

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**JOHN BOLDEN,
ZECHARIAH BENJAMIN,
NELL BROCKS,
CLARENCE ROSS, III, and
WILSON CLEAVES,**

Defendants.

No. CR08-0001

RULING ON MOTION TO SEVER

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I. INTRODUCTION

On the 5th day of March 2008, this matter came on for hearing on the Motion to Sever (docket number 58) filed by the Government on February 27, 2008.¹ The Government was represented by Assistant United States Attorney Patrick J. Reinert. Defendant John Bolden appeared personally and was represented by his attorney, Stephen A. Swift. Defendant Zechariah Benjamin appeared personally and was represented by his attorney, Jane Kelly. Defendant Nell Brocks appeared personally and was represented by her attorney, Webb L. Wassmer. Defendant Clarence Ross, III, appeared personally and was represented by his attorney, Patrick Joseph Kelly. Defendant Wilson Cleaves entered a guilty plea on February 26, 2008, which was accepted by Chief Judge Linda R. Reade on February 27, 2008. Accordingly, the attendance of Cleaves and his attorney at the instant hearing was excused by the Court.

II. ISSUE PRESENTED

In its Motion, the Government requests that the Court order separate trials pursuant to FEDERAL RULE OF CRIMINAL PROCEDURE 14(a). Specifically, the Government asks that Brocks and Ross be tried first and a second trial be held for Bolden and Benjamin.² Bolden, Benjamin, and Ross all join in the Government's Motion to Sever, although Bolden and Benjamin argue that their trial should go first. Brocks resists the Motion to Sever, arguing that all four Defendants should be tried jointly.

¹ Because a motion to sever is not dispositive of an action, a magistrate judge may hear and determine the motion, subject to reconsideration by a district judge upon a showing that the magistrate judge's order is clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1)(A).

² Initially, the Government requested that the Court schedule trials for Cleaves, Ross, Brocks, and then a joint trial for Bolden and Benjamin. Cleaves has pleaded guilty, however, and at the instant hearing, Mr. Reinert agreed that Brocks and Ross could be tried jointly.

III. RELEVANT FACTS

A. The Charges

On January 29, 2008, Defendants were charged by Superseding Indictment (docket number 19) in ten counts. Counts 1-9 pertain to the alleged distribution of crack cocaine during a 3-week period from November 29, 2007, to December 19, 2007. The Defendants charged in each Count may be summarized in table form as follows:

COUNT	DATE	DEFENDANT
1	November 29, 2007	Bolden, Cleaves
2	December 4, 2007	Bolden, Cleaves
3	December 7, 2007	Ross
4	December 13, 2007	Ross
5	December 17, 2007	Benjamin, Cleaves
6	December 17, 2007	Brocks
7	December 18, 2007	Brocks
8	December 18, 2007	Bolden, Benjamin
9	December 19, 2007	Bolden, Ross, Cleaves

In addition, all five Defendants are charged in Count 10 with conspiracy to distribute crack cocaine. It is alleged that the conspiracy began on or before January 2006 and continued to on or about December 19, 2007.

On January 23, 2008, Brocks filed a Notice of Intent to Plead Guilty to Counts 6 and 7 (docket number 17), while confirming her intent to proceed to trial on the conspiracy charge found in Count 10. A plea change hearing was held before the undersigned Magistrate Judge on February 27, 2008, and a Report and Recommendation (docket number 61) has been submitted to Chief Judge Reade.

On February 22, 2008, Cleaves filed a Notice of Intent to Plead Guilty to Count 10 (docket number 36). Cleaves appeared before the undersigned Magistrate Judge on February 26, 2008, and entered a plea of guilty to Count 10. Pursuant to the parties' agreement, the remaining Counts directed to Cleaves will be dismissed at the time of sentencing. According to Mr. Reinert, it is anticipated that Cleaves will testify in any further trial.

B. The Testimony

In seeking separate trials, the Government and three of the four remaining Defendants cite *Bruton* issues resulting from pretrial statements made by Brocks and Ross.³ Those statements are set forth in Government's Exhibits 1-5, introduced under seal at the time of hearing, and may be summarized as follows:

In July 2006, law enforcement authorities were investigating a rental car containing 44.3 grams of crack cocaine, which had been abandoned under suspicious circumstances. A "MoneyGram" bearing Bolden's name was found in the car and the vehicle had been rented by Brocks. When questioned by authorities, Brocks admitted that she rented the car and had been accompanied by Bolden, who provided cash to rent the car. According to Brocks, Bolden was "friends" with Marcus Bulet and Brian Whiting and "he was basically paying for the rental for those guys." (Government's Exhibit 1 at 8.) Brocks also admitted that she had rented the car knowing that Darius Whiting and Brian Whiting intended to use it to bring crack cocaine from Chicago to Cedar Rapids. When asked about the document relating to Bolden, however, Brocks "continued to proclaim his innocence as [sic] any involvement with the crack cocaine." (*Id.* at 9.)

In December 2006, Brocks was questioned again about the vehicle abandoned in July. Brocks told authorities that the crack cocaine found in the vehicle belonged to Darius Whiting. According to Brocks, Darius Whiting had given Bolden money "so that Bolden and Brocks could rent this car." (Government's Exhibit 2 at 3.) Brocks denied that

³ Referring to *Bruton v. United States*, 391 U.S. 123 (1968).

Bolden “was a seller of narcotics and stated that J.B. just smoked crack cocaine with a pipe.” (*Id.* at 2.)

Later in December 2006, Brocks testified before a Grand Jury. The focus of the investigation appears to be drug trafficking by Darius Whiting and others. Brocks testified that Darius Whiting and Bolden were friends, but denied that Bolden sold crack cocaine. (Government’s Exhibit 3 at 6.) Brocks also admitted driving Darius Whiting to Chicago on two occasions for the purpose of obtaining drugs for sale in Cedar Rapids.

One year later, on December 19, 2007, all five Defendants were arrested following execution of a search warrant. Brocks was interviewed by ATF Special Agent Timothy Hunt and Iowa DNE Special Agent Kelly Meggers. Brocks denied that she was a drug dealer, but told the agents that she “has been to deals before with Bolden.” (Government’s Exhibit 4, ¶ 11 at 2.) Brocks initially denied that Bolden sold crack cocaine in Cedar Rapids, but then told agents that Bolden was selling crack. (*Id.*, ¶ 16 at 2.) According to Brocks, Bolden was angry with her because she had “snitched” on Darius Whiting and Bolden threatened to kill Brocks if she snitched on him. (*Id.*, ¶ 17 at 2.) Eventually, Brocks became confused and frustrated and “asked what the agents wanted her to say.” When told by the agents that they wanted her to tell the truth, Brocks said “JB deals drugs! Is that what you want me to say?” (*Id.*, ¶ 29 at 3.) Brocks then asked to speak to an attorney and the interview was concluded.

Defendant Clarence Ross also gave a statement following his arrest on December 19, 2007, speaking to Task Force Officers Josh Lupkes and Brian Heinrich. Ross provided detailed information regarding the sale of crack cocaine from the apartment on 16th Avenue where Bolden, Cleaves, and Ross resided. According to Ross, the leader of the organization was “Blackjack,” whom the Government believes to be Defendant Zechariah Benjamin. According to Ross, all four of them sold crack cocaine and would “put money together to replenish the crack cocaine supply.” (Government’s Exhibit 5,

¶ 13 at 3.) Ross told the agents that “‘Blackjack’ would take the money and go and get the supply of crack cocaine.” (*Id.*)

IV. DISCUSSION

FEDERAL RULE OF CRIMINAL PROCEDURE 14(a) provides that if the joinder of defendants in an indictment “appears to prejudice a defendant or the government,” then the court may sever the defendants’ trials. In this case, the Government argues that a joint trial of the remaining Defendants “would prejudice the United States.” Defendants Bolden, Benjamin, and Ross agree that the trials should be severed. Brocks argues that the Government is not prejudiced by a joint trial, but that she will be prejudiced if the trials are severed.

A. Bruton Issue

The prejudice claimed by the Government allegedly stems from limitations which would be placed on testimony regarding pretrial statements made by Brocks and Ross, if Defendants are tried jointly. That is, the Government concedes that if Defendants are tried together, law enforcement officers will not be permitted to testify regarding pretrial statements made by Brocks or Ross which implicate Bolden or Benjamin. The Government argues that the use of neutral pronouns is “frowned upon” and, therefore, the appropriate remedy is separate trials. The Government freely concedes that it wants to try Brocks and Ross first and then compel their live testimony at a second trial for Bolden and Benjamin.

In *Bruton v. United States*, 391 U.S. 123 (1968), the Court held that “a defendant is deprived of his rights under the Confrontation Clause when his codefendant’s incriminating confession is introduced at their joint trial, even if the jury is instructed to consider that confession only against the codefendant.” *Cruz v. New York*, 481 U.S. 186, 187-188 (1987).

The Confrontation Clause of the Sixth Amendment guarantees the right of a criminal defendant “to be confronted with the witnesses against him.” We have held that the guarantee,

extended against the States by the Fourteenth Amendment, includes the right to cross-examine witnesses. (citation omitted) Where two or more defendants are tried jointly, therefore, the pretrial confession of one of them that implicates the others is not admissible against the others unless the confessing defendant waives his Fifth Amendment rights so as to permit cross-examination.

Id. at 189-190.

While Brocks claims that her statements regarding Bolden “are largely exculpatory,” the Court believes that the statements given by her to authorities, both before and after her arrest, incriminate Bolden. In addition, it is undisputed that statements made by Ross following his arrest incriminate Bolden and “Blackjack,” whom the Government believes to be Benjamin. Accordingly, pursuant to the dictates of *Bruton* and *Cruz*, the incriminating extrajudicial statements made by Brocks and Ross are inadmissible in a joint trial with Bolden, unless Brocks or Ross decides to testify.

Brocks suggests, however, that it would “not be difficult” to redact the offending statements and that is the “preferred method” in addressing the problem. In *Richardson v. Marsh*, 481 U.S. 200, 209 (1987), the Court indicated that trying Defendants separately whenever an incriminating statement by one of them is sought to be used, “is not as facile or as just a remedy as might seem.”

Confessions by one or more of the defendants are commonplace-and indeed the probability of confession increases with the number of participants, since each has reduced assurance that he will be protected by his own silence. It would impair both the efficiency and the fairness of the criminal justice system to require, in all these cases of joint crimes where incriminating statements exist, that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last-tried defendants who have the advantage of knowing the prosecution’s case beforehand. Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of

relative culpability-advantages which sometimes operate to the defendant's benefit.

Id. at 209-210.

In *Marsh*, the defendants were tried jointly, but the pretrial statement of the codefendant was redacted to omit all indication that anyone else participated in the crime. The Court concluded that “the Confrontation Clause is not violated by the admission of a nontestifying codefendant’s confession with a proper limiting instruction when, as here, the confession is redacted to eliminate not only the defendant’s name, but any reference to his or her existence.” *Id.* at 211.

The Supreme Court addressed the issue more recently in *Gray v. Maryland*, 523 U.S. 185 (1998). There, the prosecution redacted the codefendant’s confession by substituting the defendant’s name with a blank space or the word “deleted.” According to the Court, a “blank space in an obviously redacted confession also points directly to the defendant in a manner similar to” a codefendant’s use of defendant’s name. *Id.* at 194. The Court concluded that this procedure did not satisfy the protections intended by *Bruton*. *Id.* at 197.

The Eighth Circuit Court of Appeals has grappled on numerous occasions with the use of neutral pronouns in an effort to meet the dictates of *Bruton*. See, e.g., *United States v. Donahue*, 948 F.2d 438, 443 (8th Cir. 1991) (cases collected at n.4). In *United States v. Payne*, 923 F.2d 595 (8th Cir. 1991), for example, the Court concluded that it was error to admit a codefendant’s redacted confession “that he was planning to help ‘someone’ escape from federal custody,” when the defendant was charged with conspiracy to escape from federal custody. *Id.* at 597 (“As counsel for the government admitted at oral argument, everyone at the trial knew who the ‘someone’ was.”)⁴ On the other hand, in *United States v. Edwards*, 159 F.3d 1117 (8th Cir. 1998), the Court approved of the

⁴ The Court further concluded, however, that the error was harmless because “it is clear beyond a reasonable doubt that the jury would have convicted [the defendant] anyway.”

redaction of the codefendant’s statement “to replace inculpatory references to her codefendants with neutral pronouns such as ‘we,’ ‘they,’ ‘someone,’ and ‘others.’” *Id.* at 1124. *But see, United States v. Williams*, 429 F.3d 767, 774 (8th Cir. 2005) (suggesting the substitution of “someone” in the codefendant’s statement may have been error, when the substitutions were awkward, repeated, and “not seamlessly woven into the narrative.”).⁵

B. Motions to Sever

Where multiple defendants are charged in the same indictment, there is a preference for a joint trial unless the party moving to sever can show that the benefits are outweighed by a clear likelihood of prejudice. *United States v. Boone*, 437 F.3d 829, 837 (8th Cir. 2006) (citing *Zafiro v. United States*, 506 U.S. 534, 537 (1993)). “The presumption against severing properly joined cases is strong.” *Delpit v. United States*, 94 F.3d 1134, 1143 (8th Cir. 1996). Moreover, codefendants charged with a conspiracy should generally be tried together because a joint trial gives “the jury the best perspective on all of the evidence and therefore increases the likelihood of a correct outcome.” *United States v. Joiner*, 418 F.3d 863, 868 (8th Cir. 2005) (quoting *United States v. Flores*, 362 F.3d 1030, 1039 (8th Cir. 2004)). *See also United States v. Wint*, 974 F.2d 961, 965 (8th Cir. 1992) (“Rarely, if ever, will it be improper for coconspirators to be tried together.”).

This case is unusual in that the Government initiated the Motion to Sever. It should be recalled, however, that Bolden concurs with the Government’s Motion, claiming that “he would be unduly prejudiced and denied basic constitutional rights of cross examination” if Brocks and Ross were tried with Bolden. (*See* Defendant John Bolden’s Response to Government’s Motion to Sever Trial (docket number 66), ¶ 1 at 1.) In addition, Benjamin joined in the Government’s Motion to Sever “for the reasons set forth in the government’s Motion.” (*See* Defendant Zechariah Benjamin’s Response to

⁵ The Court did not decide the issue, however, concluding that the error, if any, was harmless.

Government's Motion to Sever (docket number 67).) While it is unusual that the Government filed a Motion to Sever after joining the Defendants in the initial Indictment, it is not without precedent.

In *United States v. Grullon*, 482 F. Supp. 429 (E.D. Pa. 1979), four defendants were charged with conspiracy. The government intended to place in evidence, as part of its case-in-chief, post-arrest statements made by two of the defendants. The statements incriminated the other two defendants, however, and in the government's view could not be effectively redacted. *Id.* at 430. Accordingly, the government filed a motion to sever, apparently intending to try first the two defendants who had provided statements. *Id.* ("The Government evidently wishes to try Grullon and Mejia first, and then, after they have been convicted or acquitted, be able to compel their testimony in the subsequent separate trial of Barrientos and Karasik.") Noting that a showing of "prejudice" is required for the granting of a severance, the Court considered whether this is "a legally cognizable form of prejudice." *Id.* The Court concluded that the government would be prejudiced by failing to sever the trials.

As it is basic to such a trial that the accused can call witnesses who may exculpate them, so too it is basic that the Government can call witnesses who may inculpate them, provided that the rights of the witnesses and of the accused are not violated. In short, the Government's interest in severance seems an appropriate pursuit of a legitimate prosecutorial end.

Id. at 431.

Similarly, in *United States v. Marxen*, 2006 WL 474523 (W.D. Ky. 2006), the Court granted the government's motion to sever. The government planned to introduce tape-recorded statements made by each of the codefendants during interviews with law enforcement officials, which would create potential problems under *Bruton*. Finding that the statements could not be effectively redacted, the Court concluded that severance of the defendants for trial was appropriate.

Following their arrest, each Defendant gave a statement to the authorities in which he/she allegedly confessed to his/her role in a series of robberies and described in detail the role of the other defendant. The Government intends to play tape recordings of those statements in their entirety at trial. The Court has reviewed the transcripts and finds that the statements cannot be redacted in such a way as to comply with the holding in *Bruton*. Accordingly, there are only two ways to comply with the Defendants' constitutional rights: (1) exclude the statements in their entirety or (2) sever the Defendants' trial. The first approach-excluding the statements-is contrary to the overall interests of justice and is unfair to the government.

Id. See also *United States v. Burns*, 432 F.3d 856, 858 (8th Cir. 2005) (“Prior to trial, the district court granted the government’s motion to sever the trials of Mr. Burns and Mr. Ellerman in order to avoid a potential confrontation-clause problem based on the admission of Mr. Ellerman’s post-arrest statement.”).

The Court reached a different conclusion in a similar context, however, in *United States v. Fregoso-Bonilla*, 494 F. Supp. 2d 1014 (E.D. Wis. 2007). In that case, the government moved to sever the trials of the two defendants based on a potential *Bruton* problem. The government wanted to use against the first defendant a statement provided by the second defendant pursuant to a proffer agreement, in which the second defendant inculpated the first defendant. “The government wants to try Valle-Fregoso first, then call her as a witness against Fregoso-Bonilla in a second trial.” *Id.* at 1015. The Court concluded that severance was not appropriate, however, because the government intended to use Valley Fregoso’s statement “as impeachment material,” rather than substantive evidence. *Id.* at 1018.

C. Analysis

The Government claims that it will be prejudiced if the trials are not severed, since it will be unable to fully utilize Brocks’ statements incriminating Bolden and Ross’ statements incriminating both Bolden and Benjamin. The Government is concerned that

“the use of a neutral pronoun in introducing these statements at a joint trial may be insufficient to meet the *Bruton* concerns.” (See Government’s Motion to Sever Defendants (docket number 58) at 3.) If the statements cannot be effectively modified, then they can not be used at a joint trial, unless Brocks and Ross testify at the trial and are subject to cross-examination. This would presumably require a severance of the trials.

Bolden concurs in the Government’s Motion and claims that “he would be unduly prejudiced and denied basic constitutional rights of cross examination” if he is tried with Brocks and Ross. If all four Defendants are tried together, however, the statements would have to be modified to meet the dictates of *Bruton*, or they would be inadmissible altogether. In either event, Bolden will not be prejudiced by a joint trial. On the other hand, if the trials are severed and the Government is permitted to try Brocks and Ross first, then the entirety of the statements, including the incriminating testimony against Bolden, would be introduced at the second trial.

While it is not entirely clear, Benjamin apparently shares the same views as Bolden. Accordingly, the same analysis would be applicable (except that only Ross’ statement incriminates Benjamin).

Brocks claims, on the other hand, that she “would be substantially prejudiced by a severance.” As noted above, Brocks has already pleaded guilty to the distribution charges set forth in Counts 6 and 7. Brocks denies, however, that she conspired with the other Defendants to distribute crack cocaine, as alleged in Count 10. Brocks wants the jury to hear all of the evidence pertaining to the other Defendants and hopes to convince the jury that she had no part in that activity. According to Brocks, this can only be effectively accomplished in a joint trial.

If Defendant Brocks is tried apart from Defendants Bolden and Benjamin, Defendant Brocks will have to present the evidence as to the Government’s allegations against Defendants Bolden and Benjamin. That will substantially change the complexion and dynamics of trial. Further, Defendant Brocks does not have the tools that the United States has to enter into

cooperation agreements with or grant immunity to witnesses. Defendant Brocks may be unable to convince certain witnesses to waive their Fifth Amendment rights and testify on her behalf, particularly if her trial is first. A joint trial avoids those issues as the Government will put on all of the evidence that it has pertaining to all Defendants.

See Defendant Nell Brock's [sic] Resistance to Government's Motion to Sever (docket number 65) at 7.

Brocks argues that Bolden and Benjamin are not prejudiced by a joint trial because the statements "can readily be redacted to eliminate references to co-Defendants." In fact, Brocks opines that "Defendants Bolden and Benjamin are better off in a trial where any statements by Defendants Brocks and Ross regarding them will be limited by redaction pursuant to *Bruton* as opposed to a second trial where the United States intends to compel Defendants Brocks and Ross to testify against them." (*See Id.*)

The Court believes that this issue turns on the question of whether the statements by Brocks and Ross can be effectively modified to protect the Sixth Amendment rights of Bolden and Benjamin. In this regard, the Court notes that with the exception of Brocks' Grand Jury testimony, the remaining statements do not constitute verbatim statements by Brocks or Ross. Rather, the exhibits consist of police reports setting forth the substance of statements made by Brocks and Ross.

Government's Exhibit 1 reflects an interview with Brocks on July 25, 2006. The interview concerned a rental car which was rented by Brocks, paid for by Bolden, and apparently used by Darius Whiting and Brian Whiting to transport crack cocaine. Brocks "continued to proclaim [Bolden's] innocence as any involvement with the crack cocaine." It is unclear to the Court whether the Government claims that activity is part of the conspiracy involving Benjamin, Ross, and Cleaves.

Government's Exhibit 2 refers to a second interview with Brocks, on December 11, 2006, concerning the same subject. Brocks again denied that Bolden was a seller of narcotics, but admitted that Darius Whiting had given Bolden money so that Bolden and

Brocks could rent a car to be used by Whiting in his drug activity. It is apparently Brocks' position that regardless of whether she or Bolden conspired with Darius Whiting in 2006, that activity has no relationship to the alleged conspiracy between Bolden, Benjamin, Ross, and Cleaves in the fall of 2007.

Of more direct concern are the statements given by Brocks and Ross immediately following their arrests on December 19, 2007, as reflected in Government's Exhibits 4 and 5. A review of Government's Exhibit 4 reflects that Brocks did not provide any information relating to the sale of drugs from the apartment occupied by the other Defendants on 16th Avenue SW. In fact, there is nothing in the officer's report to indicate that she was even asked about the activities involving Benjamin, Ross, and Cleaves. Brocks told officers, however, that "Bolden sold crack cocaine from her house on XXXX 32nd Street NE, Cedar Rapids, Iowa, while she was there." (Government's Exhibit 4, ¶ 18 at 2.) The Court notes, however, that Bolden is not charged with distribution of crack cocaine from the house on 32nd Street NE and it is not clear whether it is alleged that those sales were part of a conspiracy with Benjamin, Ross, and Cleaves.

Following his arrest, Ross provided detailed testimony regarding a conspiracy to sell crack cocaine involving himself, Bolden, Cleaves, and "Blackjack," as set forth in Government's Exhibit 5. Specifically, Ross told officers that he, Bolden, and Cleaves were living in the apartment and selling crack cocaine from the residence. The three of them would pool their money with "Blackjack," and "Blackjack" would then obtain additional crack cocaine.

Regarding the charges against Brocks and Ross, the Court believes that their respective statements can be modified with the use of neutral pronouns to eliminate references which incriminate Bolden, while retaining their incriminating impact on Brocks and Ross. For example, when testifying regarding Ross' statement, TFO Heinrich can testify that Ross admitted distributing crack cocaine and working with Cleaves and "others" to obtain and distribute crack cocaine. This testimony would support the

Government's charge of conspiracy against Ross, without incriminating Bolden. Similarly, to the extent it is determined to be relevant by the trial court, Investigator About could testify that Brocks said she received cash from another person to rent a car for use by Darius Whiting. Again, this would support the Government's conspiracy charge against Brocks, without violating *Bruton*.

The Court notes that Ross' statement does not directly incriminate Benjamin. Rather, it refers to activities of "Blackjack." If other evidence introduced at the time of trial would directly link "Blackjack" to Benjamin, then permitting testimony regarding Ross' references to "Blackjack" would seem to violate *Bruton*. *United States v. Payne*, 923 F.2d at 597; *United States v. Long*, 900 F.2d 1270, 1280 (8th Cir. 1990). In that event, when describing Ross' statements, the officer would be required to refer to neutral pronouns such as "we," "they," "someone," and "others." *United States v. Edwards*, 159 F.3d 1117, 1124 (8th Cir. 1998). This process does not violate *Bruton*, because the codefendant's confession is not incriminating on its face and does not provide direct "linkage" to the defendant. *Richardson v. Marsh*, 481 at 208.

The issue in this case is not whether the use of modified or redacted statements will prejudice the Government in its prosecution of Bolden and Benjamin, but instead whether the use of neutral pronouns will distort the statements to the extent that it prejudices the Government in its prosecution of Brocks and Ross. Unlike the case in *Marxen*, where the Court intended to use tape-recorded statements which could not be effectively redacted, and *Grullon*, where the Court apparently agreed with the Government's view that the Defendants' post-arrest statements could not be effectively redacted, the Court believes that the statements by Brocks and Ross may be modified with the use of neutral pronouns to retain their incriminating nature against Brocks and Ross, while eliminating the incriminating effect on Bolden and Benjamin. Given the strong preference to try coconspirators together, and given the lack of any real prejudice to the Government or the Defendants, the Court concludes that the Motion to Sever should be denied.

V. SUMMARY

To the extent that statements made by Brocks or Ross, which are otherwise admissible at the time of trial, incriminate Bolden or Benjamin, they must be modified by the use of neutral pronouns or redacted in order to eliminate that portion of the statement which inculcates others. The Court believes that the statements by Brocks and Bolden may be effectively modified to meet the dictates of *Bruton*, while retaining the strong preference to try alleged coconspirators together. The precise parameters of the officers' testimony regarding the pretrial statements of Brocks and Ross, however, must be determined by the trial judge. Accordingly, the Court finds that the Motion to Sever should be denied.

VI. ORDER

IT IS THEREFORE ORDERED that the Motion to Sever (docket number 58) filed by the Government on February 27, 2008, is hereby **DENIED**.

Pursuant to 28 U.S.C. § 636(b)(1)(A), any party may seek reconsideration of this Order before the District Court upon a showing that the Order is clearly erroneous or contrary to law. Any objection to this Order must be filed within ten (10) days.

DATED this 7th day of March, 2008.

JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA