No. _____

In the
Supreme Court of the United States

JESSICA VENNIE,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal Rule of Criminal Procedure 8(b) permits joinder of multiple defendants who are "alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(b). Petitioner was charged with racketeering and conspiracy to distribute and possess with intent to distribute narcotics. Petitioner was indicted along with eight co-defendants, and tried with one of those co-defendants. Although petitioner and her co-defendant were alleged to have participated in the affairs of a single legal enterprise for purposes of the Racketeer Influenced and Corrupt Organizations Act (RICO), they were not charged or alleged to have been part of the same conspiracy nor to have known each other.

The question presented is:

Whether charging two defendants with participating in the conduct of a single legal enterprise that has many legal purposes is sufficient to permit joinder under Rule 8(b), where the defendants have not been alleged to have coordinated with one another, connected with one another through any single conspiracy, or participated in a mutually beneficial plan.

LIST OF RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 14.1(b)(iii), Petitioner states that there are no proceedings directly related to the case in this Court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF RELATED PROCEEDINGS ii

TABLE OF AUTHORITIES iv

OPINIONS AND ORDERS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS 1

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE WRIT 5

CONCLUSION 12

APPENDIX

Opinion of the United States Court of Appeals for the Fourth Circuit, *United States v. Vennie*, No. 18-4843, 2019 WL 5395568 (4th Cir. Oct. 22, 2019) 1a

Order of the United States District Court for the District of Maryland, *United States v. Byrd*, Crim. No. JKB-16-0485 (D. Md. filed Nov. 9, 2017) 12a

Judgment of the United States District Court for the District of Maryland, *United States v. Vennie*, Crim. No. JKB-16-0485 (D. Md. filed Nov. 14, 2018) 15a

18 U.S.C. § 1961(1), (4)-(5) 23a

18 U.S.C. § 1962 ..... 27a

Federal Rule of Criminal Procedure 8 ..... 29a

TABLE OF AUTHORITIES

Page(s)

CASES

Bruton v. United States,
391 U.S. 123 (1968).....6

Daley v. United States,
231 F.2d 123 (1st Cir.), *cert. denied*, 351
U.S. 964 (1956).....6

Kotteakos v. United States,
328 U.S. 750 (1946).....6, 11

Schaffer v. United States,
362 U.S. 511 (1960).....5

United States v. Grey Bear,
863 F.2d 572 (8th Cir. 1988).....9

United States v. Lane,
474 U.S. 438 (1986).....5

United States v. Mackins,
315 F.3d 399 (4th Cir.), *cert. denied*, 538
U.S. 1045 (2003).....7

United States v. Satterfield,
548 F.2d 1341 (9th Cir. 1977).....8

United States v. Weiss,
491 F.2d 460 (2d Cir. 1974) 8

United States v. Welch,
656 F.2d 1039 (5th Cir. Unit A 1981),
cert. denied, 456 U.S. 915 (1982).....9

TABLE OF AUTHORITIES—Continued

Page

STATUTES

18 U.S.C. § 1956 3

18 U.S.C. § 1961(1).....2

18 U.S.C. § 1961(4).....7

18 U.S.C. § 1961(5).....2

18 U.S.C. § 1962(c) 2

21 U.S.C. § 846 3

28 U.S.C. § 1254(1).....1

Pub. L. No. 91-452, 84 Stat. 922 (1970) 9

OTHER AUTHORITIES

Fed. R. Crim. P. 8(b) 4, 6, 9, 10

Sup. Ct. R. 10(c) 5

PETITION FOR A WRIT OF CERTIORARI

Petitioner Jessica Vennie respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS AND ORDERS BELOW

The Fourth Circuit's opinion below was unpublished (2019 WL 5395568), and is available at App. 1a-11a. The district court denied Ms. Vennie's motion for severance under the Superseding Indictment on November 9, 2017, and the district court's order can be found at App. 12a-14a. The district court issued its judgment after Ms. Vennie was convicted via a jury trial on November 14, 2018, and the judgment can be found at App. 15a-22a.

JURISDICTION

The Court of Appeals entered its judgment on October 22, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The relevant statutory provisions and rules are available at App. 23a-29a.

STATEMENT OF THE CASE

1. Ms. Vennie was formerly a correctional officer at the Eastern Correctional Institution (ECI), a Maryland prison. She was initially indicted for racketeering conspiracy and for conspiracy to distribute and possess with intent to distribute narcotics, along with forty other co-defendants.

CAJA30-65[1]. The Indictment alleged that there was a broad conspiracy among inmates, correctional officers, and certain persons in the public to smuggle controlled substances into ECI. CAJA31-33, 43-61. As to Ms. Vennie, the core allegation was that she was one of several correctional officers at ECI who participated in the conspiracy. *Id.* Count one of the Indictment charged Ms. Vennie, along with the other forty co-defendants with racketeering conspiracy. CAJA31-58. Count two charged Ms. Vennie together and her forty co-defendants with conspiracy to distribute and possess with intent to distribute narcotics. CAJA59-61.

On September 12, 2017, the grand jury returned a Superseding Indictment, charging Ms. Vennie and the eight remaining defendants in Count One with racketeering in violation of 18 U.S.C. § 1962(c). CAJA66-101.[2] The Superseding Indictment then separately enumerated the alleged predicate acts for each defendant. CAJA75-87. Unlike the Indictment, the Superseding Indictment charged each defendant with engaging in a predicate act of conspiracy separately, as opposed to charging them all together under one conspiracy. *Id.* In addition, Ms. Vennie was charged with conspiracy to distribute and possess

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[1] Citations to "CAJA" refer to the Joint Appendix filed below.

[2] Under RICO, it is unlawful for any person "employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce" to participate in "the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). A "pattern of racketeering activity" is defined as at least two acts of "racketeering activity," which is in turn defined as any of a list of predicate acts and crimes. *Id.* § 1961(1), (5).

with intent to distribute narcotics, in violation of 21 U.S.C. § 846, and money laundering, in violation of 18 U.S.C. § 1956. CAJA94-95. While all of Ms. Vennie's co-defendants were also charged with conspiracy counts, the Superseding Indictment did not allege that Ms. Vennie was part of the same conspiracy as her co-defendants—only that each was connected to the same alleged enterprise, ECI. CAJA66-101. Ms. Vennie was not charged with racketeering conspiracy.

Ms. Vennie moved for severance from her co-defendants under the Superseding Indictment, arguing in part that joinder was not permissible under Rule 8(b). *See also* CAJA102-17. The district court denied the motion. App. 13a. The district court recognized that the Government did not seek to prove a direct connection between all the remaining co-defendants, but nevertheless concluded that the Government's allegation that the co-defendants were part of the same racketeering enterprise was sufficient to permit joinder under Federal Rule of Criminal Procedure 8(b). CAJA138-42, 144-48.

2. After several co-defendants entered into plea agreements, the case proceeded to trial with three remaining co-defendants, one of whom entered into a plea agreement after the jury was empaneled, leaving, Ms. Vennie and one co-defendant, Ms. Byrd. In its opening statement, the Government described its theory of the alleged relationship between Ms. Vennie and Ms. Byrd:

> Now, to be clear, Byrd and Vennie are not charged in the same conspiracy. They are not charged with conspiring with one another. And the government does not have to prove, therefore, that they did

> conspire together, or that they knew each other were smuggling, or even that they knew one another existed. What these defendants have in common is the enterprise in this case, ECI.

CAJA212 (26:5-11).

During the trial, no evidence was introduced suggesting that the conspiracy in which Ms. Vennie allegedly participated overlapped with the conspiracy in which her co-defendant Ms. Byrd allegedly participated. The lengthy testimony against Ms. Byrd, which was entirely unrelated to the charges or allegations against Ms. Vennie, also included discussions of inflammatory issues wholly unrelated to Ms. Vennie. In closing arguments, the Government reiterated that Ms. Vennie and Ms. Byrd were not being charged with participating in the same conspiracy, and explained that only the basic scheme was similar. CAJA 1019 (43:12-19).

On July 5, 2018, the jury found Ms. Vennie guilty of racketeering, conspiracy to distribute and possess with intent to distribute narcotics, and money laundering. CAJA1107-08. Ms. Byrd was acquitted on all counts. CAJA1106-07.

3. On appeal, Ms. Vennie argued in relevant part that her conviction should be vacated due to improper joinder under Rule 8(b) and the district court's refusal to sever her case from that of her co-defendant. CA4 Opening Br. 13-16. She argued that the Government failed to point to any participants in common, to allege that the two defendants were separate arms of the same conspiracy, or to point to any evidence that they were part of the same chain of actors. *Id.*; *see also* Fed. R. Crim. P. 8(b) (requiring for joinder that

two defendants have participated in the "same series of acts or transactions").

On October 22, 2019, the Fourth Circuit affirmed in an unpublished decision. App. 1a. The court of appeals concluded that it was the allegations in the Superseding Indictment—and not the evidence at trial—that must be evaluated in determining whether joinder was proper. The court then held that "[b]ecause the superseding indictment alleged that both women committed two of the same racketeering acts, in furtherance of the same enterprise, and at the same general time, the district court acted well within the bounds of Rule 8(b) in allowing joinder." App. 3a.

REASONS FOR GRANTING THE WRIT

This Court's review is warranted because the Fourth Circuit decided an important question of federal law that has not been, but should be, settled by this Court. *See* Sup. Ct. R. 10(c). The interpretation of Rule 8(b) in the context of substantive racketeering charges is an important federal issue. Although this Court has addressed Rule 8(b) in the context of conspiracy claims, *Schaffer v. United States*, 362 U.S. 511, 513-14 (1960), and in relation to whether misjoinder under Rule 8(b) falls under the harmless error standard, *United States v. Lane*, 474 U.S. 438, 447 (1986), the Court has never addressed how Rule 8(b) applies in the context of a substantive racketeering charge. This Court should grant review and clarify that merely alleging that two defendants "committed two of the same racketeering acts, in furtherance of the same [legal] enterprise, and at the same general time" is insufficient to satisfy Rule 8(b). App. 3a.

1. Rule 8(b) provides that defendants may be joined if they are "alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(b). That rule serves as an important limitation on when the Government can charge and try multiple defendants together. This Court has recognized that in those situations where Rule 8(b) permits joinder it does so to "promote economy and efficiency and to avoid a multiplicity of trials." *Bruton v. United States*, 391 U.S. 123, 131 n.6 (1968) (quoting *Daley v. United States*, 231 F.2d 123, 125 (1st Cir.), *cert. denied*, 351 U.S. 964 (1956)).

Although joinder is an important tool in that respect, the limits of Rule 8(b) are crucial to avoiding "substantial prejudice to the right of the defendants to a fair trial." *Id.* A defendant charged with committing a crime is entitled to a separate trial from other defendants who have not participated in the same act or transaction or the same series of acts or transactions. *See* Fed. R. Crim. P. 8(b); *Kotteakos v. United States*, 328 U.S. 750, 775 (1946) (a defendant has the "right not to be tried *en masse* for the conglomeration of distinct and separate offenses committed by others").

The Fourth Circuit's interpretation of Rule 8(b) in the context of substantive racketeering charges nullifies the rule's limits requiring multiple defendants to have been involved in the same "series of acts or transactions" in order to be charged together. Under the Fourth Circuit's interpretation, two defendants need not be involved in the same conspiracy, work together, or otherwise know each other; it is enough that two RICO defendants commit "two of the same racketeering acts, in furtherance of

the *same enterprise*, and at the same general time." App. 3a (emphasis added). The joinder inquiry thus shifts from looking to the actions of multiple defendants to determine whether they are "part of the same act or transaction" (as required under Rule 8(b), to looking at whether otherwise unconnected acts can be somehow linked through allegations involving the same legal entity affecting interstate or foreign commerce (that is, a RICO "enterprise"). Under RICO, an enterprise can include almost any grouping of people, large or small, closely linked or distantly connected. RICO defines an enterprise as "including any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). To be sure, two defendants may be sufficiently connected to be charged together under Rule 8(b) where they are both linked to an association-in-fact criminal conspiracy that is defined as the enterprise. But where the enterprise is defined as a large government organization, as in Ms. Vennie's case (where the enterprise was defined as ECI), a shared connection to the same enterprise does not similarly entail a connection between the criminal activity that they are charged with.

The Fourth Circuit's RICO-specific standard expands the limits of Rule 8(b) to become co-extensive with those of its more permissive partner, Rule 8(a), which governs the joinder of multiple offenses (rather than multiple defendants). While Rule 8(a) permits joinder of offenses which are of "the same or similar character," such a loose nexus is insufficient under Rule 8(b). *See United States v. Mackins,* 315 F.3d 399, 412 (4th Cir.) (comparing Rule 8(a)'s looser

requirements with those of Rule 8(b)), *cert. denied*, 538 U.S. 1045 (2003); *United States v. Satterfield*, 548 F.2d 1341, 1344 (9th Cir. 1977) (same); *United States v. Weiss*, 491 F.2d 460, 467 (2d Cir. 1974) (same).

The Fourth Circuit's decision would permit almost any two defendants charged with substantive racketeering to be tried together, as the sole nexus that would be required for joinder is a link to the same broadly defined legal enterprise. For example, a defendant who is charged with racketeering by repeatedly bribing a customs agent on the Canadian border could be charged under the same indictment and tried with someone who is charged with repeatedly bribing a customs agent on the Mexican border, despite not knowing one another, not being connected to one another through any larger criminal scheme or organization, and not having any shared aim. All the Government would need to do is define the RICO enterprise as "the U.S. Customs and Border Protection Agency." Similarly, a banker charged with racketeering for laundering money while employed by a bank branch in Portland, Oregon could be charged together with another banker indicted for engaging in (entirely unconnected) money laundering while working at another branch of that same bank in Portland, Maine.

In enacting RICO, Congress expanded the Government's ability to charge multiple defendants together in the same case, but it did not override the basic limits of Rule 8(b). Nor would interpreting it to have done so be consistent with Congress's expressed goals. Through RICO, Congress quite clearly sought to "eradicate[e] organized crime . . . by establishing new penal prohibitions, and by providing enhanced

sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970). There is nothing to suggest that RICO was intended to establish a mechanism to charge crimes together that under any definition are unorganized. *Id.*

The Fourth Circuit's RICO-specific approach thus flies in the face of the statutory text, *see* Fed. R. Crim. P. 8(b), and the common-sense notion that "there must be some common conspiracy or scheme connecting *all* acts of *the series* in order to provide proper joinder," *United States v. Grey Bear*, 863 F.2d 572, 575 (8th Cir. 1988) (per curiam), and it cannot be justified by RICO's text, history, or purpose. This Court should grant review to correct that error.

2. The Fourth Circuit is not alone in its erroneous interpretation of Rule 8(b) in the context of substantive racketeering charges. In *United States v. Welch*, the Fifth Circuit held that joinder of two separate conspiracies was permitted because they were linked in the indictment by a substantive RICO count connecting both conspiracies to the same enterprise (a Sherriff's office). 656 F.2d 1039, 1051 (5th Cir. Unit A 1981), *cert. denied*, 456 U.S. 915 (1982). The Fifth Circuit held that defendants charged with participating in two separate conspiracies can be joined under Rule 8(b) so long as all the predicate acts are "committed in the conduct of the affairs of a[] [single] enterprise." *Id.* at 1052.

3. Because of this erroneous interpretation of Rule 8(b), Ms. Vennie was charged and tried together with a co-defendant whom she did not know or interact with, whom her alleged co-conspirators did not interact with, and with whom her alleged

criminal acts were entirely separate from. Even looking solely at the Superseding Indictment against Ms. Vennie and her co-defendants, the basic requirements of Rule 8(b) have not been met. CAJA66-101. Nothing in the Superseding Indictment alleges that the multiple defendants committed the same acts or series of transactions. *See* Fed. R. Crim. P. 8(b). While the Superseding Indictment charged Ms. Vennie and her co-defendants together under the same substantive racketeering charge, each of the identified predicate acts was separate for each defendant. CAJA75-87. Nor did the Superseding Indictment include a racketeering conspiracy charge.

The Government's case at trial further confirms that joinder was improper. From its opening statements, the Government made its position clear that Ms. Vennie and her co-defendant Ms. Byrd were not connected to each other through being members of the same conspiracy, but only that they were connected to ECI. CAJA212 (26:5-11). Nor did any of the testimony suggest that Ms. Vennie and Ms. Byrd knew each other at all, let alone were part of the same larger conspiracy. The prejudicial testimony regarding Ms. Byrd was entirely unrelated to Ms. Vennie, and would not have been admissible had Ms. Vennie had the separate trial to which she was entitled. In closing arguments, the Government confirmed what the evidence had showed, stating: "Byrd and Vennie were not in the same conspiracy. They didn't conspire with one another. What joins—what they have in common is the fact that they're in ECI, and that is a racketeering enterprise." CAJA1019 (43:12-15). However, being employed by the same government agency is insufficient to permit

joinder under Rule 8(b), even where both were charged with substantive racketeering in connection with the same enterprise.

The facts of this case provide a particularly appropriate vehicle for review. In the Fifth Circuit's decision in *Welch*, for instance, there was at least an arguable connection between the two conspiracies because the same sheriff was at the center of both. Here, in contrast, the only link between the defendants was their employment by the same large legal enterprise and the fact that they were charged with similar—yet entirely independent—criminal acts. There was no allegation that a single co-conspirator linked Ms. Vennie's actions with that of her co-defendants. This Court should take the opportunity to clarify that more is needed before multiple defendants can be "tried *en masse* for the conglomeration of distinct and separate offenses committed by others." *Kotteakos*, 328 U.S. at 775.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 21, 2020

APPENDIX

TABLE OF CONTENTS

Page

Opinion of the United States Court of Appeals for the Fourth Circuit, *United States v. Vennie*, No. 18-4843, 2019 WL 5395568 (4th Cir. Oct. 22, 2019) 1a

Order of the United States District Court for the District of Maryland, *United States v. Byrd*, Crim. No. JKB-16-0485 (D. Md. filed Nov. 9, 2017) 12a

Judgment of the United States District Court for the District of Maryland, *United States v. Vennie*, Crim. No. JKB-16-0485 (D. Md. filed Nov. 14, 2018) 15a

18 U.S.C. § 1961(1), (4)-(5) 23a

18 U.S.C. § 1962 ..... 27a

Federal Rule of Criminal Procedure 8 ..... 29a

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4843

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESSICA VENNIE,

Defendant-Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
James K. Bredar, Chief District Judge. (1:16-cr-00485-JKB-8)

Submitted: September 20, 2019
Decided: October 22, 2019

Before: NIEMEYER and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion

Rebekah L. Soule, Jonathan C. Su, LATHAM & WATKINS LLP, Washington, D.C., for Appellant. Robert K. Hur, United States Attorney, Leo J. Wise, Assistant United States Attorney, Robert R. Harding, Assistant United States Attorney, OFFICE OF THE

UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following a multi-day jury trial in June 2018, Jessica Vennie was convicted of racketeering, in violation of 18 U.S.C. § 1962(c) (2012); conspiracy to distribute and to possess with intent to distribute K2 (synthetic marijuana), in violation of 21 U.S.C. §§ 841, 846 (2012); and money laundering conspiracy, in violation of 18 U.S.C. § 1956(h) (2012). The district court sentenced Vennie to 72 months in prison. Vennie appeals, raising two issues pertaining to her convictions and one challenge to her sentence. For the reasons that follow, we affirm.

I.

Vennie first argues that her case was improperly joined with that of her codefendant, Jocelyn Byrd.[1] This court reviews "*de novo* the district court's refusal to grant defendants' misjoinder motion to determine if the initial joinder of offenses and defendants was proper under Fed. R. Crim. P. 8(a) and 8(b) respectively." *United States v. Mackins*, 315 F.3d 399, 412 (4th Cir. 2003). If the initial joinder was correct, we then analyze whether the denial of the defendant's motion to sever amounts to an abuse of discretion under Fed. R. Crim. P. 14. *Id*. But if the joinder was erroneous in the first instance, we review "this nonconstitutional error for harmlessness, and [will]

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[1] The jury acquitted Byrd of all charges.

reverse *unless* the misjoinder resulted in no actual prejudice to the defendants because it had no substantial and injurious effect or influence in determining the jury's verdict." *United States v. Cannady*, 924 F.3d 94, 102 (4th Cir. 2019) (brackets and internal quotation marks omitted).

We first conclude that the district court's joinder ruling was proper. As the Sixth Circuit recently observed, "[f]or joinder, the allegations in the indictment are what matter." *United States v. Ledbetter*, 929 F.3d 338, 346 (6th Cir.), *pet. for cert. filed*, __ U.S.L.W. __ (U.S. Aug. 22, 2019) (No. 19-5663). Under Rule 8(b), an indictment may join two or more defendants if those defendants "are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Here, Vennie and Byrd, both correctional officers employed at Eastern Correctional Institution (ECI) during the relevant time frame, were charged with a substantive racketeering offense related to the same alleged enterprise—ECI. The superseding indictment charged that Vennie and Byrd committed two of the same racketeering acts. Because the superseding indictment alleged that both women committed two of the same racketeering acts, in furtherance of the same enterprise, and at the same general time, the district court acted well within the bounds of Rule 8(b) in allowing joinder. *Accord id.* (affirming the joinder of multiple defendants in a RICO prosecution where "the defendants were charged with participating in or assisting the same racketeering enterprise" and "[e]very count in the indictment allegedly arose out of defendants' conduct on behalf of or in coordination with the" identified enterprise); *United States v. Whitfield*, 590 F.3d 325,

355 (5th Cir. 2009) ("When otherwise separate offenses are charged as predicate acts of a substantive RICO count, they may be related to each other in such a way as to satisfy Rule 8(b)" (alteration and internal quotation marks omitted)).

Vennie next contends that she was prejudiced by the denial of her motion to sever and thus that the court abused its discretion in denying that motion. But the general rule in this circuit is clear: "when defendants are indicted together, they should be tried together." *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012). To show prejudice resulting from the denial of a pretrial motion to sever, the defendant must satisfy "the heavy burden" of demonstrating that the jury could not reach "a reliable judgment as to guilt or innocence" because of the joint trial. *United States v. White*, 737 F.3d 1121, 1133 (7th Cir. 2013) (internal quotation marks omitted). Vennie's efforts to make such a showing fall short.

First, that evidence was offered of no relevance to Vennie's individual charges is not dispositive. It is well settled that "a defendant is not entitled to severance merely because he might have had a better chance of acquittal in a separate trial." *United States v. Lighty*, 616 F.3d 321, 348 (4th Cir. 2010). The Supreme Court has held that limiting instructions "often will suffice to cure any risk of prejudice" caused by joinder, *Zafiro v. United States*, 506 U.S. 534, 539 (1993), and the court gave such a limiting instruction in this case. Second, the allegedly inflammatory evidence presented to establish Byrd's personal relationships with certain inmates cannot be said to have unduly swayed the jury given that the jury acquitted Byrd of all charges—despite the admission of this evidence. Finally, Vennie does not

demonstrate that the testimonial evidence as to retaliatory prison gang violence was of such a quality or pervasiveness as to create a concern that it unfairly and irreparably infected the jury. We thus affirm the district court's joinder ruling.

II.

Vennie next argues the district court erred in denying her motion for a mistrial. We review the denial of a motion for a mistrial for an abuse of discretion. *United States v. Wallace*, 515 F.3d 327, 330 (4th Cir. 2008).

Vennie's motion for a mistrial hinged on one statement made by FBI Special Agent Joseph Perrino (Agent Perrino). Specifically, on cross-examination, Vennie's lawyer questioned Agent Perrino about Agent Perrino's efforts to prepare a cooperating co-defendant to testify. When asked if he told this witness the case was proceeding against Vennie and Byrd, Agent Perrino responded, "Well, sir, you know, we had a guilty plea the morning of—." (J.A. 831).[2] The district court immediately stopped Agent Perrino's testimony and conferred with the parties outside the jury's presence.

At this point, Vennie moved for a mistrial on the ground that Agent Perrino's just quoted testimony improperly informed the jury of a non-testifying co-defendant's guilty plea. *See United States v. Blevins*, 960 F.2d 1252, 1260 (4th Cir. 1992) ("[E]vidence of a non-testifying co-defendant's guilty plea should not be put before the jury."). In denying Vennie's motion for a mistrial, the district court first recognized that

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[2] Citations to the "J.A." refer to the joint appendix submitted by the parties.

whether the challenged testimony constituted impermissible testimony as to a non-testifying co-defendant's guilty plea is questionable because Agent Perrino neither identified the co-defendant by name nor explicitly linked the mentioned guilty plea to a defendant in this case. Nonetheless, the district court concluded that, assuming error occurred, such error was harmless. Thereafter, the district court instructed the jury that any other person's decision to plead guilty was a "personal decision[] about their own guilt"; that the jury should not "speculate about the reasons why" co-defendants were not part of the trial; and that the jury should not use any individual's decision to plead guilty "in any way as evidence against or unfavorable to the defendants on trial here." (J.A. 844-45).

On appeal, Vennie contends the district court erred in denying her motion for a mistrial. In support, Vennie posits that the district court erred in allowing Agent Perrino to inform the jury of a non-testifying co-defendant's guilty plea and that such error is not harmless beyond a reasonable doubt. In response, the Government first contends that Agent Perrino's testimony on cross-examination did not place before the jury any improper evidence of a non-testifying co-defendant's guilty plea. Alternatively, the Government maintains that any error resulting from the statement is harmless beyond a reasonable doubt.

It is well settled "that evidence of a non-testifying co-defendant's guilty plea should not be put before the jury." *Blevins*, 960 F.2d at 1260. The two reasons for this restriction are: (1) the co-defendant is not present to be cross-examined about his motives for pleading guilty; and (2) the jury might consider the co-defendant's guilty plea as evidence of the defendant's

guilt. *Id.* Although we have recognized "that the error in introducing the guilty pleas of non-testifying co-defendants is of constitutional dimension[,]" such error is subject to harmless error review. *Id.* at 1262; *see United States v. Poole*, 640 F.3d 114, 118-19 (4th Cir. 2011) (explaining that the trial court's "repeated references" to the earlier guilty pleas of co-defendants is a trial error reviewable for harmlessness and not a structural error). Under this standard, a mistrial must be declared unless this court is satisfied "beyond a reasonable doubt" that the impact of the error was harmless. *Blevins*, 960 F.2d at 1262. The harmlessness inquiry "requires a quantitative assessment of the likely impact of the error measured against the other evidence presented at trial." *Blevins*, 960 F.2d at 1263. In other words, we ask whether "a rational trier of fact would have found [Vennie] guilty absent the error." *Poole*, 640 F.3d at 120.

Even assuming *arguendo* that Agent Perrino impermissibly apprised the jury of a non-testifying co-defendant's guilty plea, the district court did not abuse its discretion in denying Vennie's motion for a mistrial on this basis because such assumed error was harmless beyond a reasonable doubt. Notably, after the challenged testimony arose, the district court gave the jury an exacting and complete cautionary instruction on this issue, and this court presumes that a jury follows this type of cautionary instruction. *United States v. Saint Louis*, 889 F.3d 145, 155 (4th Cir.), *cert. denied*, 139 S. Ct. 269 (2018). By way of this instruction, the district court effectively safeguarded Vennie from any prejudice resulting from Agent Perrino's response. *Id.* at 155-56. Nor is Vennie's claim of irreparable prejudice particularly

colorable when considered in light of the weight of the Government's evidence, which included inculpating testimony by two co-defendants; testimony from an eyewitness who observed Vennie and two co-conspirators packaging contraband for Vennie to smuggle into ECI; and robust documentary evidence offered through various witnesses, which included corroborating text messages and evidence of financial transactions. Our examination of the entire trial leads us to this inescapable conclusion: a rational finder of fact would have found Vennie guilty absent the challenged testimony. *Poole*, 640 F.3d at 120. Accordingly, we conclude the district court did not abuse its discretion in denying Vennie's motion for a mistrial, *see Wallace*, 515 F.3d at 330, because Agent Perrino's statement "was harmless beyond a reasonable doubt," *Blevins*, 960 F.2d at 1262.

III.

Finally, Vennie assigns reversible procedural error to the two role enhancements applied by the district court at sentencing. In reviewing any federal sentence, this court must first ensure that the district court did not commit any "significant procedural error," such as failing to properly calculate the applicable Guidelines range, consider the 18 U.S.C. § 3553(a) (2012) factors, or adequately explain the sentence. *Gall v. United States*, 552 U.S. 38, 51 (2007). If a party asserts on appeal a claim of procedural sentencing error that it preserved before the district court, we review for abuse of discretion and will reverse unless we conclude that the error was harmless. *United States v. Lynn*, 592 F.3d 572, 576 (4th Cir. 2010). In evaluating a challenge to the district court's computation of a defendant's Guidelines range, this court reviews for clear error

the underlying factual determinations made by the district court and reviews de novo its relevant legal conclusions. *See United States v. Alvarado Perez*, 609 F.3d 609, 612 (4th Cir. 2010).

In the presentence report, the probation officer grouped the three counts of conviction and relied on the money laundering guideline, U.S. Sentencing Guidelines Manual § 2S1.1(a)(1) (2016), to determine Vennie's base offense level. This guideline directs the use of the base offense level "for the underlying offense from which the laundered funds were derived," which, in this case, was racketeering. The racketeering guideline, USSG § 2E1.1(a)(1), provides for a base offense level of 19. To this, the probation officer recommended a two-level enhancement under USSG § 2S1.1(b)(2)(B) because Vennie was convicted under 18 U.S.C. § 1956. The probation officer also recommended a two-level enhancement for abuse of a position of trust, *see* USSG § 3B1.3, and a four-level enhancement for being a leader or organizer, *see* USSG § 3B1.1(a). Over Vennie's objections, the district court sustained the Chapter 3 enhancements, but reduced the role enhancement to three levels for being a manager or supervisor. *See* USSG § 3B1.1(b).

Vennie contends on appeal that the district court procedurally erred in its application of the Chapter 3 enhancements because it relied on acts apart from the conduct related to the money laundering conspiracy to support the enhancements. Vennie's argument finds support in the Guidelines Commentary to USSG § 2S1.1, which provides: "[A]pplication of any Chapter Three adjustment shall be determined based on the offense covered by this guideline (*i.e.*, the laundering of criminally derived funds) and not on the underlying offense from which the laundered funds

were derived." USSG § 2S1.1 cmt. n.2(C); *see United States v. Howard*, 309 F. App'x 760, 769 (4th Cir. 2009) (argued but unpublished) (finding reversible sentencing error when the district court's "manager or supervisor" finding was based on the defendant's role in the underlying prostitution ring as opposed to the money laundering). However, upon review of the record, we conclude that both enhancements were properly applied—even with the limitation on what aspects of Vennie's conduct may be considered. *See Attkisson v. Holder*, 925 F.3d 606, 624 (4th Cir. 2019) (recognizing that we may "affirm on any grounds supported by the record" (internal quotation marks omitted)).

As to USSG § 3B1.3, Vennie's position as a correctional officer at ECI is undoubtedly a position of trust, and there is no room to credibly doubt that Vennie used that position to facilitate the money laundering conspiracy. Specifically, the trial testimony established that Vennie dictated the price, the method, and the timing of payments made in exchange for Vennie smuggling contraband into the prison. Vennie's smuggling efforts were orchestrated by an ECI inmate, aided by his nonincarcerated girlfriend. Implicit in the court's ruling on this issue is the conclusion that Vennie's role as a correctional officer in the prison in which this inmate was housed enhanced her ability to successfully dictate these terms. This conclusion is eminently logical and required no further discussion.

The record also confirms that Vennie's conduct solely related to the money laundering conspiracy warranted the three-level enhancement under USSG § 3B1.1(b). The trial evidence established that Vennie was critical in (1) designing the money

laundering scheme through which she hid her ill-gotten gains in PayPal accounts issued in the names of her sister and cousin; and (2) directing payments to those accounts, which were made to compensate Vennie for smuggling contraband into ECI. *Cf. Howard*, 309 F. App'x at 769. Although it did not entirely accept the defense's argument on this point, the district court, which was intimately familiar with Vennie's criminal conduct, made this finding "even with respect to the money laundering specifically." (J.A. 1182). We thus hold that, regardless of the rationale expressed at sentencing, the district court properly applied both enhancements.

Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.		**CRIMINAL**
	*	**NO. JKB-16-484**
ROZL YN BRATTEN, *et al.*,	*	
Defendants,		

* * * * * * * * * * * *

UNITED STATES OF AMERICA	*	
	*	
v.		**CRIMINAL**
	*	**NO. JKB-16-485**
SHERIMA BELL, *et al.*,	*	
Defendants.		

* * * * * * * * * * * *

ORDER

The Court held a motions hearing in this case on November 8, 2017. For the reasons stated in open court, it is ORDERED:

1. Defendant Jocelyn Byrd's Motion to Dismiss Count One of the Superseding Indictment (Case No. 16-485, ECF No. 1039) is DENIED.
2. Defendant Jocelyn Byrd's Motion for a Bill of Particulars (Case No. 16-485, ECF No. 1040) is DENIED WITHOUT PREJUDICE.

3. Defendant Dameshia Vennie's Motion for a Bill of Particulars (Case No. 16-485, ECF No. 1046) is DENIED WITHOUT PREJUDICE.
4. All motions to sever in Case No. 16-484 (ECF Nos. 908 & 910) are DENIED WITHOUT PREJUDICE.
5. Defendant Jocelyn Byrd's Motion to Dismiss or Sever (Case No. 16-485, ECF No. 1042) is DENIED insofar as it seeks dismissal of the Superseding Indictment on improper joinder grounds and DENIED WITHOUT PREJUDICE insofar as it seeks severance.
6. Defendant Jessica Vennie's Motion to Sever (Case No. 16-485, ECF No. 1045) is DENIED insofar as it seeks dismissal of the Superseding Indictment on improper joinder grounds and DENIED WITHOUT PREJUDICE insofar as it seeks severance.
7. Defendant Alvin Williams's Second Motion for Severance (Case No. 16-485, ECF No. 1047) is DENIED insofar as it seeks dismissal of the Superseding Indictment on improper joinder grounds and DENIED WITHOUT PREJUDICE insofar as it seeks severance.
8. Defendant Dameshia Vennie's Motion to Sever (Case No. 16-485, ECF No. 1048) is DENIED WITHOUT PREJUDICE.
9. Defendant Rozlyn Bratten's Motion for Appropriate Relief (Case No. 16-484, ECF No. 911) is DENIED insofar as it seeks dismissal of Count One of the Superseding Indictment and is DENIED WITHOUT PREJUDICE insofar as it requests that trial be conducted in the Southern Division of the United States District Court for

the District of Maryland located in Greenbelt, MD.

DATED this 8 day of November, 2017.

BY THE COURT:
/s/James K. Bredar
James K. Bredar
Chief Judge

United States District Court
District of Maryland

UNITED STATES OF AMERICA

v.

JESSICA VENNIE

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)
Case Number: JKB-1-16-CR-00485-008
Defendant's Attorney: Jonathan Chunwei Su, CJA, Rebekah Soule, Norman Anderson & Catherine Yao
Assistant U.S. Attorney: Leo Joseph Wise

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ , which was accepted by the court.

☒ was found guilty on count(s) 1s, 8s, & 9s of the Superseding indictment after a plea of not guilty.

Title & Section	Nature of Offenses	Date Offense Concluded	Count Number(s)
18: l 962(c)	Racketeering.	10/05/2016	1s
21:846	Conspiracy To Distribute and Possess W/Intent To Distribute K2.	10/05/2016	8s
18:1956(h)	Money Laundering Conspiracy.	10/05/2016	9s

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

☐ The defendant has been found not guilty on count(s) _____

☒ Counts Original Indictment is dismissed on the motion to the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

November 9, 2018
Date of Imposition of Judgment

/s/ James K. Bredar Nov. 13, 2018
James K. Bredar Date
United States District Judge

FILED
US DISTRICT COURT
DISTRICT OF MARYLAND
2018 NOV 14 PM 12:16
CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **72 months as to Count ls; 72 months as to Count 8s, to**

run concurrent with count no. 1; and 72 months as to Count 9s, to run concurrent with count nos. ls and 8s, for a total term of 72 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be placed in a facility consistent with her security level that is as close as possible to Ft. Worth, Texas.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____

☐ as notified by the United States Marshall.

☒ The defendant shall surrender, at her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal **which shall not be sooner than January 7, 2019**. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☒ before 12:00 noon on Monday, February 11, 2019 .

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to Count No. ls: 3 years as to Count No. 8s: and 3 years as to Count No. 9s, to run concurrent with each other, for a total term of 3 years.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. MANDATORY CONDITIONS

1) You must not commit another federal, state or local crime.
2) You must not unlawfully possess a controlled substance.
3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)

* * *

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$300,000	$.00	$.00

☐ CVB Processing Fee $30.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
		$.00	
TOTALS	$_____	$ 0.00	

* * *

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A. ☒ In full immediately; or

* * *

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

☒ NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.

* * *

18 U.S.C. § 1961(1), (4)-(5)

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503

(relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons).,[1] sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section

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[1] So in original.

2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or

section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

* * *

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

* * *

18 U.S.C. § 1962

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the

activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Federal Rule of Criminal Procedure 8

Rule 8. Joinder of Offenses or Defendants

(a) JOINDER OF OFFENSES. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

(b) JOINDER OF DEFENDANTS. The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.