

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.: 2012-CF-35337-A

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY, a.k.a.  
BRANDON LEE BRANTILEY,

Defendant.

SCOTT ELLIS  
2013 AUG 15 A 11:21  
FILED IN VERA-03  
CLERK OF CIR. CT.  
BREVARD CO. FL.

**MOTION TO SEVER DEFENDANTS**

COMES NOW the DEFENDANT, BRANDON LEE BRADLEY, a.k.a. BRANDON LEE BRANTILEY, by and through his undersigned Counsel, and pursuant to Fla. R. Crim. P. 3.152(b), and Article I, Sections 2, 9, 16, 17, and 22 of the Florida Constitution and the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, moves this Honorable Court to sever the trial of the Defendant from the trial of the Co-Defendant, namely ANDRIA MICHELLE KERCHNER, 2012-CF-35337-B.

In support of this motion, the Defendant states the following:

1. Both Defendants Brandon Lee Bradley a.k.a. Brandon Lee Brantley (hereinafter referred to as "Defendant Bradley") and Andria Michelle Kerchner (hereinafter referred to as "Co-Defendant Kerchner") were indicted on April 3, 2012. Specifically, Bradley was indicted on First Degree Premeditated Murder of a Law Enforcement Officer with Firearm, Robbery, Fleeing or Attempting to Elude; High Speed or Wanton Disregard, and



Resisting an Officer With Violence. Specifically, Kerchner was indicted on First Degree Felony Murder of a Law Enforcement Officer, Robbery, and Burglary of a Dwelling.

2. Both made incriminating statement to law enforcement on March 6, 2012.
3. Severance is required in this cause pursuant to Fla. R. Crim. P. 3.152(b)(1)(A) upon a showing that severance "*is appropriate to promote a fair determination of the guilt or innocence of 1 or more defendants.*" Defendant Bradley submits that none of the statements of Co-Defendant Kerchner are admissible against Defendant Bradley. See Lee v. Illinois, 476 U.S. 530; 106 S. Ct. 2056; 90 L. Ed. 2d 514 (1986) (accomplice confessions are presumptively unreliable); As stated by the United States Supreme Court in Cruz v. New York, 481 U.S. at 193 (1987):

where a nontestifying co-defendant's confession incriminating the defendant is not directly admissible against the defendant . . . the Confrontation Clause bars its admission at their joint trial, even if the jury is instructed not to consider it against the defendant, and even if the defendant's own confession is admitted against him.

4. Co-Defendant Kerchner, in addition to giving self-incriminating statements to law enforcement, Co-Defendant Kerchner gave statements to law enforcement in which incriminated Defendant Bradley.
5. Co-Defendant Kerchner shows her distaste towards law enforcement throughout her statement. Her opinions and feelings towards law enforcement can unfairly and unjustly be attributed to Defendant Bradley.
6. Co-Defendant Kerchner's statement carries no reliability as Co-Defendant Kerchner did not identify Defendant Bradley from the photographic lineup shown to her by law enforcement.

7. In addition, Co-Defendant Kerchner made the following statements which establish the unreliability of her statement:

- a. ...denied knowing the shooter
- b. ...denied knowing where she met him
- c. ...gave several names for the Defendant including "*Larry Galvin, Jr., d.o.b. June 22, 1988*", and "*Lou*".
- d. ...doesn't know what the pistol looked like because she doesn't know anything.
- e. ...doesn't know who shot Dep. Pill
- f. ...said "*Larry the shooter was hiding in the back of the SUV*"
- g. ...denied being at the Econolodge (the scene of the alleged robbery) that morning.
- h. ...could not remember what happened at the Econolodge
- i. ...does not know the Defendant.
- j. ...was driving when they left the econolodge (in fact all Econolodge employees testified at their depositions that the SUV was driven by a black male
- k. ...she doesn't remember being in the SUV
- l. ...said she'd "*take the charge*" (meaning that she had shot Dep. Pill)
- m. ...picked photographs out of a photo line-up, but not a picture of the Defendant.
- n. ... did not implicate the Defendant as the shooter until LEOs informed her that the Defendant claimed she was the shooter.

8. Doubt as to the propriety of severance should be resolved in favor of the Defendant, since separate trial could be held without harm to the interests of justice and increasing the likelihood of a fair and error-free trial.
9. In Bruton v. United States, 391 U.S. 123, 20 L.Ed. 2d 476, 88 S.Ct. 1620 (1968) the United States Supreme Court held that a defendant's rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution were violated by the introduction of a non-testifying codefendant's confession which named and incriminated the defendant at a joint criminal trial. Id. at 126. The crux of a Bruton violation is the introduction of statements which incriminate an accused without affording her/him an opportunity to cross-examine the declarant. In the instant case, should the two (2) Co-Defendants be tried together, and should Co-Defendant Kerchner choose not to testify at the defendants' joint trial, introduction of her confession would deny the Defendant his Sixth Amendment right to confront his accusers. The admission of the Co-Defendant's confession to the police, in the absence of her direct testimony, and the Defendant's right to cross examine her, would clearly be a violation of the standard set in Bruton.
10. Failure to grant severance in this cause would violate Defendant Bradley's right to a fair trial in that the jury will not be able to distinguish the evidence relating to each defendant's acts, conduct, and statements. As a result, the jury will be unable to apply the law intelligently and without confusion to determine the individual defendant's guilt or innocence.
11. Defendant Bradley's constitutional rights to confrontation will be violated if severance is not granted. See Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

12. In addition, failure to grant severance would unfairly prejudice Defendant Bradley.

13. Furthermore, Defendant Bradley submits that neither of the options afforded to the State by Fla.R.Crim.P. 3.152(b)(2)- (A): Joint trial with statements not admitted, or - (B): Joint trial with statements admitted, but with references to the Defendant redacted – are sufficient to promote a fair determination of the Defendant's guilt or innocence. The Defendant submits that a fair determination of the Defendant's guilt or innocence can only be accomplished by the remedy provided in 3.152(b)(2)(C): Severance of the moving defendant.

WHEREFORE, Defendant Bradley respectfully requests that this Honorable Court enter an order severing the trial of the Defendant from the trial of his Co-Defendant, and grant whatever further relief the Court deems just.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished via courier delivery to the Office of the State Attorney, Viera, Brevard County, Florida, and to A. Michael Bross, Esq., 997 S. Wickham Road, West Melbourne, FL 32904, this 14th day of August, 2013.



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