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**IN THE SUPERIOR COURT**  
**FOR THE**  
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ERIC LEE NEKAIFES and )  
EDGAR MENDOZA, )  
 )  
Defendants. )

Criminal Case No. 01-0555  
**ORDER GRANTING MOTION  
FOR SEVERANCE**

**I. PROCEDURAL BACKGROUND**

This matter came before the Court on February 13, 2002, in Courtroom 217 at 9:00 a.m. on Defendant Eric Lee Nekaifes' Motion for Severance. Linn H. Asper, Esq., appeared on behalf of Defendant Eric Lee Nekaifes. Assistant Attorney General Aaron J. Romano, Esq., appeared on behalf of the Commonwealth.

**II. FACTS**

On January 30, 2001, the Commonwealth filed an Information charging Defendant Eric Lee Nekaifes (NEKAIFES) and Defendant Edgar Mendoza (MENDOZA) with the following alleged crimes: Count I: Attempted First Degree Murder; Count II: Attempted Second Degree Murder; Count III: Assault with a Dangerous Weapon; and Count IV: Aggravated Assault and Battery.

**FOR PUBLICATION**

1 On February 1, 2002, NEKAIFES filed a Motion for Severance pursuant to Commonwealth Rule  
2 of Criminal Procedure 14.

3 **III. ISSUE**

4 Whether the Court shall grant NEKAIFES' Motion for Severance, pursuant to Commonwealth  
5 Rule of Criminal Procedure 14, where NEKAIFES asserts that NEKAIFES and MENDOZA have  
6 mutually antagonistic defenses.

7 **IV. ANALYSIS**

8 NEKAIFES moves the Court for severance, pursuant to Commonwealth Rule of Criminal  
9 Procedure 14, on the basis that each of the two defendants have "mutually antagonistic" defenses. The  
10 Commonwealth, however, asserts that the Motion for Severance should be denied because the  
11 defenses are not "mutually antagonistic."

12 Pursuant to Commonwealth Rule of Criminal Procedure 14:

13 If it appears that a defendant or the government is prejudiced by a  
14 joinder of offenses or of defendants in an information or by such  
15 joinder for trial together, the court may order an election or separate  
other relief justice requires.

16 Com. R. Crim. P. 14.

17 It is appropriate to consult interpretation of counterpart federal rules in interpreting  
18 Commonwealth procedural rules, as the interpretation of such rules can be highly persuasive. *See*  
19 *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179, 184 (1990).

20 When defendants are jointly indicted, the law generally holds they should be tried together,  
21 unless fairness to one of the defendants requires a separate trial to avoid prejudice. *See People v. 24*  
22 *Daugherty*, 468 N.E.2d 969 (Ill. 1984). The defendant must allege more than mere apprehension of  
23 prejudice in his motion and the motion must establish how the defendant may be prejudiced. *Id.*

24 Here, NEKAIFES moves the Court for severance, pursuant to Rule 14, on the basis that he  
25 and MENDOZA have "mutually antagonistic" defenses. Antagonism between defenses, however, or  
26 the desire of one defendant to exculpate himself by inculcating a co-defendant is insufficient to require  
27 severance. *United States v. Sherlock*, 962 F.2d 1349, 1363 (9th Cir. 1989), *cert. denied sub nom.*  
28 *Charley v. United States*, 506 U.S. 958, 113 S. Ct. 419, 121 L. Ed. 2d 342 (1992). To be entitled

1 to severance on the basis of "mutually antagonistic" defenses, a defendant must show that the core of  
2 the co-defendant's defense is so irreconcilable with the core of his own defense that the acceptance of  
3 the co-defendant's theory by the jury precludes acquittal of the defendant. *Id.*

4 Here, Counsel for NEKAIFES has received discovery materials, including a statement  
5 attributed to MENDOZA, wherein MENDOZA claims he had nothing to do with the alleged crime and  
6 that the crime was committed by NEKAIFES. If a jury were to accept MENDOZA's theory that  
7 NEKAIFES committed the crime with an unidentified person, then the possibility of an acquittal of  
8 NEKAIFES would be precluded. As such, the Court finds that NEKAIFES has set forth sufficient  
9 grounds to justify a severance of the underlying matter. Accordingly, NEKAIFES' Motion for  
10 Severance is hereby **GRANTED**.

11 **V. CONCLUSION**

12 For the foregoing reasons, the Court finds that if a jury were to accept MENDOZA'S theory  
13 that NEKAIFES committed the crime with an unidentified, person, then the possibility of an acquittal of  
14 NEKAIFES would be precluded. Accordingly, NEKAIFES' Motion for Severance is hereby  
15 **GRANTED**.

16  
17 So ORDERED this 27th day of February, 2002.

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21 /s/ \_\_\_\_\_  
22 JUAN T. LIZAMA, Associate Judge  
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