

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID: 1209008698
)	
VINCENT STALLINGS,)	
)	
Defendant.)	

ORDER

Upon Defendant’s Motion to Sever Sets of Charges – DENIED.
Upon Defendant’s Motion to Sever Possession Of A Firearm By Person
Prohibited Charge – GRANTED.

Defendant has been indicted for an attempted robbery, a separate robbery, and related crimes including murder, happening within a few hours during the night of September 11-12, 2012, and within a few miles of each other near Newark, Delaware. The State has evidence showing the crimes were committed by Defendant and several conspirators pursuant to a common plan to commit the robberies. The evidence includes, but is not limited to, the conspirators’ confessions and their accusations against Defendant.

Defendant is also charged in the same indictment with a third robbery and related crimes happening on April 1, 2012, at I-95 service plaza, the same place as the September attempted robbery. Defendant allegedly also had conspirators for the April robbery. One conspirator, the driver and another conspirator's girlfriend, will testify she participated in all three sets of crimes. She had worked at the I-95 service plaza, so she knew where the cash room was.

I.

Defendant has moved to sever the April and September sets of charges, to have a separate trial for each set. Defendant, of course, is concerned that when the jury hears the evidence about one set of crimes, it will unfairly hold it against Defendant as to the other, and *vice-versa*. As a brief afterthought in reply to the State, Defendant also argues that his Fifth Amendment right against self-incrimination:

becomes compromised when cases are joined in that a Defendant may wish to testify as to one count yet wishes to remain silent as to the others. *Cross v. United States*, 335 F.2d 987 (DC 1964).

Although the State purportedly has separate evidence tying Defendant to each set of crimes, some vital evidence is interrelated. For example, the driver makes first-hand accusations, having being present during all the crimes. Thus, her credibility is vital. The State implies that her testimony about the April crimes will

be corroborated by the conspirators to them, just as her incriminating testimony about the September charges will be corroborated by the conspirators to those crimes, different people. It is likely that the defense, itself, will want to call attention to all the benefit the driver is receiving by testifying against Defendant, including concessions for three, not two, sets of charges.

Furthermore, there are similarities between the three sets of crimes. Although the State does not provide many details, two sets involved some of the same conspirators and the same cash room at the I-95 service plaza, albeit five months apart. And all the crimes were committed by masked gunmen following a similar procedure. As described by the state, “They parked near the service plaza, and entered through the back employee door. On both nights, a getaway driver remained behind while [Defendant] who was armed with a gun, along with his cohorts went in to take money from the cash room.”

Again, the State may try to prove that all the charges stem from Defendant and his conspirators’ common scheme to repeatedly rob the service plaza’s cash room. Allegedly, the April robbery was successful, but the second robbery was thwarted by the intended victims. This occurred shortly before the robbery at the nearby convenience store, ending in the seemingly pointless murder of the unarmed victim. Taken together, starting with the successful robbery, all the facts may help provide Defendant with a motive for killing the victim at the end.

On balance, if the April robbery charges were tried separately from the September charges, both juries would nevertheless hear about almost everything relating to all the charges. Although it acknowledges the risk of unfair prejudice, the court finds the risk is more theoretical, and it is outweighed by the real benefit of having the jury hear about everything so that it can consider the alleged crimes as related events. Upon submission, the court will give a cautionary jury instruction that is more elaborate than the pattern.

Otherwise, the court is unconvinced that presenting both sets of charges in a single trial is unfairly prejudicial because it will undermine Defendant's right against self-incrimination. Although *Cross*, cited by Defendant in his reply and mentioned above, found prejudice in the consolidated trial there, *Cross* does not establish a *per se* rule. And, if it did, it is not binding here because *Cross* merely applies the Federal Rules of Criminal Procedure, not the Constitution.

As to specific prejudice concerning his right against self-incrimination, Defendant offers nothing. He does not even suggest that he has an actual strategy based on his testifying about one day's crimes, but not the other. Nor does he explain how even if the sets of charges are severed, he can nonetheless testify about one set and avoid sweeping cross-examination at least touching on the severed set of charges.

II.

Finally, Defendant has also moved to sever the count charging him with possession of a firearm by a person prohibited, Count XV. The State opposes that motion, citing two precedents,¹ neither of which involves a defendant on trial for his life.

In this case, almost nothing good is accomplished by pursuing Count XV. Moreover, in contrast to separate trials on the interrelated sets of charges, a separate trial on the weapons offense, if it comes to that, will be relatively simple and straightforward. Basically, all the State will have to prove is the prohibition and that Defendant knowingly possessed the weapon. The jury will only hear a few things about what happened on April 1, 2012, and nothing about September 11-12, 2012, especially not the murder.

On the other hand, even if the risk would be significantly reduced by limiting the State's presentation during its case-in-chief and providing an extensive cautionary instruction in the impending trial, as the State suggests, the person-prohibited charge adds a distraction that will make it more difficult for the jury to remain focused and unbiased. Accordingly, the court will exercise its discretion in this unusual situation and sever the person prohibited charge.

¹ *State v. Murphy*, 2000 WL 303349 (Del. Super. 2000); *Walker v. State*, 790 A.2d 477 (Del. 2002).

For the foregoing reasons, Defendant's Motion to Sever the set of charges stemming from the April 2012 robbery from the September 2012 sets of charges is **DENIED**. Defendant's Motion to Sever Count XV is **GRANTED**.

IT IS SO ORDERED.

Date: May 8, 2014

/s/ Fred S. Silverman
Judge

oc: Prothonotary (Criminal)
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