

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
JAKE D. LLOYD	:	Case No. 14 CAA 09 0062
	:	
Defendant - Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Delaware County Court of Common Pleas, Case No. 14CR-I-05-0189B
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	June 18, 2015
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APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

CAROL HAMILTON O'BRIEN
Prosecuting Attorney

DAVID H. BIRCH
2 West Winter
Delaware, OH 43015

By: MARK C. SLEEPER
Assistant Prosecuting Attorney
140 North Sandusky Street
Delaware, OH 43015

Baldwin, J.

{¶1} Appellant Jake D. Lloyd appeals a judgment of the Delaware County Common Pleas Court convicting him of aggravated robbery with a firearm specification (R.C. 2911.01(A)(1)) and felonious assault (R.C. 2903.11(A)(2)). Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} Appellant, James Williams, and Nicholas Brown were hanging out one evening when Brown brought up the name Bethany Bunting. James Williams believed Bunting had ripped him off in the past, and so they came up with a plan to rob Bunting. Brown was to text Bunting and tell her he wanted to buy pills. When she arrived, Williams and appellant would be waiting outside to rob her. Brown and his girlfriend, Samantha Cook, would stay in the house.

{¶3} On February 19, 2014, Bunting went to 126 Pumphrey Terrace in Delaware to sell pills to Brown. According to the plan, appellant and Williams attacked her when she got out of her vehicle, striking her with guns. They took pills and cash from Bunting, then fled in a BMW. Bunting attempted to follow the BMW, but was unable to do so. She eventually went to the hospital where she received five staples in her head.

{¶4} On March 9, 2014, Williams pulled a gun on a man who was walking to work, accusing him of snooping around his property. After the incident, Williams noticed a police car parked across the street from his house. He was worried about his home being raided, and called Brown to come and remove items from his house. Brown and Cook arrived at Williams' home, and left with three firearms and a large amount of

ammunition. They were stopped by the Powell Police Department, and confessed to the reason they went to Williams' house. A DNA mixture consistent with contributions from Bethany Bunting was found on the barrel of a black and silver pistol seized from Brown and Cook.

{¶5} Appellant and Williams were indicted in a joint indictment on May 1, 2014. Count one charged both Williams and appellant with aggravated robbery with a firearm specification, and count two charged both Williams and appellant with felonious assault. Counts three through six charged Williams with aggravated menacing, tampering with evidence, having weapons under disability, and possession of heroin.

{¶6} Appellant moved for relief from prejudicial joinder on May 23, 2014, seeking to have his case severed from that of Williams. The motion was denied. The case proceeded to jury trial in July of 2014. At the conclusion of the State's case, appellant renewed his motion to sever. The trial court denied the motion. The jury returned verdicts of guilty on both counts against appellant. On July 28, 2014, appellant filed a motion for new trial, again raising the issue of prejudicial joinder. The trial court denied the motion. On August 25, 2014, the court sentenced appellant to six years incarceration.

{¶7} Appellant assigns two errors to this Court on appeal:

{¶8} "I. THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION TO SEVER THE DEFENDANTS FOR TRIAL.

{¶9} "II. THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION FOR A NEW TRIAL ON THE BASIS OF IMPROPER JOINDER OF DEFENDANTS."

I., II.

{¶10} We address both of appellant's assignments of error together, as both claim the same error in the court's denial of his motion to sever his trial from that of Williams.

{¶11} Crim. R. 14 provides for relief from prejudicial joinder:

{¶12} "If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires. In ruling on a motion by a defendant for severance, the court shall order the prosecuting attorney to deliver to the court for inspection pursuant to Rule 16(B)(1) any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial."

{¶13} A defendant claiming error in the trial court's refusal to sever offenses or defendants has the burden of affirmatively showing that his rights were prejudiced by the joinder. *State v. Torres*, 66 Ohio St.2d 340, 421 N.E.2d 1288 (1981). To demonstrate error in failing to sever, a defendant must show that: (1) his rights were prejudiced by joinder; (2) at the time he moved to sever, he provided the court with sufficient information to weigh the considerations favoring joinder; and (3) the court abused its discretion in overruling the motion. *State v. Schaim*, 65 Ohio St.3d 51, 59, 1992-Ohio-31, 600 N.E.2d 661.

{¶14} Whether an accused shall be tried separately from a co-defendant is a matter within the sound discretion of the trial court. *State v. Abbott*, 152 Ohio St. 228, 89 N.E.2d 147 (1949). An abuse of discretion implies that the trial court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140(1983).

{¶15} Appellant argues that there was a substantial difference in the amount of evidence presented against him and Williams, and that more than half of the witnesses presented did not relate to the charges against him. He argues that this violates the "spillover doctrine."

{¶16} We discussed the spillover doctrine in *State v. Allen*, 5th Dist. Delaware No. 2009-CA-13, 2010-Ohio-4644, ¶ 76:

In a case involving several defendants, the court must take care that evidence against one defendant is not misinterpreted by the jury and used as the basis for convicting another defendant not connected to the evidence. The existence of ... a 'spill-over' or 'guilt transference' effect turns in part on whether the numbers of conspiracies and conspirators involved were too great for the jury to give each defendant the separate and individual consideration of the evidence against him to which he was entitled. *United States v. Gallo* (6th Cir.1985), 763 F.2d 1504, 1526. (Citing *United States v. Tolliver* (2nd Cir.1976), 541 F.2d 958, 962). The primary concern is whether the jury will be able to segregate

the evidence applicable to each defendant and follow the limiting instructions of the court as they apply to each defendant. *Opper v. United States* (1954), 348 U.S. 84, 95, 75 S.Ct. 158, 165, 99 L.Ed. 101.

{¶17} In the instant case, while there were witnesses presented on charges that were inapplicable to appellant, the evidence was simple and distinct on those charges. The charges filed solely against Williams applied to a separate incident on a separate date, and the evidence related to this incident was easily distinguishable from the evidence against appellant pertaining to the incident involving Bethany Bunting.

{¶18} Both appellant and Williams were charged with the same offenses arising from the attack on Bunting on February 19, 2014. Concerning this incident, there was not substantially more evidence presented against Williams than there was against appellant. While the DNA on Williams' gun tied him to robbery of Bethany Bunting, Brown and Cook both testified as to the involvement of appellant and Williams in the robbery and assault on Bunting. The trial court instructed the jury to carefully separate the evidence and consider it only as to the defendant to whom it applied. Tr. 770. Appellant has not demonstrated that he was prejudiced by spillover evidence from being tried with Williams.

{¶19} Appellant also argues that "other circumstances" demonstrate prejudice, such circumstances being that only two of the six counts in the indictment applied to him. Appellant has not demonstrated prejudice. The four counts against Williams alone related to a separate incident, easily separated by the jury from the charges against

appellant. Further, the trial court clearly instructed the jury as to which counts and charges applied to which defendant.

{¶20} The assignment of error is overruled. The judgment of the Delaware County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Hoffman, J. concur.