

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

UNITED STATES OF AMERICA,
Plaintiff,

NO. CR. S-99-433 WBS

v.

MEMORANDUM AND ORDER

HOANG AI LE, et al.,
Defendants.

-----oo0oo-----

Defendant Hoang Ai Le moves to sever the trial of the jointly charged defendants, counts one through three, and the counts involving firearm charges.¹

I. Legal Standard

Rule 8(b) of the Federal Rules of Criminal Procedure provides that defendants may be charged together "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." Fed. R. Crim. P. 8(b). Rule 14 provides that the court may grant a severance "[i]f it appears that a defendant or

¹ This motion is joined by co-defendants Minh Huynh, John That Luong, and Thongsouk Theng Lattanaphom.

1 the government is prejudiced by a joinder of offenses or of
2 defendants in an indictment or information or by such joinder for
3 trial together." Fed. R. Crim. P. 14

4 Rules 8(b) and 14 are designed "to promote economy and
5 efficiency and to avoid a multiplicity of trials, [so long as]
6 these objectives can be achieved without substantial prejudice to
7 the right of the defendants to a fair trial." Zafiro v. U.S.,
8 506 U.S. 534, 540 (1993) (quoting Bruton v. United States, 391
9 U.S. 123, 131 n.6 (1968) (internal quotation marks omitted)).

10 II. Discussion

11 A. Severance of Trial

12 Le claims that the prejudicial nature of the evidence
13 submitted at trial against his other co-defendants will "spill
14 over" and prejudice his right to a fair trial. (Def.'s P. & A.
15 at 3-4.) He argues that the evidence against the other co-
16 defendants will be "far more damaging" than the evidence against
17 him and the jury will not be able to compartmentalize the
18 evidence against each co-defendant to insure Le a reliable
19 verdict. (Id. at 4.) Additionally, Le claims that certain co-
20 defendants will present defenses and engage in tactics which will
21 be antagonistic to his defense. (Id. at 6.)

22 "Generally speaking, defendants jointly charged are to
23 be jointly tried." United States v. Escalante, 637 F.2d 1197,
24 1201 (9th Cir. 1980) (citing United States v. Gay, 567 F.2d 916,
25 919 (9th Cir.), cert. denied, 435 U.S. 999 (1978)). The district
26 court should only grant a severance "only if a serious risk
27 exists that a joint trial would compromise a particular trial
28 right of a properly joined defendant or prevent the jury from

1 reliably determining guilt or innocence." U.S. v. Cruz, 127 F.3d
2 791, 798-99 (9th Cir. 1997) (citing Zafiro, 506 U.S. at 538).
3 "The prejudicial effect of evidence relating to the guilt of co-
4 defendants is generally held to be neutralized by careful
5 instruction by the trial judge." Escalante, 637 F.2d at 1201.

6 Here, Le states that he is entitled to a limiting
7 instruction (Def.'s P. & A. at 5), but does not make any showing
8 that it would be insufficient to protect him from the alleged
9 spillover effect. A defendant "seeking severance based on the
10 'spillover' effect of evidence admitted against a co- defendant
11 must also demonstrate the insufficiency of limiting instructions
12 given by the judge." U.S. v. Hanley, 190 F.3d 1017, 1027 (9th
13 Cir. 1999) (quoting United States v. Nelson, 137 F.3d 1094, 1108
14 (9th Cir.), cert. denied, 525 U.S. 901 (1998)). Le argues that
15 there may be evidence introduced in trial that may not be
16 admissible against him and that he was not involved in two of the
17 four attempted robberies. This alone does not demonstrate that
18 limiting instructions would be insufficient to protect his right
19 to a fair trial or that the jury would be unable to
20 compartmentalize the evidence against him. "[O]ur court assumes
21 that the jury listen[s] to and follow[s] the trial judge's
22 instructions." Escalante, 637 F.2d at 1201. Without a showing
23 that the instructions of the trial judge will be insufficient to
24 neutralize the prejudicial effect of evidence relating to the
25 guilt of co-defendants, jointly charged defendants are to be
26 tried jointly. Id. "Judicial economy justifies reliance on the
27 jury to follow the instructions of the court that segregate the
28 evidence and limit the applicability of the evidence to each

1 defendant." U.S. v. Matta-Ballesteros, 71 F.3d 754, 771 (9th
2 Cir. 1995) (quoting United States v. Vaccaro, 816 F.2d 443, 448
3 (9th Cir.), cert. denied, 484 U.S. 928 (1987)).

4 "The most common reason for severing a trial is where
5 co-defendants present mutually exclusive or irreconcilable
6 defenses." United States v. Vasquez-Velasco, 15 F.3d 833, 846
7 (9th Cir. 1994). Le argues that the court should also sever the
8 trial for this reason.

9 To warrant severance on the basis of antagonistic
10 defenses, co-defendants must show that their defenses are
11 irreconcilable and mutually exclusive. See United States v.
12 Sherlock, 962 F.2d 1349, 1363 (9th Cir. 1992). Defenses are
13 mutually exclusive when "acquittal of one co-defendant would
14 necessarily call for the conviction of the other." United States
15 v. Tootick, 952 F.2d 1078, 1081 (9th Cir. 1991); see United
16 States v. Throckmorton, 87 F.3d 1069, 1072 (9th Cir. 1996)
17 (noting that "a defendant must show that the core of the co-
18 defendant's defense is so irreconcilable with the core of his own
19 defense that the acceptance of the co-defendant's theory by the
20 jury precludes acquittal of the defendant").

21 Here, defendant has made no showing to this effect. Le
22 has not disclosed his defense or that of his co-defendants. Le
23 claims only that certain co-defendants, "especially John That
24 Luong," will introduce evidence that will be prejudicial to Le's
25 defense and which will be "mutually antagonistic to Le's trial
26 strategy." (Def.'s P. & A. at 7.) Without more, Le has failed
27 to demonstrate how his defense is mutually exclusive or
28 irreconcilable with that of his co-defendants.

1 B. Severance of Counts One Through Three

2 Defendant claims that the joinder of the Hobbs Act
3 conspiracy to rob the Phonm Pich Jewelry store with the other
4 Hobbs Act robberies is prejudicial and should be severed under
5 Fed. R. Crim. P. 14. Le argues that there should be separate
6 trials for the conspiracy to rob the jewelry store and the
7 conspiracies to rob DFI and Amador Systems. Defendant does not
8 offer any authority for this argument.

9 As discussed above, a defendant seeking severance must
10 demonstrate the insufficiency of limiting instructions given by
11 the judge. See Hanley, 190 F.3d at 1027. Le bases his request
12 to sever the counts and conduct separate trials on the fact that
13 there will be prejudicial evidence introduced "regarding a
14 homicide and wounding of another victim." (Def.'s P. & A. at 9.)
15 He has made no showing that limiting instructions will be
16 insufficient to cure any prejudice resulting from the evidence
17 offered against his co-defendants.

18 C. Severance of Counts Involving Use of a Firearm

19 Finally, Le claims that the five charges involving use
20 of a firearm² should be severed from the remaining conspiracy
21 counts. Le claims that the firearm charges should be severed to
22 ensure that the defendants will "not be prejudiced by evidence of
23 use or possession of a firearm by others." (Def.'s P. & A. at
24 9.) Le does not offer any authority for this argument. A
25

26 ² Counts two, five, seven, and nine are violations of 18
27 U.S.C. § 924(c)(1). Count three is based on a violation of 18
28 U.S.C. §§ 924(j)(1) and (2). The indictment contains a
typographical error in count three which lists the applicable
rules as 18 U.S.C. §§ 924 (i)(1) and (2).

1 conviction under section 924(c) may be based on a conspiracy
2 under Pinkerton. United States v. Castaneda, 9 F.3d 761, 765,
3 768 (9th Cir. 1993), overruled on other grounds by United States
4 v. Nordby, 225 F.3d 1053 (9th Cir. 2000); United States v.
5 Johnson, 886 F.2d 1120, 1123 (9th Cir. 1989). Each section
6 924(c) charge must be based on a separate predicate offense.
7 United States v. Wills, 88 F.3d 704, 718 (9th Cir. 1996) Here,
8 the conspiracy charges form the predicate offense for each of the
9 firearm charges under section 924(c).³ Accordingly, the weapons
10 charges are properly joined to the conspiracy counts.

11 IT IS THEREFORE ORDERED that defendant's motion for
12 severance be, and the same hereby is, DENIED.

13 DATED: November 6, 2002

14
15

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

16
17
18
19
20
21
22
23
24
25
26

27 ³ Count three is based on a violation of 18 U.S.C. §§
28 924(j) (1) and (2), which is predicated upon a violation of
924(c). See 18 U.S.C. § 924(j).