

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

STATE OF DELAWARE,)
)
 v.)
)
ANTHONY MILES,)
(ID. Nos. 0107001242)
 0106008596)
)
)
 Defendant.)

Submitted: November 9, 2001
Decided: December 4, 2001

Stephen R. Welch, Jr., Esq., Dover, Delaware. Attorney for State.

Lloyd Schmid, Esq., Dover, Delaware. Attorney for Defendant.

UPON CONSIDERATION OF THE STATE’S
MOTION TO CONSOLIDATE
GRANTED IN PART
DENIED IN PART

UPON CONSIDERATION OF THE DEFENDANT’S
MOTION TO SEVER
GRANTED

VAUGHN, Resident Judge

State v. Anthony Miles

ID. Nos. 0107001242 & 0106008596

December 4, 2001

ORDER

Upon consideration of the State's motion to consolidate and the defendant's motion to sever, it appears that:

1. The defendant is charged in two separate indictments. One indictment alleges burglary second degree, conspiracy second degree, criminal mischief and eleven thefts of a firearm, all arising out of alleged thefts of firearms from the Smyrna Sporting Goods store in Smyrna ("the first indictment"). These offenses are alleged to have been committed on June 2 and June 5, 2001. The second indictment alleges offensive touching, possession of a firearm during the commission of a felony ("PFDCF"), possession of drug paraphernalia, aggravated menacing, receiving a stolen firearm, possession with intent to deliver marijuana and possession of a firearm by a person prohibited ("PFBPP"). These offenses are alleged to have occurred in Dover on June 12, 2001.

2. The State has moved to consolidate the charges in the second indictment for trial with the charges in the first indictment, except for the drug charges which it agrees should be tried separately. It contends that consolidation is proper under Rules 8 and 13. The defendant opposes consolidation and contends that it would cause him unfair prejudice. In addition, he has moved pursuant to Rule 14 to sever the PFBPP charge from the other charges in the second indictment. The State opposes this motion.

3. Offenses may be charged in the same indictment if they "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

State v. Anthony Miles

ID. Nos. 0107001242 & 0106008596

December 4, 2001

plan.”¹ Offenses charged in separate indictments may be tried together if they could have been indicted together.² However, offenses which are not indictable in the same indictment ordinarily are not proper for consolidation.³

4. The second indictment alleges that the defendant committed aggravated menacing by pointing a firearm at Christine Guinn, placing her in fear of imminent physical injury. In its motion, the State represents that its evidence shows that the gun which the defendant allegedly pointed at Christine Guinn has been identified as a 40 caliber Glock which was stolen from Smyrna Sporting Goods on June 2. Rule 8 provides that joinder of two offenses is permitted where they “are based on . . . two . . . acts . . . connected together . . .” The rule requires merely that an act upon which the first offense is based be linked in some fashion to an act upon which the second offense is based. The theft of a firearm and the subsequent use of that firearm to commit a crime are connected together because they involve the same firearm. The aggravated menacing charge, therefore, could have been charged in the first indictment and consolidation of that charge with those in the first indictment is proper. In addition, there will be some overlap in evidence since the defendant’s alleged possession of the 40 caliber Glock in Dover is relevant to his alleged involvement in the thefts at Smyrna Sporting Goods. An overlap in evidence is not required for joinder under Rule 8, but it supports joinder. It follows that the charge of PFDCF in the second indictment which arises out of the aggravated menacing can

¹ Super. Ct. Crim. R. 8.

² Super. Ct. Crim. R. 13

³ *Draper v. State*, Del. Supr., 146 A.2d 796 (1958).

State v. Anthony Miles

ID. Nos. 0107001242 & 0106008596

December 4, 2001

be consolidated as well. The receiving a stolen firearm charge in the second indictment pertains to the 40 caliber Glock. It is therefore also connected to the charges in the first indictment.

5. The State's motion also represents that its evidence shows that the offensive touching charge in the second indictment arises out of an incident which occurred earlier the same day as the alleged aggravated menacing. The State indicates that its evidence will show that the alleged offensive touching was broken up by an individual named Kendall Guinn, and that during the alleged aggravated menacing the defendant was demanding that Christine Guinn inform him of the whereabouts of Mr. Guinn. The offensive touching charge in the second indictment is of the same or similar character as the aggravated menacing charge, both being crimes against the person. It is, therefore, properly joined with the alleged aggravated menacing. Although not required under Rule 8, the fact that the two incidents occurred on the same day supports joinder. The offensive touching charge will remain joined with the aggravated menacing count and be part of the consolidation of the two indictments.

6. While the burden of showing that joinder is proper is on the State, the defendant has the burden of demonstrating that a joint trial will subject him to substantial injustice and unfair prejudice.⁴ Prejudice which a defendant may suffer from a joinder of offenses has been described in the following terms: (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

⁴ *Lampkins v. State*, Del. Supr., 465 A.2d 785 (1983); *Bates v. State*, Del. Supr., 386 A.2d 1139 (1978).

State v. Anthony Miles

ID. Nos. 0107001242 & 0106008596

December 4, 2001

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 separately defenses to different charges.⁵ After consideration of the offenses involved here, I am satisfied that consolidation of the aggravated menacing, the PFDCF, the receiving a stolen firearm and the offensive touching charges with the charges in the first indictment will not subject the defendant to unfair prejudice.

7. The PFBPP charge requires that the jury be informed of the defendant's prior felony conviction of trafficking in cocaine. In order to avoid unfair prejudice, that offense will be severed from any of the other offenses.

8. The aggravated menacing, PFDCF, offensive touching, and receiving a stolen firearm charges will be consolidated for trial with the charges in the first indictment. The drug charges in the second indictment will be tried separately. The PFBPP charge is severed and will be tried separately from all other charges.

9. Therefore, the State's motion to consolidate is ***granted in part*** and ***denied in part***. The defendant's motion to sever is ***granted***.

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary
cc: Order Distribution

⁵ *Weist v. State*, Del. Supr., 542 A.2d 1193 (1988).

State v. Anthony Miles

ID. Nos. 0107001242 & 0106008596

December 4, 2001