IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	**Case No.: 2:10-CR-186-MHT-WC**
	}	
ROBERT B. GEDDIE, JR.,	}	
	}	
Defendant.	}	

MEMORANDUM OF ROBERT GEDDIE IN SUPPORT OF MOTION TO SEVER

Defendant Robert Geddie respectfully requests the Court to sever his trial from the trial of his co-defendants. Solely in the alternative, and only if the Court is inclined to "group" defendants, Geddie respectfully requests the Court to join him for trial with Defendant Milton McGregor in the event that the Court grants McGregor's Motion to Sever (Doc. #362), filed January 21, 2011.

I. Standard of Review

Federal Rule of Criminal Procedure 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." FED. R. CRIM. P. 8(b). On the one hand, misjoinder under Rule 8(b) is inherently prejudicial; therefore, "the granting of a motion for severance, where misjoinder is found, is mandatory and not within the discretion of the trial court." *United States v. Nettles*, 570 F.2d 547, 551 (5th Cir. 1978) (citations omitted). But conceptually related, Rule 14(a) broadly authorizes the Court to sever co-defendants' trials, even in the absence of a technical misjoinder, "[i]f the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the

government . . . ." FED. R. CRIM. P. 14(a); *see also United States v. Baker*, 432 F.3d 1189, 1236 (11th Cir. 2005) ("Severance may be granted at the discretion of the district court if the court determines that prejudice will result from the joinder.") (citations omitted). Rule 14(a) severance is appropriate "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

II. Argument

The Indictment targets compartmentalized events spread across dozens of unconnected actors and several years – few of which events are actually related to Geddie. Specifically, in Count One, aside from unadorned, boilerplate averments regarding the conspiracy's existence and scope, (Indictment ¶¶ 27-37), the Government has identified one hundred and fifty-two overt acts, which likely will become the Government's centerpiece at trial. (Indictment ¶¶ 39-190). Of those one hundred and fifty-two overt acts, only seventeen directly reference Geddie, and those seventeen reflect only seven discrete events:

(1) In 2009, McGregor contributed to PACs controlled by Geddie, who worked as a lobbyist for McGregor. (Indictment ¶¶ 8, 118, 121).

(2) On February 15, 2010, McGregor told Geddie about Legislator 3's fundraiser to be held that same day. Geddie and an employee attended the fundraiser and brought with them, as contributions, two $2,500.00 PAC checks. Around February 16, 2010, the Government alleges that Geddie instructed an employee to internally record the contributions as being attributable to McGregor. At some unspecified point thereafter – and, again, based solely on the Government's allegations – Geddie instructed the same employee to record the contributions as being attributable to other clients. Finally, at some point between May 2010 and August 2010, Geddie allegedly produced the "altered contribution ledgers" to law enforcement officials. (Indictment ¶¶ 69-73).

(3) Between December 2009 and March 2010, PACs controlled by Geddie made various campaign contributions to Means, Ross, and Smith. Geddie

internally attributed some of these contributions to McGregor. (Indictment ¶¶ 74, 118, 121-22, 139, 155).

(4) On March 18, 2010, Geddie consulted McGregor as to whether Legislator 2 was committed to voting in favor of pro-gaming legislation. (Indictment ¶ 63).

(5) On February 22, 2010 and April 12, 2010, and without any allegation that Geddie solicited them, Crosby directed a Legislative Reference Service employee to send an amendment to and a final version of SB380 to Geddie. (Indictment ¶¶ 165, 181).

(6) On March 23, 2010, while talking to McGregor on the telephone, Geddie "hope[d]" that he was "on a safe phone" and remarked that, based on "what [he had] been told," SB380 would pass with the necessary twenty-one votes. (Indictment ¶ 187).

(7) On March 30, 2010, McGregor told Ross that Geddie, along with McGregor, would "work . . . to secure additional contributions" for Ross. (Indictment ¶ 129).

The remaining one hundred and thirty-five allegations in Count One concern telephone calls to which Geddie was not a party, meetings that Geddie did not attend, politicians with whom Geddie had no involvement, individuals who had not hired Geddie as a lobbyist, two other lobbying firms, and two cooperating legislators that Geddie did not lobby. Conspicuously absent is any meaningful allegation that Geddie was even cursorily aware of his co-defendants' coordinate activities. Indeed, upon careful inspection, the Indictment alleges that Geddie directly communicated only with McGregor, which deflates the Government's expansive allegation that the defendants, together, "agree[d] with *each other* and other persons . . . to commit federal programs bribery." (Indictment ¶ 28) (emphasis added).

Although these allegations are perhaps sufficient for notice purposes only, when considered against Count One's concrete allegations detailed in Paragraphs 38 through 190, they reveal an internal inconsistency. Based on the Government's allegations, Geddie's involvement

in the supposed conspiracy was extraneous,[1] and this conclusion warrants severance pursuant to Rule 14.

First, severing Geddie from his alleged co-conspirators has a neutral impact, if any, on judicial economy. *See, e.g.*, *United States v. Baker*, 432 F.3d 1189, 1236 (11th Cir. 2005) (observing that the "efficient and economic administration of justice" is a factor to consider when deciding a motion to sever). According to the Indictment, the Government does not intend to introduce evidence that Geddie was entangled with his co-conspirators; indeed, the allegations connect (1) Geddie and McGregor by a business relationship as well as a handful of intercepted telephone calls and (2) Geddie, Means, Smith, and Ross by publicly disclosed political contributions. These connections do not call for a sophisticated or otherwise complex evidentiary presentation that would render duplication prohibitively inefficient.

Second, premising joinder on the unadorned allegation of a unified conspiracy actually risks judicial inefficiency and substantially threatens the integrity of Geddie's trial. The Government generically alleges that the defendants, including Geddie, endeavored together to

---

[1] The remaining Counts against Geddie similarly illustrate his isolated involvement. In Count Three, the Government alleges that McGregor and Geddie violated 18 U.S.C. § 666(a)(2) based on the factual allegations concerning the contributions to Legislator 3 by PACs controlled by Geddie. (Indictment ¶ 193-94).

In Counts Twenty-Three through Thirty-Three, the Government generally alleges that Geddie participated in a scheme to deprive the State of Alabama, the Legislature, the Legislative Reference Service, and the citizens of Alabama of their right to honest services. (Indictment ¶ 234). The Indictment, although detailing eleven distinct transactions, does not contain a single concrete allegation specific to Geddie. (Indictment ¶¶ 235-36).

Finally, in Count Thirty-Nine – the only count unique to Geddie – the Government has accused Geddie of obstructing justice by relying on the alleged alteration of an internal contribution journal produced to law enforcement officials. (Indictment ¶¶ 241-42).

In short, Counts Three, Twenty-Three through Thirty-Three, and Thirty-Nine provide no clearer justification, aside from those allegations contained in Count One, for trying Geddie along with his co-defendants.

"commit federal programs bribery." (Indictment ¶ 28). But Geddie's isolation from the other transactions alleged undoubtedly foreshadows the disconnected presentation of evidence at trial.

Assuming that the Government's evidence similarly focuses on diffuse acts rather than a single overarching agreement (*i.e.*, a conspiracy's predicate), courts generally have held that a failure to sever constitutes reversible error when the evidence establishes several disconnected conspiracies rather than a single conspiracy as alleged in the indictment. *See, e.g.*, *Kotteakos v. United States*, 328 U.S. 750 (1946) ("We do not think that . . . Congress . . . intended to authorize the Government to string together, for common trial, eight or more separate and distinct crimes, conspiracies related in kind though they might be, when the only nexus among them lies in the fact that one man participated in all."). This approach is consistent with well-established law that a common thread, on its own, is legally insufficient to support a conviction for conspiracy. *See*, *e.g.*, *United States v. Chandler*, 376 F.3d 1303, 1317 (11th Cir. 2004) ("We have never upheld a conspiracy conviction where a single key man moved alone from spoke to spoke, agreeing with no one else common to more than one spoke.").

For example, in *United States v. Butler*, 494 F.2d 1246 (10th Cir. 1974), the Tenth Circuit reversed a defendant's conviction because the district court refused to sever notwithstanding the alleged co-conspirators' cabined participation:

> The United States has attempted to merge what, if anything, should be at least three separate, distinct conspiracies into one. Twenty-three defendants were named in the indictment. Different combinations of these defendants were involved in nearly every transaction which figured in the trial. Many of the defendants did not know one another prior to trial.

494 F.2d at 1256-57.

Likewise, the Eleventh Circuit in *United States v. Adkinson*, 135 F.3d 1363 (11th Cir. 1998), concluded that severance was proper when the evidence could not have established a unified conspiracy:

> The only way all of these defendants were tied together at all in this far-flung series of events was by the allegation of a violation of Section 371 through a bank fraud conspiracy which no amount of evidence at trial could establish. Prejudice resulted from the spillover effect of the massive amount of testimony and exhibits which came in against all defendants under the 'inextricably intertwined' theory. This is bad faith joinder and was seriously prejudicial to these defendants.

135 F.3d at 1374.

Cases like *Butler* and *Adkinson* illustrate that early attention to the possible misjoinder of alleged co-conspirators can prevent the later necessity for separate retrial. The concern is particularly acute when, as here, the Government has merely tracked obligatory language in the charging instrument and, with the broadest possible brushstrokes, asserted a unified endeavor – an endeavor that involved dozens of people who acted without even a serious allegation of knowledge about one another's conduct. In short, the Government's insistence on short-term efficiency, especially when the Government has included only bare allegations of conspiracy, heightens the risk of long-term inefficiency.

Applied to Geddie, and considering the Government's naked allegations regarding any synchronization among *all* defendants, a consolidated trial will result in prejudicial spillover and inevitable confusion. Geddie's involvement, as the Government acknowledges in the Indictment, is circumscribed and essentially confined to his business relationship with McGregor. (Indictment ¶¶ 63, 69-74, 118, 121-22, 128-29, 139, 155). Ordinarily, cautionary instructions to the jury, "advising that certain evidence is to be considered relevant only as to certain defendants or certain charges," mitigate prejudice resulting from joinder. *Baker*, 432 F.3d at 1236-37. As the Eleventh Circuit has explained, however, "[s]everance is justified as a

remedy only if the prejudice flowing from a joint trial is clearly beyond the curative powers of such instructions." *Id.* at 1237.

Here, given the far-flung allegations, voluminous discovery,[2] and imbalanced disparity between Geddie's alleged involvement and the supposedly sweeping nature of the subject conspiracy, there is a clear likelihood that a cautionary instruction would not meaningfully insulate Geddie against the evidence presented against his co-defendants. Indeed, "[t]his case is far too extensive and intricate to expect that a jury would be able to discern the myriad of subtle distinctions and mental gyrations that would be required by the inevitable plethora of limiting instructions necessary. And even where jurors would at first attempt to heed the judge's admonitions, they could hardly be expected to retain such precise discriminations weeks and months down the line, when they retire to deliberate on the basis of a warehouse of diverse evidence." *United States v. Blankenship*, 382 F.3d 1110, 1124 (11th Cir. 2004) (quoting *United States v. Gallo*, 668 F. Supp. 736, 753 (E.D.N.Y. 1987)); *see also Zafiro*, 506 U.S. at 539 (noting that the risk of prejudice is "heightened" when "many defendants are tried together in a complex

---

[2] To be clear, the Government has designated thousands of intercepted telephone calls as "pertinent" and disclosed several hundred thousand pages of discovery. Those materials fractionally concern Geddie; accordingly, there exists a substantial risk of prejudice on the basis of evidentiary submissions alone.

Critically, the Eleventh Circuit has affirmed the denial of severance motions when the case involved either (1) voluminous evidence but few defendants or (2) voluminous evidence tied to most defendants. *Compare United States v. Baker*, 432 F.3d 1189, 1237 (11th Cir. 2005) (affirming denial of severance because most the defendants were "implicated to some extent" by the presented evidence), *with United States v. Browne*, 505 F.3d 1229, 1271 (11th Cir. 2007) (affirming denial of severance because voluminous evidence presented against only two co-defendants); *United States v. Lehder-Rivas*, 955 F.2d 1510, 1521 (11th Cir. 1992) (same).

Here, the case is the paradigmatic "mega trial" that, notwithstanding a cautionary instruction, will overwhelm a jury. As the Eleventh Circuit explained, severance is proper for "cases in which the sheer number of defendants and charges with different standards of proof and culpability, along with the massive volume of evidence, make[] it nearly impossible for a jury to juggle everything properly and assess the guilt or innocence of each defendant independently." *United States v. Blankenship*, 382 F.3d 1110, 1124 (11th Cir. 2004) (citing *United States v. Cassano*, 132 F.3d 646, 651 (11th Cir. 1998)).

case and they have markedly different degrees of culpability"); *United States v. Baker*, 98 F.3d 330, 335 (8th Cir. 1996) ("Even though the issues and the evidence were relatively straight-forward, the risk of substantial prejudice from the spillover effect of the conspiracy evidence and the documents was too high to be cured by less drastic measures, such as the limiting instructions given by the district court. This is especially true in light of the extremely serious and admittedly sensational nature of the offense charged."); FED. R. CRIM. P. 14 Advisory Committee Note (1966 Amendment) ("A defendant may be prejudiced by the admission in evidence against a co-defendant of a statement or confession made by that co-defendant. . . . Limiting instructions to the jury may not in fact erase the prejudice.").

Finally, severance presents a practical solution to this case's logistical strains, such as (1) courtroom seating; (2) the ability for Geddie and the co-defendants to consult meaningfully with their counsel during trial; (3) ease of evidentiary and testimonial presentation; and (4) Geddie's opportunity for a speedy trial. *See, e.g.*, *United States v. Eiland*, 406 F. Supp. 2d 46, 51 (D.D.C. 2005) (severing nine defendants into two trial groups because of "the physical limitations of the courtroom and hardship on the jurors, defendants, and [the] Court"); *United States v. Shea*, 750 F. Supp. 46, 50 (D. Mass. 1990) ("The authority and responsibility for ordering that overly complex and lengthy trials be tailored to more manageable scope is independent of and in addition to authority to grant motions for severance under Fed.R.Crim.P. 12(b)(5) and 14, and orders authorized under statutes and precedents concerning rights of the public and the parties to 'speedy trial.' Underlying all these sources of authority is a principle that aims for reasonable speed in litigation. The principle applies both in pretrial proceedings and during trial. It underscores the court's authority and responsibility for breaking apart an unduly complex and lengthy case.").

In short, as the Ninth Circuit crystallized, "the claim that joint trials save time and serve judicial economy is ludicrous under the present facts. Where trials of this magnitude are involved, judicial economy will often be better served by severance." *United States v. Baker*, 10 F.3d 1374, 1389 (9th Cir. 1993), *overruled on other grounds by United States v. Nordby*, 225 F.3d 1053, 1059 (9th Cir. 2000); *see also id.* at 1390 ("There are a myriad of other potential sources of prejudice to an effective defense in trials of this scope. Defense counsel must call witnesses to attempt to impeach the credibility of prosecution witnesses who testified months earlier. Armies of defense counsel risk undermining each other with conflicting trial tactics and strategies.").

Alternatively, and only if the Court is inclined to deny outright severance and to group defendants, Geddie requests that his case be joined for trial with co-defendant McGregor on the present timeline. As described above, Geddie's only material involvement with the Indictment's allegations concerns a preexisting business relationship with McGregor. The Court has broad discretion to sever groups of defendants along such lines notwithstanding an indictment's consolidation. *See, e.g.*, *United States v. Kennedy*, 819 F. Supp. 1510, 1517 (D. Colo. 1993) (". . . I conclude that the government's proposal to sever this case for separate trials of the RICO and non-RICO defendants will minimize the overall potential for prejudice for all parties and maximize reliability of jury judgments about guilt or innocence. . . . Such severance creates two distinct trial groups with each reflecting generally homogeneous interests."). Further weighing in favor of partial severance, neither Geddie nor McGregor has requested the Court to continue the April 4, 2011 trial date.

III. Conclusion

Because separately trying Geddie safeguards judicial economy and procedural integrity, Geddie respectfully requests that the Court, pursuant to Rule 14, sever his case for trial or, and only if the Court denies outright severance, join him for trial with McGregor.

Dated: Friday, February 4, 2011

Respectfully submitted,

/s/ Jackson R. Sharman, III
One of the Attorneys for Defendant,
Robert B. Geddie, Jr.

OF COUNSEL:

Samuel H. Franklin
sfranklin@lightfootlaw.com
Jackson R. Sharman, III
jsharman@lightfootlaw.com
Jeffrey P. Doss
jdoss@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE LLC
The Clark Building
400 20th Street North
Birmingham, Alabama 35203
Telephone: (205) 581-0700
Facsimile: (205) 581-0799

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record through the Court's electronic filing system this 4th day of February, 2011.

/s/ Jackson R. Sharman, III
One of the Attorneys for Defendant,
Robert B. Geddie, Jr.