

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	
	)	CRIMINAL NO. SX-10-CR-716
v.	)	
	)	SIMPLE POSSESSION OF A CONTROLLED
SAUL HERNANDEZ, JR.,	)	SUBSTANCE
	)	
Defendant.	)	

THIS MATTER is before the Court on Defendant's Motion for Severance from the case of *People of the Virgin Islands v. Jorge Acevedo* SX-10-CR-717, and the People's Opposition thereto. For the reasons below, the Defendant's Motion will be Granted.

On or about December 12, 2010, Police Officer Ralson Wright was on foot patrol of Christiansted, near the Vicinity of the Seaborne Airline entrance on Strand Street. While on patrol, Officer Wright noticed a Toyota Rav-4 occupied by Defendants Hernandez and Acevedo parked with the doors open. Upon approaching the vehicle, Officer Wright noticed a strong smell of marijuana emanating from the vehicle. Upon questioning the individuals in the car, Defendant Acevedo allegedly stated that “we were cooling out burning a joint.” Upon being asked to exit the vehicle, Defendant Acevedo further stated “Officer I am a correctional officer and my job is stressful, and that is why I’m here burning a joint with my friend.” After being permitted to search the vehicle by Mr. Acevedo, Officer Wright found several more bags of marijuana, along with a magazine clip containing live ammunition rounds. Thus, Defendant was arrested for Simple Possession of a Controlled Substance, while Mr. Acevedo was charged with Possession

of a Controlled Substance With Intent to Distribute, as well as Unauthorized Possession of Ammunition.

Defendant Hernandez then filed the instant Motion for Severance, stating that the two Defendants' cases should be severed since they were misjoinder under Fed. R. Crim. P. 8(a) & (b). Specifically, Defendant Hernandez claims that the Information does not indicate that the offenses are of the same or similar character, since Mr. Hernandez is charged with Simple Possession, while Mr. Acevedo is charged with Possession With Intent to Distribute and Unauthorized Possession of Ammunition. Further, Defendant Hernandez claims that a joint trial will create a serious risk of denying Hernandez of his substantive due processes rights by prejudicing a jury against him, due to the nature of the charges Mr. Acevedo faces. Defendant Hernandez claims that at a joint trial, the jury will not be able to compartmentalize the evidence against Defendant Acevedo, and will ascribe it to Defendant Hernandez.

Legal Standard

Rule 8(a) of the Federal Rules of Criminal Procedure permits the joinder of multiple offenses in the same Information if the offenses are (1) of the same or similar character; (2) based on the same act or transaction; or (3) are connected with or constitute parts of a common scheme or plan. Rule 8(b) permits the joinder of multiple Defendants in the same Information whenever the Defendants are alleged to have participated in the same act or transactions or in the same series of acts or transactions constituting an offense or offenses.

Because joint trials promote efficiency and serve the interest of justice, joinder of cases is favored by Courts. *Mosby v. Government of the Virgin Islands*, 2011 WL 4357301 (D. V.I. 2011). However, "[s]everance should generally be granted if the defendant would be prejudiced

by introduction of an inculpatory prior statement of a codefendant.” *United States v. Veras de los Santos*, 184 F.App’x 245, 256 (3d Cir. 2006). Such a statement is admissible against the codefendant as a party admission, but it is not admissible against the defendant because he or she has enjoyed no opportunity to cross-examine the speaker. Introduction of the statement against the defendant would violate his or her rights under the Confrontation Clause. *Id.* (internal citations omitted).

But severance is not required if the prejudice to the defendant can be successfully ameliorated. This is most often accomplished, by redacting the statement to eliminate all references to a coconspirator and by issuing a limiting instruction advising the jury that it may not consider the statement as evidence against the defendant. *Id.*

Analysis

In this case, it is clear that there is a prior inculpatory statement made by Defendant Acevedo that would certainly be admissible into evidence as a party admission. It is also clear to this Court that such a statement would be prejudicial to Defendant Hernandez, in that the statement directly implicates Defendant Hernandez in his codefendant’s illegal possession of ammunition. Thus, severance should be granted unless the prejudice can be ameliorated.

In examining the statements made by Mr. Acevedo, this Court finds that it would be impossible to redact the statement without still implicitly involving Defendant Hernandez. The police stopped both of them in the car, with a strong smell of marijuana emanating from it. Defendant Hernandez was subsequently arrested following the stop. It would be near impossible to expect a jury to compartmentalize the statements of Defendant Acevedo to his case only, and

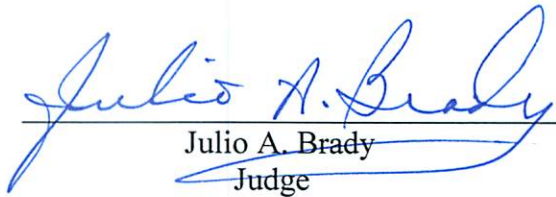
not apply them to Defendant Hernandez as well. Thus, in the interest of justice, the cases should be severed.

Further, this Court must note that the allegations in the information, even though they occurred at the same place and time, still are not the same transaction or part of a common scheme or plan. The evidence and charges in this case show that Defendant Hernandez was not involved in the intent to distribute, nor in the possession of ammunition.

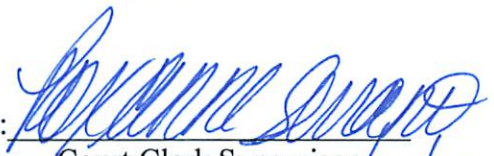
Conclusion

Upon review of the record, it is clear that the statements made by Defendant Acevedo would unfairly prejudice Defendant Hernandez. Further, there is no viable way to redact the statements without implicating Defendant Hernandez. Therefore, the cases must be severed. An appropriate Order of even date will accompany this Memorandum Opinion.

Dated: March 12, 2012.


Julio A. Brady
Judge

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: 
Court Clerk Supervisor
3/13/12