

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

UNITED STATES OF AMERICA

v.

**JOSEPH ADENS, ANTWAUN EVANS,
and SHANICE JENKINS**

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CRIMINAL ACTION

No. 12-616

PRATTER, J.

FEBRUARY 27, 2015

MEMORANDUM

The grand jury charges eight counts against eight defendants in the Second Superseding Indictment (“SSI”) (Docket No. 200), including Joseph Adens, Antwaun Evans, and Shanice Jenkins. Those eight counts generally allege three conspiracies: (1) a drug distribution conspiracy from February 2010 to July 2011 involving Mr. Adens and others (Counts 1-4)¹; (2) a second drug distribution conspiracy from December 2011 to November 2012 involving Mr. Adens and Mr. Evans (Counts 5-7)²; and (3) a conspiracy to launder money derived from the

¹ In Count 1, the grand jury charges that from February 2010 through July 2011, Mr. Adens and five other defendants conspired to knowingly and intentionally distribute controlled substances, including 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine and 100 kilograms or more of a mixture and substance containing a detectable amount of marijuana. In Count 2, the grand jury charges that on June 12, 2011, Mr. Adens and three other defendants attempted to possess with intent to distribute 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine. In Count 3, the grand jury charges that on June 13, 2011, Mr. Adens and Defendant Thomas Mooty knowingly possessed a firearm in furtherance of a drug trafficking crime. In Count 4, the grand jury charges that on June 30, 2011, Mr. Mooty was a convicted felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1)-(2).

² The grand jury charges in Count 5 that from December 2011 through November 28, 2012, Mr. Adens and Mr. Evans conspired to distribute 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine and a mixture and substance containing a detectable amount of marijuana. In Count 6, the grand jury charges that on November 27, 2012, Mr. Evans and Mr. Adens knowingly and intentionally possessed with the intent to distribute 500 grams or more of a mixture and substance containing a detectable amount of cocaine. And, in Count 7, the grand jury charges that on January 24, 2013, Mr. Evans was a felon in possession of firearm ammunition in violation of 18 U.S.C. § 922(g)(1).

second drug distribution conspiracy involving Mr. Adens, Mr. Evans, and Ms. Jenkins (Count 8)³. The grand jury further charges that Mr. Adens shot a co-conspirator seven times on June 13, 2011 in connection with the first alleged drug distribution conspiracy (i.e., the conspiracy which allegedly did not involve Mr. Evans and Ms. Jenkins).

Mr. Adens, Mr. Evans, and Ms. Jenkins each filed separate motions to sever under Federal Rules of Criminal Procedure 8 and 14. Mr. Adens moves to sever Counts 5 and 6 (Docket No. 157), Mr. Evans moves to sever Mr. Adens from Count 5 and to sever Count 7 from the rest of the case (Docket No. 154), and Ms. Jenkins moves to sever Count 8 (Docket No. 436).⁴ For the reasons that follow, the Court will deny the motions.

I. LEGAL STANDARD

Rules 8(b) and 14 are designed “to promote economy and efficiency and to avoid a multiplicity of trials, [so long as] these objectives can be achieved without substantial prejudice to the right of the defendants to a fair trial.” *Bruton v. United States*, 391 U.S. 123, 131 n.6 (1968). Federal Rule of Criminal Procedure 8 governs the joinder of offenses and defendants:

(a) Joinder of Offenses. 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.

(b) Joinder of Defendants. 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

³ In Count 8, the grand jury charges that from March 2012 through November 2012, Mr. Adens, Mr. Evans, and Ms. Jenkins conspired to launder money derived from the conspiracy described in Count 5. Count 8 incorporates by reference many of the allegations included in Count 5, as the alleged conspiracy was intended to conceal the illegal proceeds of the second drug distribution conspiracy.

⁴ Although Mr. Adens and Mr. Evans filed their motions with respect to the First Superseding Indictment (Docket No. 82), the Court will construe the motions as directed at the relevant provisions of the Second Superseding Indictment (“SSI”). The SSI includes minor modifications to the charges described in the First Superseding Indictment, with the biggest difference being the addition of Count 8 and the renumbering of the Counts.

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. When multiple defendants are charged in a single case, as here, Rule 8(b) governs both the proper joinder of defendants and the proper joinder of offenses. *See United States v. Irizarry*, 341 F.3d 273, 287 (3d Cir. 2003). Rule 8(b) does not expressly allow the joinder in a single indictment of acts that are “of the same or similar character” as does Rule 8(a), *see id.* at 287 n.4, but Rule 8(b)’s terms are broadly construed so that a “transactional nexus,” *see id.* at 241, or a logical relationship between charges, is all that is required for them to be considered part of the same “transaction.” *See United States v. Hills*, No. 08-654-1, 2009 WL 2461735 (E.D. Pa. Aug. 10, 2009). To determine whether there is a logical relationship between charges, trial judges may look at pre-trial documents, including but not limited to the indictment. *See United States v. McGill*, 964 F.2d 222, 242 (3d Cir. 1992).

If joinder is improper under Rule 8, the Court must order separate trials. *See United States v. Walker*, 657 F.3d 160, 170 (3d Cir. 2011) (“Rule 8 requires severance where defendants were improperly joined.”). But if joinder is proper under Rule 8, the Court may sever defendants or offenses under Rule 14 “[i]f it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together.” Fed. R. Crim. P. 14. “[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). The defendant bears the “heavy” burden of showing “clear and substantial prejudice resulting in a manifestly unfair trial.” *United States v. Eufrazio*, 935 F.2d 553, 568 (3d Cir. 1991) (internal quotation marks omitted). Even when the risk of prejudice is high, less drastic measures than severance (such as limiting instructions)

“often will suffice to cure any risk of prejudice.” *Zafiro*, 506 U.S. at 539. Thus, the appropriate question for the Court on a motion under Rule 14 is whether the jury can “reasonably be expected to compartmentalize the evidence as it relates to the separate defendants in view of its volume and limited admissibility.” *United States v. Serubo*, 460 F. Supp. 689, 694 (E.D. Pa. 1978).

II. DISCUSSION

A. MR. ADENS’ MOTION TO SEVER COUNTS 5 AND 6

Mr. Adens moves to sever Counts 5 and 6 (i.e., those Counts related to the second alleged drug distribution conspiracy) from those Counts related to the first alleged drug distribution conspiracy. Mr. Adens argues that the SSI fails to allege a connection between the alleged drug distribution conspiracies, so there has been misjoinder under Rule 8. Alternatively, Mr. Adens argues that he will suffer prejudice if the Court fails to sever Counts 5 and 6 because the jury may conclude that because he participated in one alleged drug distribution conspiracy, he probably participated in the other alleged drug distribution conspiracy.

“A series of conspiracies may be joined in one prosecution if they satisfy the test of Rule 8(b).” 1A Charles Alan Wright & Arthur Miller, *Federal Practice and Procedure* § 144 (4th ed.). In other words, conspiracies that are logically related or part of a single series of acts or transactions may be properly joined in a single prosecution, even if the alleged conspiracies were relatively separate. *See, e.g., United States v. Hill*, 643 F.3d 807, 829 (11th Cir. 2011) (“[S]eparate conspiracies with different memberships may still be joined if they are part of the same series of acts or transactions.” (internal quotation marks and citation omitted)); *United States v. Stein*, 428 F. Supp. 2d 138, 142-43 (S.D.N.Y. 2006) (explaining that joinder is proper

when the alleged crimes are logically related, even when the indictment alleges several conspiracies rather than a single conspiracy).

In this case, there has not been misjoinder under Rule 8 because the temporal proximity of and substantive similarities between the conspiracies render them sufficiently related as to have the “transactional nexus” required for joinder. The grand jury charges that Mr. Adens participated in the first drug distribution conspiracy and then transitioned to the second drug distribution conspiracy, a related conspiracy with a different set of co-conspirators. It alleges that the conspiracies occurred one after another, and operated in largely the same fashion (i.e., Mr. Adens arranged for the transportation of marijuana and cocaine from Los Angeles, California to Philadelphia, Pennsylvania for distribution). The fact that Mr. Adens found new co-conspirators with whom to execute a similar drug distribution scheme does not render the series of transactions sufficiently separate such that joinder is improper under Rule 8(b). *See Hill*, 643 F.3d at 829. Mr. Adens’ relies on *United States v. Hatcher*, 680 F.2d 438 (6th Cir. 1982), but his reliance is misplaced. In *Hatcher*, the court found misjoinder because “the indictment on its face allege[d] no connection between [one defendant] and the cocaine-related charges against [the other defendant]. Neither does the record reveal any evidence of such a connection.” *Id.* at 441. Here, however, the Government’s pre-trial filings describe the similarities between the two alleged drug distribution conspiracies, and the SSI describes the temporal proximity of the two conspiracies. Because of the temporal proximity and similar methodologies employed in the conspiracies, the Court finds joinder proper under Rule 8(b).

Moreover, Mr. Adens has not presented an efficacious argument as to why the necessary degree of prejudice would result from joinder. Mr. Adens argues that he will be subjected to “the slings and arrows of defense counsel for seven co-defendants in the first alleged conspiracy and

one in the second alleged conspiracy,” (Adens Mot. at 7), but that is not enough to meet the “heavy burden” of showing clear and substantial prejudice. *United States v. Console*, 13 F.3d 641, 655 (3d Cir. 1993). Indeed, the Supreme Court has held that not even mutually antagonistic defenses mandate severance, and that prejudice resulting from mutually conflicting defenses can often be remedied by the use of limiting instructions. *See Zafiro*, 506 U.S. at 534. Mr. Adens points to the concerns expressed in Justice Stevens’ concurrence in *Zafiro* that there may be “serious risks of prejudice and overreaching” in joint trials, *see id.* at 545 (Stevens, J., concurring), and the Court is mindful of those concerns, but the Court finds that this case does not implicate those concerns because any risk of prejudice can be appropriately addressed through the use of limiting instructions. As a result, the Court will deny Mr. Adens’ Motion to Sever under Rule 14.

B. MR. EVANS’ MOTION TO SEVER MR. ADENS FROM COUNT 5

Mr. Evans moves to sever Mr. Adens from Count 5 under Rule 14. Mr. Evans argues that he will suffer substantial prejudice if he and Mr. Adens are tried together for the second alleged drug distribution conspiracy because the jury will hear evidence that Mr. Adens shot someone seven times in connection with the first drug distribution conspiracy. According to Mr. Evans, “the government will use Mr. Aden’s alleged conduct . . . as evidence in order to sensationalize the conspiracy elements of Count [Five] as to Mr. Evans.” (Evans Br. at 21-22).

The Court finds that there is no reason to believe that the jury will be unable to compartmentalize the evidence presented against each defendant and in connection with each alleged conspiracy. Although joinder presents some risk of prejudice in this case, “it is of the type that can be cured with proper instructions, and ‘juries are presumed to follow their instructions.’” *Zafiro*, 506 U.S. at 540-41 (quoting *Richardson v. Marsh*, 481 U.S. 200, 211

(1987)). Consequently, the Court will instruct the jury as to how it may consider any evidence of the alleged shooting, and will instruct the jury that it may not consider the evidence as to Mr. Evans on Count 5. Mr. Evans cites no cases in support of his Rule 14 argument and demonstrates no reason to disregard the presumption that jurors follow their instructions. As a result, the Court will deny Mr. Evans' Motion to Sever Mr. Adens from Count 5.

C. MR. EVANS' MOTION TO SEVER COUNT 7

Mr. Evans moves to sever Count 7, the firearm possession charge. He argues that there is "no transactional nexus whatsoever between Mr. Evans and the alleged drug possession and trafficking charges in the indictment." (Evans Br. at 21). In support of his Motion, Mr. Evans relies on *United States v. Plummer*, No. 05-336, 2007 WL 2973712 (W.D. Pa. Oct. 10, 2007), and *United States v. Chavis*, 296 F.3d 450 (6th Cir. 2002).

In *Plummer*, the defendant was charged with one count of conspiracy to acquire firearms through the use of false statements in August 2004 ("Count One"), one count of possession of a firearm by a convicted felon in August 2004 ("Count Two"), one count of conspiracy to distribute and possess with intent to distribute crack cocaine in November 2005 ("Count Three"), and one count possession of a firearm by a convicted felon in November 2005 ("Count Four"). See 2007 WL 2973712, at *1. The initial indictment included only Counts One and Two, but when agents attempted to arrest the defendant, they discovered drugs in the defendant's girlfriend's apartment (the fact underlying Count Three) and a firearm in the defendant's car (the fact underlying Count Four). *Id.* The defendant moved to sever, arguing that Count Three and Count Four were not related to each other or to Counts One and Two. *Id.* at *5. The district court agreed, finding it important that the facts underlying the various charges in the indictment occurred fifteen months apart and that the government presented no basis for believing that all

the counts were part of a common scheme. *Id.* The court ordered three separate trials: one trial on Counts One and Two, one trial on Count Three, and one trial on Count Four. *Id.*

Similarly, in *Chavis*, the defendant was charged with using drugs to pay for an illegal firearm purchase in 1997 and possessing drugs in 1999. *See* 296 F.3d at 453-55. The defendant moved to sever the counts, and the Sixth Circuit Court of Appeals granted the motion under Rule 8(a) because the Government failed to demonstrate that the same or similar evidence would be presented to prove each of the charges, and the indictment did not allege any connection between the two offenses. *See id.* at 458-61. The Government argued that the defendant's one-time use of drugs to pay for firearms rendered the later possession charge sufficiently related for purposes of Rule 8, but the court concluded that the Government failed to show that the alleged possession *in 1999* had anything to do with the illegal firearm purchase in 1997. *Id.* at 460.

The Court will deny Mr. Evans' Motion to Sever Count 7. Count 7 is sufficiently related to the second drug distribution conspiracy for purposes of Rule 8 joinder. "[A]lthough it is much better practice to state the 'connecting' allegations required by Rule 8 in the indictment, the absence of these allegations from the indictment is not dispositive of a Rule 8 motion. Government representations made in other pretrial proceedings and documents as to the factual connections between the counts may satisfy the requirements of Rule 8." *Serubo*, 460 F. Supp. at 693. Although the indictment on its face lacks allegations connecting Count 7 to the other counts, the Government represents to the Court that the firearm was discovered at the same time as, and in close physical proximity to, other evidence supporting Counts 5 and 6. This is sufficient to create a "transactional nexus" between those three counts and to satisfy Rule 8(b), and stands in stark contrast to the evidence in *Chavis* and *Plummer*, which was discovered

several months apart and in different locations.⁵ As a result, the Court will deny Mr. Evans' Motion to Sever Count 7.

D. MS. JENKINS' MOTION TO SEVER COUNT 8

Ms. Jenkins moves to sever Count 8, arguing that Counts 1-7 allege completely separate conspiracies from that charged in Count 8, with the only common link being Mr. Adens. As the mere coincidence of a single defendant being involved in multiple crimes is not necessarily enough to permit joinder, Ms. Jenkins claims that joinder is improper under Rule 8(b) and Count 8 must be severed from Counts 1-7. Ms. Jenkins points to *United States v. Mancuso*, 799 F. Supp. 567 (E.D.N.C. 1992), in support of her Motion. In *Mancuso*, two separate conspiracies were charged in a single indictment because one of the defendants participated in both conspiracies. *See* 799 F. Supp. at 572. When a defendant who allegedly participated in only one of the conspiracies moved to sever, the district court concluded that the defendant's joinder was improper under Rule 8(b) and severed certain counts of the indictment. *Id.* at 573.

Here, the Court finds that joinder of Count 8 is proper under Rule 8(b) because Count 8 incorporates by reference the second drug distribution conspiracy charged in Count 5. *See* SSI at p. 22 ¶ 1. In other words, Count 8 alleges that Ms. Jenkins laundered money derived from Mr. Adens' and Mr. Evans' conspiracy to transport and distribute controlled substances. As a result, Count 8 is undoubtedly connected to the conspiracy that generated the illegal proceeds that Ms. Jenkins allegedly helped launder. To prove Count 8, the Government will have to reference the conspiracy alleged in Count 5 and show that the allegedly laundered money came from the sale of illegal drugs and that Ms. Jenkins knew as much. In contrast to the indictment in *Mancuso*,

⁵ To the extent Mr. Evans moves to sever Count 7 under Rule 14, the Court finds that he has failed to demonstrate that he would suffer clear and substantial prejudice. As described above, the Court can minimize the risk of prejudice to Mr. Evans case using limiting instructions and other means less drastic than severance.

which failed to allege a connection between the counts, the SSI alleges an important connection between Count 8 and the second alleged drug distribution conspiracy. In addition, as discussed above, joinder between the first and second alleged drug distribution conspiracies is not improper under Rule 8(b). Consequently, the Court will deny Ms. Jenkins' Motion under Rule 8(b).

Ms. Jenkins argues in the alternative that even if severance is not required under Rule 8(b), it is appropriate under Rule 14 because the evidence against the other defendants—especially evidence of weapons offenses and the alleged shooting—creates a risk that “a jury will attribute a violent nature to her when no allegations of violence have ever been made against her.” (Jenkins Br. at 7). Although the risk of prejudice is “heightened” when many defendants are tried together in a “complex case and they have markedly different degrees of culpability,” *Walker*, 657 F.3d at 170, this case is not a “complex case” that cannot be cured through the use of limiting instructions or other case management techniques. As discussed above, the Court will minimize the risk of improper prejudice to Ms. Jenkins through the use of limiting instructions and other conventional case management techniques.

III. CONCLUSION

The Court finds that there has been no misjoinder under Rule 8, and that none of the movants have carried the heavy burden of proving sufficient prejudice to justify severance under Rule 14. Any risk of prejudice can be addressed adequately through case management practices such as limiting instructions. As a result, the Court will deny the motions to sever.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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ORDER

AND NOW, this 27th day of February, 2015, upon consideration of Joseph Adens' Motion to Sever (Docket No. 157), Antwaun Evans' Omnibus Pre-Trial Motion and Memorandum of Law for Severance [sic] of Defendant (Docket No. 154, pp. 19-21), Shanice Jenkins' Motion for Severance (Docket No. 436), and the Government's respective Responses in Opposition (Docket Nos. 173, 181, 453), and after hearings on December 11, 2013, and December 19, 2013, **the Court hereby ORDERS** that Mr. Adens' Motion to Sever (Docket No. 157), Mr. Evans' Motion for Severance [sic] (Docket No. 154, pp. 19-21), and Ms. Jenkins' Motion for Severance (Docket No. 436) are **DENIED** for the reasons stated in the Memorandum accompanying this Order.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE