



United States of America v. Lamerique et al

2018 | Cited 0 times | S.D. West Virginia | March 5, 2018

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA HUNTINGTON DIVISION

UNITED STATES OF AMERICA v. CRIMINAL ACTION NO. 3:17-00100-01 KARL NELSY LAMERIQUE

MEMORANDUM OPINION AND ORDER DENIED.

I. Background

On December 19, 2017, a Grand Jury charged Defendant Karl Lamerique, Marquise Henderson, Rigoberto Fernandez, Jr., Arvin Fabre, Andre Watson, and Kevin Lamerique with multiple criminal offenses by way of a Second Superseding Indictment. ECF No. 110. The indictment included nine counts of criminal conduct, each brought against one or more of the above-named individuals. *Id.*

On February 7, 2018, Defendant filed the present Motion to Sever, arguing that trying him with the other defendants in this case will violate his rights to confront and cross-examine witnesses and his right to a fair and impartial jury. ECF No. 153.

II. Standard of Review

The Federal Rules of Criminal Procedure empower the Government to charge two or more alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting

an offense or offenses. together in the same indictment, one or more may seek severance from the joinder pursuant to Rule

14. Fed. R. Crim. P. 14(a) (to prejudice a defendant or the government, the court may order separate trials of counts, sever the

. Where there has been proper joinder pursuant to Rule 8, however, severance pursuant to Rule 14 is rare. *United States v. Hornsby*, 666 F.3d 296, 309 (4th Cir. 2012). To prevail on a motion for severance, a defendant *United States v. Branch*, 537 F.3d 328, 341 (4th Cir. 2008) (internal quotation and citation omitted).



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system for joint trials of defendants who Zafiro v. United States efficiency and serve the interests of justice by avoiding the scandal and inequity of inconsistent

Id. (internal quotation and citation omitted). joined under Rule 8, a district court should grant a severance under Rule 14 only if there is a serious

risk that a joint trial would . . . prevent the jury from making a reliable judgment about guilt or United States v. Cardwell, 433 F.3d 378, 387 (4th Cir. 2005) (original emphasis) (internal quotation and citation omitted). Id. (internal quotation and citation omitted).

expense to the government and witnesses of separate trials against the prejudice to the defendants

United States v. Becker, 585 F.2d 703, 706 (4th Cir. 1978). Even if prejudice is shown, a trial court is not required to sever a defendant from a joint trial. Zafiro, 506 U.S. at 538 Case 3:17-cr-00100 Document 182 Filed 03/05/18 Page 2 of 5 PageID #: 859 Id. at 539. The Supreme Court has instructed lower courts that prejudice resulting f Id. at 540.

III. Discussion

Defendant makes no argument that the original joinder of these defendants was improper under Rule 8 of the Federal Rules of Criminal Procedure. See ECF No. 153. Instead, Defendant argues that failure to sever will result in violations of his right -examine

right to confront and cross-examine witnesses Amendment. ECF No. 1 -in- witnesses is

Defendant next argues that he should be granted a severance because the evidence in this case is stronger as to his codefendants than it is to him and that the jury will therefore be prejudiced against him should all defendants be tried jointly. ECF No. 153, at 5. The Government maintains that Defendant was actually a participant in and leader of the presently charged conspiracy and trial of his codefendants. ECF No. 173.

United States v. Roberts, 881 F.2d 95, 102 (4th Cir. 1989). Case 3:17-cr-00100 Document 182 Filed 03/05/18 Page 3 of 5 PageID #: 860 the judicial process by gi Buchanan v. Kentucky, 483 U.S. 402, 418 (1987).

Particularly where the crimes charged against the codefendants arise from the same conduct, a of a particular defendant and to assign fairly the respective responsibilities of each defendant in

Id. In this case, Defendant is jointly charged in a nine-count indictment. ECF No. 110. As the

3. Considerations of judicial economy and the burden that separate trials would place on the



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Government weigh heavily against severance in this case. Defendant was jointly indicted with his codefendants, and is charged of participating in and leading the conspiracy central to this case. Proceeding with a joint trial will prevent the Government from having to present the same case twice, to two different juries, and will avoid problems of judicial inconsistency in verdicts. It will also offer the jury the opportunity to get a clearer picture of the case and to accurately apportion guilt to each participating defendant.

On the other hand, valuation of the potential prejudice to Defendant as a result of denying his motion to sever shows that any prejudice that may result from a joint trial does not outweigh the considerations of judicial economy and burden on the Government just outlined. argument that the weight of the evidence against his codefendants will prejudice the jury against

serious risk that a joint trial would . . . prevent the jury from making Cardwell, 433 F.3d at 387. The Court finds that any prejudice that Defendant may suffer as a result of a joint trial can be effectively and sufficiently

granted at this time.

IV. Conclusion

DENIED. The Court DIRECTS the Clerk to send a copy of this Order to counsel and the defendant, Marshals Service.

ENTER: March 5, 2018

ROBERT C. CHAMBERS UNITED STATES DISTRICT JUDGE

