

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

CR 16-50163-04

Plaintiff,

UNITED STATES' RESPONSE TO  
THE DEFENDANT TERRY  
FEATHERMAN'S MOTION TO SEVER  
DEFENDANTS

vs.

TERRY FEATHERMAN,

Defendant.

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Comes now the United States of America, by and through Assistant United States Attorney Megan Poppen, to submit the following response to the defendant Terry Featherman's motion to sever defendants. (Dockets 111-112).

**FACTS**

Oglala Sioux Tribe Department of Public Safety (OST DPS) Law Enforcement Officers were dispatched to Roberta Featherman's residence in Potato Creek on the evening of November 11, 2016. Officers were advised that a fight had taken place among the occupants of Roberta's home and C.W.H. After being dispatched at approximately 11:30 p.m. a second caller advised that Roberta's windows were being broken out by the Wounded Heads.

OST DPS Officer Ronald Red Owl arrived on scene and observed the broken windows to Roberta's home. Officer Red Owl made contact with Roberta and Harold Red Owl (CR's 16-50163-01 and 02), on the side of the house. Harold and Roberta were inside the house and Officer Red Owl was outside the residence. Harold advised that he would let Officer Red Owl enter the house.

After several minutes, Harold appeared at the front door and allowed Officer Red Owl to enter. Officer Red Owl located Jeff Shoulders, hiding in a closet in an upstairs bedroom.

Shortly thereafter, Officer Tim Peete discovered I.W.C. and J.W.C. on the floor in the living room, covered with blankets. The children were severely emaciated and wearing only diapers. Roberta was eventually located under the stairs in the basement, passed out and hiding. Roberta was intoxicated and arrested. All adults present in the home were arrested and transported to jail. Those arrested at the home were Roberta Featherman (CR 16-50163-01), Harold Red Owl (CR 16-50163-03), Terry Featherman (CR 16-50163-04), Tressa Means Featherman (CR 16-50163-05), Jeff Shoulders (CR 16-50163-06) and Rainbow Spoonhunter (CR 16-50163-07).

Officers learned from a juvenile witness that Darcel Featherman was the mother of the young emaciated children and that the father was Isaac White Crane. The juvenile witness advised that Roberta and Harold were J.W.C.'s caretakers and that Darshan Featherman (CR 16-50163-02) was I.W.C.'s caretaker. Darshan was located at a nearby home and arrested. Darshan was not intoxicated. Through the investigation, Federal Bureau of Investigation Special Agent (SA) Mark Lucas learned that Darcel gave I.W.C. to Darshan and gave J.W.C. to Roberta.

On November 18, 2016, SA Lucas and FBI SA Matt Weber interviewed the defendant, Terry Featherman, at the Adult Offenders Facility in Pine Ridge,

South Dakota. The interview was conducted after the defendant was fully advised of his *Miranda* rights and voluntarily waived his *Miranda* rights and signed a form acknowledging he waived his *Miranda* rights.

From the beginning, SA Lucas' questioning towards the defendant was focused on his knowledge of the abuse and neglect of I.W.C. and J.W.C. occurring in Roberta's home. The defendant admitted that he had been living at Roberta's residence for the last month and admitted that J.W.C. and I.W.C. lived at the home. The defendant admitted that the children lived in the north corner of the living room and that the children slept in a crib (toddler bed). The defendant admitted that he knew the children had been living at Roberta's residence for the past three years. The defendant acknowledged that the condition the children were in was not healthy. The defendant admitted that Roberta received money in exchange for taking care of the children. The defendant stated that J.W.C. was Darcel's child and that I.W.C. was Darshan's<sup>1</sup> child and that Darshan had been living at Roberta's residence because she had broken up with her boyfriend. The defendant acknowledged that he could have done something, but instead, did nothing to assist the children in their dire medical state.

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<sup>1</sup> I.W.C. is also Darcel Featherman's child, but Darcel gave Darshan I.W.C.

**LEGAL ARGUMENT**

The defendant has moved for a separate trial in this assault resulting in this serious bodily injury and felony child abuse and neglect case citing Fed. R. Crim. P. 14(a). Under the provisions of Rule 14, a defendant must demonstrate that he has been prejudiced by the joinder before the court in its discretion may consider granting severance. Fed. R. Crim. P. 14(a). A disparity in the weight of evidence between the codefendants is not sufficient grounds for severance. *United States v. Bordeaux*, 84 F. 3d 1544, 1547 (8th Cir. 1996); *see also United States v. Lee*, 374 F.3d 637, 646 (8th Cir. 2004) (“It is not an abuse of discretion to deny a severance motion when . . . there is varying strength in the evidence against each defendant.”).

The defendant, Terry Featherman, along with his codefendants, Tressa Means Featherman, Jeff Shoulders and Rainbow Spoonhunter are charged in counts three and four of the indictment with aiding and abetting felony child abuse and neglect. Each codefendant, with the exception of Tressa Means Featherman made statements regarding their knowledge and condition of the children who were found in Roberta’s home on the evening of November 11, 2016.

In support of his motion, the defendant argues that he will be prejudiced if the severance is not granted because the jury will be unable to

“compartmentalize” the evidence as it relates to him and that it will prejudice him. Docket 112, page 4. The burden is upon the defendant to show “real prejudice.” *United States v. Davis*, 534 F.3d 903, 916 (8th Cir. 2008). “Real prejudice” is shown if either the moving defendant's defense is irreconcilable with the defense of the codefendant or the jury would be unable to compartmentalize the evidence as it relates to the separate defendants. *Id.* at 916–17. “Generally, the risk that a joint trial will prejudice one or more of the defendants ‘is best cured by careful and thorough jury instructions.’” *Id.*

The defendant argues that he was not “legally responsible for their care,” unlike Roberta, Harold and Darshan. Docket 112, page 4. Further, the defendant argues that he didn’t have “any direct interaction with the girls” and that he did not know about the violations of SDCL § 26-10-1<sup>2</sup> occurring within the home. *Id.* The defendant argues that due to these factors, he will be prejudiced and the jury will be unable to compartmentalize the charges as they relate to his conduct. Like the Court in *United States v. Hazelrigg*, the District Court will ensure that, “the jury will be instructed on what the government needs to prove in relation to each offense and each defendant charged. And the jury

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<sup>2</sup> Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute aggravated assault, is guilty of a Class 4 felony. If the victim is less than seven years of age, the person is guilty of a Class 3 felony.

will be instructed to consider each defendant separately.” 2009 WL 3617562, \*2 (DSD October 29, 2009).

First, SDCL § 26-10-1 does not require that the offender be “legally responsible” for the child or children abused and neglected. Additionally, the jury will be able to compartmentalize and differentiate the charges as they apply to different codefendants. As such, because Roberta, Harold, and Darshan were the primary care takers of J.W.C. and I.W.C. and were responsible for the children, they are the only three individuals charged in counts two and three of the indictment charging aiding and abetting assault resulting in serious bodily injury in violation of 18 U.S.C. §§ 1153, 2, 113(a)(6), and 3559(f). The focus of the remaining four defendants, which includes the defendant, is their knowledge and actions regarding the children and the abuse and neglect the children were subjected to.

The defendant also claimed he did not have any interaction with the girls, yet he admitted that he knew the children had lived in the house for the last three years, knew where they slept and knew the biological mother of J.W.C. and at the very least knew that I.W.C. was supposed to be primarily taken care of by Darshan. By his own admission, the defendant admitted to living in the house during the time period in which the children were starved. The defendant was more than a sporadic resident of Roberta’s residence. He was an unemployed,

college educated man<sup>3</sup>, who consumed alcohol with Roberta and the other residents of the residence and witnessed J.W.C. and I.W.C. be exposed to abuse and neglect and did nothing to assist the children. The defendant also admitted that he saw the children, but clothed. Regardless of whether the children were clothed or not, it is undisputed that the emaciated condition the children were in would be clearly recognizable.

To show clear prejudice, the defendant must show that his defense is irreconcilable with that of a codefendant or that the jury was unable to compartmentalize the evidence in the case. *Bordeaux*, 84 F. 3d at 1547; *United States v. Shivers*, 66 F. 3d 938, 940 (8th Cir. 1995). The defenses presented by the defendants must be more than inconsistent; they must be “actually irreconcilable.” *United States v. Oakie*, 12 F. 3d 1436, 1441 (8th Cir. 1993) (quoting *Mason*, 982 F.3d at 328). The defendant admitted to all of the factors surrounding the requisite knowledge and actions that comprise the charges of aiding and abetting felony child abuse and neglect as contained in counts three and four. His statements alone serve the basis for his conduct and charges. Similarly, the additional codefendants’ statements<sup>4</sup> and evidence form the basis for their charges. Where the charges and evidence are not complex, it is generally presumed that the jury will have no difficulty in compartmentalizing evidence

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<sup>3</sup> In his interview with SA Lucas, the defendant stated he was going to work on his Master’s Degree in April 2017.

<sup>4</sup> Tressa Means Featherman invoked her right to an attorney and was not questioned.

against each defendant. *Bordeaux*, 84 F.3d at 1547; *United States v. Blum*, 65 F.3d 1436, 1444 (8th Cir. 1995).

The burden of establishing prejudice falls on the defendant. *United States v. Mann*, 685 F.3d 714, 720 (8th Cir. 2012). Under the provisions of Rule 14, a defendant must demonstrate that he has been prejudiced by the joinder before the court in its discretion may consider granting severance. Fed. R. Crim. P. 14(a). The defendant has not met his burden to show a real or severe prejudice that will result from a joint trial of all codefendants in this case. Therefore, the United States requests that the motion to sever be denied.

Dated this 3rd day of March, 2017.

RANDOLPH J. SEILER  
United States Attorney

*/s/ Megan Poppen*

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