IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE	)
	)
v.	)
	)
LINDA L. CHARBONNEAU	) ID #0207003810

* * *

STATE OF DELAWARE	)
	)
v.	)
	)
MELISSA RUCINSKI	) ID #0207003805
	)

Date Submitted: September 12, 2003
Date Decided: September 24, 2003

Upon Defendants' Motions to Sever. Denied.

MEMORANDUM OPINION

James W. Adkins, Esquire and Paula T. Ryan, Esquire, Deputy Attorneys General, Department of Justice, Georgetown, Delaware, attorneys for the State.

Craig A. Karsnitz, Esquire, Young, Conaway, Stargatt & Taylor, LLP, Georgetown, Delaware and Thomas A. Pedersen, Esquire, Georgetown, Delaware, attorneys for Defendant Linda L. Charbonneau.

John F. Brady, Esquire, Georgetown, Delaware and John M. Sandy, Esquire, Stumpf, Sandy & Vickers, Georgetown, Delaware, attorneys for Defendant Melissa Rucinski.

STOKES, J.

INTRODUCTION

The defendants Linda L. Charbonneau ("Linda Charbonneau") and Melissa Rucinski ("Rucinski"), her daughter, are charged with the capital murders of John Charbonneau on or about September 23, 2001, and William Sproates, on or about October 17, 2001. Each incident carries a conspiracy count. The Sproates charges further allege possession of a deadly weapon. Rucinski's husband, Willie Brown ("Brown"), also was charged with these crimes. He pled guilty to the murders on April 24, 2003 and agreed to testify against the others.

The defendants are being tried separately. A joint trial would not be appropriate given that Brown and Rucinski had implicated themselves and Linda Charbonneau in pretrial statements. *See Fogg v. State*, 719 A.2d 947 (Del. 1998), *citing Bruton v. United States*, 391 U.S. 123 (1968) (holding that a defendant is deprived of his/her rights under the Confrontation Clause of the Sixth Amendment when a non-testifying co-defendant's confession naming him/her as a participant in a crime is introduced at their joint trial, even if the jury is instructed to consider that confession only against the confessing co-defendant). The defendants filed motions to sever the charges arising from the two murders and argument was scheduled. As the positions in the pleadings

were similar, the Court asked the lawyers for Rucinski if they would join in the Linda Charbonneau argument that was set for Friday, September 12, 2003. They agreed to do so. Following argument, the defendants declined an opportunity to present further matters. After reviewing the submissions, arguments, and law, the motions to sever are denied.

BACKGROUND

Motions of this nature involve an analysis of the evidence in support of the charges. *See Howard v. State,* 704 A.2d 278, 281 (Del. 1998) (observing that "each severance application tends to be fact intensive"). What follows is the State's proffer of what the evidence will show. Although significant details come from Brown, an accomplice, his credibility is a jury question.

Linda Charbonneau was formerly the wife of John Charbonneau. She remarried William Sproates ("Sproates"). Rucinski is Linda Charbonneau's daughter. John Charbonneau was Rucinski's stepfather. Sproates was a nephew of John Charbonneau. Rucinski and Brown had a romantic relationship beginning in June of 2001 that later led to their marriage.

At the time of John Charbonneau's murder, Linda Charbonneau was living in a home located in Bridgeville, Delaware. Rucinski was living there also with her three children. Sproates resided in Magnolia, Delaware. Brown had a place

in Lewes, Delaware.

In September of 2001, John Charbonneau disappeared, and his missing status was reported to the authorities. Sproates contacted the Delaware State Police and expressed his fear of Linda Charbonneau, Rucinski and Brown to the police and friends. He advised that they were involved in John Charbonneau's death. Sproates also showed a bloody box to individuals that the defendants had moved, along with other furnishings, from Bridgeville to Magnolia after John Charbonneau's disappearance. Sproates disappeared around October 17, 2001, and his relatives notified the Delaware State Police in November, 2001.

At about the same time, most of the contents of the Bridgeville residence were removed, including kitchen cabinets and carpets, and taken to Magnolia. By the middle of October, defendants (other than Brown) and Rucinski's children were living in the Sproates residence. John Charbonneau's mail was being forwarded from Bridgeville to a post office box in Felton, Delaware. Rucinski had completed the paperwork to forward the mail.

On November 30, 2001, police officers visited the Bridgeville residence at the request of John Charbonneau's relatives. The home was bare. At the back of the property, a shallow grave was found. After examination, Sproates' body was found. His identification was established through fingerprint testing.

A wallet in the pocket of the victim contained identification belonging to him. An autopsy was performed. Sproates' death was caused by multiple stab wounds, blunt force trauma, and asphyxiation.

As part of Sproates' homicide investigation, the Magnolia residence, a Dodge van and a Chevrolet Lumina were searched. The Dodge van was registered to Linda Charbonneau. Brown owned the Lumina in the fall of 2001, but he later sold it to Linda Charbonneau. John Charbonneau's blood was found in the van. ATM receipts for money withdrawn from John Charbonneau's PNC account were found in the Lumina. Rucinski was observed on video withdrawing these funds at a Wawa convenience store during the time of John Charbonneau's disappearance after September 23, 2001. John Charbonneau's drivers license and social security card were found in a diaper bag in the kitchen in the Magnolia residence.

In November and December of 2001, Linda Charbonneau, Rucinski and Brown were questioned about the body in the backyard of the Bridgeville residence and about the status of John Charbonneau and Sproates. They denied knowing anything about the corpse or the victims. In December, 2001, John Rucinski, Melissa Rucinski's former husband (divorced in January of 2001) advised that Melissa and Linda Charbonneau asked him to help them "get rid

of" John Charbonneau in the fall of 2000. The plan was to kill him and to conceal the body by burial in the backyard or by hiding it in a camper.

In July of 2002, Brown admitted that John Charbonneau had been murdered. He led the police to a site near Millsboro where the body was buried. An autopsy and DNA testing confirmed the identity. The cause of death was attributed to blunt force injury causing a fractured skull. Brown implicated himself, Linda Charbonneau and Rucinski in the murders and in the burial of the bodies.

Rucinski also attempted to show where John Charbonneau was buried after an interview. While her attempt was unsuccessful, she passed within several feet of the location. The body was located in an undeveloped area with surrounding tree and plant growth. Rucinski admitted being present at the Bridgeville residence when John Charbonneau was killed, participating in the transporting and disposing of his body, and using John Charbonneau's ATM card to withdraw money after his death. Linda Charbonneau gave her John Charbonneau's ATM card and PIN information to permit these withdrawals. Rucinski admitted having John Charbonneau's driver's license and social security card in Magnolia.

After Brown pled guilty to murdering John Charbonneau and Sproates, he

provided further information on May 1, 2003. He connected Rucinski with Sproates' murder. Previously, Brown had implicated Linda Charbonneau. In his May statement, Brown said that Sproates was murdered because he was talking to defendants and others about his suspicions regarding his uncle, John Charbonneau's disappearance. Sproates was buried behind the residence of John Charbonneau at Linda Charbonneau's direction. Allegedly, she felt that if Sproates' body was found there, then authorities would think that John Charbonneau was responsible for Sproates' death.

ISSUES

The pending motions raise the questions of whether the crimes arising from the September and October killings are properly joined and, if so, should they nonetheless be severed to avoid unfair prejudice? Defendants claim the crimes are separate episodes and that they would be unfairly prejudiced if the charges are not severed. The State of Delaware ("State") contends joinder is appropriate and that defendants have not met their burden to justify a severance.

THE LAW

Superior Court Criminal Rule 8 permits the joinder of offenses when "the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or

constituting parts of a common scheme or plan." *Super. Ct. Cr. R. 8(a).* Joinder is proper where "the offenses are of the same general character, involve a similar course of conduct, and have occurred within a relatively brief span of time." *Coffield v. State*, 794 A.2d 588, 595 (Del. 2002). This rule "is designed to promote judicial economy and efficiency, provided that the realization of those objectives is consistent with the rights of the accused." *Mayer v. State*, 320 A.2d 713, 717 (Del. 1974). Thus, a motion to sever may be granted under Superior Court Criminal Rule 14, when the defendant would be prejudiced by joinder of the offenses, "even though the offenses were properly joined in the same indictment." *See Super. Ct. Cr. R. 14; Weist v. State*, 542 A.2d 1193, 1195 (Del. 1988).

> Prejudice may be shown where:
>
> > (1) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find; (2) the jury may use the evidence of one of the crimes to infer a general criminal disposition of the defendant in order to find guilt of the other crime or crimes; and (3) the defendant may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.

Garden v. State, 815 A.2d 327, 334 (Del. 2003).

The defendant bears the burden to establish prejudice, and mere hypothetical prejudice is insufficient. *Skinner v. State*, 575 A.2d 1108, 1118

(Del. 1990). The interests of judicial economy outweigh defendant's interests when the claims of prejudice are unsubstantiated. *State v. Hammons*, 2001 WL 1729119 (Del. Super.) (Mem.Op.).

The Court considers a number of factors in ruling on a motion for severance. For example, one point weighing against severance is the existence of evidence relating to one crime that is admissible in the trial of another crime. *Bates v. State*, 386 A.2d 1139, 1142 (Del. 1978). "[E]vidence of one crime is admissible in the trial of another crime when it has `independent logical relevance' and its probative value outweighs prejudice to the defendant." *Garden*, 815 A.2d at 334, *citing Getz v. State*, 538 A.2d 726, 730 (Del. 1988). In addition, severance may not be granted where "the evidence is of the same type and impact" because the risk is lower "that the jury will be influenced by the cumulative effect of differing types of circumstantial and direct evidence linking the defendant to the offense." *Howard v. State*, 704 A.2d 278, 281 (Del. 1998).

Severance also may be denied where "[t]he criminal activity of the defendant with respect to the two crimes was so inextricably intertwined so as to make proof of one crime impossible without proof of the other." *McDonald v. State*, 307 A.2d 796, 798 (Del. 1973). Moreover, the Court has denied

severance despite obvious prejudice to the defendant "where the offenses charged are the same general nature and there is evidence of a modus operandi." *Hammons* at 3. However, severance has been granted where "the sheer mass of charges" in the case renders "it extremely unlikely that a jury will be able to resist the cumulative effect of evidence linking the defendant to separate charges." *State v. McKay*, 382 A.2d 260, 262 (Del. Super. 1978).

ANALYSIS

A review of the indictments shows that the charges of the September and October incidents are the same or are similar. Also, the charged offenses are based on two or more acts or transactions which are connected together. The term "connected together" in Rule 8 permits joinder where counts arise from related transactions. *See 1A, Charles Alan Wright,* Federal Practice and Procedure §143 (3d ed. 1999).

Here, the State's proffer suggests the defendants participated in and concealed John Charbonneau's death to divert suspicion from themselves. Allegedly, defendants moved his property to Sproates' Magnolia residence and thereafter killed Sproates to prevent his continued cooperation with the police and testimony against them. From this perspective, Charbonneau's murder can be seen as inducing Sproates' death. Even without considering the interwoven

relationships between the parties and the similarities in the killings, there is a meaningful and significant enough link between these crimes to make joinder appropriate. *See Smithers v. State,* 826 So.2d 916, 923-924 (Fla. 2002) (closely connected double murder charges may be joined).

Furthermore, defendants have not met their burden under Super. Ct. Crim. R. 14 to show unfair prejudice. A reasonable probability does not exist that "substantial injustice" would result from joinder of the offenses. *Howard,* 704 A.2d at 280. Defendants argue that the Charbonneau and Sproates counts should be severed because they involve different victims and occurred at separate times. However, "severance is not required *ipso facto*, simply because the alleged charges involve different victims or occur at separate times." *Fortt v. State*, 767 A.2d 799, 803 (Del. 2001). Defendants also assert that the jury is likely to cumulate the evidence of the two murders and find guilt. However, unlike in other cases involving a multitude of charges and numerous incidents, the indictments in this case contain only five counts and involve only two incidents. *See Hammons* at 4 (giving examples of cases involving a multitude of charges where severance was granted). Thus, this case does "not require the jury to possess `an unusual degree of detachment' in order to consider each charge separately." *Id.* Therefore, the jury will not cumulate the evidence of the

murders to find guilt in this case.

Defendants also argue that the jury may use evidence from one crime to infer a general criminal disposition. They further claim that presentation of evidence relating to both murders will lead the jury to become hostile to defendants making a conviction more likely. However, the evidence concerning the incidents is of the same type and impact, the offenses themselves are similar, and they are connected and occurred within a four week period. These factors cut against severance. *See Coffield* at 595. The jury essentially will be instructed to consider each count separately, to return a separate verdict as to each, and that because a conclusion is reached in one count, it does not mean the conclusion would apply to other counts. Juries are presumed to understand and follow instructions. *See Fortt* at 804. The jury will not infer from two incidents that either defendant has a general criminal disposition and convict on that basis.

Rucinski suggests that she may be subject to embarrassment or confusion by presenting different and separate defenses to several charges. (Charbonneau does not make an argument on this basis.) The claim is that she might testify concerning the Sproates' murder but may remain silent given her admitted involvement in the John Charbonneau matter. This is no more than speculation. One is not embarrassed by acknowledging responsibility for only one crime.

Juries frequently parse different positions without confusion.

Furthermore, Rucinski is subject to impeachment in separate trials given her broad pretrial statements denying any criminal involvement. The Supreme Court has this to say on the subject:

> Garden's claim that he would have testified in a separate murder trial is hypothetical and somewhat disingenuous. Garden contends that he was concerned about admission of his statement to police regarding the events of December 17 - but Garden's inconsistent statements could have been used to impeach his credibility in a separate murder trial as well. He initially told police he was not involved at all, then admitted that he took part in the shopping spree using the stolen credit cards. This falsehood would certainly be relevant evidence bearing on his credibility as a witness.

Garden, 815 A.2d at 334.

Generally, a bare claim that the defense would have been conducted differently (i.e., the defendant would have remained silent at one trial had there been two trials) is not persuasive. *See Bates,* 386 A.2d at 1142. Rucinski did no more than express a preference to testify about some counts and not others. This is insufficient. *United States v. Corbin,* 734 F.2d 643, 649 (11 Cir. 1984) (Where defendants expressed no more than a generalized desire to testify as to some counts but not others, but did not indicate to what they would have testified or why their testimony would have been of importance, they failed to make the showing of compelling prejudice that is required for severance.) In

any event, evidence from the two incidents would be admitted at a joint trial. *See United States v. Jacobs*, 244 F.3d 503, 506-507 (6th Cir. 2001). (When one abduction was linked to the others, making evidence from each crime admissible in trial of the other, the court did not abuse its discretion in denying the motion to sever, rejecting defendant's claim of a Hobson's choice of either testifying about both incidents, or not testifying at all.) Prejudice does not exist on this aspect of Rucinski's contention.

As indicated, a major factor in the analysis concerns the cross admissibility of evidence. Significant evidence common to both crimes has independent logical relevance (other than a general criminal disposition) and would be considered in separate trials. Consider a trial only of the Sproates case. Sproates was aiding the investigation of John Charbonneau's disappearance. The proffer suggests the defendants killed him to eliminate his cooperation and value as a witness. Sproates expressed his fear about the defendants to the police and others. His state of mind would be admissible under D.R.E. 803(3)[1] to show motive. It demonstrates premeditation, and/or intent by defendants, to kill Sproates which are material to the disputed elements of the first degree murder charge. Consequently, the State can present evidence of this nature in its case in chief. *See Capano v. State*, 781 A.2d 556, 607-615

(Del. 2001). While statements of belief to prove a fact are not admissible under the state of mind exception, statements about his conversations with defendants would be admissible under D.R.E. 804(b)(6).[2] *See United States v. Thevis*, 665 F.2d 616, 630 (5th Cir. 1982) (Applying a waiver analysis against a hearsay objection, the Court commented "the law simply cannot countenance a defendant deriving benefits from murdering the chief witness against him."). *United States v. Zlatogur*, 271 F.3d 1025, 1028 (11th Cir. 2001) (Defendant's threats frightened a cooperating witness to flee the country. In 1997, F.R.E. 804(a)(6) codified the waiver by misconduct doctrine, and defendant's hearsay argument was foreclosed.).

On the other hand, evidence that defendants planned Sproates' murder is relevant in the John Charbonneau prosecution. It shows consciousness of guilt from which actual guilt of the crimes charged can be inferred. Generally, "upon the trial of a criminal case, acts, conduct and declarations of the accused occurring after the commission of an alleged offense which are relevant and tend to show a consciousness of guilt or a desire or disposition to conceal the crime are admissible in evidence" (citations omitted). *Goldsmith v. State*, 405 A.2d 109, 113 (Del. 1979). Evidence of plans to kill prospective government witnesses fall well within the category. *See Lovett v. State*, 516 A.2d 455, 468-

469 (Del. 1986). Likewise, Sproates' death provided leads in the Charbonneau investigation. *See Steckel v. State*, 711 A.2d 5 at 9 (Del. 1998) (the content of harassing phone calls to a third person lead police to believe defendant was a likely suspect in victim's murder).

The probative value of the foregoing evidence is self-evident and is not substantively outweighed by the danger of unfair prejudice under D.R.E. 403. D.R.E. 404(b) permits the proper use of uncharged misconduct to show motive and consciousness of guilt. *See Bright v. State*, 740 A.2d 927, 932-933 (Del. 1999).

Additionally, the circumstances of the incidents are inextricably intertwined. The relationships between the victims and defendants cannot be separated. The witnesses are largely the same for both murders. It would be less confusing to have a joint trial, and judicial economy requires one in the absence of prejudice.

Finally, the argument is made that Sproates' death was too gruesome to be joined with John Charbonneau's murder. This is not persuasive and accepting it would imply that defendants could not receive a fair trial in a separate proceeding focused only on the events of October 17, 2001. Any

murder is difficult. Juries are fully capable of filtering the emotion out of grisly evidence (e.g., autopsy photographs) to make decisions on a proper basis.

CONCLUSION

Considering the foregoing, the charges of both incidents are properly joined, the defendants have not satisfied their burden to show unfair prejudice, and no reasonable probability exists that defendants will suffer substantial injustice if all charges are tried together. Therefore, defendants' motions to sever must be and are hereby **denied.**

IT IS SO ORDERED.

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Richard F. Stokes, Judge

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ENDNOTES

1. The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (3) "Then existing mental, emotional or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will."

2. (b) *Hearsay exceptions.* The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: (6) "Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

2.