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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America Plaintiff, v. Jacqueline L. Parker, Defendant.	CR-10-757-PHX-ROS **UNITED STATES' RESPONSE TO DEFENDANT JACQUELINE PARKER'S MOTION TO SEVER**

1. Introduction.

Defendant Jacqueline Parker has moved to sever her trial from her co-defendant husband because: (1) she thinks of herself as a minor participant to the acts alleged in the Indictment, and will be found guilty by association to her husband in a joint trial; (2) she views the evidence likely to be admitted against her husband to be unfairly prejudicial against her in a joint trial; and (3) she perceives there might be ***Bruton*** issues. Defendant's motion should be denied as it lacks any factual or legal support.

2. Factual Overview.

A. Indictment.

On June 8, 2010, a federal grand jury returned an indictment against James R. Parker ("Parker") and Jacqueline L. Parker ("Jacqueline Parker"). (CR 1.) Defendant Parker was charged with four counts of Tax Evasion in violation of 26 U.S.C.§ 7201, and four counts of making a False Statement in violation of 26 U.S.C.§ 7206(1). (Id.) Defendant Jacqueline Parker was charged with two counts of making a False Statement in violation of 26 U.S.C.§ 7206(1). (Id.) The Indictment provides the following information in support of these charges.

B. Relevant Facts Contained in the Indictment (CR 1).

Defendants were married and resided in Carefree, Arizona. Parker was the owner of Omega Construction, Inc., a Nevada corporation, and the owner and chief executive officer of Mackinnon Belize Land and Development Limited, a Belize corporation, which developed land for hotels on the Placencia Peninsula in Belize.

In 1997 and 1998, defendants filed joint U.S. Individual Income Tax Returns, which reported minimal income and tax liabilities of $2,089.00 and $7,967.00 respectively. These returns were subsequently the subject of an extensive Internal Revenue Service ("IRS") audit, which revealed that defendants failed to report substantial income for 1997 and 1998. In May 2003, defendants, who were represented by legal counsel, entered into a stipulated agreement with the government in United States Tax Court as to their correct income tax liability for the years 1997 and 1998. The defendants stipulated to owing, collectively, approximately $1,035,479.00 in additional tax, $207,095.00 in penalties, and $465,860.00 in interest charges. Defendants never paid any of the agreed upon approximately $1.7 million in additional taxes, penalties, and interest.

For 1999 and 2000, defendants failed to file their tax returns; the IRS again audited defendants and assessed a substantial liability in excess of $1.0 million, which defendants have failed to pay. For the years 2001 and 2002, defendants filed their U.S. Individual Income Tax Returns, with tax liabilities of $13,924.00 and $12,331.00 respectively. Defendants have failed to pay any of the taxes for these years as well.

In anticipation of a substantial tax liability resulting from the audit of defendants' 1997 and 1998 tax returns, defendant James Parker, as early as 2002, began to hide assets and income sources. In August 2002, defendant James Parker transferred, for no consideration, ownership of the defendants' approximately $1.5 million Carefree, Arizona residence to Sunlight Financial Limited Liability Partnership ("Sunlight"), a nominee entity purportedly managed by the defendants' daughter, Rachael T. Parker Harris. Although ownership of the property was

transferred, defendants maintained sole use and control over the residence. Sunlight also has never filed a tax return.

Between 2004 and 2007, defendant James Parker invested more than $1.2 million into a startup cattle operation on land both owned and leased in the State of Oklahoma. Defendant James Parker owned and operated the cattle operation using a nominee entity, Cimarron River Ranch, LLC ("Cimarron LLC"). To hide the true ownership of Cimarron LLC, defendant James Parker made his then 21 year old son, Samuel Parker, the straw owner of Cimarron LLC. Cimarron LLC also has never filed a tax return.

On or about June 7, 2004, defendant James Parker, as chief executive officer of Mackinnon Belize Land and Development Limited, agreed to sell 597 prime acres in Belize for approximately $6.0 million. The buyer of the property was I.D., an unrelated Illinois company. At the direction of defendant James Parker, I.D. deposited the sales proceeds into an account at Belize Bank, Limited, Belize.

In July 2004, defendant James Parker, using Cimarron LLC as the purported owner and his 21 year old son Samuel Parker as the "straw buyer," purchased for his and co-defendant Jacqueline Parker's personal use, a $306,695 Rolls Royce automobile. The Rolls Royce was delivered by the California car dealership to the defendants' Carefree residence, and the insurance policy listed the primary driver as defendant James Parker.

In August 2005, in order to further place his assets beyond the reach of the government, defendant James Parker obtained a $1.5 million second mortgage against the Carefree, Arizona residence. Defendant James Parker then used approximately $1.0 million of the proceeds to purchase a 7,000 square foot residence in Amarillo, Texas for his wife and him to enjoy. Defendant Jacqueline Parker inspected the home prior to the purchase, and has on occasion also resided at the residence. The Amarillo, Texas residence was placed into yet another nominee entity, RSJ Investments LLC. Defendant James Parker attempted to hide his ownership of RSJ Investments LLC by again making his son, Sam Parker, the purported owner/member of this entity. RSJ Investments LLC also has never filed a tax return.

In January, 2005, the Resorts Consulting Quorum LLP ("RCQ") bank account at Chase (formerly Bank One) was established. The only authorized signor on the account was an individual associated with a Phoenix, Arizona law firm, which at the time was representing the defendants with regard to the taxes they owed to the IRS. Approximately $112,000, in monthly installments of $7,000, was paid to defendant James Parker's Omega Construction Company from the RCQ account, and approximately $152,000 was paid from the RCQ account to make loan payments on the $1.5 million second mortgage on defendants' Carefree home.

After the sale of the above-described property in Belize, and between June 2004 and January 2008, wire transfers were made from Belize Bank Limited into several accounts in the United States. These transfers included transfers of $1,302,000 and $1,544,375 into two bank accounts associated with Cimarron River Ranch, a $223,500 transfer into a bank account associated with RCQ, a $306,000 transfer to purchase the Rolls Royce, and a $36,029 transfer to acquire a Ford truck.

Other than the nominal monies that flowed through the RCQ bank account to Omega, none of the $3,411,904.00 of repatriated funds from the Belize land sale were reported on the defendants' tax returns. The defendants' tax returns for the years 2004, 2005, and 2006 only reflected the following taxable income: $13,320, $37,391, and $40,810 respectively.

On or about July 30, 2004, defendants attempted to "compromise" their unpaid tax liabilities with the IRS.[1/] They sought to eliminate their collective $1.7 million-plus obligation

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[1/] Generally, an individual who owes money to the IRS can seek, under various provisions of law, a reduction to his or her outstanding obligations to the IRS. This is known as a "compromise." Insufficient assets and income to pay the full amount due is an acceptable reason for seeking a compromise. A completed Offer in Compromise (Form 656), signed under the penalty of perjury, is required to be submitted to the IRS in order to seek a compromise of the outstanding liability. This was generally done with the thought that the compromised liability would be made in a single payment thereafter, which would ordinarily be substantially less than the amount originally owed by the taxpayer. Collection Information Statement for Wage Earners and Self-Employed Individuals (Form 433-A) and Collection Information Statement for Businesses (Form 433-B) were schedules used to itemize various financial information, and are often required with an Offer in Compromise (Form 656). Forms 433-A and 433-B also are required to be signed under the penalty of perjury. On occasion, and under

(continued...)

through a one-time payment of $130,000.00. Defendants also falsely claimed that they were borrowing the proposed sum of money from friends and a bank. This offer was not accepted by the IRS. On or about November 16, 2004, defendants again attempted to seek a second "compromise" with the IRS through a one-time payment of $130,000.00. Defendants also claimed that they were borrowing the proposed sum of money from friends and family. This offer was not accepted by the IRS. On or about April 13, 2005, defendants, for the third time, attempted to seek a "compromise" with the IRS for their unpaid tax liabilities. This time they sought to eliminate their collective tax debt through a one-time payment of $450,000.00. Defendants again falsely claimed that they were borrowing the money from their family, and receiving collections from a purported note that Omega Construction supposedly held from Sunlight Financial. This offer was not accepted by the IRS.

For all three offers, defendants submitted and signed under penalty of perjury various IRS documentation falsely reflecting that the defendants purportedly had neither the income nor the assets to pay the IRS.

After the IRS turned down the previous offers of compromise, defendants, on or about August 5, 2005, submitted a fourth set of false financial statements, which were signed under penalty of perjury. The defendants were now requesting that because of their purported dire financial condition, they should be allowed to pay a monthly $2,000 installment on their now approximately $2.7 million tax liability. This offer was again rejected by the IRS.

The financial statements submitted by the defendants to the United States in connection with the above-referenced offers of compromise and installment request, falsely failed to disclose the defendants' true ownership of a home worth more than $1 million, a Rolls Royce automobile, a million dollar cattle operation, and approximately $6 million in proceeds received from the sale of Belizian land. The defendants falsely and fraudulently stated to the IRS that they

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[1/] (...continued)
limited circumstances, the IRS allowed a taxpayer who owed taxes to enter into an installment agreement and make monthly payments to satisfy a taxpayer's outstanding tax liability.

were unable to pay their rent, were impoverished, would be homeless if not for the kindness and support of their two children, and further misrepresented their monthly income and net worth.

During this same time period, from 2000 through February, 2008, defendants frequently traveled to Belize. Defendant Parker made eighteen (18) trips, and defendant Jacqueline Parker made eleven (11) trips.

3. Argument.

As a preliminary matter, defendant's Motion to Sever cited only to Rule 8, Fed. R. Crim. P., for her argument regarding misjoinder, but did not cite Rule 14 to argue any prejudicial joinder. Instead, defendant principally cited to Rule 403, Fed. R. Evid., and ***Bruton v. United States***, 391 U.S. 123 (1968) to raise her notions of unfair prejudice. Despite her failure to cite and argue Rule 14, the United States will nonetheless address that issue as well.

A. Standards for Severance.

1. General Joinder Principles.

In the Ninth Circuit, joinder remains the rule and severance the exception. ***United States v. Nolan***, 700 F.2d 479, 482 (9th Cir. 1983). "[C]o-defendants jointly charged are, *prima facie*, to be jointly tried." ***United States v. Doe***, 655 F.2d 920, 926 (9th Cir. 1980); ***see also United States v. Arias-Villanueva***, 998 F.2d 1491, 1506 (9th Cir. 1993); ***United States v. Gay***, 567 F.2d 916, 919 (9th Cir. 1978). "Joint participation in a criminal activity means a joint indictment and a joint trial." ***United States v. Marcello***, 731 F.2d 1354, 1360 (9th Cir. 1984). As noted by the Supreme Court, "There is a strong preference in the federal system for joint trials of defendants who are indicted together." ***Zafiro v. United States***, 506 U.S. 534, 537 (1993); ***see also Richardson v. Marsh***, 481 U.S. 200, 209 (1987); ***Parker v. United States***, 404 F.2d 1193, 1196 (9th Cir. 1968).

2. Rule 8(b) Misjoinder Standards.

Rule 8(b) provides: "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....All defendants need not be charged in each count." Fed. R.

Crim. P. 8(b). Trial courts may generally look only to the face of the indictment to determine whether joinder is proper. ***United States v. Jawara***, 474 F.3d 565, 573 (9th Cir. 2007); ***United States v. VonWillie***, 59 F.3d 922, 929 (9th Cir. 1995); ***United States v. Terry***, 911 F.2d 272, 276 (9th Cir. 1990).

3. Rule 14(a) Prejudicial Joinder Standards.

"The burden is on the defendant to make a strong showing of prejudice in order to obtain the relief permitted by Rule 14." ***United States v. White***, 766 F. Supp. 873, 891 (E.D. Wash. 1991); ***see also United States v. Ford***, 632 F.2d 1354, 1373 (9th Cir. 1980), ***overruled on other grounds, United States v. DeBright***, 730 F.2d 1255, 1259 (9th Cir. 1984). The defendant seeking severance bears the burden of proving that a joint trial will cause "clear, manifest, or undue prejudice" such that she will be denied a fair trial. ***United States v. Freeman***, 6 F.3d 586, 598 (9th Cir. 1993); ***United States v. Cuozzo***, 962 F.2d 945, 950 (9th Cir. 1992). Under the test articulated by the Supreme Court in ***Zafiro***, the defendant seeking severance must establish "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." 506 U.S. at 539.

B. There Was No Misjoinder Under Rule 8(b).

1. Rule 8(b) Permits Joinder in this Case.

Defendant first argues that under Rule 8(b), she was improperly joined with her husband. Defendant's argument centers around her disagreement with what the evidence will prove, in which she thereafter cites to a factually distinguishable and non-analogous Ninth Circuit opinion. On its face, Rule 8(b) was complied with, and her factual disputes clearly ignore the plain facts alleged in the Indictment.

Rule 8(b) permits joinder of defendants who have participated "in the same series of acts or transactions constituting an offense or offenses." The rule further provides that all defendants need not be charged in each count. In this case, the interrelationship of acts and transactions between the defendants is voluminous and clearly interconnected.

As set forth in the Indictment, the following facts are alleged that illustrate the overlapping and interrelated nature of this case:

1. Defendants were married during the relevant time periods alleged in the Indictment, and resided in a community property state. (CR 1, ¶ 1.)

2. When they filed, defendants filed joint U.S. Individual Income Tax Returns. (CR 1, ¶¶ 2, 5.)

3. Defendants jointly entered into a stipulated agreement in Tax Court to approximately $1.7 million of unpaid taxes, interest and penalties. (CR 1, ¶ 3.)

4. Defendants continue to reside in their $1.5 million Carefree, Arizona home even after it was transferred to a nominee entity purportedly managed by their young daughter. (CR 1, ¶ 7.)

5. Defendants household came into possession of a $300,000 Rolls Royce that was used by the defendants and maintained at their Carefree residence, but was titled in the name of their 21 year old son as the straw buyer. (CR 1, ¶ 9.)

6. After encumbering their Carefree residence, defendants then purchased a 7000 square foot home in Texas (in their daughter's name), which defendant Jacqueline Parker inspected and lived in on many occasions. (CR 1, ¶ 10.)

7. Defendants jointly submitted four "compromises" to the IRS, in which they jointly detailed their assets and liabilities, but left off the homes, vehicles and other assets they were using exclusively. (CR 1, ¶¶ 14-19.)

8. Defendants jointly traveled to Belize on numerous occasions between 2000-2008, which is where the land that was sold for millions was located, and which funded the purchase of the expensive real and personal property they jointly enjoyed during the years no taxes were paid and false submissions were being made to the IRS. (CR 1, ¶¶ 9, 12, 14-20.)

Defendant Jacqueline Parker as much as conceded the overlapping nature of the facts when she wrote: "[w]hile at first glance the offenses alleged against the Parker's [sic] appear inextricably intertwined...." (Motion at page 5, lines 4-5.) She thereafter quickly moved off that point by arguing what she hopes to be able to prove at trial – that she "raised her children and kept a home for her husband – which is not a basis from which this Court can find a misjoinder under Rule 8(b). The charges in the Indictment flow from a series of interrelated acts and transactions, which are clearly relevant to the charges that have been brought against both defendants.

2. Defendant's Reliance on *Satterfield* is Misplaced.

Defendant relies exclusively on ***United States v. Satterfield***, 548 F. 2d 1341 (9th Cir. 1977), which is factually distinguishable and not analogous to the situation in this case. In ***Satterfield***, two unrelated defendants were charged with several bank robberies in a single indictment. The charges pertained to five Oregon bank robberies. Only two of the five bank robberies were committed together by the two defendants; the other three were committed by one defendant alone. ***Id.*** at 1343. After a trial, the Ninth Circuit reversed and remanded because it determined that the three distinct robberies committed by only one defendant alone should not have been joined under Rule 8(b) with the other two robberies perpetrated by the defendants together. ***Id.*** at 1344-46. The Ninth Circuit specifically found that the three joined robberies were not linked by some common modus operandi to the two robberies perpetrated together, nor was there some factual and logical relation between the two sets of robberies. ***Id.***

Satterfield does not support defendant's argument. First, the fact pattern is too dissimilar to be analogous in any meaningful way. Second, the facts alleged in this case show a much more overlapping and interrelated factual and logical relationship between the two joined defendants. The story begins with the defendants jointly stipulating in Tax Court that they owe $1.7 million in unpaid taxes, interest and penalties. The story ends with them jointly submitting several false offers of compromise to the IRS in their joint effort to settle their tax issues for the period 1997-2003. In between, Mr. Parker evasively transferred the luxurious assets they shared together (i.e., Carefree home, Rolls Royce car, Texas Ranch) into nominee entities purported controlled by their young children.

3. Their Joint Conduct is Factually and Logically Connected.

From beginning to end, the defendants jointly failed to file or falsely filed tax returns, stipulated to $1.7 million in tax liability, shared and enjoyed assets evasively transferred to nominee children, and falsely claimed to be impoverished as they tried to finagle out of their massive tax obligations. As such, they were properly joined under Rule 8(b) for having partaken and been involved in the same series of events and transactions alleged in the Indictment.

C. There Was No Prejudicial Joinder.

Defendant Jacqueline Parker oddly claims that a Rule of Evidence mandates severance of these two defendants because some evidence, which may be pertinent to only defendant James Parker, will be "unfairly prejudicial"as to Jacqueline Parker. Rule 403, Fed. R. Evid., permits the Court to exclude relevant evidence if its admission would create unfair prejudice that "*substantially* outweigh[s]" the proffered evidence's probative value. It is not a rule of procedure that grants the Court authority to safeguard the fairness of a trial by ordering severance, and the one case cited by defendant, ***United States v. Connelly***, 874 F.2d 412 (7th Cir. 1989), does not even address the issue in the context of a severance.

It is Rule 14 of the Rules of Criminal Procedure which does that. It appears that defendant is inartfully complaining about what is referred to as "spill over;" that is, that admittedly relevant evidence against one defendant will cause an unfair trial of another. Other than sweeping generalizations, defendant does not support her claim.

1. There Will be No Guilt by Association.

As in any multi-defendant trial, some of the evidence introduced will pertain to one defendant only. The fact that certain evidence is admissible against only one of two trial defendants is insufficient to warrant a separate trial. ***United States v. Nace***, 561 F.2d 763, 770 (9th Cir. 1977). In determining whether the defendant has demonstrated undue prejudice that would compromise a specific trial right, the Court must consider "whether the jury can reasonably be expected to compartmentalize the evidence as it relates to separate defendants in light of its volume and limited admissibility." ***Freeman***, 6 F. 3d at 598; ***United States v. Unruh***, 855 F.2d 1363, 1374 (9th Cir. 1987). In addition, if certain evidence would be admissible against defendant James Parker and not against his wife, the Court can give a curative jury instruction. ***See Zafiro***, 306 U.S. at 539; ***United States v. Douglas***, 780 F.2d 1472, 1479 (9th Cir. 1986); ***United States v. DeRosa***, 670 F.2d 889, 898 (9th Cir. 1982).

It is the burden of the defendant to show that a properly instructed jury would be incapable of compartmentalizing the evidence. ***United States v. Vasquez-Valesco***, 15 F.3rd 833, 846 (9th Cir. 1995). It is generally presumed that the jury may be relied upon to follow instructions to compartmentalize. ***See, e.g., United States v. Baker***, 10 F.3rd 1374, 1388 (9th Cir. 1993), ***overruled on other grounds, United States v. Nordby,*** 225 F.3rd 1053 (9th Cir. 2000).

She further argues the jury will be unable to segregate any evidence associated only with her co-defendant husband. Allegations that a jury might be confused or cumulate the evidence rarely justifies a severance because, to a certain degree, such risks are inherent in all joinder cases. ***United States v. Reed***, 620 F.2d 709, 712 (9th Cir. 1980). Proper jury instructions and verdict forms ensure that the jury considers each count and defendant separately. ***Id***.

Defendant motion lacks specifics about the nature of her claim of unfair prejudice. She devotes one line to this argument in her Rule 403 section of her motion. On page 6, lines 15-16, she wrote that a risk of unfair prejudice will be created "... because the Government will devote a large amount of time in its case-in-chief to Mr. Parker's business dealings and alleged tax evasion." That is it. Defendant has clearly failed to meet the heavy burden place upon her by the law. Her request for severance on this ground should be denied.

D. No "*Bruton*" Issues Were Identified.

Defendant argues there are potential ***Bruton*** issues. The United States has and will continue to identify any statements by either defendant to law enforcement or third parties that the United States shall seek to admit at trial. If any of those statements create any arguable ***Bruton*** concerns, and redaction or substitution of neutral pronouns will not cure the issue, then the United States will not seek to admit that part of any statement that would violate ***Bruton***. In all other respects, defendant's ***Bruton*** claim lacks sufficient specificity for the government to address in this response.

4. Conclusion.

Because defendant Jacqueline Parker failed to put forth any justification for granting severance, and because joint trials serve the public interest in that they expedite the

administration of justice and lessen the burden on the judicial system, the United States respectfully requests that this Court deny defendant Jacqueline Parker's Motion to Sever.

Respectfully submitted this 9th day of May, 2011.

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Certificate of Service: I hereby certify that on this day , I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants: Joy Bertrand, John McBee, Michael Minns, Ashley Arnett.