IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNT

STATE OF DELAWARE,)		
)		
v.)		
)		
ERIC A. YOUNG,)		
(ID. No. 1206010872))		
)		
Defenda	nt.)		
	Submitted:	April 5	2013

Nicole S. Hartman, Esq., Department of Justice, Dover, Delaware. Attorney for the State.

Decided: July 31, 2013

Suzanne E. MacPerhson, Esq., Public Defender's Office, Dover, Delaware. Attorney for the Defendant.

Upon Consideration of Defendant's

Motion to Sever

GRANTED

ORDER

Upon consideration of the defendant's Motion to Sever, the State's opposition, and the record of the case, it appears that:

- 1. On June 13, 2012, the police conducted a wiretap intercept of phone calls between defendant Eric Young and co-defendant Jermaine Dollard. They had a warrant for such wiretaps. The conversations led the police to believe that Young and Dollard intended to travel to New York City to purchase illegal drugs. Later that day, the police followed Young and Dollard, who were traveling in Dollard's Honda Accord, from Delaware to New York City, while conducting surveillance of them. With the information which they had gathered, the police obtained a warrant to search both Dollard's vehicle and his residence. On the way back down to Delaware from New York, the police conducted a traffic stop of Dollard's vehicle and found two kilograms of cocaine in a secret compartment. The police also conducted a search of Dollard's home, where they discovered weapons, drugs, and drug paraphernalia.
- 2. On July 2, 2012, Young and Dollard were both charged by indictment with Aggravated Possession of Cocaine, Drug Dealing, and Conspiracy Second Degree, stemming from the June 13 search of Dollard's vehicle. In addition, Dollard was also charged with Racketeering, Drug Dealing, and Possession of Drug Paraphernalia in connection with the search of his home. The State proposes to try them together.
 - 3. The defendant now moves to sever his case from that of his co-

State v. Eric A. Young ID. No. 1206010872

July 31, 2013

defendant, Dollard, pursuant to Superior Court Criminal Rule 14.¹ Young contends that severance is required because his and Dollard's defenses will be antagonistic to one another. He also contends that he will be prejudiced by being tried with Dollard, who is being tried on additional racketeering and drug dealing charges, because the jury will infer that Young was involved in the other charges. The State contends that the jury will have no difficulty in segregating the evidence against each defendant, because most of Dollard's additional charges stem from a search conducted at his home, rather than his vehicle. To the extent that there is jury confusion, the State contends, it can be remedied by a jury instruction.

4. Ordinarily, judicial economy dictates that the State should jointly try defendants that are indicted for the same crimes.² However, the trial court should grant separate trials if the defendants can show a reasonable, and not hypothetical, probability that substantial prejudice may result from a joint trial.³ The decision to sever rests within the sound discretion of the court.⁴ When determining whether to grant a motion to sever, the Delaware Supreme Court has held that the trial court should consider the following factors: (1) problems involving a co-defendant's extra-

¹ Super. Ct. Crim. R. 14 states in pertinent part: "If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment or information 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."

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

³ Floudiotis v. State, 726 A.2d 1196, 1210 (Del. 1999).

⁴ State v. Skinner, 575 A.2d 1108, 1119 (Del. 1990).

State v. Eric A. Young ID. No. 1206010872 July 31, 2013

judicial statements; (2) an absence of substantial independent competent evidence of the movant's guilt; (3) antagonistic defenses as between the co-defendant and the movant; and (4) difficulty in segregating the State's evidence as between the co-defendant and the movant.⁵ If any one of the factors exists, severance may be appropriate.⁶ The burden is on the defendant to demonstrate "substantial injustice" and "unfair prejudice" in order to show that severance is necessary.⁷

5. Young is in the case only because of the discovery of cocaine in a secret compartment in Dollard's vehicle. Counsel for the State and Young have informed the Court that Dollard gave a statement to the police in which he denies responsibility and places responsibility for the drugs being there on Young. Dollard's statement is not admissible against Young. It is anticipated that a defense from Young may be that he was unaware of the drugs being there and that the responsibility was Dollard's. Thus, the anticipated defenses are antagonistic because the jury cannot accept one without rejecting the other. It may be that the intercepted phone calls will overcome both defenses, but, nonetheless, the defenses which it is anticipated the parties will offer are antagonistic. Under these circumstances, I am persuaded that severance should be granted, without discussing Young's additional contention that the racketeering charge against Dollard will make it difficult for the jury to segregate the State's evidence as between the two co-defendants.

⁵ Manley v. State, 709 A.2d 643, 652 (Del. 1998).

⁶ State v. Anker, 2005 WL 823750, at *2 (Del. Super. Apr. 4, 2005).

⁷ Outten v. State, 650 A.2d 1291, 1298 (Del. 1994).

State v. Eric A. Young

ID. No. 1206010872 July 31, 2013

6. Therefore, Young's Motion to Sever is *granted*.

IT IS SO ORDERED.

President Judge

oc: Prothonotary

cc: File