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 STEPHANIE ORTIZ'S REPLY TO GOVERNMENT RESPONSE TO MOTION FOR SEVERANCE

I. Background

When defendant Stephanie Ortiz filed a motion to sever her trial from that of each co-defendant other than Ruben Ortiz, Jr., she asked the Court to hold in abeyance any decision on her motion for severance of defendants until the parties became aware which of her co-defendants are prepared to proceed to trial. [R. 115: 1]. In response, the government asserted that was reasonable. [R. 125: 1]. The government also indicated than whenever asked, it will argue that Ms. Ortiz's joinder with any remaining defendants for trial is required because she would not be prejudiced, or otherwise such prejudice is remedied by appropriate limiting instructions. [R. 125: 1,4].

In this reply, Ms. Ortiz informs the Court that while she maintains it would be prudent for the Court to suspend ruling on her motion for a reasonable time before the currently scheduled May 29, 2020 final pretrial conference in order to see which defendants are actually proceeding to trial, it is anticipated that the Court will ultimately only need to decide whether she is tried with Francisco Martinez. Though no plea agreements for any defendant has yet been filed in the case, case discovery, the non-filing of pretrial motions by defendants other than Stephanie Ortiz and Francisco Martinez, and intelligence in the District reveals no defendant intends to proceed to trial other than Ms. Ortiz and Martinez, who have never met, and who did not know of the other's existence until the filing of the superseding indictment.

Ms. Ortiz maintains that there is limited incriminating and relevant evidence as to the lone money laundering count lodged against her that is disputed, and the independent criminal conduct of Martinez will significantly and unfairly affect her chances of acquittal. While she has considered that defendants that are substantially less culpable than their co-defendants often fare better in a joint trial, rather than a separate trial, here she asks the Court to exercise its discretion to sever her jury trial from that of Martinez pursuant to Fed. R. Crim. P. 14(a) [If the joinder of defendants in an indictment or consolidation for trial appears to prejudice a defendant, the court may sever the defendants' trials].

II. Discussion

For the approximate two (2) years prior to the June 17, 2019 arrest of Ruben Ortiz, Jr., not too long after his release from the Wisconsin Department of Corrections on May 23, 2017, law enforcement has been investigating his large scale trafficking of marijuana, cocaine, cocaine base, methamphetamine, heroin, Percocet pills, and fentanyl. Rubin Ortiz's moniker was aptly "Ready." In Count One of the superseding indictment, eight (8) men have been indicted with Rubin Ortiz in a conspiracy with each other and others uncharged to distribute and possess with intent to distribute those controlled substances over that two (2) year period: Alejandro Lopez; Francisco Martinez; Hector M. Gomez-Salas; Oscar Alonso; Gabriel Y. Bonilla; Cedric D. Cohen; Terry A. Johnson, and Richard Guyette. [R. 13: 1-2].

Alleged co-conspirators Alonso, Lopez, Johnson, Cohen, and Guyette have been charged in Counts Three through Eleven with substantive counts of possession with intent to distribute certain controlled substances and possession of six (6) firearms in furtherance of the conspiracy. [R. 13: 4- 12]. Defendant James Parkinson, the only case defendant other than Ms. Ortiz not named in the conspiracy, is charged in substantive counts with his alleged associate, Alonso. [R. 13: 4-5]. Francisco Martinez is not charged in any substantive counts.

All of these indicted defendants, together with others known and unknown involved in drug trafficking, make up what law enforcement labels in investigative reports as the "Ortiz Transactional Organization" (TCO).

Count Two charges Ruben Ortiz and Stephanie Ortiz, with money laundering by purchasing on or about January 14, 2019 a 2015 Tesla Model S automobile with the proceeds of a "conspiracy to distribute controlled substances." [R. 13: 3]. The government's response to Ms. Ortiz's motion for severance confirms that the referenced conspiracy is Count One.[1] [R. 125: 2].

The superseding indictment sets forth a "Notice of Forfeiture" that does not list the 2015 Tesla Model S.[2] [R. 13: 13-14].

The case discovery is extraordinarily voluminous, its organization complicated, and review is ongoing. Review to date supports the notion that sources of controlled substances for the leader and organizer of the conspiracy,

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[1] In substantive Counts Six, Eight, and Ten of the supervising indictment charging possession of firearms in furtherance of drug trafficking crimes, the government specifically refers to Count One of the indictment, further supporting the notion the government contends there is no other conspiracy other than that alleged in the case and which relates to the money laundering count.

[2] The government asserts in its response to Ms. Ortiz's motion for severance that should the case proceed to trial it likely would seek a second superseding indictment against her that would allege additional money laundering charges involving the purchase of the Tesla at an Illinois car dealership, which presumably would be a handful of monthly payments made on the financed vehicle to a finance company, together with additional money laundering charges associated with the financing of a 2016 Lexus GS by Stephanie Ortiz on behalf of her brother, which was arranged after the Tesla was exchanged for the Lexus at the same car dealership in May 2019, and for which a monthly payment was made. That potentiality does not affect Ms. Ortiz's argument for severance of defendant(s). The 2016 Lexus is not listed within the "Notice of Forfeiture."

Ruben Ortiz, are Alejandro Lopez for marijuana, cocaine and heroin; Francisco Martinez for marijuana, marijuana cartridges, cocaine, heroin, and fentanyl; Oscar Alonso for cocaine and heroin; and Hector Gomez-Salas for marijuana, cocaine and heroin. Review to date supports the notion that Bonilla, Cohen, Johnson and Guyette are wholesale customers of drugs obtained by Ruben Ortiz. Parkinson worked for and with Alonzo.

Stephanie Ortiz is a sister of Ruben Ortiz, six (6) years his junior. She is the founder of "Black Lives United in Green Bay" and at the time of the alleged money laundering offense was employed and remains employed as the Director of Prevention and Outreach at "End Domestic Abuse Wisconsin," together with employment at "Wise Women Gathering Place," which provides advocacy, healing and prevention in domestic violence.

Before his apprehension, Ruben Ortiz led the Green Bay chapter of the Latin King street gang and a life of substantial drug trafficking and violent crime in and around Green Bay, and even inside various Wisconsin penal facilities. He historically involved in various capacities in his grand misdeeds- to include obtaining, storing and selling all sorts of drugs, money, guns and vehicles- a cue of women he has impregnated; some of the children thereby begotten; his mother;

numerous friends and associates; lawful businesses; his lawyers; a host of others;[3] and defendant Stephanie Ortiz in 2019 with regard to financing the Tesla and Lexus automobiles. This will be related to the jury hearing evidence concerning any defendant that contests the allegations set forth in the superseding indictment, to include his Stephanie Ortiz's role in the purchase and financing of the Tesla.

At a joint jury trial of Ms. Ortiz and Martinez, co-conspirators will testify how the leader ruined the lives of family members and endangered every community he entered in pursuit of financial gain and status through his drug trafficking and gang involvement, and how those witnesses facilitated same for their own benefit. That testimony may be corroborated by 29 controlled buys of various drugs made from conspiracy members; seized controlled substances and guns throughout the two (2) year investigation; the June 17, 2019 arrest of some 30 targets and execution of 18 search warrants; text messages and recorded telephone communications among conspiracy members; and testimony concerning the general fruits of the dogged investigation of this group of serious criminals gathered by law enforcement witnesses from the Brown County Drug Task Force, the Menominee Indian Tribal Police Department, the Oneida Police Department, the Menominee County Sheriff's Department, the Federal Bureau of Investigation,

[3] Law enforcement, primarily the Brown County Drug Task Force, would typically be prepared to show persons interviewed during the course of their investigation up to 200 photos of persons involved in Ruben Ortiz's drug operation that spanned California, Oregon, Nevada, Florida, Illinois and Wisconsin.

the Internal Revenue Service, and the Wisconsin Department of Transportation, among other agencies.

At a joint trial of Ms. Ortiz and Martinez, certain government witnesses will testify to the particular role of Illinois-based Latin King member Francisco Martinez, known as "Baby Frank," in the drug conspiracy, which was to supply substantial amounts of marijuana, cocaine, heroin, and fentanyl to Ruben Ortiz. Depending on the outcome of a Martinez's pretrial motion [R. 109], law enforcement witnesses will testify about a traffic stop on January 30, 2019 in Arizona in which $77,745 was seized from a trap compartment in a vehicle Martinez was operating. [R. 120: 2]. The entirety of evidence of Francisco Martinez's guilt in the drug trafficking conspiracy is substantial and compelling.

Stephanie Ortiz is not charged in the Count One drug trafficking conspiracy. [R. 13: 1-2]. Despite law enforcement suspicion, borne by the fact that most of those related to Ruben Ortiz work with him in drug trafficking, and Ms. Ortiz's assistance of her brother in drug trafficking years prior, Stephanie Ortiz was not part of the "Ortiz Transactional Organization" that is the subject of this case. The general policy that persons jointly indicted in a conspiracy are tried together does not apply. *United States v. Giangrosso,* 779 F.2d 376, 379 (7th Cir.1985); *United States v. Caliendo,* 910 F.2d 429, 437 (7th Cir.1990).

At a joint trial of Ms. Ortiz and Martinez, not a single witness will testify that Stephanie Ortiz was involved in the extensive drug trafficking activities of her brother and his associates.

At her trial, the government must prove that Ms. Ortiz (1) conducted or attempted to conduct a financial transaction; (2) involving proceeds of specified unlawful activity; (3) with knowledge that transaction involved proceeds of some unlawful activity; and (4) with knowledge that transaction was designed to conceal or disguise the nature, location, source, ownership or control of proceeds of the specified unlawful activity. 18 U.S.C. §1956(a)(1)(B)9(i); Pattern Criminal Jury Instructions of the Seventh Circuit; [R. 13: 3].

At her trial, Stephanie Ortiz does not intend to contest that there is proof beyond a reasonable doubt of the existence of the drug trafficking conspiracy charged in Count One of the superseding indictment; that she was aware of same; that she conducted the financial transaction for the Tesla automobile; that the funds involved in the transaction came from Ruben Ortiz and his drug trafficking activity, which is a principle basis for joinder of Ms. Ortiz and Martinez for trial that the government argues in its response [R. 125: 2]; that she registered the Tesla vehicle in her name; and that her brother was to her knowledge the sole operator of the vehicle. Ms. Ortiz has given a *Mirandized*[4] and voluntary statement to law

[4] *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

enforcement that admits those facts, and the statement's admissibility is unchallenged by the defense. The government establishes without any push back that the money Ms. Ortiz used to purchase the Tesla was obtained through drug sales, making a joint trial with a single drug salesman unnecessary, contrary to the government's concern. [R. 125: 3]. The government will need few essential witnesses in the trial of Stephanie Ortiz, which makes largely misplaced the government claim that a joint trial here reduces the burden upon witnesses who would need to return to court for two (2) trials. [R. 125: 2].

Stephanie Ortiz will contest that she knew the transaction for the Tesla automobile was designed in whole or part to conceal in any way the proceeds of the drug conspiracy. The government's concern a joint trial reduces the chance each defendant will try to create a reasonable doubt by blaming an absent colleague is cast away. [R. 125: 2-3].

A. Disparity of charges and evidence

None of the Count One conspiracy overt acts of Francisco Martinez relates in any particular meaningful way to the substantive offense of money laundering charged against Ms. Ortiz, certainly no more than any other Count One conspiracy overt act, of which there are thousands that she does not dispute. Ms. Ortiz contends that her money laundering count is essentially related to the many conspiracy overt acts of her brother Ruben Ortiz and or those of his

principle right hand men, Cedric Cohen and Gabriel Bonilla, again none of which she disputes. Ms. Ortiz is accused of a money laundering scheme in which the Count One conspiracy is intricately woven, but only to a point, not to reaching the conduct of Francisco Martinez for purposes of a joint trial with him. Note that the January 30, 2019 seizure of $77,745 from Martinez occurs two (2) weeks after the date charged in the money laundering count alleged versus Ms. Ortiz. That sum of money is $72,000 more than the initial down payment made by Ms. Ortiz for the Tesla, to be followed by a handful of approximate $750 monthly payments. Government cooperating witness(es) will testify that that some of the Martinez money was earmarked for his purchase of 10,000 marijuana cartridges from a Somalian narcotics supplier in California in a deal that Ruben Ortiz brokered. A May 24, 2019 law enforcement seizure of $1,000 from Martinez in Fond du Lac County [R. 120: 3] is, according to a government cooperating witness, the same day Martinez supplied Ruben Ortiz with $12,000 worth of fentanyl. This is four (4) months after the date of offense for the money laundering count lodged versus Ms. Ortiz. The volume of discovery prohibits Ms. Ortiz from here outlining how much of the alleged criminal conspiratorial activities of Martinez, essentially drug trafficking, post-date her purchase of the Tesla for her brother.

The case investigation is devoid of any evidence Martinez knew of the alleged money laundering scheme. Martinez was not a drug dealer laundering his

drug money, and Ms. Ortiz was not a drug dealer. Ms. Ortiz allegedly was involved in independent criminal activity without the participation of the lone conspiracy member calling ready for trial with her.

Ms. Ortiz makes no claim joinder for trial is not proper under Fed. R. Crim. P. 8(a). Severance should be granted under Rule 14(a) where one defendant is being charged with a crime that, while somehow related to the other defendant or their overall criminal scheme, is significantly different from that relating to the other defendant. *See, e.g., United States v. Erwin,* 793 F.2d 656, 666 (5th Cir.1986) (holding that severance of a particular co-defendant was required because "[t]he charges against her were only peripherally related to those alleged against the other [co-defendants, and] [a]s the trial progressed it became increasingly apparent that very little of the mountain of evidence was usable against her"); *United States v. Sampol,* 636 F.2d 621, 646 (D.C.Cir.1980) (finding severance was required where a defendant was tried for making false statements to a grand jury and misprison of felony in the same trial as co-defendants accused of "the bombing murder of two people"); *United States v. Maisonet,* No. S3 97 Cr. 0817, 1998 U.S. Dist. LEXIS 9696, at *18 (S.D.N.Y. July 1, 1998) ("[The defendant] is not charged with any act of violence, nor is he charged with participating in the possession, sale, or distribution of narcotics. Given the nature and extent of evidence that the Government will likely introduce against both groups of co-

defendants, the potential for prejudice against [the defendant] arising from a joint trial with either group is substantial.").

Any interrelatedness of Martinez's drug trafficking conspiracy conduct - which was a small part of the Ruben Ortiz led conspiracy - to Ms. Ortiz's alleged money laundering conduct in further of that conspiracy is minimal. If defendants Stephanie Ortiz and Martinez were severed for trial, little evidence would have to be unnecessarily repeated, particularly based upon the focus of Ms. Ortiz's defense. It is such duplication that is a cost to society and a major consideration in the joinder of criminal defendants. *Zafiro v. United States, supra*, 506 U.S. 534, 537, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993); *Richardson v. Marsh*, 481 U.S. 200, 210, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987); *United States v. Buljubasic*, 808 F.2d 1260, 1263 (7th Cir.1987)

At a joint trial of Ms. Ortiz and Martinez, there will be substantial evidence related to Martinez's substantial drug trafficking of a list of dangerous and fatal drugs, including fentanyl. A government cooperating witness will testify that he was supplied up to 1/2 kilo of cocaine by Martinez, together with marijuana and THC cartridges for periods of years. This witness will say that Ruben Ortiz later began to source Martinez marijuana cartridges, and the two (2) discussed sales of kilos of cocaine to one another. This quantity and quality of evidence only admissible as to Martinez is powerful and essentially dispositive, overwhelming the

de minimus evidence against Ms. Ortiz, a bit player in conduct only related to and not part of the drug conspiracy, and who might not be able to differentiate herself in the juror's mind from a drug conspiracy star like Francisco Martinez. This intrinsically calls into question a jury's ability and willingness to follow limiting instructions. *United States v. Briscoe,* 896 F.2d 1476, 1498 (7th Cir. 1990) ("Generally, a cautionary instruction will be sufficient to cure any unfair prejudice.... [H]owever, if the evidence creates an unacceptably high inference of wrongdoing against another defendant, the district court should either exclude the evidence or sever the trials."). Absent a separate trial where such powerful evidence is confined to a defendant against whom it may be properly used, Ms. Ortiz's defense will be prejudiced by preventing the jury from making a reliable judgment about her guilt or innocence concerning the simple issue at her trial, concealment of drug proceeds. *Zafiro v. United States,* 506 U.S. at 539, 113 S.Ct. 933.

Evidence of Ms. Ortiz's money laundering offense differs significantly from the evidence against Martinez. Ms. Ortiz does not speculate she might suffer prejudice, as the government contends. [R. 125: 4]. She has explained why a jury in this case, as opposed to juries in other multi-defendant trials, would find it difficult to perform its obligations as a fact finder as to her guilt or innocence, contrary to the government's argument. [R. 125: 4]. The evidence against

Martinez is not just greater than that versus Ms. Ortiz, it is of striking different nature. There is evidence presented here of compelling prejudice against which the court is unable to protect Ms. Ortiz other than by severance.

B. Massive and complex amount of evidence

Reliable judgment about guilt or innocence as referenced in *Zafiro* also applies to cases in which different charges and degrees of culpability, along with a massive volume of evidence, makes it nearly impossible for a jury to juggle everything properly and assess the guilt or innocence of each defendant independently. *United States v. Clark,* 989 F.2d 1490, 1499 (7th Cir.1993). The Seventh Circuit has observed that " '[t]he question of whether a joint trial infringes upon the defendant's right to a fair trial depends on whether it is within the jury's capacity, given the complexity of the case, to follow admonitory instructions and to keep separate, collate and appraise the evidence relevant only to each defendant.' " *United States v. Cavale,* 688 F.2d 1098, 1107 (7th Cir.) (quoting *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)), *cert. denied,* 459 U.S. 1018, 103 S.Ct. 380, 74 L.Ed.2d 513 (1982). The Court has designated this case as complex. Only if the government agrees to make its trial presentation simple, putting to the side vast amounts of the two (2) year Ruben Ortiz drug

investigation, does Ms. Ortiz's concern fall short. If likely cannot do so as to Martinez to satisfy Ms. Ortiz and make joinder for trial just.

Particularly based upon Ms. Ortiz's limited trial defense, this is not a case where the jury will benefit from a full consideration of the drug conspiracy and money laundering allegations.

C. Limiting Instructions

The government believes prejudice inuring to Ms. Ortiz by a joint trial with Martinez may be remedied by appropriate limiting instructions. [R. 125: 1; 3]. Should Ms. Ortiz and Martinez be tried jointly, the trial court would be required to spend an inordinate amount of time instructing the jury to cabin the way in which certain pieces of evidence could be used and reminding the jurors that the evidence must be weighed separately as to each defendant on each count. Judicial economy attendant to a joint trial of these two (2) defendants indicted in the same charging document is lost. Ms. Ortiz contends that severance may reduce the expenditure of judicial and prosecutorial time. [R. 125: 2].

III. Conclusion

Ordinarily when a group of people are charged with participating in the same crime, they are tried together even though the evidence is stronger against one or some than against others. *United States v. Velasquez,* 772 F.2d 1348, 1352 (7th Cir.1985), *cert. denied,* 475 U.S. 1021, 106 S.Ct. 1211, 89 L.Ed.2d 323 (1986).

Here, the two (2) trial defendants are not charged with participating in the same crime, rather only properly charged under the same indictment under Fed R. Crim. P. 8(b) because Ms. Ortiz's alleged money laundering is related to the drug distribution operation of her brother in which Martinez participated, thereby connecting the trial defendants' crimes by common plan or scheme. *United States v. Sims,* 808 F.Supp. 607 (N.D. Illinois 1992). Yet, the Count One conspiracy and Count Two money laundering charges, to be uniquely defended by Ms. Ortiz, supply no overwhelming nexus tying together Stephanie Ortiz and Francisco Martinez working to benefit the conspiracy. Under those circumstances, disparity of the character of evidence among the trial defendants creating prejudice should carry the day in favor of severance. The test of injury resulting from joinder depends on the special circumstances of each case. *Kotteakos v. United States,* 328 U.S. 750, 777, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946). The danger of a joint trial that Ms. Ortiz conjures up is not abstract. She asks the Court to grant a severance of her trial from that of Francisco Martinez pursuant to Fed. R. Crim. P. 14(a).

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

Respectfully submitted,

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