

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	02 CR 1050-10
)	
ANTHONY DOYLE,)	Judge James B. Zagel
)	
Defendant.)	

MOTION FOR SEVERANCE AND INCORPORATED MEMORANDUM OF LAW

Now Comes, ANTHONY DOYLE, through one of his attorneys, DARRYL A. GOLDBERG, pursuant to Rule 14(a) of the Federal Rules of Criminal Procedure and the Fifth and Sixth Amendments to the United States Constitution, and respectfully moves this Honorable Court to sever his trial from the trial(s) of the codefendants in order to ensure his right to a fair trial. The grounds for the motion are set forth in the incorporated memorandum of law.

BRIEF MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SEVERANCE

PREFATORY REMARKS

Mr. Doyle is charged in one count of a nine count indictment. Mr. Doyle is charged with violating 18 U.S.C. §1962(d) and §1963 by allegedly conducting the affairs of the “Chicago Outfit” through a pattern of racketeering activity. However, Mr. Doyle’s eleven codefendants are charged with additional crimes in the other eight counts of the indictment including conducting an illegal gambling business, obstructing a criminal investigation, tax fraud conspiracy, extortion, extortionate collection of an extension of credit, and making false statements. The disparity in evidence and charges, and the markedly different degrees of culpability among the codefendants severely and unfairly prejudices Mr. Doyle’s right to a fair trial. Thus, in order to ensure Mr. Doyle’s right to a fair trial and due process of law, his trial should be severed from the trial(s) of his codefendants.

THE INDICTMENT AND THE POTENTIAL EVIDENCE

Mr. Doyle is only charged with count one in the nine count, second superseding indictment, and is only named in three paragraphs of the entire 43 page indictment. In count one, the racketeering charge, the indictment attempts to lay out the structure of “The Enterprise,” the alleged “Racketeering Conspiracy,” and the “Pattern of Racketeering Activity” that establish a RICO violation. Among the Government’s contentions is that the “Chicago Outfit” and some of Mr. Doyle’s codefendants are personally responsible for personally committing nineteen murders, eight of which were “accompanied by exceptionally brutal behavior indicative of wanton cruelty,” and four of which were committed in the course of an aggravated kidnapping. (Second Superseding Indictment, ¶¶23, 52,53, hereafter referred to as Indictment, ¶ __.) Moreover, there are allegations of “juice loans,” extortionate collections, illegal gambling businesses, violence, intimidation, tax fraud, among other crimes, none of which appear to be attributed to Mr. Doyle. (*See generally* Indictment.)

Mr. Doyle is alleged to have informed codefendant, Frank Calabrese, Sr. (“Calabrese”), of law enforcement investigation into the murder of John Fecarotta (“Fecarotta”), and also to have agreed to pass messages from Calabrese to other members of the “Chicago Outfit” to determine whether codefendant Nicholas Calabrese or James DiForti were cooperating with law enforcement. (Indictment, ¶ 18.) To date, it appears that the only information the Government has in relation to Mr. Doyle is a small handful of “overhears,” or wiretaps recorded at FCI Milan.

However, as of the July 18, 2005 court date, the Government has swamped defense counsel with over 28,000 recorded conversations, spanning over 300,000 minutes, directly involving Mr. Doyle’s codefendants. Supposedly, the Government will attempt to use these tape recorded conversations to detail the heinous, violent crimes allegedly committed by Mr. Doyle’s codefendants in this case.

ARGUMENT

I. THIS COURT SHOULD SEVER MR. DOYLE’S TRIAL FROM THE TRIAL OF HIS CODEFENDANTS IN THIS CASE BECAUSE THE DISPROPORTIONATE EVIDENCE REPRESENTS MARKEDLY DIFFERENT DEGREES OF CULPABILITY AND TRYING MR. DOYLE WITH HIS CODEFENDANTS WOULD IMPEDE MR. DOYLE’S CONSTITUTIONAL RIGHT TO A FAIR TRIAL BECAUSE IT WOULD PREVENT A REASONABLE JURY FROM MAKING A RELIABLE JUDGMENT ABOUT HIS GUILT OR INNOCENCE.

Even if offenses and defendants are properly joined, the prejudicial effect of joinder may warrant a severance. FED. R. CRIM. P. 14. The United States Supreme Court has held that a district court should grant a severance under FED. R. CRIM. P. 14 “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 (1983). The Supreme Court found that “such a risk might occur when evidence that the jury should not consider against a defendant and that would not be admissible if a defendant were tried alone is admitted against a codefendant.” Id. For example, the Court found “that evidence of a codefendant’s wrongdoing in some circumstances erroneously could lead a jury to conclude that a defendant was guilty. When many defendants are tried together in a complex case and they have markedly different degrees of culpability, this risk of prejudice is heightened.” Id., *citing* Kotteakos v. United States, 328 U.S. 750, 774-775 (1946)(Reversed because instruction that jury should consider each defendant's case separately in determining his participation in the scheme charged was not the equivalent of cautionary instruction appropriate in cases where related but separate conspiracies are tried together that jury should take care to consider evidence relating to each conspiracy separately from that relating to each other conspiracy charged.)

The Honorable Matthew F. Kennelly, before ascending to the Federal Bench, points out that “a ‘peripheral’ defendant in a multiple defendant prosecution may be prejudiced by the sheer volume of evidence relating to a codefendant, if only a small portion of that evidence is directly relevant to the charges against the peripheral defendant.” *See* George J. Cotsirilos & Matthew F. Kennelly, *When Should Birds of a Feather Flock Together? Problems in Defending Multiple Defendant Prosecutions*, 4-WTR CRIM. JUST. 2,44-43 (1990). While now

Judge Kennelly points out that severances based on this “spillover effect” are rare, courts are permitted and sometimes required to grant a severance in the appropriate circumstances. Id. *citing* C. Wright, 1 Fed. Prac. & Proc. Crim.2d §223 at 808-11 (1982).

In this case, it is appropriate and certainly within this Court’s discretion to sever Mr. Doyle’s trial from his codefendant. Based on the indictment and the discovery to date, Mr. Doyle is clearly a “peripheral” defendant in this case. In a joint trial, the Government’s evidence against Mr. Doyle’s codefendants will be substantially greater than any evidence against Mr. Doyle. Not only does the sheer volume of evidence against his codefendants unfairly prejudice Mr. Doyle, but the Government’s attempt to prove numerous heinous murders, violent crimes and myriad deceitful activity against the other defendants will undoubtedly diminish Mr. Doyle’s constitutional right to a fair trial based upon the relevant evidence against him.

Moreover, no limiting instructions could cure the unfairly prejudicial effect of being tried with his codefendants in a joint trial, and allow a jury to make a reliable judgment about Mr. Doyle’s guilt or innocence. The old adage truly applies here; you can’t unring the bell, especially when a jury has been exposed day-in and day-out to murders and other violent and deceitful crimes. Simply, the nature and volume of the evidence, and the potential for confusion prevents any reasonable juror from understanding and separating the Government’s attempt to prove independent conspiracies and crimes in the remaining counts of the indictment. Even if some of the evidence involving his codefendant’s personal involvement in criminal activity is admissible against Mr. Doyle, the overwhelming majority of the evidence is irrelevant, inadmissible, and a severance is the only practical way to ensure Mr. Doyle’s constitutional right to a fair trial.

CONCLUSION

WHEREFORE, based upon the foregoing, and other reasons that this Honorable Court deem fit, ANTHONY DOYLE, respectfully requests that his trial be severed from that of his codefendants.

Respectfully submitted,

/s/ Darryl A. Goldberg
DARRYL A. GOLDBERG
One of Mr. Doyle's Attorneys

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CERTIFICATE OF SERVICE

I, Darryl A. Goldberg, hereby certify that on October 5, 2005, I electronically filed the foregoing using ECF for the United States District Court for the Northern District of Illinois.

/s/ Darryl A. Goldberg
DARRYL A. GOLDBERG