

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

v.

FARIDAH ALI

:
:
:
:
:

CRIMINAL NO. 04-CR-611-2

MEMORANDUM AND ORDER

Kauffman, J.

March 24, 2005

On September 29, 2004, a grand jury returned a multiple count Indictment charging violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and related offenses against Faridah Ali (“Defendant”) and her husband Shamsud-din Ali. The Indictment also alleged related crimes against five other co-defendants. On February 2, 2005, a fifty-five-count Superseding Indictment was issued, charging Defendant and six others with various criminal activities. Now before this Court is Defendant’s Motion for Severance of Trial from Remaining Defendants. For the reasons that follow, this Motion will be granted.

I. Background

Defendant is charged in approximately thirty counts of the Superseding Indictment with violations of RICO, mail fraud, wire fraud, and tax evasion. Her husband, Shamsud-din Ali, is also charged in multiple counts, many of which overlap with the charges against Defendant. Defendant asserts that she wishes to testify on her own behalf at trial, but that her testimony would inculcate her husband. Defendant’s Motion ¶ 4. Because this presents a conflict between Defendant’s constitutional right to testify in her own defense and the marital privilege not to be compelled to testify adversely to her spouse, Defendant has moved to sever her trial from that of

her husband.

II. Legal Standard

While there is a clear preference in the federal system for the joint trial of defendants who are indicted together, a court may sever if a joint trial “appears to prejudice a defendant or the government.” Fed. R. Crim. P. 14(a). Severance should be granted “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); see also United States v. Davis, 397 F.3d 173, 182 (3d Cir. 2005). A defendant bears the burden of establishing that severance is necessary. United States v. Sandini, 888 F.2d 300, 305 (3d Cir. 1989).

III. Discussion

In this criminal case, Defendant argues that two fundamental rights are at issue: her right to testify on her own behalf and her privilege not to be compelled to testify adversely to her spouse. Defendant’s fundamental constitutional right to testify on her own behalf is well established. See, e.g., United States v. Leggett, 162 F.3d 237, 245 (3d Cir. 1998); see also Faretta v. California, 422 U.S. 806, 819 n.15 (1975). Similarly, federal courts have repeatedly recognized Defendant’s privilege not to be compelled to testify adversely to her spouse in a criminal proceeding. See, e.g., Trammel v. United States, 445 U.S. 40, 53 (1980); In re Grand Jury, 111 F.3d 1083, 1085-86 (3d Cir. 1997). In this Circuit, the marital testimonial privilege is not abrogated even when the Government alleges joint criminal activity between spouses. See In re Malfitano, 633 F.2d 276, 280 (3d Cir. 1980). Thus, if Defendant were tried alongside her husband, she would be forced to choose between two basic, fundamental rights. Requiring her to

so compromise a specific trial right would be manifestly unfair. In the interest of justice, the appropriate remedy is to sever the trials of Defendant and her husband. See United States v. Dobson, 2003 WL 22427984, at *2 (E.D. Pa. Aug. 18, 2003) (ordering separate trials for spouses in similar situation); see also United States v. Ammar, 714 F.2d 238, 257 (3d Cir. 1983) (suggesting severance when necessary to protect the rights of co-defendant spouses). “[N]o defendant should be deprived of a fair trial simply because it is more convenient for the government to try several defendants jointly.” Dobson, 2003 WL 22427984 at *3.

The Government argues that Defendant’s testimony against her husband would not be “compelled,” since it would be her choice to testify. However, the inevitable prejudice to Defendant stemming from a requirement that she choose between two basic rights necessitates severance.¹

IV. Conclusion

For the foregoing reasons, the Court concludes that severance of Defendant is necessary to ensure the preservation of her fundamental rights and the fairness of her trial. An appropriate Order follows.

¹ The Government further objects that there is no proof that Defendant’s testimony would actually be adverse to her husband, and that this Court should at least order a proffer of her anticipated testimony. In the cases cited by the Government, courts have compelled such proof only from a non-defendant spouse and only where use immunity has been granted. See, e.g., In re Grand Jury, 111 F.3d at 1086-87. Accordingly, the Court concludes it would be inappropriate to compel Defendant to make such a proffer. Cf. Rock v. Arkansas, 483 U.S. 44, 52-53 (1987); United States v. Patane, 124 S. Ct. 2620, 2626 (2004); United States v. Hill, 655 F.2d 512, 515 (3d Cir. 1981).

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

v.

FARIDAH ALI

:
:
:
:
:

CRIMINAL NO. 04-CR-611-2

ORDER

AND NOW, this 24th day of March, 2005, upon consideration of Defendant's Motion for Severance of Trial (docket no. 48), and the Government's response thereto, it is **ORDERED** that the Motion is **GRANTED**. Accordingly, the trial of Defendant Faridah Ali shall take place separate from and following the trial of the other defendants named in the Indictment.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.