

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

United States of America,
Plaintiff,

v.

Jodie Marie Mann (2)
Defendant.

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No. SA-18-CR-390-2-OLG

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO SEVER**

For the reasons stated below, the government concludes that severance is appropriate to avoid infringing co-defendant Robert Mikell Ussery's Sixth Amendment right to confront the witnesses against him.

I. Procedural History

The Government charged Mann by complaint on June 4, 2018, indicted her two days later, and filed a second superseding indictment in May 2022 with her present charges: two counts of aiding and abetting a felon in possession of firearms in violation of 18 U.S.C. § 2 and § 922(g)(1). ECF Nos. 3, 15, 179. Mann filed her Motion to Sever Co-Defendants from a Joint Trial on June 4, 2022. ECF No. 198. The Court ordered this Response by June 15, 2022.

II. Analysis

In her Motion, Mann asserts that severance is appropriate because (1) the government's use of her co-defendant's testimony would create *Bruton* issues for her and (2) she anticipates that her co-defendant will raise the issue of his belief in false conspiracy theories, which Mann asserts would lead to spillover prejudice against her. Def. Mot. at 1, 3, and 6. The government does not support the reasoning in Mann's Motion because the government can ameliorate any *Bruton* issues that would result from the government's use of Ussery's confessions against

Mann by implementing the procedures described in *Bruton*'s progeny. See e.g. *Richardson v. Marsh*, 481 U.S. 200, 211 (1987) (holding that "that the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when ... the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence"); *Gray v. Maryland*, 523 U.S. 185, 192 (1988) (clarifying that "[r]edactions that simply replace a name with an obvious blank space or a word such as 'deleted' or a symbol or other similarly obvious indications of alteration" are insufficient to cure a *Bruton* issue.); *United States v. Nanda*, 867 F.3d 522, 527 (5th Cir. 2017) (emphasizing that *Bruton* is a "narrow exception" applicable only when the defendant's statement directly implicates a co-defendant). However, the government cannot implement measures that preclude Mann's inculpatory statements from directly implicating her co-defendant, Ussery. In sum, the *Bruton* issues that cannot be resolved implicates Ussery, not Mann. Therefore, although Ussery has not raised the issue himself, the government contends that the defendants should be severed and tried separately.

a. Mann's Inculpatory Statements

On May 23, 2018, Mann consented to a voluntary interview at the local Sheriff's Office. Law enforcement officers recorded the interview on video, and the government intends to offer the interview video and transcript, or portions thereof, into evidence in the government's case in chief against Mann. During the interview, Mann implicated herself in that she admitted that she knew Ussery was a felon and that she aided him in jointly possessing weapons, but she simultaneously implicated Ussery by indicating that he possessed weapons and that he was a felon at the time. For example, the video shows the following:

Federal Agent: We all know in this room that Sidethorn [referring to Ussery] has been convicted of a felony, you know he is not supposed to carry a

gun, which is why they are your guns and why you carry them, right?

Jodie Mann: Right, right.

Federal Agent: Okay, so that is why...

Jodie Mann: We legally could carry that gun that day.

Federal Agent: Why ...

State Officer: You could Jodie .. yeah

Federal Agent: Why could you both legally carry that gun that day? I really want to hear your side of the story.

Jodie Mann: Why could I legally carry?

Federal Agent: No you said we

Jodie Mann: I

Federal Agent: Okay, I misheard, I'm just saying, so that is why I want your side of the story about everything that surrounds that incident on March 5th in Sutherland Springs, that is why I'm asking you these questions.

The government cannot edit the video, or the transcript in lieu of the video, in such a manner that avoids directly implicating Ussery's culpability. Moreover, the government contends that, given back-and-forth/crosstalk with the law enforcement personnel, the video itself will be important evidence which cannot be supplanted with a testifying law enforcement officer's summary of what the officer recalls that Mann said during the interview. Even if the government did not offer the video into evidence in its case-in-chief, the government would expect that Mann's defense might offer a portion of it to rebut the testifying officer or in Mann's defense. Accordingly, the government supports severing Mann and Ussery for the purpose of trial.

b. Trial Setting

Given that Ussery is incarcerated and Mann is on bond, the government suggests that Ussery's trial should go first, as currently scheduled on July 18, 2022. The government requests a trial date for Mann as soon as is convenient for the Court thereafter. The government estimates four days of trial for both Ussery and Mann, with approximately 12 witnesses.

Given the constitutional implications if Ussery is unable to cross-examine Mann as to the inculpatory statements she made against him during her May 23, 2018 interview, the government must support severance of Ussery and Mann for trial purposes.

Respectfully submitted,

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CERTIFICATE OF
SERVICE

I certify that I caused a true and correct copy of the foregoing instrument to be electronically filed with the Clerk of the Court using the CM/ECF System, which will transmit notification of such filing to counsel of record to counsel for the Defendant.

/s/

Kelly Stephenson
Assistant United States Attorney

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ORDER

Having considered the Defendant's Motion, the Governments Response, and after considering the entire record, the Court orders that the Defendants are to be severed for purposes of trial.

SIGNED AND ENTERED this _____, 2022.

THE HONORABLE ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE