IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	**CRIMINAL NO. WDQ-03-0213**
	*	
WALTER POINDEXTER	*	
DEON LIONNEL SMITH	*	

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GOVERNMENT'S RESPONSE IN OPPOSITION TO SEVERANCE OF DEFENDANTS

Comes now the United States of America, by and through its counsel, Thomas M. DiBiagio, United States Attorney for the District of Maryland, Jonathan P. Luna, Assistant United States Attorney, and Vivien J. Cockburn, Special Assistant United States Attorney for said district, hereby responds to the defendant's motion to sever defendant Deon Lionnel Smith from co-defendant Walter Poindexter.

I. Background

Defendants Walter Poindexter and Deon Lionnel Smith have been indicted for conspiring to distribute in excess of one kilogram of heroin from the beginning of 2000 through May of 2003. The government's evidence will establish that Poindexter and Smith conducted a heroin distribution network in which Smith was the primary supplier of heroin. Poindexter in turn employed a group of street dealers, including Warren Grace, who sold the heroin under the street name " 911." The profits from the street sales of 911 heroin were shared by Poindexter and Smith. During the course of the conspiracy, Poindexter was advised that Alvin Jones had burglarized one of Poindexter's stash houses. Believing that Jones had burglarized the stash house, the government's evidence will show that upon finding Jones, Poindexter shot and killed Jones on January 22, 2001.

A. Defendant Smith should not be severed from his co-defendant Poindexter

"There is a preference in the federal system for joint trials of defendants who are indicted together." Zafiro v. United States, 506 U.S. 534, 537 (1993). This strong preference reflects several principles, as the Supreme Court has forcefully stated:

> It would impair both the efficiency and the fairness of the criminal justice system to require . . . that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last-tried defendants who have the advantage of knowing the prosecution's case beforehand. Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability – advantages which sometimes operate to the defendant's benefit. Even apart from these tactical considerations, joint trials generally serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts.

Richardson v. Marsh, 481 U.S. 200, 210 (1987). Thus, while joint trials may invite some prejudice to defendants, "[t]he risks of prejudice attendant in a joint trial are presumptively outweighed by the conservation of time, money and scarce judicial resources that a joint trial permits." United States v. Jimenez, 824 F. Supp. 351, 366 (S.D.N.Y. 1993). The general preference for joint trials is even more compelling in a conspiracy case, and the Fourth Circuit adheres "to the well-established principle that defendants who are charged in the same criminal conspiracy should be tried together." United States v. Reavis, 48 F.3d 763, 767 (4th Cir. 1995) (citing Zafiro, 506 U.S. at 537, United States v. Brooks, 957 F.2d 1138, 1145 (4th Cir. 1992); United States v. Parodi, 703 F.2d 768, 779 (4th Cir. 1983)).

In recognition of the compelling interests served by joint trials, it has long been the law that severance motions "are committed to the sound discretion of the trial judge." United States v.

Casamento, 887 F.2d 1141, 1149 (2d Cir. 1989). However, "[j]oint trials are favored in those cases in which defendants have been indicted together for the sake of judicial economy." Reavis, 48 F.3d at 767; see also United States v. Santoni , 585 F.2d 667, 674 (4th Cir. 1978) ("The trial court must weigh the inconvenience and expense to the government and witnesses of separate trials against the prejudice to the defendants inherent in a joint trial, and its determination will not be disturbed unless the denial of a severance deprives the movant of a fair trial and results in a miscarriage of justice."); United States v. Henry, 861 F. Supp. 1190, 1199 (S.D.N.Y. 1994) ("[i]n exercising this discretion, the Court must pay heed to the powerful institutional interests in judicial economy favoring joint rather than separate trials."). For example, consideration of "the burdens upon the criminal justice system imposed by separate trials has given rise to a *strong presumption* in favor [of] joint trials and led courts to erect high barriers to defendants who move for severance." Id. (emphasis added).

When defendants have been properly joined, as is the case here, the Supreme Court has held that "a district court should grant a severance under Rule 14 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, 506 U.S. at 539; accord United States v. Williams, 10 F.3d 1070, 1080 (4th Cir. 1993). Because "a certain amount of conflict among defendants is inherent in most multi-defendant trials," United States v. Smith, 44 F.3d 1259, 1267 (4th Cir. 1995), defendants do not meet their burden "merely because they may have a better chance of acquittal in separate trials." Zafiro, 506 U.S. at 540; Reavis, 48 F.3d at 766 ("The party moving for severance must establish that actual prejudice would result from a joint trial, and not merely that a separate trial would offer a better chance of acquittal.") (citations omitted). Moreover, even in those rare instances when a defendant establishes a "high" risk of prejudice, "less drastic measures,

such as limiting instructions, often will suffice to cure any risk of prejudice." Zafiro, 506 U.S. at 539; see also United States v. Porter, 821 F.2d 968, 972 (4th Cir. 1987) ("No prejudice exists if the jury can make individual determinations by following the court's cautionary instructions and appraising the independent evidence against each defendant."). Defendants have not and cannot meet their burden in this case of showing a sufficient risk of prejudice that cannot be overcome by appropriate limiting instructions.

B. A Joint Trial In This Case Is Uniquely Compelling

Justice also is served in a single trial by not permitting the "last-tried defendants" the advantage of learning about the government's case. Richardson, 481 U.S. at 210. For example, "[k]eeping the number of times that certain key witnesses must repeat their testimony will also reduce the relative advantage accruing to defendants who are tried at later dates and who can benefit from knowledge of the contents and weaknesses of a witness's testimony." United States v. Gambino, 729 F. Supp. 954, 970-71 (S.D.N.Y. 1990).

Another compelling reason for a joint trial is the avoidance of inconvenience and trauma for the witnesses. See, Richardson v. Marsh, 481 U.S. at 210; Howard v. Moore, 131 F.3d 399, 416 (4th Cir. 1997). In this case, that is particularly true. At least two of the witnesses in this case were involuntary witnesses to murder of Alvin Jones. Two separate trials will require these witnesses to relive horrific experience of witnessing the murder of a human being. See, Richardson, 481 U.S. at 210 (joint trials avoid imposing "trauma" of having victims repeat their testimony). Moreover, the emotional burdens from testifying just once may cause some of these witnesses to avoid testifying a second time, thus unfairly causing prejudice to the Government's case and the victims' interest in justice.

Finally, a single trial of the charges in this case will best avoid the "scandal and inequity of inconsistent verdicts." Richardson, 481 U.S. at 210. By presenting the complete picture to one jury, there is a greater likelihood that justice will be accomplished. Id. "The principles that guide the district court's consideration of a motion for severance usually counsel denial." United States v. Rosa, 11 F.3d 315, 341 (2d Cir. 1993).

Respectfully submitted,

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