

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE, :
 :
 v. : I.D. Nos. 1101006766 and
 : 1105019914
 :
 REGINALD WATERS, :
 :
 Defendant. :

ORDER

Upon consideration of the Defendant’s motion to sever, the State’s response and the record, it appears that:

1. The Defendant, Reginald Waters, is charged with Count 1, Rape First Degree; Count 2, Attempted Rape in the First Degree; Count 3, Unlawful Sexual Contact First Degree; Count 4, Unlawful Sexual Contact First Degree; Count 5, Endangering the Welfare of a Child; Count 6, Endangering the Welfare of a Child; Count 7, Unlawful Sexual Contact First Degree; Count 8, Endangering the Welfare of a Child; Count 9, Act of Intimidation; Count 10, Tampering with a Witness; Count 11, Non-Compliance with Bond; and Count 12, Misuse of Prisoner Mail.

2. Defendant seeks severance of Counts 1 through 8 from Counts 9 through 12. Counts 9-12 are alleged to have occurred while Defendant was held in lieu of bond awaiting trial at the James T. Vaughn Correctional Center.

3. In support of his motion the Defendant contends that Counts 9-12, which generally outline a course of conduct of intimidation and tampering with a witness, will show that he is in custody, readily paints the picture for the jury of “a consciousness of guilty acts” and is highly prejudicial to the Defendant. While the

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genesis of the two sets of counts are in common, the facts are not. Defendant alleges that the only common thread is the consciousness of guilt argument that the State may raise.

4. Defendant further argues that the indictment represented by Counts 9-12 arises from two somewhat bizarre letters alleged to be authored by the Defendant.¹

5. In response, the State contends that evidence of one set of crimes would be admissible in the trial of another set of crimes, citing *Bates v. State*.² Evidence contained in these letters are alleged to demonstrate that Defendant wrote to a third party seeking to have that person intervene to help him get the charges against him dropped by the use of veiled threats of telling “dark secrets”. Evidence of these letters would be admissible to prove his consciousness of guilt in the rape charges by his threatening efforts.

6. Superior Court Criminal Rule 14 governs a motion for severance.³ Whether to grant or to deny severance is a matter within the sound discretion of the

¹ A two page undated letter to Mrs. Watkins and a six page undated letter to Mrs. Cassandra who would be presumed witnesses at trial.

² *Bates v. State*, Del. Supr., 386 A.2d 1139 (1978).

³ **Rule 14. Relief from prejudicial joinder.**

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election of separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney general to deliver to the court for inspection in camera any statements or confessions made by the defendants which the state intends to introduce into evidence at the trial.

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trial court.⁴ Moreover, the determination by the trial judge in denying a motion for severance will not be reversed except for a clear abuse of discretion, that is, on appeal it must appear that the trial judge had the likelihood of the reasonable probability of prejudice before him when he denied the motion.⁵ The defendant bears the burden of demonstrating prejudice from a denial of a motion to sever.⁶ Furthermore, mere hypothetical prejudice from a denial of motion to sever is not sufficient.⁷ Severance has been denied where the offenses charged are of the same general nature and give evidence of modus operandi, even though obvious prejudice existed as to the defendant.⁸ On the other hand, severance should not be denied when the sheer mass of charges in a case renders it extremely unlikely that a jury will be able to resist the cumulative effect of evidence linking the defendant to separate charges.⁹

7. This is not a case where Counts 9-12 are so inextricably intertwined that it would be virtually impossible for the State to present its evidence as to Counts 1-8.¹⁰ Counts 1-8 are alleged to have occurred between December 1, 2010 and January

⁴ *Bates, supra.*; *Lampkin v. State*, Del. Supr., 465 A.2d 785 (1983).

⁵ *Burton v. State*, Del. Supr., 149 A.2d 337 (1959).

⁶ *Bates, supra.*

⁷ *Id.*

⁸ *State v. McKay*, Del. Super., 382 A.2d 260 (1969).

⁹ *Id.*

¹⁰ *Pandiscio v. State*, Del. Supr., 496 A.2d 546 (1988); *McDonald v. State*, Del. Supr., 307 A.2d 796 (1973).

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7, 2011 and Counts 9-12 on or about May 3, 2011.

8. Defendant seems to be arguing that a trial on all counts may cause the jury to infer that if the Defendant did intimidate a witness, he must be guilty of the rape and related charges. Furthermore, we have the additional detriment wholly caused by the Defendant himself in having his counsel discharged. At present we have a *pro se* Defendant which will complicate this matter for the Court so judicial efficiency becomes a concern.

9. The Supreme Court of Delaware identified three situations where prejudice to the defendant from the joinder of offenses has been found to exist. First, the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find. Second, the jury may use the evidence of one of the crimes to infer a general criminal disposition of the defendant in order to find guilty of the other crime or crimes. Third, the defendant may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.¹¹

10. I would ordinarily be reluctant to sever in the usual case having similar facts as this case, but in light of the special concerns highlighted by the *pro se* defense and weighing the factors noted in the above paragraph, I believe severance is appropriate.

11. Based on Defendant's demonstration of sufficient prejudice and in consideration of judicious economy and efficiency, Defendant's motion to sever

¹¹ *Wiest v. State*, Del. Supr., 542 A.2d 1193, 1195 (1988). See also *State v. McKay*, *supra*.

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Counts 9-12 from Counts 1-8 is ***granted***.

IT IS SO ORDERED this 4th day of October, 2011.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

oc: Prothonotary

xc: Christopher Parker, Esquire
Paul S. Swierzbinski, Esquire
Reginald D. Waters, *pro se*
File