UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA	**)**	
	)	
v.	**)**	**Docket No. 2:18-cr-00063-GZS**
	)	
DANIELS, et al.	**)**	

DEFENDANT MR, LLC'S MOTION FOR SEVERANCE

NOW COMES, Defendant MR, LLC, and pursuant to Rules 8(b) and 14(a) of the Federal Rules of Criminal Procedure, hereby moves for severance and a separate trial.

I. FACTUAL BACKGROUND

A. The Formation of MR, LLC.

Kevin Dean, co-founder of Electricity Maine and an entrepreneur with business interests nationwide, sought to enter Maine's burgeoning (and lawful) medical marijuana industry. In the fall of 2016, Mr. Dean learned that a warehouse at 230 Merrow Road in Auburn, Maine ("230 Merrow Road"), leased by Defendant Brian Bilodeau and sub-leased to two licensed marijuana caregivers, was for sale. Seeing the opportunity to enter the market on a limited basis as a landlord with an established medical marijuana cultivation in compliance with Maine law as a tenant, Mr. Dean formed MR, LLC ("MR") on October 24, 2016, for the purpose of purchasing 230 Merrow Road.[1] *See MR Operating Agreement*, attached as Exhibit A. Mr. Dean was, and remains, the sole member of MR and the only individual authorized to transact business on its behalf. *Id.* at 2. Understanding that the pre-existing cultivation to be an established and legitimate operation, Mr. Dean intended to have no involvement with the cultivation.

MR purchased 230 Merrow Road on November 1, 2016 from Clay McLafferty, using

[1] Mr. Dean has also invested in a licensed marijuana dispensary in the State of Oregon, and he would later partner with Safe Alternatives – one of eight licensed dispensaries in the State of Maine – to operate a marijuana dispensary on Lewiston Junction Road in Lewiston. The Government has not charged any individuals in connection with the Lewiston Junction Road dispensary and has not suggested that illegal activity was occurring at that facility.

certified bank funds. *See Purchase & Sale Agreement*, attached as Exhibit B. Mr. Dean was the only individual with any interest in the real estate. *Id.* A separate agreement was structured with respect to the building's improvements, *i.e.* the pre-existing marijuana cultivation equipment, whereby Mr. McLafferty – who had outfitted the building for a marijuana grow in 2015 – loaned Mr. Dean, MR and Mr. Bilodeau $450,000, payable in $50,000 monthly installments. *See Commercial Promissory Note*, attached as Exhibit C. Although each were jointly and severally liable for the loan, *id.*, the parties' intent was that Mr. Bilodeau would pay the $50,000 monthly installments on the equipment directly to Mr. McLafferty and $10,000 a month in rent to MR.

Other than in its capacity as a landlord, MR was not involved in the marijuana cultivation at 230 Merrow Road, and Mr. Dean was never surveilled by Government agents at the property. Apart from the $10,000 monthly rent payments, which MR reported as income on its tax returns, MR did not receive any proceeds from, or pay any of the expenses associated with, the grow. Nor did MR contribute to the $50,000 monthly payments to the seller – those payments were made directly by Mr. Bilodeau to Mr. McCafferty, and the funds did not pass through MR's bank account. *See Superseding Indictment* at 14 (Docket No. 82). 230 Merrow Road's caregivers did not have any interest in MR, and MR had no interest in the marijuana cultivation.

B. The Government's Investigation.

In 2016, the DEA and the IRS began investigating an alleged organization that distributed marijuana outside of Maine's medical marijuana laws. *See Affidavit of DEA Kelly Young* at ¶ 5 ("Kelly Affidavit"), attached as Exhibit D. The Government has identified Defendant Timmy Bellmore as the alleged "leader of this organization," alleging that he was "responsible for the overall management of the marijuana cultivation and distribution" between 2015 and February 27, 2018. *Kelly Aff.* ¶ 9; *Superseding Indictment* at 1 (Docket No. 82). The Government claimed

that Mr. Bellmore operated marijuana grows at 7 separate locations in Lewiston and Auburn. *Id.* ¶ 8. The Government did *not* allege that 230 Merrow Road was one of these locations. *Id.*

Instead, the Government claimed that 230 Merrow Road was a separate cultivation belonging to Mr. Bilodeau. In the summer of 2015, Messrs. Bilodeau and Bellmore began renting 230 Merrow Road from Mr. McLafferty after he outfitted the building for a marijuana grow. But by the fall of 2017, Messrs. Bilodeau and Bellmore were "no longer partners in the marijuana trade" and had stopped talking entirely. *Kelly Aff.* ¶¶ 58, 69. Mr. Bilodeau continued to lease 230 Merrow Road following their split, and Messrs. Bilodeau and Bellmore had no involvement with each other's respective operations whatsoever. *Id.* ¶¶ 58, 69.[2]

C. The Indictment.

On February 27, 2018, federal agents executed search warrants on a number of grow locations in the Lewiston/Auburn area, including, *inter alia*, locations allegedly maintained by Mr. Bellmore and 230 Merrow Road. On October 5, 2018, the Government obtained a superseding indictment against 23 individual and corporate defendants, including Mr. Bellmore, Mr. Bilodeau and MR. *See Superseding Indictment* (Docket No. 82).

The Superseding Indictment alleges two separate conspiracies. First, it alleges that Mr. Bellmore, Mr. Bilodeau and 9 other individuals and entities conspired to distribute marijuana between 2015 and February 27, 2018 (the "Bellmore Conspiracy"). *See id.* at 1-2 (Count I). MR was not charged as part of this conspiracy. *Id.* Instead, MR was charged with maintaining a separate drug involved premises and manufacturing a controlled substance at 230 Merrow Road between November, 2016 and February 27, 2018. *Id.* at 6, 11 (Counts 12 and 25). Second, the Government alleged that MR and Mr. Bilodeau conspired between November 15, 2016 and July

[2] The Government has not intercepted any recordings between Messrs. Bilodeau and Bellmore, and Mr. Bellmore has not been seen at 230 Merrow Road since the fall of 2017. The Government concedes that Mr. Bellmore's only information concerning 230 Merrow Road comes from the hearsay statements of others. *Kelly Aff.* ¶ 58.

10, 2017 to launder the $50,000 monthly payments Mr. Bilodeau made to Mr. McLafferty (the "Money Laundering Conspiracy"). *Id.* at 13-14 (Count 30). The Government did not allege that Mr. Bellmore or any of his confederates participated in the Money Laundering Conspiracy. The Government also did not allege that Mr. Dean was involved. Instead, the Government appears to rely on a mistaken theory that unidentified "bank records" establish that Mr. Bilodeau was authorized to act on MR's behalf. *See Verified Compl. for Forfeiture In Rem* at 2, Docket No 2:18-cv-00143 (Docket No. 1). MR's actual "bank records" reveal that Mr. Bilodeau is *not* so authorized. *See MR Entity Authorization*, attached as Exhibit E.

II. ARGUMENT

The Court must provide MR with a separate trial for two reasons. First, under Rule 8(b), joinder of MR in the Superseding Indictment was improper because MR is not alleged to have participated in any of the alleged acts or series of acts that the Government claims establishes the Bellmore Conspiracy. Second, even if joinder of MR with the Bellmore Conspiracy was otherwise permissible, the Court must sever MR under Rule 14(a) to relieve the undue prejudice that will result from the evidence presented against the Bellmore Conspiracy.

A. Joinder Under Rule 8 is Improper.

Joinder of MR with the Bellmore Conspiracy is improper under Rule 8 because the Superseding Indictment has not alleged any common activity binding all defendants. At most, the Government has alleged two competing marijuana cultivations with one overlapping member. This is not sufficient to justify joinder.

1. Legal Standard.

Under Fed. R. Crim. P. 8(b), an 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 and offense or offenses." In other words, joinder is permissible only if there exists "some common activity binding the objecting defendant with all the other indictees and that common activity encompasses all the charged offenses," such as the participation of *all* defendants in a *single* drug distribution conspiracy. *United States v. Natanel*, 938 F.2d 302, 306 (1st Cir. 1991). "Without a sufficient connection between the defendants charged with the crimes in an indictment, joinder is improper." *United States v. Azor*, 881 F.3d 1, 10 (1st Cir. 2017). "A rational basis in fact, sufficient to warrant joinder, must be discernible from the face of the indictment." *United States v. Boylan*, 898 F.2d 230, 245 (1st Cir. 1990).

2. The Government Has Alleged Two Separate Conspiracies.

The Government has alleged two "separate and distinct conspiracies, involving different participants," to distribute marijuana outside the bounds of Maine's medical marijuana program. *United States v. Webb*, 827 F. Supp. 840, 841 (D. Mass. 1993). "In order to be part of the 'same series of acts or transactions,' defendants must have known about and participated in acts that were part of an overall scheme." *United States v. Fuentes*, 979 F. Supp. 2d 224, 226 (D.P.R. 2013) (citing *United States v. Bledsoe*, 674 F.2d 647, 656 (8th Cir. 1982)). Here, the Superseding Indictment – which determines whether joinder was proper – does not suggest that MR participated in *any* transaction, much less a "series of acts or transactions," with any alleged member of the Bellmore Conspiracy other than Mr. Bilodeau. The Government does not even allege that MR was aware of Mr. Bellmore's activities. *United States v. Rajaratnam*, 753 F. Supp. 2d 299, 308–09 (S.D.N.Y. 2010) (finding improper joinder where nothing in the Indictment alleges that one defendant "even knew anything about" the activities forming the basis of another count). Rather, the Government acknowledges that Mr. Bellmore was "not involved" in the marijuana cultivation at 230 Merrow Road, that he and Mr. Bilodeau were "no

longer partners in the marijuana trade," and that Messrs. Bellmore and Bilodeau had "nothing to do with each other so I don't hear about what he does." *Kelly Aff.* ¶¶ 58, 69.

The mere fact that both conspiracies allegedly sought to distribute the same product in the same region is insufficient to justify joinder. *Webb*, 827 F. Supp. at 841 (The "'mere similarity of acts, without more, cannot justify joinder.'") (quoting *Natanel,* 938 F.2d at 307)); *United States v. Rittweger*, 259 F. Supp. 2d 275, 283 (S.D.N.Y. 2003) ("two separate transactions do not constitute a 'series' within the meaning of Rule 8(b) merely because they are of a similar character or involve one or more common participants (internal quotation marks and citation omitted)). Indeed, rather than sharing a "common goal," *United States v. Rodríguez-Reyes*, 714 F.3d 1, 7 (1st Cir. 2013), Messrs. Bellmore and Bilodeau were *direct competitors*, to the point that Mr. Bellmore complained that the marijuana cultivation at 230 Merrow Road diluted the market with an inferior product and affected market prices. *Kelly Aff.* ¶¶ 22-23.[3] Such conduct, known to the Government in seeking its search warrants, does not establish anything approaching participation in a common goal or plan; in fact, it suggests quite the opposite. *See United States v. Menashe,* 741 F.Supp. 1135, 1138 (S.D.N.Y. 1990) (two separate conspiracies improperly joined where one of the multiple defendants was charged in both conspiracies, but no common plan between other members of the two conspiracies was alleged).

3. The Existence of an "Overlapping" Member Does Not Justify Joining MR with Other Members of the Bellmore Conspiracy.

The fact that Mr. Bilodeau is an alleged member of both conspiracies also does not justify joining MR with the alleged members of the Bellmore Conspiracy. "[T]he presence of one overlapping member does not make two separate conspiracies part of the same series of acts or transactions." *Webb,* 827 F. Supp. at 841; *United States v. Velasquez*, 772 F.2d 1348, 1353–54

[3] Mr. Bellmore took pains to distance himself from 230 Merrow Road, outwardly claiming he had no responsibility for its debts and "boast[ing]" that he made more money than Mr. Bilodeau. *Kelly Aff.* ¶ 58.

(7th Cir. 1985) ("[T]he mere fact that two conspiracies have overlapping memberships will not authorize a single indictment if the conspiracies cannot be tied together into one conspiracy, one common plan or scheme."); *United States v. Daniels*, 803 F.3d 335, 340 (7th Cir. 2015) (improper joinder where the Government did not charge a single conspiracy or a common scheme or plan but "alleged three separate bank robberies (and the related firearm counts) against different combinations of defendants"). This is particularly true when that overlapping member severed all ties with the original conspiracy and was not authorized to act on behalf of a corporate defendant in an alleged second conspiracy. *United States v. Lech*, 161 F.R.D. 255, 257-58 (S.D.N.Y. 1995) (improper joinder when the only "common thread" between two sets of charges was one defendant's prior dealings with another defendant alleged to be associated with the moving defendant); *United States v. Kouzmine*, 921 F. Supp. 1131, 1133 (S.D.N.Y. 1996) ("Given the conceded falling out between [the defendants], there is no colorable argument in this case . . . that both conspiracies alleged here were part of a single overarching scheme.").

Here, the only connection between MR and the Bellmore Conspiracy is the alleged affiliation of Mr. Bilodeau with both organizations. Again, Mr. Bilodeau's "affiliation" with MR is based on the Government's theory that MR's "bank records" authorized Mr. Bilodeau to act on MR's behalf. This premise is incorrect – Mr. Bilodeau was never a member of MR, *see Ex. A*, and MR's "bank records" did not authorize him to act on the company's behalf. *See Ex. E.* Accordingly, Mr. Bilodeau cannot connect MR to the Bellmore Conspiracy or otherwise serve as the basis for joining MR with the other defendants in the Superseding Indictment. *See United States v. Green*, 324 F. Supp. 2d 311, 319 (D. Mass. 2004) ("Joinder is improper if the government lacks a 'reasonable expectation' of proving the required connection.").

In sum, the Government has charged a corporate landlord of one marijuana cultivator

alongside numerous other marijuana cultivators based on a disproven theory that an agent of the corporate landlord previously associated with the other cultivators. The Government has not alleged any "common activity" between that corporate landlord and the competing conspiracy. Rule 8 does not permit the Government to charge two competing marijuana cultivators, and their respective business associates, together simply because they sold the same product in the same market. *See Natanel*, 938 F.2d at 306.

B. Even if Joinder Under Rule 8 is Proper the Court Must Order Severance of a MR Under Rule 14(a).

Even if joinder was proper under Rule 8, severance is still warranted under Rule 14 to avoid the unfair prejudice MR will suffer if the Government's evidence against the Bellmore Conspiracy is introduced at MR's trial.

1. Legal Standard.

Under Rule 14(a), "[i]f 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." Fed. R. Crim. P. 14(a). "Rule 14 gives the district judge wide authority to sever defendants," *United States v. DeCologero*, 364 F.3d 12, 25 (1st Cir. 2012), and severance is warranted where "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." *Azor*, 881 F.3d at 12 (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993)).

2. Argument.

"[T]he prime factor that a court must consider in evaluating a severance motion is whether the court may reasonably expect the jury to collate and appraise the independent evidence against each defendant." *United States v. Rodriguez-Marrero*, 390 F.3d 1, 27 (1st Cir.

2004). In making this determination, courts consider the indictment's complexity, any disproportionality of evidence, and whether evidence is admissible only as to some defendants. *United States v. Gallo*, 668 F. Supp. 736, 749 (E.D.N.Y. 1987). The "comparative uniqueness" of the moving defendant's alleged role in the crimes charged, *United States v. Abrahams*, 466 F. Supp. 552, 555 (D. Mass. 1978), and issues of case management, judicial economy, *Green*, 324 F. Supp. 2d at 328, are also important factors.

Here, joining MR with the other Defendants will prejudice MR's right to a fair trial because the Government's evidence against the other Defendants, inadmissible as to MR, will confuse the issues and prevent the jury from fairly considering the case against MR in isolation. For example, the Government will introduce evidence that 1) Mr. Belmore's felony conviction in 2004 disqualified him from participation in Maine's medical marijuana program; 2) certain members of the Bellmore Conspiracy allegedly trafficked in other narcotics; and 3) that members of the Bellmore Conspiracy illegally processed their marijuana. *Kelly Aff.* ¶¶ 9-10; *Superseding Indictment* at 4 (Count 6), 7-8 (Counts 16 and 17). Such evidence is utterly irrelevant to the Government's case against MR – MR and its sole member have no criminal history whatsoever, and no other drugs or processing equipment were found on its property. The introduction of such "other acts" evidence at a joined trial would suggest MR's "guilt by association" with convicted felons who were not allowed to participate in Maine's medical marijuana program. *See United States v. Stoeker*, 920 F. Supp. 876, 886-887 (N.D. Ill. 1996) (finding severance warranted in part based on risk defendant "may suffer a transference of guilt merely due to his association with a more culpable defendant").

Second, out of the thousands of conversations the Government recorded, it did not record a single conversation involving Mr. Dean or surveille him at 230 Merrow Road. It did record,

however, hundreds of conversations between Mr. Bellmore and his alleged co-conspirators discussing the marijuana trade, including a few conversations discussing 230 Merrow Road. *See Kelly Aff.* ¶¶ 22, 58. Standing alone, the disparity in the evidence against MR, a mere landlord, compared to the other defendants, warrants severance.[4] And given that the Government's recordings of Mr. Bellmore occurred well after he terminated his association with Mr. Bilodeau, they could not possibly have occurred in "furtherance" of any conspiracy involving MR, meaning their prejudice is even more pronounced because they are inadmissible hearsay in a single trial against MR. *See generally United States v. Bruton*, 391 U.S. 123 (1968).

Finally, "the sheer number of defendants and charges with different standards of proof and culpability, along with the massive volume of evidence, makes it nearly impossible for a jury to juggle everything properly and assess the guilt or innocence of each defendant independently." *United States v. Blankenship*, 382 F.3d 1110, 1124 (11th Cir. 2004). Furthermore, improper joinder will only exacerbate the daunting logistical and practical limitations confronting the Court if all 23 defendants, and their lawyers, must attend a single trial, *United States v. Gray*, 173 F. Supp. 2d 1, 8 (D.D.C. 2001). Moreover, forcing MR – which is named in only two of the Superseding Indictment's 41 counts, to prepare for and attend what could be a very lengthy trial is unfair. *See Stoekler*, 920 F. Supp. 876 at 887 (finding unfair prejudice in forcing a defendant named in 3 of 58 counts to endure a 3 month trial). In sum, the case envisioned by the Superseding Indictment may be impossible to fairly try, and based on all of the foregoing considerations, MR should be severed from it.

[4] *See United States v. Santiago-Mesinas*, 2018 WL 4899076, at *5 (D. Colo. Oct. 9, 2018) (noting that the risk a jury will not be able to "compartmentalize" the evidence against each defendant is "'heightened'" "'[w]hen many defendants are tried together in a complex case and they have markedly different degrees of culpability'" and finding, based on the "quantitative and qualitative differences" between the role of the moving defendant and the other defendants, as well as the fact that the moving defendant was not involved in any recorded conversation, that the disparity of the evidence against that moving defendant warranted severance (quoting *Zafiro*, 506 U.S. at 539)); *see also Stoekler*, 920 F. Supp. at 886 (same); *Gallo*, 668 F. Supp. at 749.

WHEREFORE, Defendant MR, LLC, hereby requests that the Court sever it from the Superseding Indictment and order that MR have a separate trial.

Dated at Portland, Maine this 22nd day of April, 2019.

/s/ Thimi R. Mina
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CERTIFICATE OF SERVICE

I, Alfred C. Frawley IV, hereby certify that on this 22nd day of April, 2019, I electronically filed the foregoing **DEFENDANT MR, LLC'S MOTION FOR SEVERANCE**, which shall send notification of such filing to counsel of record for all parties.

Dated: April 22, 2019

/s/ Alfred C. Frawley IV

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