

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

LANDON MITCHELL

Case No. 1:21CR508(BAH)

REPLY IN SUPPORT OF MOTION TO SEVER DEFENDANTS

Landon Mitchell, through counsel, respectfully replies to the government's opposition, ECF No. 56, to his motion to sever, ECF No. 48, and requests, pursuant to Federal Rule of Criminal Procedure 14, that this Honorable Court sever his trial from that of his co-defendant, Luke Bender.

First, severance is required under *Bruton v. United States*, 391 U.S. 123, 137 (1968), based on the prejudice Mr. Mitchell will suffer should his co-defendant's statements be introduced at a joint trial. Mr. Bender's statements to the police unquestionably implicate Mr. Mitchell such that "a limiting instruction would be of no avail." *United States v. Applewhite*, 72 F.3d 140, 145 (D.C. Cir. 1995). Although the government states in its opposition that it "has not indicated that it intends to introduce Bender's statements," ECF No. 56 at 6, and "likely will not seek to introduce Bender's self-serving statements," *id.* at 7, the potential for those statements to be introduced and the prejudice that would result from those statements is still present. Should the government choose to introduce Mr. Bender's statements at trial, Mr. Mitchell will renew his motion for severance, as the Court has a "continuing duty at

all stages of the trial to grant a severance if prejudice does appear.” *Schaffer v. United States*, 362 U.S. 511, 516 (1960); *see also United States v. Wilson*, 434 F.2d 494, 499-500 (D.C. Cir. 1970); *Sims v. United States*, 405 F.2d 1381, 1382 n.1 (D.C. Cir. 1968).

Additionally, severance is also required because a joint trial may result in a jury convicting Mr. Mitchell due to guilt by association and Mr. Bender may present an irreconcilable defense and act as a second prosecutor against Mr. Mitchell. Mr. Mitchell relies on his arguments in his motion to sever and will not repeat them here. *See* ECF No. 48 at 3-7.¹

WHEREFORE, for the reasons cited herein and any others that may appear to the Court, Mr. Mitchell asks this Court to sever Mr. Mitchell’s trial from that of his co-defendant.

Respectfully submitted,

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FEDERAL PUBLIC DEFENDER

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¹ Continued joinder also prejudices Mr. Mitchell by causing him to be unable to resolve his case pretrial in a beneficial manner because the government is insisting that both defendants agree on the proposed resolution. Joinder in this case is forcing Mr. Mitchell to proceed to trial when he otherwise would resolve this matter prior to trial.