

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 0903021499
v.	:	
	:	
ERIC K. SZULBORSKI,	:	
	:	
Defendant.	:	

Submitted: October 30, 2009

Decided: November 3, 2009

ORDER

Upon Defendant's Motion for Relief from
Prejudicial Joinder. *Denied.*

R. David Favata, Esquire, Department of Justice, Dover, Delaware; attorneys for the State of Delaware.

Sandra W. Dean, Esquire, Office of the Public Defender, Dover, Delaware; attorneys for the Defendant.

WITHAM, R.J.

INTRODUCTION

Defendant Eric Szulborski (“Szulborski”) filed this Motion for Relief from Prejudicial Joinder on October 6, 2009. Based upon the reasons set forth below, Defendant’s motion must be DENIED.

FACTS AND PROCEDURAL HISTORY

Szulborski was indicted on 152-counts for a crime spree. The charges stem from a variety of separate burglaries. The State allegedly has direct evidence of Szulborski’s involvement in the burglary of a “Tire King” on February 28, 2009 (counts 146-149) and the burglary of an individual victim on March 23, 2009 (counts 136-139). Szulborski contends, however, that the State lacks any direct evidence linking him to the remaining counts.

DISCUSSION

The decision whether to grant or deny a motion for severance is a matter within the sound discretion of the trial court.¹ The defendant has the burden of establishing substantial prejudice.² Mere hypothetical prejudice, however, is not sufficient.³ The interest of judicial economy outweighs the defendant’s interests where the defendant makes unsubstantiated claims of prejudice.⁴

¹ *Bates v. State*, 386 A.2d 1139, 1141 (Del. 1978); *see also* Super. Ct. Crim. R. 14.

² *Id.*

³ *Id.*

⁴ *State v. Flagg*, 739 A.2d 797, 799 (Del. Super. Ct. 1999).

Delaware Superior Court Criminal Procedure Rule 8 permits the joinder of offenses in an indictment if the separate counts are of the same or similar character.⁵ Separate trials may be ordered, however, where joinder would prejudice the defendant.⁶

In determining whether the defendant is prejudiced, the Court should consider whether:

(1) the jury may accumulate evidence of the various offenses charged and find guilt when, if considered separately, it would not so find; (2) the jury may use the evidence of one of the offenses to infer a general criminal disposition of the defendant in order to find guilt of the other offense or offenses; and (3) the defendant was subject to embarrassment or confusion in presenting different and separate defenses to different offenses.⁷

A defendant meets his burden of showing prejudice where “judicial economy concerns are outweighed by joinder so highly prejudicial the Court is compelled to sever the trial.”⁸

Severance is appropriate where the “sheer mass of the charges . . . render it extremely unlikely that a jury will be able to resist the cumulative effect of evidence

⁵ Super. Ct. Crim. R. 8(a).

⁶ Super. Ct. Crim. R. 14.

⁷ *State v. McKay*, 382 A.2d 260, 262 (Del. Super. Ct. 1978).

⁸ *State v. Cooke*, 909 A.2d 596, 600-01 (Del. Super. Ct. 2006).

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linking the defendant to separate charges.⁹ The total number of counts, however, is not *per se* determinative of “sheer mass.”¹⁰

CONCLUSION

After considering the facts and arguments of this case, the Court finds that Szulborski has failed to meet his burden of showing substantial prejudice. Consequently, Szulborski’s Motion to Sever Counts 146-149 and 136-139 from the remaining counts is *denied*.

IT IS SO ORDERED.

R.J.

WLW/dmh
oc: Prothonotary
xc: Counsel

⁹ *McKay*, 382 A.2d 260.

¹⁰ *State v. Siple*, 1996 WL 528396, at *3 (Del. Super.).