

# State of Franklin v. Ford

## Model answer: the outline, then the written argument section of the sever brief (annotated)

The ARGUMENT section of a persuasive trial brief supporting Ford's motion to sever. Read the colors as in your marked-up File and Library: each highlight is the rule or fact in play, and the same color links a rule to the fact that turns on it.

**Key:** a highlighted phrase is the rule or fact; **the teal → text** after it is the shorthand takeaway (what it proves).

Rule 8(a) joinder   Rule 14 severance   prong 1 propensity   prong 2: 404(b)   403 + prior felony   prong 3: testify   the cases   State's arguments

## STEP ONE The outline (what you jot before you write)

Two arguments: Rule 8(a) misjoinder, then Rule 14 severance (three prongs). Note the authority by each rule.

### Argument I: Rule 8(a) improper joinder

**I Rule 8(a)** (Saylers): join only if same/similar character, same transaction, or common scheme/plan. →

#### Count 1 misjoined

- › Count 1 (cocaine, April, a home) vs the October car counts: different drug, place, date; a sale not a possession. Like Saylers. → **not joinable**
- › **Concede:** Counts 2 & 3 (same car, same day) are one transaction, properly joined. → **credibility**

### Argument II: Rule 14 severance (in the alternative)

**II Rule 14** (Ritter): even if joined, sever for prejudice (three prongs). → **sever all three**

- › Prong 1: multiple-charge 'bad person' inference; concede rarely enough, but heightened (gun = violent; two drugs = 'kingpin').
- › Prong 2: no cross-admissibility under 404(b) (distinguish Ritter's common plan); and 403 bars the 2015 assault-murder felony (Pierce). → **the core**
- › Prong 3: a joint trial burdens Ford's right to testify on the drug counts (Pierce).

## STEP TWO The written argument (persuasive, full-sentence headings)

The argument section only, per the office guidelines: subject headings that apply a rule to Ford's facts, supporting authority emphasized and contrary authority distinguished. Analysis left, teaching notes right.

### ARGUMENT

#### I. Count 1 Is Improperly Joined Under Rule 8(a) Because the April Cocaine Sale Shares No Common Character, Transaction, or Plan with the October Offenses.

Rule 8(a) permits joining offenses in one indictment only if they are of the

**Format.** Only the ARGUMENT section is required, no statement of facts and no table of contents.

**Heading.** Argument I heading: a full-sentence application of Rule 8(a) to Ford's facts, not a bare conclusion.

**Rule + case.** State the Rule 8(a) test, note that the court may consult the affidavits

same or similar character, are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan. Fr. R. Crim. P. 8(a). In deciding joinder, the court may look beyond the indictment to the affidavits supporting the arrests. State v. Saylers. In Saylers, the court held it improper to join two robbery charges committed two years apart in different settings; a shared label was not enough to make the offenses similar.

The cocaine sale charged in Count 1 is no more similar to the October offenses than the two robberies in Saylers. The affidavits show that Count 1 involves the sale of cocaine at an apartment on April 17, 2021, while Count 2 involves the possession of marijuana in a car six months later, on October 24. The two counts involve different drugs, a different location, a different date, and different conduct (a completed sale versus mere possession). They are not of the same or similar character, are not part of a single transaction, and reflect no common scheme or plan. The cocaine sale and the firearm charged in Count 3 are even more remote: a completed drug sale months earlier bears no relation to possessing a gun in a car. Because Count 1 satisfies none of Rule 8(a)'s grounds, it is misjoined and must be tried separately.

Defendant acknowledges that Counts 2 and 3 are properly joined: the marijuana and the firearm were found in the same car during the same traffic stop on October 24, so they arise from the same transaction under Rule 8(a). That single, proper joinder does not save the joinder of the unrelated April cocaine sale.

## II. Even If the Counts Were Properly Joined, Rule 14 Requires Severance Because a Joint Trial Would Unfairly Prejudice Ford on Every Charge.

Rule 14 permits the court to sever counts whenever joinder appears to prejudice a defendant. Fr. R. Crim. P. 14. Even properly joined counts must be severed when a joint trial creates unfair prejudice. State v. Ritter identifies three kinds of prejudice: (1) the jury may treat the defendant as a bad person and convict on all counts; (2) evidence of one offense would be inadmissible in a separate trial of another; and (3) the defendant may wish to testify as to one charge but not another. All three are present here.

First, trying these charges together invites the jury to convict Ford simply because she faces many charges. Although this prejudice alone rarely compels severance, the risk here is acute: hearing that Ford is charged with

(Saylers), and set up the Saylers analogy.

**Argue misjoinder.** Apply Saylers: different drug/place/date/conduct = misjoined. Sweep in Count 3 too (even more remote from the cocaine sale).

**Concede 2 & 3.** Make the good-faith concession the guidelines reward: Counts 2 & 3 (same car, same day) ARE properly joined. It bolsters credibility.

**Heading.** Argument II heading: the alternative Rule 14 argument.

**Rule 14 framework.** State the Rule 14 standard and lay out Ritter's three prongs, previewing that all three favor severance.

**Prong 1: propensity.** Prong 1: concede it rarely suffices alone, then argue the heightened 'kingpin' and 'violent person'

two separate drug crimes may lead the jury to brand her a drug 'kingpin,' and hearing that she possessed a firearm may lead the jury to believe she is a violent person and convict her on the drug counts regardless of the proof.

Second, and most important, evidence of each offense would be inadmissible in a separate trial of the others. Rule 404(b) bars other-acts evidence offered to show propensity, admitting it only for a purpose such as motive, intent, or a common plan. In *Ritter*, two heroin sales were cross-admissible because they were the same drug sold in the same neighborhood from the same car within months, showing a single plan. Ford's case is the opposite: different drugs, different places, and different dates, with no common plan. Her intent and knowledge as to one offense do not prove another. The State may argue, citing *Ritter*, that the gun shows an intent to sell drugs, but the cocaine sale was months earlier and elsewhere, and the marijuana and firearm charges can be weighed without importing the unrelated cocaine sale.

Even if some of this evidence cleared Rule 404(b), Rule 403 would exclude it because its probative value is substantially outweighed by the danger of unfair prejudice. The firearm charge is uniquely dangerous: to prove that Ford is a felon in possession, the jury must be told that she was convicted in 2015 of assault with intent to commit murder. That violent felony has no bearing on whether she sold cocaine or possessed marijuana, yet it would gravely prejudice the jury against her on those counts, and the prosecutor has refused to stipulate to an unnamed prior felony. This is precisely the prejudice condemned in *State v. Pierce*, where the firearm count was severed because the order of protection underlying it was irrelevant to the other count and the jury's learning of it was too prejudicial. As in *Pierce*, the firearm count must be severed from the drug counts.

Third, a joint trial would burden Ford's right to testify in her own defense. Ford has legitimate reasons to testify about the drug charges, explaining her limited role in the April incident and her lack of knowledge of the items in the car. But if all counts are tried together, taking the stand could expose her to impeachment with the 2015 conviction, forcing her to choose between defending the drug charges and shielding the jury from her record. *Pierce* recognized this very burden. Severance would let Ford make that choice charge by charge.

For these reasons, Count 1 is improperly joined under Rule 8(a), and in any

risks here.

**Prong 2: 404(b).** Prong 2 (the core): no cross-admissibility. Distinguish *Ritter*'s common plan; rebut the State's gun-shows-intent argument (remote in time/place).

**403 + prior felony.** Prong 2 continued into Rule 403: the prior assault-murder conviction is the strongest point. Analogize *Pierce*; note the refused stipulation.

**Prong 3: testify.** Prong 3: the joint trial burdens the testimonial choice. Argue the burden only, do NOT promise she will or won't testify.

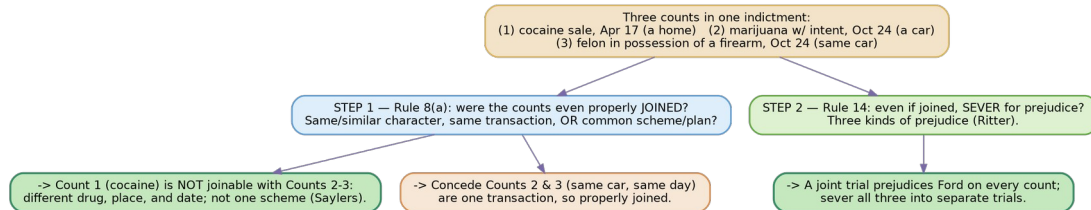
**Conclusion.** Close by restating both grounds and the precise relief requested:

event all three counts must be severed under Rule 14. Defendant respectfully requests that the court **sever the three counts and order a separate trial on each.**

*three separate trials.*

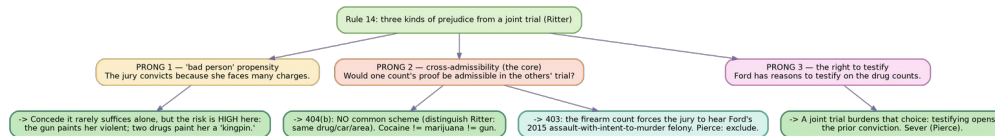
## AT A GLANCE The two-step attack and the prejudice ladder

### Rule 8(a), then Rule 14



*Step 1 attacks the joinder of Count 1; Step 2 severs all three for prejudice even if joinder was proper.*

### Rule 14's three prongs



*Propensity, cross-admissibility (the core, with the prior felony), and the right to testify.*