

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA, : CRIMINAL ACTION
et al. : :
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JULIAN GLASGOW : NO. 08-19-1

MEMORANDUM

Bartle, C.J.

October 24, 2008

Defendant Julian Glasgow has moved for severance of his trial from that of his brother and co-defendant Bryan Glasgow pursuant to Rule 14(a) of the Federal Rules of Criminal Procedure. Rule 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).

Bryan Glasgow has been charged in the first two counts of a six count indictment with being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1) and using and carrying a firearm during and in relation to a crime of violence under 18 U.S.C. § 922(c)(1)(A). Count III charges him with assault with a deadly weapon in violation of the Virgin Islands Criminal Code, V.I. Code Ann. Tit. 14, § 297(2). He and his brother Julian are both indicted in the final three counts for possession with intent to distribute cocaine base, marijuana, and marijuana

plants under 21 U.S.C. §§ 841(a), 841(b)(1)(B)(iii), 841(b)(1)(D), and 841(b)(1)(B)(vii) as well as aiding and abetting under 18 U.S.C. § 2.

Julian asserts that severance should be granted because Bryan would then testify on his behalf that: (1) Julian did not reside and had no possessory interest in the premise where the drugs were found; (2) the drugs in issue were not Julian's; and (3) the drugs in issue belonged to him, that is, Bryan. At the hearing on the pending motion at which both Julian and Bryan were present, Bryan's counsel confirmed that his client would so testify. Bryan has subsequently submitted an affidavit setting forth the facts recited above.

In deciding a motion for severance such as this, the court must consider four factors set forth in United States v. Boscia, 573 F.2d 827, 832 (3d Cir. 1978), and reiterated in later cases including United States v. Gonzalez, 918 F.2d 1129, 1137 (3d Cir. 1990). They are: "(1) What is the likelihood that co-defendants will testify? (2) What is the degree to which such testimony would be exculpatory? (3) What is the degree to which the testifying co-defendants could be impeached? (4) What is the effect on judicial economy?" Gonzalez, 918 F.2d at 1137 (citing Boscia, 573 F.2d at 832).

It appears that the likelihood that Bryan would testify is strong if a severance is granted. He has taken an affidavit that the drugs belonged to him and not to Julian. Under these circumstances where he has admitted his own guilt as to the drug

charges, he would have no reason not to testify in a separate trial limited to the drug charges against Julian, his brother. Here, Julian has come forward with more than "bare assertions" that Bryan will testify on his behalf. See Gonzalez, 918 F.2d at 1137.

It is clear that Bryan's proffered testimony would be exculpatory. His testimony, if believed, would exonerate Julian of any of the drug offenses in issue.

Bryan, however, could be impeached if he testified. First, he is the brother of Julian and a reasonable fact finder could find him lacking credibility on that basis. In addition, Bryan has an extensive criminal history. While some of the crimes may be excluded as outside the ten year limit under Rule 609 of the Federal Rules of Evidence, at least one serious crime is likely to be admitted for impeachment purposes. Consequently, Bryan would be subject to impeachment because he is Julian's close blood relative and because he has a criminal record.

Finally, under Boscia and its progeny, we must consider judicial economy. This interest would be served by trying Julian and Bryan together, although a separate trial of Julian would not be lengthy. In Zafiro v. United States, the Supreme Court explained, "[t]here is a preference in the federal system for joint trials of defendants who are indicted together. Joint trials play a vital role in the criminal justice system. They promote efficiency and serve the interests of justice by avoiding

the scandal and inequity of inconsistent verdicts." 506 U.S. 534, 537 (1993) (internal quotations and citation omitted).

The Supreme Court in Zafiro emphasized that the fundamental question under Rule 14 is whether the defendant seeking severance would be prejudiced by joinder. The Court recognized that "a defendant might suffer prejudice if essential exculpatory evidence that would be available to a defendant tried alone were unavailable in a joint trial." Id. at 539.

Here, if severance is granted, Julian will have the benefit of the testimony of his brother that he, Julian, had no involvement with the drugs in issue. This evidence will not be available if there is a joint trial. While Bryan admits to the drug offenses, he is vigorously contesting the weapons and assault charges. He is unlikely to take the stand in a joint trial with the result that his brother would be deprived of critical evidence.

In sum, Bryan is likely to testify if there are separate trials. Bryan's testimony at Julian's trial will surely be exculpatory. These factors outweigh the impeachment of Bryan on the witness stand and the issue of judicial economy. The risk of prejudice to Julian is high without a severance. See id.

Accordingly, we will grant the motion of Julian Glasgow for a trial separate from that of Bryan Glasgow and will order that Bryan Glasgow be tried first.

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	:	
v.	:	
	:	
JULIAN GLASGOW	:	NO. 08-19

ORDER

AND NOW, this 24th day of October, 2008, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

- (1) the motion of defendant Julian Glasgow for a trial separate from that of co-defendant Bryan Glasgow is GRANTED; and
- (2) the trial of Bryan Glasgow shall precede the trial of Julian Glasgow.

BY THE COURT:

/s/ Harvey Bartle III
HARVEY BARTLE III C.J.
SITTING BY DESIGNATION