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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,
Plaintiff,

NO. CR. S-99-433 WBS

v.

MEMORANDUM AND ORDER

JOHN THAT LUONG, et al.,
Defendants.

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Defendant John That Luong moves for severance under Federal Rule of Criminal Procedure 8(b).¹ He argues that each of the four robbery or attempted robbery conspiracies charged in the indictment are misjoined. Luong argues that each of the four conspiracies must be severed because there is no relationship among them and the facts underlying each offense are different.

I. Legal Standard

Federal Rule of Criminal Procedure 8(b) governs the standard for joining two or more defendants:

Two or more defendants may be charged in the same

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

1 indictment or information if they are alleged to have
2 participated in the same act or transaction or in the
3 same series of acts or transactions constituting an
4 offense or offenses. Such defendants may be charged in
one or more counts together or separately and all of
the defendants need not be charged in each count.

5 The charges against the defendants are properly joined if they
6 participated in the same series of acts or transactions
7 constituting an offense or offenses. United States v. Golb, 69
8 F.3d 1417, 1425 (9th Cir. 1995), cert. denied, 517 U.S. 1127
9 (1996). "The term 'transaction' is interpreted flexibly, and
10 whether a 'series' exists depends on whether there is a 'logical
11 relationship' between the transactions." Id. (quoting United
12 States v. Vasquez-Velasco, 15 F.3d 833, 843 (9th Cir. 1994)).
13 "Joinder of charges against multiple defendants is particularly
14 appropriate when the charges involve substantially overlapping
15 evidence." Id. (citing Vasquez-Velasco, 15 F.3d at 844).

16 II. Discussion

17 In determining the propriety of joinder under Rule 8,
18 courts are to look at the indictment. See e.g., United States v.
19 Terry, 911 F.2d 272, 276 (9th Cir. 1990) ("Because Rule 8 is
20 concerned with the propriety of joining offenses in the
21 indictment, the validity of the joinder is determined solely by
22 the allegations in the indictment.") However, courts have looked
23 beyond the indictment itself to determine whether joinder is
24 proper. See e.g., United States v. Vasquez-Velasco, 15 F.3d 833,
25 844 n.8 (9th Cir. 1994) ("[Defendant] argues that the propriety of
26 joinder under Rule 8(b) is to be based only on the face of the
27 indictment. We have held that the plan or conspiracy need not be
28 charged on the face of the indictment; instead, we look to

1 whether the evidence introduced at trial establishes that joinder
2 was appropriate."); United States v. Ford, 632 F.2d 1354, 1375
3 (9th Cir. 1980) (finding that logical relationship "need not be
4 charged on the face of the indictment."), cert. denied, 450 U.S.
5 934 (1981), overruled on other grounds, United States v. De
6 Bright, 730 F.2d 1255, 1372 (9th Cir. 1984) (en banc).

7 To begin with the indictment itself, both John That
8 Luong and Minh Huynh are charged in each of the four
9 conspiracies. The government has represented to the court that
10 it will demonstrate that in each conspiracy, the composition and
11 hierarchy of the group were the same. Luong operated as the
12 group's leader, Huynh operated as its crew chief, and the rest of
13 the group consisted of subordinate crew members. This
14 demonstrates a logical relationship among the four robberies
15 because each involves a "substantial evidentiary overlap between
16 charges" of the group's structure and identity of its leadership.
17 Golb, 69 F.3d at 1426. That is, the composition and hierarchy of
18 the group are the same in each of the four conspiracies, as is
19 the identity of group's leaders.

20 Furthermore, the robberies "occurred within a
21 relatively short time period and involved a common cast of
22 characters." Id. at 1425. The four robberies are alleged in the
23 indictment to have taken place over the course of approximately
24 one month, from December 22, 1995 to January 25, 1996. Luong and
25 Huyhn are charged in all counts. Lattanaphon and Ty Chan are
26 charged in all counts except four and five. Son Van Nguyen and
27 Ai Le are charged in five of the nine counts.

28 Accordingly, joinder is proper because "the charges

1 involve[] substantially overlapping evidence. . .combined with
2 the fact that the events occurred during a brief time span and
3 included many of the same participants." Vasquez-Velasco, 15
4 F.3d at 844.

5 Furthermore, joinder would be proper in this case
6 consistent with the principles of trial convenience and
7 efficiency. "Because the goal of Rule 8(b) is to maximize trial
8 convenience and efficiency with a minimum of prejudice, Rule 8(b)
9 is construed liberally in favor of joinder." United States v.
10 Sarkisian, 197 F.3d 966, 975 (9th Cir. 1999) (internal citations
11 omitted). Although not determinative, the court has also
12 considered the burden that multiple trials would present for the
13 victims in this case. Many would be faced with the possibility
14 of testifying to their experience multiple times. Additionally,
15 other litigants would be denied access to the court for upwards
16 of nine months. Multiple trials in this case would not comport
17 with Rule 8(b)'s goal of judicial economy.

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

20 DATED: November 6, 2002

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WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE
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