

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

vs.

TRESON STEPHENS,

Defendant.

THIS MATTER is before the Court on Defendant Treson Stephens’ “Motion for Relief from Prejudicial Joinder,” filed May 11, 2018 (the “Motion for Relief”).¹ Stephens asked the Court to sever his trial from that of his co-defendant, Carlos Norman (“Norman”), alleging that failure to do so will result in prejudice to Stephens at trial. By Order dated August 24, 2018, the Court denied the subject Motion For Relief From Joinder. This Memorandum Opinion provides the reasons for that denial.

On December 28, 2016, a criminal information was filed against Defendant Treson Stephens (“Stephens”) in connection with the shooting death of Shacoi Benjamin. Carlos Norman and Cymari Fredericks were also charged with Shacoi Benjamin’s death and the three cases were consolidated.² Cymari Fredericks

² Stephens, Norman and Fredericks were each charged with First Degree Murder and related charges and all three cases were consolidated.

(“Fredericks”) subsequently entered into a plea agreement with the People of the Virgin Islands (the “People”). Fredericks’ plea agreement requires him to testify for the People and against Stephens and Norman. According to Stephens, Fredericks’ written statement and video statement, taken in November 2017, reflect that he will testify that Norman was the shooter, that Stephens was not the shooter and that Stephens did not even have a gun.

LEGAL STANDARD

V.I. R. Crim. P. 8(b) Joinder of Offenses or Defendants

V.I. R. Crim. P. 8(b) permits the joinder of 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 may be charged in one or more counts together or separately. All defendants need not be charged in each count.”

V.I. R. Crim. P. 14(a) Relief from Prejudicial Joinder

V.I. R. Crim. P. 14(a) states in relevant part that “if the joinder of defendants in an information, or a consolidation for trial appears to prejudice a defendant . . . the court may . . . sever the defendants’ trials.”

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ANALYSIS

The issue is whether the joint trial of Stephens and Norman will result in prejudice to Stephens sufficient to compel severance under Rule 14(a).³ “Rules 8(b) and 14 are designed ‘to promote economy and efficiency and to avoid a multiplicity of trials’” *Zafiro v. United States*, 506 U.S. 534, 540 (1993) (quoting *Bruton v. United States*, 391 U.S. 123, 131, n. 6 (1968) (internal quotation marks omitted)). “Because joint trials promote efficiency and serve the interest of justice, joinder of cases is favored by Courts.” *People of the Virgin Islands v. Hernandez*, 2012 V.I. LEXIS 98, *3 (Super. Ct. Mar. 12, 2012) (citing *Mosby v. Government of the Virgin Islands*, 55 V.I. 1138 (D.V.I. 2011)). “This preference is particularly strong where, as here, the defendants are alleged to have participated in a common plan or scheme.” *United States v. Salameh*, 152 F.3d 88, 115 (2d Cir. 1998). “Joint trial is the rule; severance is the exception which applies where joinder of defendants yields such prejudice to a defendant as to deny him his fundamental right to a fair trial.” *Government of the Virgin Islands v. Petersen*, 1985 V.I. LEXIS 47, *3 (Terr. Ct. July 16, 1985).

Under V.I. R. Crim. P. 14, “the defendant must prove prejudice to obtain relief from prejudicial joinder with the case of a co-defendant.” *People of the Virgin Islands*

³ The People argue in their Opposition that the original joinder of defendants in this matter was proper, but Stephens does not address or question original joinder in his Motion for Relief. The Court notes that even if the original joinder was proper, it may later become prejudicial.

v. Austrie, 52 V.I. 19, 29 (Super. Ct. June 4, 2009) (internal quotations omitted).⁴ “[T]he prejudice alleged must outweigh the underlying purposes of joinder” *Petersen*, 1985 V.I. LEXIS 47, at *4. “[V]ague allegations of prejudice do not meet this standard.” *United States v. Shabazz*, 319 Fed. Appx. 127, 130-131, (3d Cir. 2009). “In order to prevail on a motion for severance, a defendant must show compelling, specific, and actual prejudice from a court's refusal to grant the motion to sever.” *United States v. Saadey*, 393 F.3d 669, 678 (6th Cir. 2005).

Stephens asserts that Fredericks's testimony will likely implicate Norman and not Stephens and that Norman will then attempt to discredit Fredericks' credibility while Stephens tries to bolster Fredericks' credibility. This prospect does not call for severance. “[D]efendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials.” *Zafiro*, 506 U.S. at 540. Similarly, Stephens argument that the disproportionate weight of evidence against Norman would prevent a jury from coming to a reliable conclusion as to his own guilt or innocence does not justify severance. “An important element of a fair trial is that a jury consider only relevant and competent evidence bearing on the issue of guilt or innocence.” *Bruton* at 131, n.6 (See, e. g., *Blumenthal v. United States*, 332 U.S. 539, 559-560 (1947)). However, “a defendant is not entitled to a severance merely because evidence against a co-defendant is more damaging than the evidence against the

⁴ *Austrie* was decided pursuant to Rule 14 of the Federal Rules of Criminal Procedure. The Virgin Islands now follows the Virgin Islands Rules of Criminal Procedure. However, Rule 14 V.I. R. Crim. P. is virtually identical to Rule 14 Fed. R. Crim. P. Therefore, the Court looks to other courts that have interpreted Rule 14 Fed. R. Crim. P. for guidance.

moving party.” *United States v. Somers*, 496 F.2d 723, 730 (3d Cir. 1974). “Instead, the relevant inquiry is ‘whether the jury will be able to compartmentalize the evidence as it relates to separate defendants in view of its volume and limited admissibility.’” *Audain v. Gov’t of the Virgin Islands*, 2014 U.S. Dist. LEXIS 3290, *21-22 (D.V.I. Jan. 8, 2014) (quoting *United States v. Davis*, 397 F.3d 173, 182 (3d Cir. 2005) (internal quotation marks omitted)). “[A] fair trial does not include the right to exclude relevant and competent evidence.” *Zafiro*, 506 U.S. at 540.

The People argue that proper jury instructions could serve to mitigate any potential prejudice to Stephens. The Court agrees. “[L]ess drastic measures than severance, such as limiting instructions, often will suffice to cure any risk of prejudice.” *United States v. Heilman*, 377 Fed. Appx. 157, 199 (3d Cir. 2010) (citing *Zafiro*, 506 U.S. at 539 (approving instructions to compartmentalize evidence, placing burden on government, and to find guilt beyond a reasonable doubt). “Every criminal trial presents prejudice to a defendant” *People of the Virgin Islands v. Ponce*, 62 V.I. 458, 467 (Super. Ct. June 25, 2015.) “A court . . . can cure perceived prejudice through statements and instructions to the jury.” *Id.* “As for jury confusion, it is hardly a novel task for a trial court to provide a jury limiting instructions to guide the jury as to how and for what purposes they may consider evidence admitted before them.” *United States v. DiScala*, 2018 U.S. Dist. LEXIS 36817, *83 (E.D.N.Y. 2018). Here, proper jury instructions should suffice to cure any perceived prejudice Stephens believes he might face, based on the evidence presented at trial.

“[T]he primary danger against which [V.I. R. Crim. P. 14] is designed to guard is that of a defendant having to face what amounts to two prosecutors — the state and his co-defendant”. *Petersen*, 1985 V.I. LEXIS 47, *6 (citing *United States v. Lee*, 744 F.2d 1124, 1126 (5th Cir. 1984)). However, “[m]ere finger pointing among codefendants – i.e., the familiar he did it, not I defense – normally is not a sufficient ground for severance.” *United States v. Morales-Guanill*, 77 F. Supp. 3d 258, 261, 2015 (D.P.R. 2015) (quoting *United States v. Tiem Trinh*, 665 F.3d 1, 19 (1st Cir. 2011)) (internal citations omitted). “The general rule is that the defenses must be antagonistic to the point of being mutually exclusive.” *Petersen*, 1985 V.I. LEXIS 47, *5 (citing *United States v. Crawford*, 581 F.2d 489, 491 (5th Cir. 1978)). “The standard for mutual exclusivity is that: ‘the essence or core of the defenses must be in conflict such that the jury, in order to believe the core of one defense, must necessarily disbelieve the core of the other.’” *United States v. Lee*, 744 F.2d 1124, 1126 (5th Cir. 1984) (quoting *United States v. Romanello*, 726 F.2d 173, 177 (5th Cir. 1984)). “Defendants may disagree on the facts not comprising the core of their defenses without generating the kind of prejudice that mandates severance.” *Id.* (citing *United States v. DeVeau*, 734 F.2d 1023, 1027 (5th Cir. 1984)). “To compel severance the defenses must be antagonistic to the point of being irreconcilable and mutually exclusive.” *Romanello*, 726 F.2d at 177 (citing *United States v. Berkowitz*, 662 F.2d 1127, 1133 (5th Cir. 1981)).

Stephens has not proffered any defense theory that suggests that his and Norman's rise to the level of "irreconcilable and mutually exclusive" theories. Moreover, "[m]utually antagonistic defenses are not prejudicial per se. [V.I.] R. Crim. P. 14 does not require severance even if prejudice is shown; rather, it leaves the tailoring of the relief to be granted, if any, to the [trial] court's sound discretion." *Zafiro*, 506 U.S. at 535; *Ponce*, 62 V.I. at 466. "The possibility that codefendants may mount mutually antagonistic defenses is not itself a ground for severance where the risk of prejudice can be offset by 'less drastic measures' devised by the [trial] court, 'such as limiting instructions.'" *United States v. O'Connor*, 650 F.3d 839, 858 (2d Cir. 2011) (quoting *Zafiro*, 506 U.S. at 539). Stephens does not argue that he and Norman have mutually antagonistic defense theories. Therefore, the Court finds that sufficient limiting instructions to the jury should serve to cure any potential prejudice to Stephens.

One of Stephens' claims is that the People's witnesses will likely give contradictory testimony and thus he argues the Court should hold an evidentiary hearing "to permit the Court to examine the evidence that actually exists against Defendant Stephens [which] could lead to a dismissal or a narrowing of charges against Stephens and arguably would benefit judicial economy by ultimately allowing the Court to conserve judicial resources, eliminate time consuming mid-trial motion practice and side-bar arguments before an impaneled jury." Defendant's Omnibus Response at 1. However, Stephens offers no authority for the Court to engage in such

a fact finding mission in an evidentiary hearing in advance of trial and the Court is aware of none.

It is true that Rule 14(b) permits an in camera inspection of “any defendant’s statement that the government intends to use as evidence.” However, Stephens has not suggested that the People have a statement from Norman that they intend to use at trial. Therefore, there is no authority for the Court to perform an in camera inspection of the People’s evidence and even less authority to hold an evidentiary hearing. Fredericks’ matter was severed by his guilty plea. Thus, his statement is no longer subject to in camera inspection. If the People call witnesses that offer contradictory testimony at trial the People do so at their own peril.

Another test of whether a matter should be severed is if there is a risk of introduction of evidence that would not be admissible if a defendant is tried alone. However, Stephens has not suggested that there exists any evidence that the People would be precluded from using if Stephens were tried alone. Therefore, there are no grounds for the matters to be severed. The same applies to the possibility that Stephens might testify during the trial. His own testimony cannot be deemed prejudicial to him.

CONCLUSION

There is no compelling reason to justify severing the trials of Defendants Stephens and Norman. Any perceived or potential prejudice may be cured with limiting instructions to the jury at trial.

For these reasons Stephens' Motion for Relief from Prejudicial Joinder was denied by Order entered on August 24, 2018.

ORDERED that copies of this Memorandum Opinion be served upon Defendant Stephens and Defendant Norman, and copies directed to Assistant Attorney General Quincy McRae, Chief of the Criminal Division, Assistant Attorney General Nadja Harrigan, Assistant Attorney General Tiffany McLean, Carl Williams, Esq., and Kanaan Wilhite, Esq.

DATED: September 12, 2018

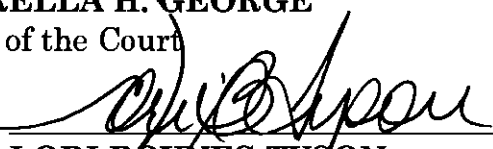


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Court Clerk Supervisor

9/12/18