SUPREME COURT OF THE UNITED STATES

No. 91–6824

GLORIA ZAFIRO, JOSE MARTINEZ, SALVADOR GARCIA AND ALFONSO SOTO, PETITIONERS
v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[January 25, 1993]

JUSTICE O'CONNOR delivered the opinion of the Court.

Rule 8(b) of the Federal Rules of Criminal Procedure provides that defendants may be charged together "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." Rule 14 of the Rules, in turn, permits a district court to grant a severance of defendants if "it appears that a defendant or the government is prejudiced by a joinder." In this case, we consider whether Rule 14 requires severance as a matter of law when codefendants present "mutually antagonistic defenses."

Gloria Zafiro, Jose Martinez, Salvador Garcia, and Alfonso Soto were accused of distributing illegal drugs in the Chicago area, operating primarily out of Soto's bungalow in Chicago and Zafiro's apartment in Cicero, a nearby suburb. One day, government agents observed Garcia and Soto place a large box in Soto's car and drive from Soto's bungalow to Zafiro's apartment. The agents followed the two as they carried the box up the stairs. When the agents identified themselves, Garcia and Soto dropped the box and ran into the apartment. The agents entered the

apartment in pursuit and found the four petitioners in the living room. The dropped box contained 55 pounds of cocaine. After obtaining a search warrant for the apartment, agents found approximately 16 pounds of cocaine, 25 grams of heroin, and 4 pounds of marijuana inside a suitcase in a closet. Next to the suitcase was a sack containing $22,960 in cash. Police officers also discovered 7 pounds of cocaine in a car parked in Soto's garage.

The four petitioners were indicted and brought to trial together. At various points during the proceeding, Garcia and Soto moved for severance, arguing that their defenses were mutually antagonistic. Soto testified that he knew nothing about the drug conspiracy. He claimed that Garcia had asked him for a box, which he gave Garcia, and that he (Soto) did not know its contents until they were arrested. Garcia did not testify, but his lawyer argued that Garcia was innocent: The box belonged to Soto and Garcia was ignorant of its contents.

Zafiro and Martinez also repeatedly moved for severance on the ground that their defenses were mutually antagonistic. Zafiro testified that she was merely Martinez's girlfriend and knew nothing of the conspiracy. She claimed that Martinez stayed in her apartment occasion-ally, kept some clothes there, and gave her small amounts of money. Although she allowed Martinez to store a suitcase in her closet, she testified, she had no idea that the suitcase contained illegal drugs. Like Garcia, Martinez did not testify. But his lawyer argued that Martinez was only visiting his girlfriend and had no idea that she was involved in distributing drugs.

The District Court denied the motions for severance. The jury convicted all four petitioners of conspiring to possess cocaine, heroin, and marijuana with the intent to distribute. 21 U. S. C. §846. In addition, Garcia and Soto were convicted of possessing cocaine with the intent to distribute,

§841(a)(1), and Martinez was convicted of possessing cocaine, heroin, and marijuana with the intent to distribute, *ibid.*

Petitioners appealed their convictions. Garcia, Soto, and Martinez claimed that the District Court abused its discretion in denying their motions to sever. (Zafiro did not appeal the denial of her severance motion, and thus, her claim is not properly before this Court.) The Court of Appeals for the Seventh Circuit acknowledged that "a vast number of cases say that a defendant is entitled to a severance when the `defendants present mutually antagonistic defenses' in the sense that `the acceptance of one party's defense precludes the acquittal of the other defendant.'" 945 F. 2d 881, 885 (1991) (quoting *United States* v. *Keck*, 773 F. 2d 759, 765 (CA7 1985)). Noting that "mutual antagonism . . . and other . . . characterizations of the effort of one defendant to shift the blame from himself to a codefendant neither control nor illuminate the question of severance," 945 F. 2d, at 886, the Court of Appeals found that the defendants had not suffered prejudice and affirmed the District Court's denial of severance. We granted the petition for certiorari, 503 U. S. ___ (1992), and now affirm the judgment of the Court of Appeals.

Rule 8(b) states that "[t]wo or more defendants may be charged in the same indictment or information 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." There is a preference in the federal system for joint trials of defendants who are indicted together. Joint trials "play a vital role in the criminal justice system." *Richardson* v. *Marsh*, 481 U. S. 200, 209 (1987). They promote efficiency and "serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts." *Id.*, at 210. For these reasons, we

repeatedly have approved of joint trials. See *ibid.*; *Opper* v. *United States*, 348 U. S. 84, 95 (1954); *United States* v. *Marchant*, 12 Wheat. 480 (1827); cf. 1 C. Wright, Federal Practice and Procedure §223 (2d ed. 1982) (citing lower court opinions to the same effect). But Rule 14 recognizes that joinder, even when proper under Rule 8(b), may prejudice either a defendant or the Government. Thus, the Rule provides,

> "[i]f it appears that a defendant or the government is prejudiced by a joinder of . . . defendants . . . for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires."

In interpreting Rule 14, the Courts of Appeals frequently have expressed the view that "mutually antagonistic" or "irreconcilable" defenses may be so prejudicial in some circumstances as to mandate severance. See, *e.g.*, *United States* v. *Benton*, 852 F. 2d 1456, 1469 (CA6), cert. denied, 488 U. S. 993 (1988); *United States* v. *Smith*, 788 F. 2d 663, 668 (CA10 1986); *Keck*, *supra*, at 765; *United States* v. *Magdaniel-Mora*, 746 F. 2d 715, 718 (CA11 1984); *United States* v. *Berkowitz*, 662 F. 2d 1127, 1133–1134 (CA5 1981); *United States* v. *Haldeman*, 181 U. S. App. D. C. 254, 294–295, 559 F. 2d 31, 71–72 (1976), cert. denied, 431 U. S. 933 (1977). Notwithstanding such assertions, the courts have reversed relatively few convictions for failure to grant a severance on grounds of mutually antagonistic or irreconcilable defenses. See, *e.g.*, *United States* v. *Tootick*, 952 F. 2d 1078 (CA9 1991); *United States* v. *Rucker*, 915 F. 2d 1511, 1512–1513 (CA11 1990); *United States* v. *Romanello*, 726 F. 2d 173 (CA5 1984). The low rate of reversal may reflect the inability of defendants to prove a risk of prejudice in most cases involving conflicting defenses.

Nevertheless, petitioners urge us to adopt a bright-

line rule, mandating severance whenever codefendants have conflicting defenses. See Brief for Petitioners i. We decline to do so. Mutually antagonistic defenses are not prejudicial *per se*. Moreover, Rule 14 does not require severance even if prejudice is shown; rather, it leaves the tailoring of the relief to be granted, if any, to the district court's sound discretion. See, *e.g.*, *United States* v. *Lane*, 474 U. S. 438, 449, n. 12 (1986); *Opper*, *supra*, at 95.

We believe that, when defendants properly have been joined under Rule 8(b), a district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence. Such a risk might occur when evidence that the jury should not consider against a defendant and that would not be admissible if a defendant were tried alone is admitted against a codefendant. For example, evidence of a codefendant's wrongdoing in some circumstances erroneously could lead a jury to conclude that a defendant was guilty. When many defendants are tried together in a complex case and they have markedly different degrees of culpability, this risk of prejudice is heightened. See *Kotteakos* v. *United States*, 328 U. S. 750, 774–775 (1946). Evidence that is probative of a defendant's guilt but technically admissible only against a codefendant also might present a risk of prejudice. See *Bruton* v. *United States*, 391 U. S. 123 (1968). Conversely, a defendant might suffer prejudice if essential exculpatory evidence that would be available to a defendant tried alone were unavailable in a joint trial. See, *e.g.*, *Tifford* v. *Wainwright*, 588 F. 2d 954 (CA5 1979) (*per curiam*). The risk of prejudice will vary with the facts in each case, and district courts may find prejudice in situations not discussed here. When the risk of prejudice is high, a district court is more likely to determine that separate

trials are necessary, but, as we indicated in *Richardson* v. *Marsh*, less drastic measures, such as limiting instructions, often will suffice to cure any risk of prejudice. See 481 U. S., at 211.

Turning to the facts of this case, we note that petitioners do not articulate any specific instances of prejudice. Instead they contend that the very nature of their defenses, without more, prejudiced them. Their theory is that when two defendants both claim they are innocent and each accuses the other of the crime, a jury will conclude (1) that both defendants are lying and convict them both on that basis, or (2) that at least one of the two must be guilty without regard to whether the Government has proved its case beyond a reasonable doubt.

As to the first contention, it is well settled that defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials. See, *e.g.*, *United States* v. *Martinez*, 922 F. 2d 914, 922 (CA1 1991); *United States* v. *Manner*, 281 U. S. App. D. C. 89, 98, 887 F. 2d 317, 324 (1989), cert. denied, 493 U. S. 1062 (1990). Rules 8(b) and 14 are designed "to promote economy and efficiency and to avoid a multiplicity of trials, [so long as] these objectives can be achieved without substantial prejudice to the right of the defendants to a fair trial." *Bruton*, 391 U. S., at 131, n. 6 (internal quotation omitted). While "[a]n important element of a fair trial is that a jury consider *only* relevant and competent evidence bearing on the issue of guilt or innocence," *ibid.* (emphasis added), a fair trial does not include the right to exclude relevant and competent evidence. A defendant normally would not be entitled to exclude the testimony of a former codefendant if the district court did sever their trials, and we see no reason why relevant and competent testimony would be prejudicial merely because the witness is also a codefendant.

As to the second contention, the short answer is

that petitioners' scenario simply did not occur here. The Government argued that all four petitioners were guilty and offered sufficient evidence as to all four petitioners; the jury in turn found all four petitioners guilty of various offenses. Moreover, even if there were some risk of prejudice, here it is of the type that can be cured with proper instructions, and "juries are presumed to follow their instructions." *Richardson*, *supra*, at 211. The District Court properly instructed the jury that the Government had "the burden of proving beyond a reasonable doubt" that each defendant committed the crimes with which he or she was charged. Tr. 864. The court then instructed the jury that it must "give separate consideration to each individual defendant and to each separate charge against him. Each defendant is entitled to have his or her case determined from his or her own conduct and from the evidence [that] may be applicable to him or to her." *Id.*, at 865. In addition, the District Court admonished the jury that opening and closing arguments are not evidence and that it should draw no inferences from a defendant's exercise of the right to silence. *Id.*, at 862–864. These instructions sufficed to cure any possibility of prejudice. See *Schaffer* v. *United States*, 362 U. S. 511, 516 (1960).

Rule 14 leaves the determination of risk of prejudice and any remedy that may be necessary to the sound discretion of the district courts. Because petitioners have not shown that their joint trial subjected them to any legally cognizable prejudice, we conclude that the District Court did not abuse its discretion in denying petitioners' motions to sever. The judgment of the Court of Appeals is

Affirmed.