

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Andrew J. Vella, Esquire
Caterina J. Gatto, Esquire
Deputy Attorneys General
Department of Justice
820 North French Street
Wilmington, Delaware 19801
Attorneys for the State

Jennifer-Kate Aaronson, Esquire
8 E. 13th Street
P.O. Box 2865
Wilmington, Delaware 19805
Attorney for Defendant

Patrick J. Collins, Esquire
8 E. 13th Street
Wilmington, Delaware 19801
Attorney for Defendant

**Re: State of Delaware v. Jamaïen Monroe
I.D. No. 0601021343**

Submitted: June 17, 2008

Decided: July 14, 2008

On Defendant's Motion to Sever Charges.

DENIED.

Dear Counsel:

Defendant has been indicted on 19 charges stemming from two incidents, which took place 15 months apart. The lead charge with respect to the first incident is Attempted Murder First Degree. The lead charge with respect to the second incident is Murder First Degree. The alleged victim was the same in both incidents. Defendant has filed a motion to sever the charges into two trials and asserts as the basis for his motion the "potential for a jury to impermissibly aggregate and accumulate" evidence in a

consolidated trial.¹ However, Defendant has not demonstrated substantial actual prejudice from a joinder of charges, and for other reasons set forth below, Defendant's motion to sever charges is **DENIED**.

I. FACTS² AND PROCEDURAL HISTORY

The first incident took place on January 26, 2006 when Wilmington Police responded to complaints of shots fired in the area of East 23rd and Carter Streets. Police officers were unable to locate witnesses at the scene, but shortly thereafter, the victim, Andre Ferrell, of the shooting arrived at Wilmington Hospital with multiple gunshot wounds to his back. The shooter in this incident was identified as Defendant. A warrant containing multiple charges, including Attempted Murder First Degree, was issued for Defendant.

Fifteen months later, on April 2, 2007, and after having evaded police apprehension on the warrant for his arrest, Defendant was allegedly implicated by witness identification in a second shooting on that date of the same victim. The victim died from the injuries he sustained. The incident on April 2, 2007 took place in the parking lot of Derr's Market near Newark and was investigated by the New Castle County Police.

Defendant was arrested October 2, 2007 on warrants from these two separate incidents.³ On November 13, 2007, Defendant was indicted under a consolidated case by a Grand Jury on 19 counts covering charges from both incidents.⁴ The indictment brings four charges stemming from the January 26, 2006 incident, most notably one count of Attempted Murder First Degree, as well as 15 charges from the April 2, 2007 incident, most notably one count of Murder First Degree.⁵

II. THE PARTIES' CONTENTIONS

Defendant seeks severance of the charges against him on the grounds that a joinder of charges would cause him to suffer substantial prejudice. Defendant contends that it is "highly probable that the jury may impermissibly accumulate the evidence of all the crimes charged when it

¹ Def. Resp., at ¶ 2

² The following facts are summarized from the State's Response to Defendant's Motion to Sever, which Defendant has neither supplemented nor contested.

³ Pl. Resp. at ¶ 4.

⁴ See Docket.

⁵ Pl. Resp., at ¶ 1-2.

considers the Defendant's guilt or innocence of each crime."⁶ Defendant further claims that, if the charges were severed, that evidence of one of the two events would be inadmissible as a matter of law at a trial for the other event, pursuant to Delaware Rule of Evidence 404(b). In support of this point, Defendant relies heavily on the amount of time (15 months) between the two incidents as too attenuated of a link to prove motive. Defendant further asserts that, if his motion is denied, he would never be able to contest the use of evidence admitted in a joint trial under 404(b).⁷ Finally, Defendant claims that any concern of judicial economy is minimized by the fact that there is little overlap in evidence between the State's cases if they were to be severed.⁸ Defendant contends that he has carried his burden of persuasion on the motion by showing that a joinder would result in actual prejudice to him.

In response, the State argues that joinder of charges is appropriate in the instant case because "as a whole the charges are of the same character, involve an almost identical course of conduct, and occurred against the same victim."⁹ The State also contends that, even if the charges were severed, evidence of the one event would be admissible at a trial concerning the other as proof of motive and/or intent, pursuant to Delaware Rule of Evidence 404(b).¹⁰ The State contends that Defendant has not carried his burden of persuasion on the motion by failing to show that a joinder would result in actual prejudice to him.

III. THE APPLICABLE LAW

Delaware Superior Court Criminal Rule 8(a) states the following:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if 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

⁶ Def. Mot., at ¶ 13.

⁷ *Id.* at ¶ 15.

⁸ *Id.* at ¶ 16.

⁹ Pl. Resp., at ¶ 8.

¹⁰ *Id.* at ¶ 10.

transactions connected together or constituting parts of a common scheme or plan.¹¹

Delaware Superior Court Criminal Rule 14, in relevant part, states the following:

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 or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.¹²

While Super. Ct. Crim. R. 8(a) provides the basis for joinder of offenses, severance of the charges pursuant to Super. Ct. Crim. R. 14 may be warranted if Defendant demonstrates with a reasonable probability that a substantial injustice will result from a joinder.¹³ Hypothetical prejudice to Defendant is insufficient to carry this burden.¹⁴

The Supreme Court has recognized three circumstances of prejudice potentially arising from joinder: 1) a defendant will be subject to harassment or confusion if a defendant presents different defenses to the different charges, 2) the jury may improperly infer a general criminal disposition on the part of a defendant from the multiplicity of charges and/or 3) the jury may improperly accumulate evidence presented on all charges to justify finding guilt on a particular one.¹⁵ Ultimately, the test for determining whether a defendant has met his burden by showing real prejudice is whether joinder is “so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compels the Court’s discretion to sever.”¹⁶

¹¹ Super. Ct. Crim. R. 8(a).

¹² Super. Ct. Crim. R. 14.

¹³ *Bates v. State*, 386 A.2d 1139, 1141 (Del. 1978) (holding that the trial court did not abuse its discretion in failing to sever charges when defendant did not carry burden of showing actual prejudice resulting from joinder).

¹⁴ *Id.* at 1142.

¹⁵ *State v. McKay*, 382 A.2d 260, 262 (Del. Super. 1978) (recognizing the three situations of potential prejudice resulting from joinder, and citing *Drew v. United States*, 331 F.2d 85 (D.C. Cir. 1964)). See also *Wiest v. State*, 542 A.2d 1193, 1195 (Del. 1988)

¹⁶ *State v. Howard*, 1996 WL 190045, (Del. Super.).

IV. DISCUSSION

The Court finds that joinder is presumptively permissible in the instant case, pursuant to Super. Ct. Crim. R. 8(a), because the offenses charged against Defendant are connected together by a common scheme or plan, i.e., to kill Andre Ferrell. Therefore, Defendant carries the burden, pursuant to Super. Ct. Crim. R. 14, of convincing the Court that he is unfairly prejudiced by such joinder. The Court holds that Defendant has failed to carry his burden of showing actual prejudice that he would suffer by joinder and has posed merely hypothetical prejudice.

With respect to the first prong of the recognized circumstances of prejudice which could prevent an otherwise sound joinder under *McKay*, Defendant has not shown that he would use different defenses for the charges if the charges are severed but instead suggests that it would be “likely.”¹⁷ Without more, these claims do not reach the necessary showing of real prejudice to Defendant to compel the Court’s discretion to sever. With respect to the second and third prongs of the *McKay* test, Defendant has not convinced the Court that the Court will be unable to minimize any potential prejudice, which may arise from a consolidated trial. The Court will give a “separate trials” instruction to the jury on this point.¹⁸ There is a presumption that a jury will follow the Court’s instructions when given.¹⁹ Therefore, Defendant has failed to show that any of the three circumstances of prejudice recognized in *McKay* would be realized in the instant case.

Moreover, the Court believes that severance would ultimately be a drain on judicial economy. If this Court were to grant severance, the Murder First Degree case would presumably be tried first, and Delaware Rule of Evidence 404(b) would very likely allow the introduction in the murder trial of the evidence of the attempted murder as part of motive and/or intent. In a

¹⁷ Def. Mot., at ¶14.

¹⁸ The instruction will read something like the following: “The defendant is charged with 19 separate offenses stemming from two separate incidents, which are set forth in the indictment. These are 19 separate and distinct offenses, and you must independently evaluate each offense. The fact that you reach a conclusion with regard to one offense does not mean that the same conclusion will apply to any other offense. Each charge is separate and distinct, and you must evaluate evidence as to one independently from evidence as to the other.”

¹⁹ *Skinner v. State*, 575 A.2d 1108, 1118 (Del. 1990) (refusing to sever charges against the defendant, the trial court properly issued a separate trials instruction to the jury).

recent and similar California Supreme Court case of *People v. Zambrano*, the trial court's joinder of the lead charges against the defendant of Murder First Degree and Attempted Murder First Degree stemming from two incidents was upheld as within its discretion as evidence was likely to spillover into severed trials anyway.²⁰ In *Zambrano*, the defendant was charged with the attempted murders of a couple and also with the subsequent murder of a co-worker with whom he had candidly discussed the attack on the couple. After initially convincing the co-worker to give a false statement to provide the defendant with an alibi, the defendant later discovered that the co-worker wanted to tell the truth and had given a statement to the police concerning the same. The defendant later killed him before he could testify in a trial. In affirming the trial court's denial of severance of the lead charges, the *Zambrano* Court found that evidence of the attempted murders would have been cross-admissible in a separate trial on the murder charge as probative of the defendant's motive for the murder, i.e., to eliminate his co-worker as a witness in the attempted murder trial.²¹ The rationale of *Zambrano* applies equally here.

Defendant argues that because the investigations, witnesses and evidence from both incidents overlap minimally, judicial economy is not sacrificed by allowing two trials. Defendant asserts that DRE 404(b) will not allow the evidence of the earlier Attempted Murder because of the amount of time (15 months) that passed between the two events in question. However, the time that elapsed between January 26, 2006 and April 2, 2007 was apparently due to Defendant's eluding police capture.

Defendant's assertion that he will be unable to challenge the admissibility of 404(b) evidence in a joint trial is also unfounded. Defendant may object to the introduction of this evidence submitted during the trial (although the Court does recognize that it has stated in this opinion that such evidence is likely to be admitted). A joinder of charges does not extinguish Defendant's rights to challenge and successfully exclude improper evidence.

The decision of whether to grant severance of charges rests in the sound discretion of the Court. As Defendant has not demonstrated the requisite "actual prejudice" recognized in Delaware case law from a consolidated trial, Defendant's motion to sever charges is **DENIED**.²²

²⁰ *People v. Zambrano*, 163 P.3d 4, 38 (Cal. 2007)

²¹ *Id.*

²² At oral argument, Defendant raised for the first time the issue of "due process" in support of his motion. As this ground for the motion had not been raised in the motion papers, the Court will not consider it. See *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993) (refusing to consider a legal claim not raised in the text of the party's briefs).

V. CONCLUSION

For the preceding reasons, Defendant's motion to sever charges is **DENIED.**

Very truly yours,

oc: Prothonotary