

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: September 15, 2020)

STATE OF RHODE ISLAND

:

vs.

:

No. P1-2017-0542 A&B

:

JAYQUAN GARLINGTON and

:

BRUCE MOTEN

:

:

DECISION ON MOTIONS TO SEVER

VOGEL, J. Co-defendants Jayquan Garlington (Garlington) and Bruce Moten (Moten) were indicted for the 2007 murder of Darren Reagans and for conspiring with each other and with the late Kasean Benton (Benton) to commit that murder. Both defendants seek to have their cases severed from one another for trial. The State objects to their motions to sever. The Court has received memoranda from the defendants in support of their respective positions and from the State in opposition to the motions.¹ After consideration thereof, in the exercise of its discretionary powers under Super. R. Crim. P. 14, this Court grants the motion filed by Moten and overrules the State’s objection thereto. Having decided Moten’s motion in favor of severance, it is unnecessary for the Court to reach the motion filed by Garlington. For the reasons set forth herein, the Court will try the cases against these jointly indicted defendants separately.

¹ Through counsel, Moten objected to having the Court decide his motion on written filings without oral argument in his presence but failed to provide requested legal authority to support his position. Because Garlington and Moten are housed in different securities, the Department of Corrections is unable to provide WebEx access for them to appear simultaneously at the same hearing. (Email from: Bajakian, Eliza (DOC) to Judge Vogel, September 10, 2020.) In light of Covid-19, and the aforementioned circumstances, the Court overrules Moten’s objection to having the Court decide these motions on memoranda and reply memoranda submitted by the parties.

I

Facts

The State's theory of the case includes an allegation that the jointly indicted defendants and their deceased co-conspirator, Benton, were members of a gang, YNIC, and that Darren Reagans was a member of a rival gang, Comstock. Benton himself was shot and killed on July 12, 2009 by a member of Comstock, Donald Young. *See State v. Young*, 78 A.3d 787, 790 (R.I. 2013). The facts set forth in the Supreme Court opinion in the *Young* case give some context to the issues before the Court in this matter. As set forth in that opinion, YNIC, is an acronym for "Young Ni**ers in Charge." Comstock members come from Comstock Avenue in Providence. *Id.* at 790, n.2, 3. Apparently, as of the date of Benton's murder, there was an ongoing violent feud between the two gangs. *Id.*

Garlington, under his rap name "Yung Jake," has performed several rap songs and music videos and has uploaded the same on the Internet. In accordance with a decision issued by this Court on May 21, 2020, the State will be permitted to offer certain lyrics from one of his rap songs at trial, "*Ain't Da Same*." The State contends that one line in the song, "*In 07 I was smokin on D*," is an admission by the singer (Garlington) that in 2007 he killed Darren Reagans. The State suggests that the lyrics not only constitute an admission by Garlington of his participation and guilt in the killing of Darren Reagans, they also establish motive, knowledge of, and purpose for the murder. Although Garlington uses the word "I" in the aforementioned lyric to suggest that he was singing a song solely about his own criminal conduct, that interpretation would be taking the line out of context. In the lines that follow, Garlington uses the second person "we" when recounting acts of violence. He sings:

"In 07 I was smokin on D

*“Them ni**as bounced back and they smoked Kasean*

“R.I.P.

“They thought it was a game while we was on the scheme

“We lurking

“2012 Devon on lean

“Now Dougie got smoked by the cops. . . .” See Tr. (prepared by State) of *“Ain’t Da Same”* by Yung Jake and Blue, at lines 14-20.

The State expects to offer evidence that the above quoted lyrics mention “Kasean,” “Devon” and “Dougie.” It appears that “Kasean” refers to Kasean Benton, “Devon” to Devon Young and “Dougie” to Douglas Cooper. Consistent with the song lyrics, all three met violent deaths. In addition to the aforementioned killing of Benton, Donald Young’s brother and fellow Comstock member, Devon, was shot and killed in 2012. Grand Jury Tr. 8-15, Mar. 1, 2017. In 2014, police officers shot Cooper after the officers intervened in a shootout involving the rival gang members. *Id.* at 16-17.

II

Analysis

Moten and Garlington both seek separate trials. The State objects to their motions for severance and contends that the defendants are not entitled to separate trials.

Moten contends that he will be prejudiced if one jury considers the allegations against both him and Garlington. He expresses a particular concern about being viewed as the “we” referenced in the rap song. In light of the conspiracy charge and the likely jury instruction on that charge, he fears that the jury will not focus on the word “I” in the line *“In 07 I was smokin on D”* See Tr. (prepared by State) of *“Ain’t Da Same”* by Yung Jake and Blue, at line 14 He notes that if

Garlington exercises his Fifth Amendment right and declines to testify at trial and the song is admitted into evidence, Moten will be unable to confront this evidence against him.

Garlington also seeks a separate trial from Moten and cites the potential of antagonistic defenses, listing several persons identified by the State as having information concerning the murder. Some purportedly offer information against Moten, and not Garlington.

The motions to sever are filed under Super. R. Crim. P. 14 which provides in pertinent part that:

“If it appears that a defendant . . . is prejudiced by a joinder of . . . defendants in an indictment, information, or complaint 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.” Super. R. Crim. P. 14.

“A defendant is not entitled to severance as a matter of right; the grant or denial of severance rests within the sound discretion of the trial justice.” *State v. Clarke*, 448 A.2d 1208, 1209 (R.I. 1982). The word “prejudice” as set forth in Rule 14 refers to *substantial prejudice*. Our Supreme Court has stated that “[i]t is not sufficient for the defendant to cite the potential for and the likelihood of prejudice. His burden is to demonstrate substantial prejudice resulting from the joinder.” *State v. Day*, 898 A.2d 698, 705 (R.I. 2006) (quoting *State v. Whitman*, 431 A.2d 1229, 1233 (R.I. 1981)).

Substantial prejudice for severance is “something more than [a] mere disadvantage” and exists when there is a “real doubt about how the trial irregularity may have affected the jury.” *State v. Patriarca*, 112 R.I. 14, 29-30, 308 A.2d 300, 311 (1973). In *Day*, 898 A.2d at 705, our Supreme Court explained that:

“Substantial prejudice can occur in the following circumstances:

‘(1) [The defendant] may become embarrassed or confounded in presenting separate defenses; (2) the jury may use the evidence of one of the crimes charged

to infer a criminal disposition on the part of the defendant from which is found his guilt of the other crime or crimes charged; or (3) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find.” *Day*, 898 A.2d at 705 (quoting *State v. Goodreau*, 560 A.2d 318, 321-22 (R.I. 1989)).

The State correctly notes that the joinder of charges against Moten and Garlington will not violate *Bruton v. United States*, 391 U.S. 123 (1968). Even if the admission of the rap lyrics constitutes Garlington’s confession, the song does not implicate Moten in the killing of Reagans. In *Bruton*, the United States Supreme Court reversed Bruton’s conviction following a joint trial when the trial justice admitted the co-defendant’s confession that implicated Bruton in the crime. The United States Supreme Court found that the evidence violated Bruton’s constitutional right of cross-examination under the Confrontation Clause of the Sixth Amendment. *Id.*

In *State v. Alston*, 900 A.2d 1212 (R.I. 2006), our Supreme Court reversed Alston’s conviction as violating the holding in *Bruton* although he was tried separately from his co-defendant, Jerry Coleman. At Alston’s trial, a detective testified and read a redacted version of Coleman’s confession implicating only himself. References to Alston’s involvement in the crimes were deleted from the confession. However, the prosecutor then asked the detective what he did after obtaining Coleman’s statement, and he replied that he completed an affidavit for Alston’s arrest. *Id.* at 1218. The Court found that exchange to constitute a *Bruton* violation and reversed the conviction.

Even though the admission of the rap lyrics in a joined trial in this case may not constitute a *Bruton* violation, joinder still may violate Moten’s right to a fair trial. Ultimately, this Court must balance “efficiency and convenience in judicial administration on the one hand and the defendant’s right to a fair trial without prejudice on the other.” *State v. Pereira*, 973 A.2d 19, 28 (R.I. 2009) (quoting *Day*, 898 A.2d at 705 and *Patriarca*, 112 R.I. at 29, 308 A.2d at 311).

It is reasonable to infer that the State will suggest to the jury that the murder of Reagans by Garlington was an act carried out by himself and other members of his gang, YNIC, against a member of the rival gang, Comstock. It is highly unlikely that the State will contend that he acted alone. In support of its theory of the case, the State will offer lyrics from “Ain’t Da Same” which demonstrate multiple deadly and violent confrontations between the two rival gangs and arguably illustrate a cavalier attitude toward such violence. This potentially powerful evidence offered against Garlington likely would suggest to the jury that Moten, also a member of YNIC, was involved with his co-defendant in the same conduct referenced in the rap song. The violent killing of the deceased co-defendant supports the inference that Garlington may not have acted alone.

Moten is charged with conspiring with Garlington and Benton in the murder of Reagans. In connection with that charge, the jury will be instructed that conspiracy is an agreement by “two or more persons to commit an unlawful act or to perform a lawful act for an unlawful purpose.” *State v. Mastracchio*, 612 A.2d 698, 706 (R.I. 1992). The jury further will be instructed that proof of an explicit agreement to commit the alleged offense may be “inferentially established by proof of the relations, conduct, circumstances, and actions of the parties.” *Id.* (quoting *State v. Gordon*, 508 A.2d 1339, 1349 (R.I. 1986)).

In denying defendants’ motions in limine to preclude the admissibility of lyrics from “Ain’t Da Same,” this Court viewed the probative value of the proffered evidence as it related to the charges solely against Garlington. The decision allowing the rap lyrics would not apply to a separate trial against Moten. The lyrics would not be admissible against Moten at a separate trial. Accordingly, in determining whether a joined trial would result in substantial prejudice to Moten, the Court must consider the risk that Moten would be deprived of a fair trial in light of the admissibility of the rap lyrics at a joint trial.

This Court finds that the rap song not only may implicate Garlington in the murder, but also would demonstrate the extent of violence between the two rival gangs. That supports the State's position that Reagans' murder was committed as part of that gang violence and that Moten, seated next to Garlington, was part of the gang warfare that led to the murder. The jury may infer that Benton was killed to revenge the murder of Reagans, suggesting that Garlington did not act alone regardless of his use of the word "I" in the rap lyric "*In 07 I was smokin on D.*" The jury may infer, at the very least, that Benton was involved in the killing.

Although a joined trial may advance "efficiency and convenience in judicial administration" (*see Pereira*, 973 A.2d at 28), joinder may create a risk of substantial prejudice interfering with Moten's right to a fair trial. This Court must safeguard that right without regard to efficiency or convenience.

III

Conclusion

For the foregoing reasons, the Court grants Moten's motion for a separate trial. Having decided his motion, the Court does not reach the arguments advanced by Garlington in his motion for a separate trial and need not decide that motion.

The State may determine which of the two trials it wishes to pursue first and shall notify the Court and the defendants of that selection by October 15, 2020.

Counsel shall submit an appropriate order for entry.

