

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 THAIS THOMPSON : NO. 05-440-22
 :

SURRICK, J.

DECEMBER 17, 2007

MEMORANDUM & ORDER

Presently before the Court is Defendant Thais Thompson's Motion for Severance (**Doc. No. 427**). For the following reasons, Defendant's Motion will be denied.

I. BACKGROUND

On February 21, 2007, the grand jury returned a Fifth Superseding Indictment ("Indictment") charging Defendant Thompson and twenty-one co-defendants with offenses related to their participation in a wide-ranging drug conspiracy. The Indictment contained 194 counts charging defendants with conspiracy to distribute narcotics in violation of 21 U.S.C. § 846; engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848(a), (b); being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1); possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c); distribution and possession with intent to distribute narcotics in violation of 21 U.S.C. § 841(a)(1); and other related offenses. In five of those counts, Defendant was charged with aiding and abetting the possession of a firearm in furtherance of a drug trafficking crime and aiding and abetting the management of a house for the purpose of unlawfully storing and distributing a controlled substance in violation of 18 U.S.C. § 924(c)(1) and (2) (Count 67); making false statements to

the grand jury in violation of 18 U.S.C. § 1623(a) (Counts 189-191); and knowingly and intentionally assisting co-defendant James Morris in order to prevent his apprehension, trial, and punishment, by making the false statements alleged in Counts 189 through 191 in violation of 18 U.S.C. § 3 (Count 192).

The charges against Defendant are related to a search that federal agents conducted of Defendant's home which she shared with co-defendant Morris, and her subsequent testimony before a federal grand jury. The search of 5 Burden Hill Road was conducted on August 10, 2005, as part of a series of searches of 26 homes and automobiles, that were allegedly related to the cocaine trafficking organization led by co-defendant Alton Coles. (Doc. No. 459.) During the search of the home, agents seized over \$559,000 in cash, a currency counting machine, multiple kilo wrappers for packaging cocaine, a digital scale, a loaded semi-automatic handgun, and loose ammunition. (Doc. No. 295 at 20.) In the car parked outside the house, agents found 499 grams of cocaine and approximately \$2,500 in cash. (*Id.*)

On June 7, 2006, pursuant to a subpoena, Defendant appeared before a federal grand jury and testified with regard to the origin of the \$559,000 cash found in her home. She testified under oath that the money had been left to her by her dead grandfather. (Suppression Hr'g Tr. 85, August 20, 2007.) The Government contends that this is not true. Defendant also denied making a \$25,000 cash payment to anyone. The Government contends that Defendant made a \$25,000 payment to the former attorney for co-defendant Alton Coles. (*Id.* at 86.) Finally Defendant denied having any knowledge of co-defendant Morris's bank accounts. The Government contends that the evidence demonstrates that the contrary is true. (*Id.*)

Defendant is scheduled to go to trial on January 14, 2008 along with co-defendants Alton

Coles, Timothy Baukman, James Morris, Asya Richardson, and Monique Pullins. Defendant has moved to sever her trial from those of her co-defendants.

II. LEGAL ANALYSIS

A. Severance of the Perjury Allegations from the Conspiracy Charge.

Defendant requests severance of the charges in Counts 189-192, stemming from her alleged perjury, from the charge in Count 67 alleging that she aided and abetted possession of a firearm in furtherance of a drug trafficking crime and aided and abetted management of a house for storing illegal drugs. She claims that the charges were improperly joined and, in the alternative, that severe prejudice will result from a trial combining all the charges against her as they are unrelated.

1. Joinder

Joinder of multiple offenses in a criminal proceeding is governed by Federal Rule of Criminal Procedure 8(a) which states:

The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged – whether felonies or misdemeanors or both - are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

Fed.R.Crim.P. 8(a). **“In addition to a ‘logical relationship’ between charges, some courts have emphasized that the ‘commonality of proof’ between charges warrants the joinder of charges or defendants.”** *United States v. Kemp*, Crim. A. No. 04-370, 2004 WL 2757867, at *3 (E.D.Pa. Dec. 2, 2004) (citing *United States v. Hubbard*, 474 F.Supp. 64, 87 (D.D.C. 1979)). **In this case, joinder was appropriate because among other things Defendant’s actions constitute part of a common scheme or plan. The perjury charge and the charges alleging aiding and abetting are all**

related to evidence found during the August 10th search of the home Defendant shared with Morris. The Government contends that Defendant's perjury charge relates directly to the money that was acquired from the drug trafficking conspiracy. The money was found in Defendant's home. Defendant allegedly lied about the origins of the money. Defendant allegedly lied about other matters related to Coles, Morris, and the money. In addition, a money counting machine was found in Defendant's home along with drug paraphernalia, and drugs were found in the automobile outside the home. The perjury, the drug conspiracy, and the crimes charged in Count 67 are all interrelated. Clearly there is a logical relationship between these charges and there is a commonality of proof.

B. Severance of Defendant Thompson's Trial from the Trials of the Alleged Co-Defendants

Defendant also argues that her trial was improperly joined with the trials of the other defendants as there was no evidence she was involved with their activities, with the exception of her personal relationship with Morris. In the alternative, she argues that she will be greatly prejudiced by a joint trial with the other defendants because the nature of the Government's evidence against her is very different in nature from the evidence the Government has against the other defendants.

1. Joinder

Joinder of multiple defendants in a criminal proceeding is governed by Federal Rule of Criminal Procedure 8(b) which states:

The indictment or information may charge 2 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. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in

each count.

Fed. R. Crim. P. 8(b).

In this matter, joinder of Defendant's trial with the trial of Morris and the other co-defendants is appropriate. In *United States v. Eufrazio*, the Third Circuit noted that:

Rule 8(b) provides substantial leeway to prosecutors who would join racketeering defendants in a single trial. The rule permits joinder of defendants charged with participating in the same racketeering enterprise or conspiracy, even when different defendants are charged with different acts, so long as indictments indicate all the acts charged against each joined defendant (even separately charged substantive counts) are charged as racketeering predicates or as acts undertaken in furtherance of, or in association with, a commonly charged RICO enterprise or conspiracy.

935 F.2d 553, 567 (3d Cir. 1991). “[J]oinder . . . of a conspiracy count and substantive counts arising out of the conspiracy [is permitted], since the claim of conspiracy provides a common link, and demonstrates the existence of a common scheme or plan.” *Id.* (citing *United States v. Somers*, 496 F.2d 723, 729-730 (3d Cir. 1974)). In addition, “defendants jointly indicted should be tried together to conserve judicial resources. The public interest in judicial economy favors joint trials where the same evidence would be presented at separate trials of defendants charged with a single conspiracy.” *Eufrazio*, 935 F.2d at 568. Defendant is charged in Count 67 with aiding and abetting the possession of a firearm in furtherance of a drug trafficking crime and maintaining drug-involved premises, a count which directly arises out of the larger conspiracy involving Morris and the other co-defendants. The nexus between Count 67 and the drug conspiracy is clear. The interest in judicial economy certainly supports the joinder of Thompson's trial with the trials of the other defendants charged in the same drug conspiracy.

Defendant argues that her perjury charge stems from grand jury testimony given long after the end of the drug conspiracy and that there is no nexus between the perjury and the other

offenses in the Indictment. The Government responds that there is a nexus. The Government contends that the perjury was with regard to proceeds from the drug conspiracy and that the perjury also discloses Defendant's relationship with co-defendants Morris and Coles. In *Kemp*, 2004 WL 2757867, at *3, the court noted that: "courts have allowed the joinder of perjury claims where the alleged perjury relates to the underlying substantive charges, regardless of whether those underlying charges are brought against the defendant charged with perjury or against other defendants." *Id.* The defendants in *Kemp* had been charged with lying about a conspiracy but had not actually been charged with the conspiracy itself. In this case, Defendant Thompson is not charged with the conspiracy itself; however, the charges against her arise from perjury related to the conspiracy and to important evidence of the conspiracy found in her home. In addition, as discussed above, the perjury charges are properly joined with Count 67, and Count 67 is properly joined with the charges brought against the other defendants in the Indictment. Under the circumstances, joinder of Defendant's trial with the trials of the other defendants in this matter is appropriate.

2. Prejudice

A court may grant separate trials if necessary to avoid prejudice. Federal Rule of Criminal Procedure 14(a) provides: "If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires." Fed. R. Crim. P. 14(a); *see also Eufrasio*, 935 F.2d at 568 (noting that the denial of severance is committed to the sound discretion of the judge).

"The Rule places the burden of showing prejudice from the joinder on the defendant

seeking severance.” *Eufrasio*, 935 F.2d at 568. However, “[w]hen defendants properly have been joined under Rule 8(b), 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.” *Zafiro v. United States*, 506 U.S. 534, 539 (1993). “A trial court should balance the public interest in joint trials against the possibility of prejudice inherent in the joinder of defendants.” *Eufrasio*, 935 F.2d at 568.

In support of her severance motion, Defendant baldly asserts that her defense is antagonistic to the defenses of the other Defendants and that she made an exculpatory statement to the agents who searched her home that could be construed as inculcating her boyfriend, co-defendant Morris. Defendant has failed to indicate just how her defense would be antagonistic to the defenses of other defendants and has failed to enlighten us as to the problematic exculpatory statement. Moreover, the Government has indicated that if there is a *Bruton* issue, it will redact the statements to cure the problem. Under the circumstances, we see no reason to grant a severance based upon antagonistic defenses or Defendant’s exculpatory statement.

Finally, a defendant may be prejudiced as a result of “spillover” of evidence when tried with codefendants. “When many defendants are tried together in a complex case and they have markedly different degrees of culpability, [the] risk of prejudice is heighten[ed].” *Zafiro*, 506 U.S. at 539. However, the Supreme Court has stated that “it is well settled that defendants are not entitled to severance merely because they have a better chance of acquittal in separate trials.” *Id.* at 540. “The main determinant is whether the jury can appropriately compartmentalize the evidence in a case so as to consider the evidence only as it relates to the relevant defendant.”

Kemp, 2004 WL 2757867, at *4 (citing *United States v. McGlory*, 968 F.2d 309, 340 (3d Cir. 1992)). There is no reason why the jury will be unable to properly compartmentalize the evidence in this case and consider the evidence only as it relates to the relevant defendant. We see no prejudice in joining the offense and defendants in this matter.

III. CONCLUSION

For these reasons, we are compelled to conclude that Defendant **has provided no basis for severance of either the offenses or the defendants in this trial. Accordingly, Defendant's Motion for Severance will be denied.**

An appropriate Order follows.

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ORDER

AND NOW, this 17th day of December, 2007, upon consideration of Defendant **Thais Thompson's Motion for Severance (Doc. No. 427)**, and all documents submitted in support thereof and in opposition thereto, it is ORDERED that said Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:



R. Barclay Surrick, Judge