IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	**ID NO. 1108023648**
v.	:	
	:	
WILLIAM S. SELLS, III,	:	
	:	
Defendant.	:	

Submitted: April 18, 2013
Decided: April 30, 2013

Upon Defendant Sells' Motion for Severance
DENIED

OPINION and ORDER

Susan G. Schmidhauser, Esq., and Deborah J. Weaver, Esq., Deputy Attorneys General, Department of Justice, Dover, Delaware for the State of Delaware.

Andre M. Beauregard, Esq., Brown, Shiels & Beauregard, LLC, Dover, Delaware, and Adam Windett, Esq., Hopkins & Windett, LLC, Dover, Delaware for Defendant William S. Sells, III.

Robert A. Harpster, Esq., Office of the Public Defender, Dover, Delaware standby counsel for Defendant Russell Grimes.

Russell Grimes, *pro se*.

Young, J.

BACKGROUND

Defendant, William Sells has Moved to have his trial severed from the trial of co-defendant, Russell Grimes. Those two defendants were indicted jointly in a 24 count indictment.

Both defendants were charged with Robbery First Degree (Count 1), Conspiracy Second Degree (Count 2), Possession of a Firearm During the Commission of a Felony (Count 3), six counts of Aggravated Menacing (Counts 6 through 11), Theft (Count 12), and five counts of Attempted Murder First Degree (Counts 14 through 18). Additionally, Defendant Sells was charged with the counts of Possession of a Firearm or Ammunition by a Person Prohibited (Counts 4 and 22), Wearing a Disguise (Count 5), Conspiracy First Degree (Count 20) and Possession of a Firearm During the Commission of a Felony (Count 21). Grimes, individually, was charged with Possession of a Firearm or Ammunition by a Person Prohibited (Count 13), Conspiracy First Degree (Count 19), Forgery Second Degree (Count 23) and Criminal Impersonation (Count 24).

All of the foregoing occurred on or about August 26, 2011, in the course of or during the circumstances surrounding an alleged armed robbery. Factually, at least at this juncture, it appears clear that an armed robbery took place on August 26, 2011, at the First National Bank of Wyoming, where a masked individual entered the bank; pointed what appeared to multiple employees to be a handgun; demanded money on threat of shooting or killing; obtained money; and fled. It appears likely at this point that the flight was in a black SUV. It is also essentially undisputed that the Delaware State Police pursued a black Ford SUV with New Jersey registration, during the

course of which shots were fired from the pursued SUV at the police vehicle, striking it several times, and placing the officers in the police vehicle in fear for their lives. Similarly undisputed is that the pursued vehicle eventually crashed; the occupants thereof fled the vehicle; a foot pursuit took place; and during the pursuit, one of the individuals fleeing, who turned out to be Defendant Russell Grimes, was shot and then arrested.

Evidence exists that the pursued vehicle belonged to one Sophia A. Jones, who was the girlfriend of Defendant Sells, and who had loaned the vehicle to Defendant Sells. That evidence may or may not be disputed.

Defendant Sells was not apprehended during the event. Evidently, he was arrested some three days later.

Defendant Sells argues that the defenses which might be presented by the two defendants will be antagonistic to each other. In his Motion, Sells claims that the anticipated antagonism is so marked that "the jury cannot accept one defendant's defense without rejecting a central part of the other's."

As indicated, many of the primary facts are indisputable. Still, one can hypothesize that Sells and Grimes could each claim that the other had sole control and possession of the pursued vehicle. Grimes could claim that Sells went into the bank, while Sells could deny that. Sells might say that, even if he were in the pursued vehicle, Grimes was doing the driving and the shooting; whereas Grimes might say just the opposite. Those scenarios present possible – even if attenuated – arenas of disagreement between the co-defendants. Other incompatible circumstances might be propounded. In an attached, but sealed, "Exhibit," Defendant has succinctly referred

to a few areas where the co-defendants might not be in accord. Defendant requested that confidentiality be maintained as to the content of that Exhibit. I have reviewed the Exhibit; will maintain its confidentiality; but find nothing in it of consequence *vis à vis* this Motion.

STANDARD OF REVIEW

Superior Court Criminal Rule 8(b) permits two or more defendants to be charged in the same indictment "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"[1] Generally, when defendants are indicted jointly, they will also be tried together.[2] On the other hand, Superior Court Criminal Rule 14 provides the trial court with authority to grant a motion for separate trials, if trying the defendants jointly would prejudice any of the parties. The defendant bears the burden of demonstrating that denial of the motion would result in substantial injustice and unfair prejudice.[3]

The decision to grant or deny such a motion is a matter of discretion addressed to the trial judge.[4] This discretion may be considered to be abused when a denial brings about a reasonable probability that substantial injustice will result

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[1] Super. Ct. Crim. R. 8(b).

[2] *Jenkins v. State*, 230 A.2d 262, 272 (Del. 1967).

[3] *Lampkins v. State*, 465 A.2d 785, 794 (Del. 1983).

[4] *Wiest v. State*, 542 A.2d 1193, 1195 (Del. 1985); *Younger v. State*, 496 A.2d 546, 549-50 (Del. 1985).

from the holding of a joint trial.[5] The Delaware Supreme Court has held that an abuse of discretion "usually depends upon the facts and circumstances of each case", although some general rules may applied.[6] However, the motion should be granted "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."[7]

DISCUSSION

Analyses of motions to sever based upon claims of antagonistic defenses have come about frequently of late (cf: *State v. Gibbs and Hicks*, ID 1107013054 & 1107013050, November 30, 2012; and *State v. Morris*, ID 1209001736, April 24, 2013). As indicated therein, the case references flow from *Floudiotis*,[8] which cites *Manley*[9] and *Jenkins*.[10] There are four factors a court ought to consider in reaching a determination as to whether a motion to sever should be granted:

(1) problems involving a co-defendant's extra-judicial statements;

(2) an absence of substantial independent competent evidence of movant's

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[5] *Bradley v. State*, 559, A.2d 1234, 1241 (Del. 1989) (quoting *Bates v. State*, 386 A.2d 1139, 1141 (Del. 1978)).

[6] *Id.*

[7] *Stevenson v. State*, 709 A.2d 619, 630 (Del. 1998) (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993)).

[8] *Floudiotis v. State,* 726 A.2d 1196, 1210 (Del. 1999).

[9] *Manley v. State*, 709 A2 643 (Del. 1998).

[10] *Jenkins v. State*, 230 A2 262 (Del. 1967).

guilt;

(3) antagonistic defenses between the co-defendants;

(4) difficulty segregating the evidence between the co-defendants.

Upon proper consideration of those factors, a finding of the existence of any one may make severance appropriate.

The first factor is, to a large extent, a *Bruton* matter presented when the co-defendants have provided extra-judicial statements, which incriminate the other.[11] The problem arises if other, independent evidence is, at least, sparse. That is not an issue in this case. As stated above, substantial evidence, completely exclusive of any input from either defendant, exists.

The second prong, similarly, is not relevant here. The Affidavits of probable cause show entirely consistent identification of the "in the bank" suspect compatible with Defendant Sells' description; plus evidence of Sells' having borrowed the pursued vehicle shortly before the robbery; plus prior associations between the two co-defendants; and other evidence.

The fourth potential basis concerns difficulty in segregating evidence between the co-defendants. That is not an issue of any consequence that has been suggested, with the possible exception of which occupant in the pursued vehicle did the actual shooting at the pursuing police. Since accomplice liability would make both responsible for either's shooting, that, too, is not consequential.

That leaves the third prong, which is the single argument presented by

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[11] *Bruton v. United States*, 391 U.S. 123 (1968).

Defendant Sells. Given the areas of potential – and it must be stressed here that those areas are AT BEST potential – disagreement we have the oft-recited "unfairness" of the movants' having to respond not only to the accusations of the prosecution, but also to those of the co-defendant. Conceivably, in some case scenarios, that could present a legitimate issue. Here, that is not the situation.

Bradley[12] has held that defenses are "sufficiently antagonistic to mandate separate trials" only when "the jury can reasonably accept the core of the defense offered by either defendant only if it rejects the core of the defense offered by his co-defendant." The theoretical "finger pointing" that would have each defendant claiming that the other did the shooting nevertheless has both defendants in the pursued car, with both equally legally culpable. The possible admission by Grimes that he was a robber but so was Sells, as opposed to the claim by Sells that "I was never there," *a priori* demands a position by Sells that points no finger at all. So even that event, as unlikely as it is to be something which will come to pass, would not satisfy a basis for severing the trials. The apparently irrefutable evidence of the police chase of a vehicle from which gun shots were fired, followed by the pursued vehicle's crashing, followed by the shooting of one of the individuals' (Grimes) who emerged from the pursued car, drastically limits the realistic or legitimate basis for arguing that antagonistic defenses of any consequence exist.

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[12] *Bradley v. State*, 559 A2 1234, 1241 (Del. 1989).

As stated in *Manley*[13] and elsewhere, joint trials are preferred, for reasons of judicial economy and efficiency, to say nothing of consistency of jury verdict. So long as those objectives can be achieved without substantial prejudice to the right of a defendant to a fair trial, the decision to deny a motion for severance is appropriate. Indeed, the general rule is that jointly indicted defendants are tried together.[14]

That, it appears to the Court, is the case at bar. Therefore, Defendant Sells' Motion to Sever is **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Counsel
Russell Grimes, *pro se*
Opinion Distribution
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[13] *State v. Manley*, 1996 WL 527322, at *2 (Del. Super., August 1, 1996) aff'd 709 A2643 (Del. 1998)

[14] *Bradley v. State*, 559 A2 1234 (Del. 1989).