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8 Attorney For Defendant

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11 STATE OF ARIZONA,

No: CR2006-007790-004DT

12 Plaintiff,

DEFENDANT MARGIE SANTIAGO'S
MOTION TO SEVER DEFENDANTS
(Oral Argument Requested)

13 MARGIE SANTIAGO,

14 Defendant.

15 Defendant Margie Santiago, pursuant to Rule 13.4 (a) of the Arizona Rules of Criminal
16 Procedure, moves for an Order severing the trial of said Defendant from that of the remaining
17 Defendants on the grounds that severance is necessary to promote a fair determination of her
18 guilt or innocence, and the jury will confuse evidence introduced against the other defendants
19 with proof of guilt against her, thereby causing fundamental error. This Motion is supported by
20 the accompanying Memorandum of Points and Authorities.
21

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **FACTS**

24 On May 2, 2006, the Maricopa County Grand Jury returned a 26 Count Indictment
25 against Gilbert Martinez on twenty three felonies, including First Degree Murder; against
26 Gilbert Anthony Martinez on ten felonies; and, Robert Arbolida on ten felonies, including First
27 Degree Murder. The acts and occurrences giving rise to the charges against these three
28 defendants occurred between December 15, 2005, and March 31, 2006.

1 Ms. Santiago is also named in the indictment. But she is charged with three offenses
2 allegedly occurring after the 23 offenses the other defendants are charged with. charged with.
3 None of the alleged offenses are related in time. place or manner to the crimes of the other
4 defendants
5 defendants

6 **LAW**

7 Rule 13.3 provides in relevant part that:

8 Two or more defendants may be joined when each defendant is charged with each
9 offense included, or when the several offenses are part of a common conspiracy, scheme,
10 or plan or are otherwise so closely connected that it would be difficult to separate proof of
11 any one from proof of the others.

12 Rule 13.4 provides that:

13 a. In General. Whenever 2 or more offenses or two or more defendants have been
14 joined for trial, and severance of any or all offenses, or of any or all defendants, or
15 both, is necessary to promote a fair determination of guilt or innocence of any
16 defendant or any offense, the court may on it's own initiative, and shall on the
17 motion of a party, order such severance.

18 When multiple defendant are charged with the same offense which can be proved by the
19 same evidence, the cases against each defendant may be joined for trial. In *State v. Grannis*, 183
20 Ariz. 52, 900 P.2d 1 (1995), the Arizona Supreme Court noted the four exceptions to the rule:

21 1. The evidence admitted against one defendant is facially incriminating to the other
22 defendants;

23 2. evidence admitted against one defendant has a harmful rub off effect on the other
24 defendants;

25 3. there is a significant disparity in the amount of evidence introduced against each of the
26 two defendants; or

27 4. co-defendants present defenses that are so antagonistic that they are mutually
28

1 exclusive, or the conduct of one defendant's defense harms the other defendants.

2 The case law suggests that sometimes, however, a curative jury instruction is sufficient
3 to alleviate any risk of prejudice that might result from a joint trial. But Defendant cannot
4 imagine what that curative jury instruction could be in the present case.
5

6 The prosecution is alleging no less than thirteen separate incidents of crimes over a
7 course of four months, and 69 witnesses so far to present. It is not alleged that Ms. Santiago
8 participated in any of these thirteen incidents of crimes,. She is not charged as a co-defendant on
9 any of the 23 counts in the indictment, So, the charges against her cannot be proven by the same
10 evidence, and there is an overwhelming disparity in the amount of evidence against the other
11 defendants as compared to her. Only two of the thirteen crimes relate in any way to this
12 defendant, and then only peripherally. The charges against Ms. Santiago stem from the alleged
13 discovery of stolen property at the home she was living in, allegedly allowing her brother to
14 wash up at her house, and disposing of some of his blood stained clothing.
15

16 Second, it is projected that this trial will last at least four months. And the case
17 presentation will be chronological. So, before the first testimony against Ms. Santiago is
18 presented the jury will have been subjected to a daily onslaught of witnesses and evidence against
19 the other three defendants concerning thirteen separate crimes, not the least of which is the cold
20 blooded murder of an elderly man. None of which are related in time, place or manner to the
21 charges against Ms. Santiago. The test here is whether the jury can keep separate the evidence
22 that is relevant to each defendant and render a fair and impartial verdict as to each. How does the
23 jury switch gears and wipe out four months of testimony of horrific crimes against vulnerable
24 elderly people with a mere instruction?
25

26 Third, two of the defendants in this case face the death penalty, and two defendants are
27
28

1 Ms. Santiago's brother and nephew, a fact that the prosecution is sure to inform the jury of. Thus,
2 the jury is free to assume that Ms. Santiago is somehow or other implicated in the offenses by
3 virtue of her presence from day one of the trial, and her blood relationship to these defendants.
4

5 As the Arizona Supreme Court stated in *State v. Lawson*, 144 Ariz. 547, 555, 698 P.2d
6 1266, 1274 (1985), there is "the problem of "spill-over" or "rub-off": will the jury's unfavorable
7 impression of the three defendants against whom the evidence is properly admitted influence the
8 way the jurors view the fourth defendant. Although a severance is rarely granted when this
9 concern is raised, *see* 1 Wright, *Federal Practice and Procedure* § 223 (1982), **it must be given**
10 if a defendant can show that he would suffer substantial prejudice from a joint trial. *United States*
11 *v. Walker*, 706 F.2d 28, 30 (1st Cir.1983." (Emphasis added). As to this Defendant, the jury will
12 not be able to keep separate evidence related to the other defendants and numerous unrelated
13 crimes because of the heinousness of the other defendants' crimes and thus, cautionary
14 instructions will be futile and ignored by the jury.
15

16 It is true that severance is not required when the evidence on which a claim of rub-off
17 relies would be admissible in a separate trial. *See State v. Runningeagle*, 176 Ariz. 59, 68, 859
18 P.2d 169, 178, *cert. denied*, 510 U.S. 1015, 126 L. Ed. 2d 574, 114 S. Ct. 609 (1993). However,
19 in the case at bar, there is no basis for admitting much of the evidence of the other Defendants'
20 crimes because evidence of those crime bears no relevance to those alleged to have been
21 committed by Defendant Margie Santiago and relate to numerous other alleged offenses for
22 which she has not been charged. *See State v. Curiel*, 130 Ariz. 176, 184, 634 P.2d 988, 995 .
23 (App. 1981)
24

25
26 Finally, the grant denial of a motion to sever is within the sound discretion of the trial
27 court and will be reversed only if that discretion is abused. *State v. Mauro* , 149 Ariz. 24 , 716
28

1 *P.2d 393 (1986)*, rev'd on other grounds, *481 U.S. 520, 107 S. Ct. 1931, 95 L. Ed. 2d 458*
2 *(1987)*. However, in the case at bar, the Court should exercise its discretion and order the
3 severance of Defendant Margie Santiago from the other Defendants since the facts establish that
4 she will be prejudiced by the trial court's failure to sever since the jury will find guilt by
5 association for crimes for which she has not even been charged. *See, State v. Lucas*, *146 Ariz.*
6 *597, 708 P.2d 81 (1985)*. In fact, the evidence for severance is compelling because given the
7 facts of this case, the jury cannot keep separate the evidence that is relevant to the other
8 defendants and render a fair and impartial verdict as to her. *Lawson, 144 Ariz. at 556, 698 P.2d*
9 *at 1275*, quoting *United States v. Lippner, 676 F.2d 456, 464-65 (11th Cir. 1982)*. The majority
10 of the alleged crimes of the other defendants were separated by time and place and unrelated to
11 the alleged crimes of Defendant Margie Santiago,.
12

13
14 WHEREFORE, Defendant Margie Santiago respectfully requests the Court to sever her
15 case from those of the other Defendants.

16 Respectfully submitted this ____ day of March, 2007.
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19
20

21 _____
22 JUAN R. RIVERA
23 Attorney For Defendant Margie Santiago
24

25 Copy mailed\delivered
26 this __ day of February,, 2009,
27 to:

28 The Honorable Margaret R. Mahoney
Judge of the Superior Court

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28