

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

vs.

CASE NO.: 3:18-cr-89-J-34JRK

REGINALD BROWN

**SECOND MOTION TO SEVER THE TRIAL OF REGINALD BROWN
FROM THE TRIAL OF KATRINA BROWN AND MEMORANDUM OF LAW**

The Defendant, Reginald Brown, by and through the undersigned attorney, pursuant to Rules 12(b) and 14 of the Federal Rules of Criminal Procedure and the Fifth Amendment of the U.S. Constitution respectfully moves this Honorable Court to sever his trial from that of Katrina Brown's. As grounds for this motion, Defendant states as follows:

1. Reginald Brown and Katrina Brown are charged in a multi-count Indictment returned May 23, 2018. Count One charges each with conspiracy to commit mail and wire fraud in violation of 18 U.S.C. §1349. Counts 2 through 14 charge each with substantive counts of mail fraud in violation of U.S.C. §1341 and §2. Counts 15 through 27 charge each with substantive counts of wire fraud in violation of 18 U.S.C. §1343 and §2. Counts 28 through 33 charge each with substantive counts of money laundering in violation of 18 U.S.C. §1957 and §2. Mr. Brown alone is charged with a failure to file a 1040 tax form in Count 38.

2. Mr. Brown initially moved to sever the trials of the two defendants in October, 2018. (Doc. 59). The United States opposed the motion. (Doc. 72). This Court denied the

motion to sever by order entered on April 3, 2019 (Doc. 114).

3. Mr. Brown adopts and incorporates by reference the arguments raised in the initial motion. He contends a change in circumstances warrants re-consideration of the severance issue. Specifically, the change in circumstances is that of co-defendant Katrina Brown's decision to represent herself. On August 2, 2019, two weeks before the beginning of trial, the Court having little to no discretion in the matter, ordered that Ms. Brown be permitted to represent herself at trial. (Doc. 166). Ms. Brown promptly filed a motion to continue arguing she needs more time to prepare. (Doc. 170). The United States opposes that motion. (Doc 171). Mr. Brown is prepared for trial.

4. Mr. Brown initially contended the spillover effect of the evidence as to Katrina Brown unfairly prejudices him. There is no direct evidence Reginald Brown had any knowledge of any misrepresentations Katrina Brown may or may not have made to lenders. He never willfully agreed to commit a crime. He never knowingly aided and abetted any criminal conduct that may or may not have been committed by Katrina Brown. Accordingly, the trials of these two presumptively innocent individuals should be severed. Now he faces the prospect of sitting helplessly by while Ms. Brown flails about trying to be both lawyer and client. This spectacle can only prejudice his case in the eyes of the jury and make it all but impossible for the jury to reach an individualized verdict as to him.

MEMORANDUM OF LAW

Rule 8 of the Federal Rules of Criminal Procedure generally provides an "Indictment or Information may charge two or more Defendants if they are alleged to have participated

in the same acts or transactions, constituting an offense or offenses.” Rule 14, on the other hand, provides in part, “if the joinder of offenses or Defendants in an indictment, and information or a consolidation for trial appears to prejudice a Defendant... the Court may order separate trials of counts, sever the Defendants’ trials, or provide any other relief that justice requires.” The due process clause of the Fifth Amendment to the United States Constitution is implicated where a joint trial compromises a specific trial right of one of the Defendants or prevents the jury from making a reliable judgment of guilt. See *Zafiro v United States*, 506 U.S. 534, 539, 113 S. Ct. 933, 122 L. Ed. 2nd 317 (1993).

The 11th Circuit has construed *Zafiro* to mean “there are only two circumstances in which severance is the only permissible remedy.” *US v. Blankenship*, 382 F.3d 1110 (11th Cir. 2004). As the court interpreted *Zafiro*’s Rule 14 test, those circumstances are “where a joint trial leads to the denial of a constitutional right” and where “serious risk that the jury would be prevented from making a reliable judgment of guilt or innocence.” *Id* at 1123. An example of a District Court finding that the spillover effect of evidence of a series of counts unfairly prejudiced the Defendant’s right to a fair trial on a separate set of counts is found at *US v. Hassoun*, 477 F. Supp. 2d 1210 (S.D. Fla. 2007).

The District Court severs a series of counts charging Mr. Hassoun with perjury and false statements from a series of charges related to the material support for terrorism. *Id* at 1212. After an extended discussion of the relationship between the false statement counts and the substantive counts, the Court finds “severing falsity counts negates the problem and ensures a fair trial free from spillover.” *Id* at 1230. Ultimately, the Court concludes “Hassoun presents a compelling argument for why Rule 14 severance is appropriate in this

case” and severs six counts from the others. Id at 1232.

The defense in this case is that if Katrina Brown committed any crimes as charged in the Indictment, Reginald Brown did not know it and did not knowingly participate in those crimes. This defense is completely antagonistic to her position. The joint trial will both prevent Mr. Brown from presenting an individual defense and could likely result in an inability to properly instruct the jury. Even if severance is not mandated, the Court should exercise its discretionary authority to sever the trials to assure him a fair trial.

WHEREFORE, the Defendant, Reginald Brown, for the above-mentioned reasons respectfully moves this Honorable Court to sever his trial from Katrina Brown’s trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2019, I electronically filed the foregoing with the clerk of the Court by using CM/ECF system which will send a notice of electronic filing to A. Tysen Duva, AUSA, Michael Coolican, AUSA, John P. Leombruno, Esq., and Richard Landes, Esq and by email to Katrina Brown at Bbrowncato1122@gmail.com.

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THOMAS M. BELL