IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
TIFFANY SMITH-REYNOLDS,	)	**CASE NO. ST-10-CR-0057**
JAMAL D. TODMAN,	)	**CASE NO. ST-10-CR-0336**
	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

This matter is before the Court on Defendant Tiffany Smith-Reynolds' March 11, 2010, Motion for Severance ("the Motion"). The People filed an Opposition to Defendant's Motion on March 16, 2010.

FACTS AND PROCEDURAL HISTORY

The Affidavit of Detective Margaret Price provided that Mr. Fitzroy Tutein, a Sergeant First Class with the Virgin Islands National Guard, stated that on May 1, 2009, he was assigned to the Virgin Islands Police Department to assist with traffic control at the entrance of the Estate Nadir Community ("Estate Nadir"). While directing traffic, he observed three (3) black males standing next to the one-way sign at the entrance, he heard "pop shots," and then saw the same three (3) black males running alongside a four-door silver Honda, license plate TDU-196, with guns in their hands. Next, Mr. Tutein observed the males fire shots into the rear passenger window of the Honda from six (6) inches away. They then ran into Estate Nadir, while Mr. Tutein ran towards the Honda,

which had rear-ended a black BMW. When Mr. Tutein was informed that someone had been shot, he reported the shooting via radio providing the license plate number of the Honda.

The person who had been shot was Codefendant Jamal Todman ("the codefendant"), who stated that he was unable to identify his assailants. The codefendant was admitted to the hospital for treatment of gunshot wounds to both arms. While the codefendant was being disrobed for surgery, a brown, leather holster was found attached to his belt by the registered nurse, Ms. Michele Shiel.

Furthermore, the Honda belonging to Defendant was taken for inventory by Crime Scene Technician Debra Mahoney. The inventory of the Honda revealed a black 9mm 17, 9 x 19 Austria Pistol ("the gun"), with what appeared to be blood on it, on the floor behind the passenger's seat. In addition, one of the gun's serial numbers, EDK580, matched the serial number of a gun that was reported stolen during a burglary from a police officer. Also, Defendant's Honda contained a zip-locked plastic bag containing eleven (11) small bottles of a green, leafy substance, one (1) small plastic bag also with a green leafy substance, a black Kenwood handheld radio, one (1) black battery, and one (1) black antenna for the handheld radio, a black magazine with thirty (30) rounds of ammunition, a magazine with seventeen (17) rounds of ammunition, and one (1) single round of ammunition found in a small blue and white, jean bag. On November 18, 2009, a firearm search was conducted in St. Thomas, St. John and St. Croix, revealing that Defendants did not have licenses to possess or carry a firearm in the United States Virgin Islands.

As a result, Defendant was charged with aiding and abetting another in the unauthorized possession of a firearm, aiding and abetting another in possession of stolen property, and the unauthorized possession of a controlled substance.

DISCUSSION

Joinder of defendants is governed by Fed. R. Crim. P. 8(b),[1] which provides in pertinent part:

> The indictment or information 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.

Defendants are charged with aiding and abetting each other in the unauthorized possession of a firearm and aiding abetting each other in the possession of stolen property. Defendant is also solely charged with possession of stolen property. Joinder of Defendants is proper because it appears that Defendants participated in the same series of events or transactions. In *United States v. Fields*, 2009 WL 3236022, No. 08-3232, at *2, (3d Cir. Oct. 9, 2009), officers noticed a gun in a speeding minivan in which defendants were pulled over. The court held that the defendants were engaged in the same series of acts or transactions and reasoned that, because eyewitness testimony connected each defendant to the minivan, joinder of defendants was proper. *Id.* Likewise, immediately before the codefendant was taken to the hospital, Mr. Tutein witnessed both Defendants riding in Defendant's Honda, where the evidence was recovered. See *United States v. Grasso*, 55 F.R.D. 288, 291 (E.D. Penn. 1972) ("The conduct upon which each of the

[1] Made applicable to the Virgin Islands pursuant to Super. Ct. R. 7.

counts is based must be part of a factually related transaction or series of events in which all defendants participated").

Defendant also moves to sever this matter due to prejudicial joinder pursuant to Fed. R. Crim. P. 14(a), which states, in part, "If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial 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."

There is a preference for joint trials of defendants who are indicted together. *Zafiro v. United States,* 506 U.S. 534, 537 (1993). Thus, defendants bear a heavy burden to demonstrate that it would be an abuse of discretion by the court to deny severance and that a court's denial of severance would result in a "clear and substantial prejudice resulting in a manifestly unfair trial." *Fields, supra* at 3 (quoting *United States v. Lore,* 430 F.3d 190, 205 (3d Cir. 2005)). Trial judges have broad discretion in deciding motions for severance and must "weigh possible prejudice to the defendant against interests of judicial economy." *United States v. Reicherter*, 674 F.2d 397, 400 (3d Cir. 1981).

Defendant argues that joinder with the codefendant will prejudice her case because the codefendant's exercise of his right to be free from self-incrimination would prevent her from calling the codefendant as an exculpatory witness, citing 48 U.S.C. § 1561. In *United States v. Boscia, et al.*, 573 F.2d 827, 829 (3d Cir. 1978), the court considered four (4) factors in determining whether severance is warranted when

severance is based on a defendant's assertion that denial of severance will deprive defendants of their ability to call codefendants to testify on their behalf.

> In determining the necessity of severance under these circumstances, courts have placed emphasis on the following four factors: (1) the likelihood of codefendant's testifying; (2) the degree to which such testimony would be exculpatory; (3) the degree to which the testifying codefendants could be impeached; (4) judicial economy. *Id.*

Defendant has provided no evidence that the codefendant is unwilling to testify in this matter. In fact, Defendant asserts that the codefendant may well testify because his testimony will not implicate him in the crimes charged. Were Todman to testify, Defendant would be free to cross examine him or to bring out any exculpatory evidence he could provide. If Todman testifies, it has little moment whether he does so in a separate or joint trial, since Defendant may cross examine him fully in either event.

Defendant contends that the likelihood that the codefendant would be subject to impeachment is minimal because the codefendant has only one (1) prior bad act that may be subject to impeachment. However, Defendant failed to consider that the codefendant's testimony at his own trial may be subject to impeachment. For example, in *Provenzano, supra,* at 199, the court reasoned that the codefendant would be subject to impeachment, especially if the codefendant was tried before the defendant. Moreover, in *Glasgow, supra* at 2, the court reasoned that impeachment of the codefendant was likely because he and the defendant were brothers, resulting in the jury finding that the codefendant lacked credibility on that basis. Likewise, Defendant and the codefendant were in a close relationship as boyfriend and girlfriend, and the jury may also find that

the codefendant's testimony lacks credibility due to Defendant and the codefendant's romantic relationship. Thus, the codefendant is highly susceptible to impeachment.

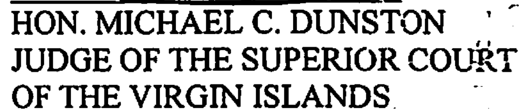
Judicial economy in this matter will not be preserved if severance is granted. In *U.S. v. Bissell*, 954 F.Supp. 841, 873 (D.N.J. 1996), the court determined that severance would not be in the interest of judicial economy because the defendants were "charged in conjunction with fraudulently running the Bedminster Station and committing tax evasion" and, reasoned that if defendants were granted separate trials, they still would involve many of the same witnesses and much of the same evidence. *Id.* Similarly, in this matter, Defendant is charged in Counts Three and Four with the same crimes as the codefendant. As a result, Defendant and the codefendant will likely call some of the same witnesses as well as have some of the same evidence. See *United States v. Rosa*, 560 F.2d 149, 156 (3d Cir. 1977) ("The proof offered at a separate trial would have been completely duplicative of the proof in the case sub judice").

Finally, Defendant argues that she will suffer prejudice if the trials are not severed because there may be evidence used against the codefendant that is inadmissible against Defendant. Defendant avers that a separate motion will establish that Defendant's Honda was illegally searched without a warrant, resulting in the suppression of all evidence found in the Honda. However, Defendant's argument is premature because the evidence at issue has not been suppressed. Furthermore, "a primary concern in considering a motion for severance is 'whether the jury can reasonably be expected to compartmentalize the evidence,' as it relates to each count by following the instructions of the trial court." *United States v. Reicherter*, 647 F.2d 397, 400 (3d Cir. 1981) (quoting

United States v. DeLarosa, 450 F.2d 1057, 1065 (3d Cir. 1971)) (citations omitted). Assuming *arguendo* some evidence against the codefendant is suppressed as to Defendant, the Court can provide curative instructions to the jury to consider the evidence relating to each Defendant separately. See *Zafiro, supra* at 539 (citing *Richardson v. Marsh*, 481 U.S. 200, 211 (1987)) (Severance is an extreme measure. Thus, "limiting instructions often will suffice to cure any risk of prejudice"); See also *McHale v. United States*, 398 F.2d 757, 758 (D.C. App. Ct. 1968) (Defendants are not entitled to automatic severance simply because the evidence against a codefendant is more detrimental than the evidence against the defendant). Therefore, the Court finds that Defendant has not established that she is entitled to severance because her rights at trial may be prejudiced.

Accordingly, after considering the factors listed in *Boscia, supra* at 829, the Court finds that joinder was proper and Defendant has failed to meet her heavy burden of proving "clear and substantial prejudice" requiring severance of the two (2) cases. *Fields, supra* at 2. A separate Order shall follow.

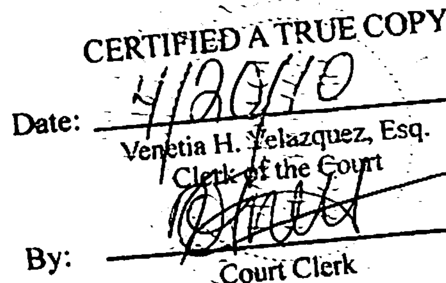
Dated: April 15, 2010



HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest:
Date: April_____, 2010
Venetia H. Velasquez, Esq.
Court Clerk Supervisor____/_____/_____

by:
Rosalie Griffith
Court Clerk Supervisor 4/16/10



CERTIFIED A TRUE COPY
Date: 4/20/10
Venetia H. Velazquez, Esq.
Clerk of the Court
By:
Court Clerk