

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA, :  
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 Plaintiff, :  
 :  
 :  
 v. : CASE NO. 23SC188947  
 :  
 :  
 RAY SMITH, III, : Judge: Scott McAfee  
 :  
 :  
 Defendant. :

**DEFENDANT RAY SMITH'S**  
**MOTION FOR SEVERANCE**

As currently postured, this case involves too many defendants – nineteen defendants – too many disparate predicate acts, too many prosecution witnesses, and a complex array of relationships of all the witnesses and defendants for the jury to comprehend. Many of the overt acts occurred in various states around the country (Wisconsin, Michigan, Arizona, Georgia, Pennsylvania; Washington D.C.); yet there are few if any of the defendants who are alleged to have engaged in any overt acts in more than one or two states. Ray Smith, for example, is not alleged to have engaged in *any* overt act outside Georgia.

The reasonable solution to the problem is the traditional method of simplifying a case that is too byzantine: the Court should sever the defendants into manageable groups so the case can be presented in reasonable bite-size segments that a jury will be able to understand and assimilate in a reasonable amount of time.

This solution will also reduce the amount of time any jury will be required to be empaneled. The experience learned by this Court in the YSL gang trial – jury selection that lasted (and is still in progress) over eight months, and a trial that is expected to last another eight months (at least) – is a lesson learned that should inform any Court about the dangers of pursuing a joint trial for over a dozen defendants.

The prosecution, no doubt, will protest that the defendants were part of a nationwide enterprise. The defense will vigorously contest this at trial, but the argument is irrelevant to the issue of severance. The prosecution cannot dictate the length of trial, and the prejudice suffered by the defendants (and the judge, and the jury, and the judicial system in general) simply by overcharging a case and exaggerating the scope of its enterprise.

Federal courts learned this lesson long ago, abandoning mega-trials, even when all defendants were charged in one conspiracy. *United States v. Casamento*, 887 F.2d 1141 (2d Cir. 1989) (appeal of the infamous “pizza connection case”). Though upholding the verdicts, the Second Circuit set forth guidelines for future mega-trials. Among other considerations, the district judge should question the propriety of severing counts and defendants in any case where the prosecutor anticipates that a joint trial will exceed four months.

Georgia law also authorizes the trial court to grant a severance of defendants

if separate trials would improve the fact-finding goal of a trial. *Cain v. State*, 235 Ga. 128, 218 S.E.2d 856 (1975): In considering whether to sever the defendants' trials, a court should consider (1) whether the number of defendants will create confusion of the evidence and law applicable to each individual defendant; (2) whether there is a danger that evidence admissible against one defendant will be considered against another, despite the admonitory precaution of the court; and (3) whether the defenses of the defendants are antagonistic to each other or to each other's rights. A court should also consider whether a severance would enable one defendant to testify for another defendant.

Ray Smith was never informed that he was a target of the grand jury's investigation. He was never invited to meet with the prosecution to review evidence. He has never been privy to any of the discovery provided to any co-defendant, or to information supplied to co-defendants informally by the prosecution. He will not be prepared for trial in October, 2023.

WHEREFORE, defendant Ray Smith prays that the Court sever the defendants into manageable groups for trial. Defendant Smith will be in a position to suggest such groups of defendants after the State furnishes the discovery to the defense in mid-September and may have additional bases for a severance.

This 31<sup>st</sup> day of August, 2023.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

DONALD F. SAMUEL, ESQ.

Georgia Bar Number 624475

/s/ Amanda R. Clark Palmer

AMANDA R. CLARK PALMER, ESQ.

Georgia Bar Number 130608

/s/ Kristen Wright Novay

KRISTEN WRIGHT NOVAY, ESQ.

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/s/ Bruce Morris

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 Defendant. )

**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically filed this MOTION FOR SEVERANCE by using the ODYSSEY eFileGA system which will automatically send email notification of such filing to all attorneys and parties of record.

This, the 31<sup>st</sup> day of August, 2023.

GARLAND, SAMUEL & LOEB, P.C.

/s/ Donald F. Samuel

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