UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM HUGH WEYGANDT, Defendant.	No. 2:11-CR-00429-JAM **ORDER GRANTING DEFENDANT WEYGANDT'S MOTION TO SEVER**

This matter comes before the Court on Defendant William Hugh Weygandt's Motion to Sever the Trial and Conspiracy Charge (Doc. #91) pursuant to Federal Rules of Criminal Procedure 8(b) and 14. The Government opposes the Motion. (Doc. #119). For the reasons set forth below, Defendant's Motion to Sever is granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of an alleged conspiracy to purposefully disregard Federal Aviation Administration ("FAA") regulations in the repair and overhaul airplane parts, in violation of federal law.

According to the Superseding Indictment, WECO Aerospace

Systems, Inc. ("WECO") was a certified FAA repair station, with its original facility in Burbank, California since 1974, and a second facility in Lincoln, California since 1994. Doc. #64 at ¶ 1(c). WECO was authorized by the FAA "to maintain and rebuild certain aircraft component parts, and to approve the return of the parts to service in accordance with [FAA regulations]." Id.

By 2005, Defendant was the president and sole owner of WECO. Doc. #64 at ¶ 1(d). In 2006, he agreed to sell WECO, and the sale of the company closed in March 2007. Id. Defendant continued to work as the president until approximately February 2008. Id.

On September 29, 2011, the Grand Jury returned an indictment against six WECO employees, Jerry Edward Kuwata, Michael Dennis Maupin, Scott Hamilton Durham, Christopher Warren MacQueen, Douglas Arthur Johnson, and Anthony Zito, on conspiracy and fraud charges. See Doc. #1 (charging violations of 18 U.S.C. §§ 38 and 1341, in 36 Counts). Defendants Zito and Maupin subsequently entered guilty pleas to the Indictment and an Information, respectively. See Doc. #31, 33, 56, 57-58.

Just over a year later, on October 10, 2012, the United States filed the Superseding Indictment. Doc. #64. Defendant Weygandt was charged for the first time through the Superseding Indictment, but in all other respects, the Superseding Indictment is virtually identical to the original Indictment. Compare Doc. #64 with Doc. #1. Defendant Weygandt is only named in Count 1, the conspiracy charge, of the 36 Count Superseding Indictment. Doc. #64 at ¶ 2. The alleged conspiracy began no later than approximately October 26, 2006, and continued until approximately

February 15, 2008. Id.

Count 1 charges that Defendant Weygandt, together with co-Defendants Kuwata, Durham, MacQueen, and Johnson, "knowingly, and with the intent to defraud, combined, conspired, and agreed with each other . . . to: (a) falsify and conceal material facts concerning aircraft parts; (b) make materially fraudulent representations concerning aircraft parts; (c) make and use materially false writings, entries, certifications, documents, records, data plates, labels, and electronic communications concerning aircraft parts; and (d) export from and import and introduce into the United States, sell, trade, and install on and in aircraft, aircraft parts using and by means of fraudulent representations, documents, records, labels, certificates, depictions, data plates, and electronic communications, all in violation of Title 18, United States Code, Section 38(a)." Id. at ¶ 2(a)-(d). The charged "objects of the conspiracy were to defraud the FAA and WECO customers by: (a) Falsifying and concealing material facts regarding the use of unapproved parts used in repairs and overhauls of rotables and converters; (b) Submitting fraudulent [reports] which stated that repairs and overhauls had been done in compliance with FAA regulations when they had not; and (c) Conducting repairs and overhauls of rotables and converters with less expensive and unapproved parts, and without the use of costly required tests and test equipment." Id. at ¶ 3.

Defendant is only alleged to have committed one overt act in furtherance of the conspiracy: "On or about August 7, 2007, defendant[ ] Weygandt, and another known [to] the Grand Jury,

signed the WECO Repair Station Manual/Quality Assurance Manual which failed to disclose . . .” to the FAA a separate facility used by WECO Lincoln to store parts that were used in the questioned overhauls and repairs. Doc. #64 at ¶ 5(c). Again, Defendant is not named in any of the other 35 Counts with his co-Defendants. See id.

Within a few weeks of the United States superseding the indictment, Defendant Kuwanta pled guilty to an information. Doc. #85-87. Subsequently, the remaining Defendants filed several motions attacking the Superseding Indictment and seeking to preclude evidence from the Government’s case-in-chief. See Doc. #71-72, 75, 78.

Since being named in this complex matter, Defendant has received over 1 million pages of discovery. See Doc. #91.

On December 5, 2012, Defendant filed the pending Motion to Sever pursuant to Federal Rules of Criminal Procedure 8(b) and 14. Doc. #91. By stipulation and order, the Court modified the briefing schedule and moved the hearing on all pending defense motions to February 12, 2013. See Doc. #112. At the February 12 hearing, the Court heard from counsel for Defendant Weygandt, counsel for all remaining co-Defendants, and counsel for the United States on the issues raised in the briefing, then took the matter under submission.

II. LEGAL STANDARD

A. Rule 8(b)

Federal Rule of Criminal Procedure 8(b) governs joinder of multiple defendants, providing: “The indictment . . . may charge

2 or more 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. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count."

"'Rule 8(b) is construed liberally in favor of joinder[,]' [because] 'the goal of Rule 8(b) is to maximize trial convenience and efficiency with a minimum of prejudice.'" United States v. Sarkisian, 197 F.3d 966, 975 (9th Cir. 1999) (quoting United States v. Sanchez-Lopez, 879 F.2d 541, 550 (9th Cir. 1989) and United States v. Baker, 10 F.3d 1374, 1387 (9th Cir. 1993)).

A motion for misjoinder must be granted under Rule 8(b) "unless its standards are met, even in the absence of prejudice[.]" United States v. Lane, 474 U.S. 438, 449 n.12 (1986).

B. Rule 14

Federal Rule of Criminal Procedure 14(a) provides: "If the joinder of offenses or defendants in an indictment . . . appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires." The concern of Rule 14 "is to provide the trial court with some flexibility when a joint trial may appear to risk prejudice to a party[.]" United States v. Lane, 474 U.S. 438, 449 n.12 (1986).

Determining whether severance is warranted "is a matter within the trial court's discretion . . . ." United States v. Doe, 655 F.2d 920, 926 (9th Cir. 1981). "The defendant must demonstrate that a joint trial is 'so manifestly prejudicial that

it outweighs the dominant concern with judicial economy and compels the exercise of the court's discretion to sever.'" Id. (quoting United States v. Brashier, 548 F.2d 1315, 1323 (9th Cir. 1976)). Indeed, the "burden of demonstrating prejudice is a difficult one . . . ," and motions to sever are seldom granted. Id. at 926 (citing United States v. Campanale, 518 F.2d 352, 359 (9th Cir. 1975)).

III. OPINION

Defendant argues severance is warranted under Federal Rule of Criminal Procedure 8(b) because Defendant was misjoined, and under Rule 14, because Defendant's right to a fair trial will be severely prejudiced if he is not tried separately. Doc. #91 at 3. The Government responds to each of Defendant's arguments, arguing the extreme remedy of severance is not appropriate in this case. Doc. #119. These arguments are discussed below in the order presented by the parties.

A. Defendant was properly joined under Rule 8(b)

Defendant argues severance pursuant to Rule 8(b) is necessary because all of the Counts in the Superseding Indictment do not arise out of a common plan or conspiracy. Doc. #91 at 10. Defendant relies on the fact that there is no overt act alleged in the Superseding Indictment related to his knowledge of the distinct acts charged in Counts 2-36. Id. The Government responds by arguing it is clear that Rule 8(b)'s requirements have been satisfied from the Superseding Indictment, as "the Defendant is implicated in a series of transactions that form the conspiracy charged in Count 1." Doc. #119 at 5.

The question of whether a party was properly joined under Rule 8(b) can be resolved "from the face of the indictment." United States v. Jawara, 474 F.3d 565, 573 (9th Cir. 2007). Indeed, "'because Rule 8 is concerned with the propriety of joining offenses in the indictment, the validity of the joinder is determined solely by the allegations in the indictment.'" Id. at 572 (quoting United States v. Terry, 911 F.2d 272, 276 (9th Cir. 1990)).

As the Government argues, the acts alleged in the indictment are part of a broad, criminal scheme that occurred at WECO over many years. See Doc. #119 at 4-6. Although Defendant is not charged in Counts 2-36, the conduct alleged in those Counts can be said to "flow directly from" the charged conspiracy. See Jawara, 474 F.3d 574-75 (quoting United States v. Whitworth, 856 F.2d 1268, 1277 (9th Cir. 1988)). In construing the Superseding indictment "liberally in favor of joinder," as this Court is required to do, the Court finds the Defendant's arguments of misjoinder must fail. See United States v. Sarkisian, 197 F.3d 966, 975 (9th Cir. 1999) (quotations and citations omitted). The Superseding Indictment discusses Defendant's authority and role as president of WECO during the relevant period of the alleged fraud. See Doc. #64. These allegations are part of the overall scheme "to defraud the FAA and WECO customers by performing repairs and overhauls which did not comply with FAA regulations." Id. Accordingly, the Court finds Defendant was properly joined in the conspiracy charge of the Superseding Indictment because the allegations contained therein support the Government's theory that all the named Defendants "participated in the . . . same

series of acts or transactions, constituting [the Conspiracy charge]." FED. R. CRIM. P. 8(b).

Defendant makes other arguments regarding prejudice; these are better addressed under Rule 14 since the Court must only look to the face of the indictment in determining whether Rule 8 has been satisfied. See United States v. Jawara, 474 F.3d 565, 572-73 (9th Cir. 2007).

For the aforementioned reasons, the Court denies Defendant's Motion to Sever under Rule 8(b) and turns to Defendant's Motion under Rule 14.

B. Severance is warranted under Rule 14

Defendant argues there is a serious risk that his right to a fair trial will be compromised by having to go to trial with the remaining co-Defendants. The Court agrees. See Doc. #91 at 12-17. As discussed in detail below, there are several reasons a joint trial "appears to prejudice" the Defendant: there is a serious risk of "spillover evidence," and it will result in the presentation of mutually antagonistic defenses. The arguments regarding judicial economy cut both ways, such that the potential prejudice of Defendant in this case considerably outweighs the concern for judicial economy.

Defendant argues he will be severely prejudiced by a joint trial because he will be forced to participate in a trial where there will be evidence put on against his co-Defendants regarding 35 Counts he is not named in. Doc. #91 at 13-15. Indeed, because this is a complex case, the evidence presented by the Government to substantiate the other Counts in this case will likely be considered by the jury as evidence against Defendant.

Id. In conjunction with his argument regarding spillover evidence, Defendant also avers that the jury will be overwhelmed, generally, with the amount of evidence presented in this complicated case, causing a great risk of "incoherency and prejudice." Doc. #91 at pg. 14.

As stated by the Ninth Circuit, "[t]he prime consideration in assessing the prejudicial effect of a joint trial is whether the jury can reasonably be expected to compartmentalize the evidence as it relates to separate defendants, in view of its volume and the limited admissibility of some of the evidence." United States v. Escalante, 637 F.2d 1197, 1201 (9th Cir. 1980) (citations omitted). The Government argued in its brief, and to the Court on February 12, that most of the evidence in this case is relevant to Count 1, charged against all Defendants. See Doc. #119 at 9. It is the Government's position that it is unlikely there will be a great deal of additional evidence put on to substantiate Counts 2-35, and therefore, the joint trial will not be manifestly prejudicial to Defendant. Id. Defendant, on the other hand, notes that the amount of documents in this case demonstrates that there will be at least several days of additional evidence put on in this case that has no relevance to the charge against Defendant. See Transcript of Hearing, February 12, 2012, Doc. #124. Defendant's argument is persuasive. There will be a great deal of evidence put on in this case that only relates to charges not levied against Defendant. Specifically, there are 35 substantive counts which the Government must prove against other Defendants with evidence that does not relate to Defendant Weygandt. It is very likely

that not only will the jury be confused due to the voluminous amount of materials, but it will difficult, if not impossible, for the jurors to ignore that evidence in considering Defendant's role in this case. See Zafiro v. United States, 550 U.S. 534, 539 (1993). This is especially true when, as here, "defendants are tried together in a complex case and they have markedly different degrees of culpability . . . ." Id. (citing Kotteakos v. United States, 328 U.S. 750, 774-75 (1946)).

The Court must weigh the concern with manifest prejudice against the consideration of judicial economy. See United States v. Doe, 655 F.2d 920, 926 (9th Cir. 1981). The Government again argues that the majority of the evidence that will be presented at trial relates to Count 1; therefore, severing Defendant is not in the interest of judicial economy because it will result in two separate, but almost identical trials. Doc. #119 at 6-11. The reality in this case is that Defendant was indicted more than a year after his co-Defendants and therefore has not had the necessary time to prepare for trial in this case. If the Court does not sever Defendant, the case will have to be continued to allow Defendant adequate time to prepare for trial. If the severance is granted, the co-Defendants can proceed to trial in April. Although there may be some overlap in the evidence, the concern for judicial economy in this case is minimized due to the fact that the trial would have to be dealyed. Thus, in balancing the concern for judicial economy with the great likelihood of prejudice to Defendant, the Court finds the prejudice to Defendant in participating in a joint trial greatly outweighs any concern with judicial economy. Cf. United States v. Doe, 655

F.2d 920, 926 (9th Cir. 1981).

Next, Defendant argues that he and the co-defendants set to be tried will present "mutually antagonistic" defenses. Doc. #91 at 15-17. As correctly stated by the Government, mutually antagonistic defenses only warrant severance when "the core of the codefendant's defense is so irreconcilable with the core of the [moving defendant's] own defense that the acceptance of the codefendant's theory by the jury precludes acquittal of the defendant." United States v. Throckmorton, 87 F.3d 1069, 1072 (9th Cir. 1996). The Government argues that the defenses will potentially be inconsistent, but not irreconcilable such that a severance is warranted. Doc. #119 at pg. 11-13. However, at the February 12 hearing, the Defendants were all in agreement that there was a core conflict between the defenses they intend to present at trial. Specifically, Defendant represented to the Court that he will argue that his co-Defendants are solely responsible for any fraud committed at WECO, while the co-Defendants represented to the Court that they all intend to argue Defendant is solely responsible for the crimes committed in this case. While the Court has not received evidence on this issue, counsels' representations are enough to raise a serious concern that the defenses will be mutually exclusive, causing great prejudice to Defendant should he be tried with his co-defendants. See United States v. Tootick, 952 F.2d 1078 (9th Cir. 1991). This, coupled with the prejudice discussed above, leads the Court to conclude that severance is warranted under the particular circumstances of this case.

Finally, Defendant argues that a joint trial will jeopardize

his ability to seek exculpatory testimony from the other Defendants in this case. Doc. #91 at pg. 17. The Government is correct in arguing that in order to succeed on a Motion to Sever on this basis, the Defendant must establish that his co-Defendants would actually testify and their testimony would be favorable to him. See Doc. #119 (citing United States v. Vigil, 561 F.2d 1316 (9th Cir. 1977)). Defendant has failed to make this showing; Defendant's arguments are purely speculative, and therefore, the Court denies Defendant's Motion to Sever on this basis.

The United States has argued that the proper remedy in this case is to use curative instructions if the evidence at trial is potentially prejudicial to Defendant. Doc. #91 at 10-11. While this is one of the remedies available to the Court in considering a Motion to Sever, the Court finds that the risk of prejudice is too great to allow the trial to proceed for the reasons stated above. Accordingly, the Court exercises its discretion in finding that severance is warranted. See United States v. Doe, 655 F.2d 920, 926 (9th Cir. 1981).

In sum, the Defendant has demonstrated that the prejudice in this case goes far beyond what is necessarily inherent in a multi-defendant case. Cf. United States v. Ford, 632 F.2d 1354, 1373 (9th Cir. 1980) (overruled on other grounds by United States v. DeBright, 730 F.2d 1255 (9th Cir. 1984)). Indeed, it appears continuing with a joint trial would be so manifestly prejudicial to Defendant that it outweighs any concern this Court has for

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judicial economy. Accordingly, the Court finds that Defendant's Motion to Sever pursuant to Rule 14 should be granted.

IV. ORDER

After carefully considering the papers submitted in this matter, and the oral arguments of counsel for both parties on the issues raised in the briefs, it is hereby ordered that Defendant's Motion to Sever (Doc. #91) is GRANTED. It is furthered ordered that the trial date as to Defendant Weygandt is hereby vacated. All scheduling as to Defendant Weygandt will be addressed at the next status conference.

IT IS SO ORDERED.

Dated: March 3, 2013

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE