation of “spillover guilt” or, in other words, a disparity in the evidence, is not enough to rebut the presumptions in favor of a single trial. *Lopez*, 6 F.3d at 1286. In addition, even assuming that the United States would present “more evidence” against other defendants, the fact that the evidence against one defendant may be proportionally greater than the evidence against another is not grounds for a severance. *See United States v. Doerr*, 886 F.2d 944, 972 (7th Cir. 1989).

II. CONCLUSION

Ortiz has been properly joined with the other defendants and has made no showing at this time of any actual prejudice by such joinder. Even if “compelling prejudice” exists, the trial court’s instructions to the jury can cure any concern of a spill over evidence. Accordingly, the government anticipates it will argue for her motion to be denied when timely raised before the district court.

Dated this 20th day of March, 2020.

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