

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 DANTE TUCKER : NO. 05-440
 :

SURRICK, J.

NOVEMBER 9, 2007

MEMORANDUM & ORDER

Presently before the Court is Defendant Dante Tucker's Motion for Severance (Doc. No. 400). For the following reasons, Defendant's Motion will be denied.

I. BACKGROUND

On February 21, 2007, the grand jury returned a 194-Count Fifth Superseding Indictment ("Indictment") charging Alton Coles and twenty-one co-defendants, including Dante Tucker, with offenses related to their participation in a wide-ranging drug conspiracy.¹ The Indictment specifically charged Tucker with conspiracy to distribute narcotics in violation of 21 U.S.C. § 846 (Count 1); distribution and possession with intent to distribute narcotics in violation of 21 U.S.C. § 841(a)(1) (Counts 40, 62); use of a communication facility to facilitate the distribution of narcotics in violation of 21 U.S.C. § 843(b) (Counts 42, 45); maintenance of a storage facility in violation of 21 U.S.C. § 856(a)(2) (Count 61); possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c) (Counts 68, 193); and being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) (Counts 69, 194).

The Government has indicated that it wishes to try Tucker with co-defendants Hakiem

¹Not all defendants were charged in all counts in the Indictment.

Johnson, Jamar Campbell, Antonio Jackson, and Terry Walker. (See Doc. No. 412 at 8.)

II. DISCUSSION

Defendant seeks a separate trial under Federal Rule of Criminal Procedure 14(a) alleging that “this case presents a serious risk that a joint trial would prevent the jury from making a reliable judgment about your movant’s guilt or innocence.” (Doc. No. 400 at unnumbered 4.) Defendant argues that he will not receive a fair trial because of “clear prejudice.” (*Id.* at unnumbered 3.) Defendant also argues that “the jury may not be able to compartmentalize the charges against Mr. Tucker . . .” (*Id.*) Defendant states that he would not receive a fair trial as to his defense that “the Government cannot prove beyond a reasonable doubt that the movant was a member of the criminal conspiracy as described in this Indictment.”² (Doc. No. 400 at unnumbered 3.)

“When considering a motion to sever, a court must engage in a two-part inquiry. First, the court must determine whether the defendants were properly joined under Rule 8(b). Then, the court must consider whether joinder substantially prejudices any defendant under Rule 14.” *United States v. Solomon*, 2006 WL 3198957*1 (W.D.Pa. 2006).

Defendant concedes that joinder of Defendant with co-defendants in this criminal proceeding was proper under Federal Rule of Criminal Procedure 8(b). (*See* Doc. No. 400 at unnumbered 3.) Defendant contends, however, that joinder of Defendant’s case with co-

²Defendant “reserves the right and requests leave to submit a brief in support of the instant motion since Counsel has not received discovery in this case and there may be additional *Bruton* problems and/or necessity of co-defendants’ testimony.” (*Id.* at unnumbered 2.) This Motion and the Memorandum in support thereof were filed on June 15, 2007. The Government has advised that it has made all discovery available to Defendant. As of this date there has been no request to file a supplemental brief.

defendants Johnson, Campbell, Jackson, and Walker will be “so prejudicial that [it] outweighs the interest of judicial economy and efficiency addressed by joint trials.” (*Id.* at 3-4.) Defendant moves to sever his trial “from the trials of any codefendants that may be asserting a defense contrary to his.” (*Id.* at 4.)

The Government responds that Defendant’s assertions that his co-defendants may offer defenses inculcating Defendant and may present antagonistic defenses at trial “are insufficient to overcome the strong presumption in favor of trying the defendant jointly with his charged co-conspirators.” (Doc. No. 405 at 3.) The Government also points out that Defendant argues for severance “based solely on his unsupported, and self-serving, allegations of antagonistic defenses.” (*Id.* at 4.) Finally, the Government argues that “there is no reason to believe that the jury will be unable to ‘compartmentalize’ the evidence and charges against each defendant, particularly if the Court gives limiting instructions where appropriate.” (*Id.* at 6.)

Even when co-defendants are properly joined, the court may grant separate trials if it is necessary to avoid prejudice to the moving defendant. 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 United States v. Eufrazio*, 935 F.2d 553, 568 (3d Cir. 1991) (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.” *Eufrazio*, 935 F.2d at 568. The circumstances in which a district court may find that defendant has demonstrated sufficient prejudice are limited:

When 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.”

Eufrazio, 935 F.2d at 568.

Here, Defendant has not sustained his burden of showing prejudice from the joinder. Defendant’s motion provides no factual support for his severance challenge. Defendant has offered no evidence that a particular co-defendant will offer an antagonistic defense. Neither has Defendant provided any support for his contention that a joint trial will confuse a jury. Defendant merely states that a joint trial will be prejudicial because “the jury cannot reasonably be expected to compartmentalize the evidence against the movant and the other defendants should these defendants offer a defense which may result in the jury concluding that all of the defendants are worthy of condemnation of a criminal conviction.” (Doc. No. 400 at 4.)

Based upon the record, we are satisfied that Defendant will not be prejudiced by a joint trial with co-defendants Johnson, Campbell, Jackson, and Walker. There is no serious risk in this case that a joint trial involving Defendant and the above-named co-defendants will prevent a jury from making a reliable judgment about Defendant’s guilt or innocence. Trying these co-defendants together, where there has been admittedly proper joinder, satisfies the need for judicial economy and efficiency without undue prejudice to Defendant.

For these reasons, Defendant’s motion to sever will be denied.

An appropriate Order follows.

