

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:08CR014

ROBERT L. MOULTRIE, ET AL.

GOVERNMENT'S RESPONSE AND MEMORANDUM IN
OPPOSITION TO THE DEFENDANTS'
MOTIONS FOR SEVERANCE

Comes now, the United States of America by and through the United States Attorney for the Northern District of Mississippi in opposition to the Motion for Severance filed by defendant, Robert L. Moultrie. The motion is joined by all defendants. In support thereof, the United States would show unto the Court the following.

Defendants Moultrie, Cawood and corporate defendants are charged in a sixteen count Indictment alleging multiple transactions constituting parts of a common scheme or plan. Count One of the Indictment charges that Moultrie, Cawood and corporate defendants conspired with others to corruptly reward or influence a public official in connection with an economic development project known as the Mississippi Beef Processors project, in violation of 18 U.S.C. 371 and 666. Count Two of the Indictment charges that Moultrie, Cawood, Morehead and corporate defendants, aided and abetted by others, devised and executed a scheme to defraud numerous state entities, a bank and individuals through the use of the U.S. Mails, in violation of 18 U.S.C. 1341. Counts Three through Sixteen allege that Moultrie, Cawood, Morehead and corporate defendants committed substantive violations of the above mail fraud statute to execute the scheme. Moultrie, Cawood, Morehead and corporate defendants contend that they are

prejudiced by the joinder of the charges. They contend that the indictment alleges two completely separate and disconnected schemes. The United States submits the offenses charged are based on multiple acts of each defendant which clearly constitutes parts of a common scheme or plan. Thus, the offenses are properly joined.

Rule 8(a) of the Federal Rules of Criminal Procedure provides the following:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

An exception to this rule is set forth in Rule 14, Federal Rules of Criminal Procedure, which provides as follows:

If it appears that the defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

Thus, Rule 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 district court's sound discretion. Zafiro v. United States, 506 U.S. 534, 538-39 (1993). In fact, joinder of charges is the rule rather than exception and Rule 8 is construed liberally in favor of joinder. United States v. Park, 531 F.2d 754, 761 (5th Cir. 1976). The courts have repeatedly emphasized the substantive public interest underlying this rule.

Joinder expedites the administrations of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burden upon citizens who must sacrifice both time and money to serve upon juries, and avoids the necessity of recalling witnesses who would otherwise be called upon to testify only once.

United States v. Walker, 720 F.2d 1527, 1533 n.2 (11th Cir. 1983), cert. denied, 465 U.S. 1108 (1984) (quoting Parker v. United States, 404 F.2d 1193, 1196 (9th Cir. 1968), cert. denied, 394

U.S. 1004 (1969).

The burden is upon the defendant to establish sufficient grounds for severance under Rule 14. United States v. Welch, 656 F.2d 1039, 1054 (5th Cir. 1981), cert. denied, 456 U.S. 915 (1982); United States v. Salomon, 609 F.2d 1172, 1175 (5th Cir. 1980). Chief Judge Brown, writing for a unanimous court held:

To obtain a severance under Rule 14, the movants have the burden of convincing the court that without such drastic relief they would be unable to obtain a fair trial. (citations omitted)

A mere showing of some prejudice has usually been insufficient, for qualitatively it must be the most compelling prejudice against which the trial court will be unable to afford protection. (citations omitted) (emphasis added)..

United States v. Perez, 489 F.2d 51, 64 (5th Cir. 1973). Review of a district court's ruling on a motion to sever is for abuse of discretion. United States v. Stouffer, 986 F.2d 916, 924 (5th Cir. 1993).

Moultrie, Cawood , Morehead and corporate defendants contend that they will suffer prejudice should the Court allow a joint trial of all counts. Particularly, Moultrie, Cawood, Morehead and corporate defendants ask the Court to sever the conspiracy to reward or influence charge from the trial of the mail fraud scheme even though at the heart of each charge is the acquisition and execution of the same contract. Moultrie's motion concedes that joinder is proper as there are common acts which accomplish the object of the conspiracy to influence a public official and to scheme to defraud the victims, separate and apart from the public official. The indictment alleges and the proof will establish that Moultrie, Cawood and corporate defendants attempted to acquire this contract, in part, through the promise of campaign contributions. The contributions were paid after the company acquired the contract and were charged off, at the direction of Moultrie and Cawood to the contract both directly and indirectly.

The indictment also alleges that other expenses incurred during the acquisition of the contract were charged off to the contract during its execution. Moultrie, Cawood, Morehead and corporate defendants are alleged to have aided and abetted the fraud scheme. While the indictment does not allege each and every act of defendants, it does demonstrate that conspiracy charge is a part of the overall scheme to defraud. Thus, the charges are properly joined.

Severing Count One would not appreciably reduce the length of a trial on either. Thus, the Court would preside over two trials of basically the same length with substantially overlapping witnesses. No reason recognized in law and supported by an adequate showing has been advanced for such a prolific disposition of judicial resources. The expense to the taxpayers and the inconvenience to witnesses and jurors argue strongly against severance. For the above reasons, the United States respectfully submits that the defendants' motions to sever be denied.

Respectfully submitted,

JIM M. GREENLEE
United States Attorney
MS BAR NO. 5001

By: */s/ William C. Lamar*
WILLIAM C. LAMAR
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CERTIFICATE OF SERVICE

I, William C. Lamar, certify that I electronically filed the foregoing GOVERNMENT'S RESPONSE AND MEMORANDUM IN OPPOSITION TO THE DEFENDANTS' MOTION FOR SEVERANCE with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: None.

This the 4th day of August, 2008.

/s/ William C. Lamar
WILLIAM C. LAMAR
Assistant United States Attorney