IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE.	)	
	)	
V.	)	
	)	
DOMINIQUE BENSON,	)	DEF. I.D.: 1409003743
CHRISTOPHER RIVERS,	)	DEF. I.D.: 1409001584
	)	
Defendants.	)	

Date Submitted: March 10, 2015
Date Decided: June 1, 2015

OPINION.

Defendants' Motions to Sever. **DENIED.**

Steven P. Wood, Esquire, Colleen K. Norris, Esquire, Karin M. Volker, Esquire and Jenna R. Milecki, Deputy Attorneys General. Wilmington, Delaware. Attorneys for the State of Delaware.

Patrick J. Collins, Esquire and Albert J. Roop, V, Esquire, Wilmington, Delaware. Attorneys for Dominique Benson.

Brian J. Chapman, Esquire and John A. Barber, Esquire, Wilmington, Delaware. Attorneys for Christopher Rivers.

BUTLER, J.

INTRODUCTION

Defendants, Christopher Rivers and Dominique Benson, have been charged with Murder First Degree and other offenses in connection with the shooting deaths of Joseph and Olga Connell. The defendants are scheduled to be tried together during a joint capital murder trial that is estimated to last approximately eight weeks. The defendants have both filed motions to sever defendants. Because the defendants have failed to show that a joint trial will result in any reasonable probability of substantial injustice or unfair prejudice, their motions must be denied.

FACTS

On September 22, 2013, police responded to the condominium residences at Paladin Club in North Wilmington after multiple reports of shots fired. Upon arrival, officers found Joseph and Olga Connell, suffering from multiple gunshot wounds. Both victims died that same day.

The State intends to prove that defendant Rivers engaged a middleman, Joshua Bey, to hire one or more people to kill his business partner, Joseph Connell and his wife. It is alleged that Rivers wanted Mr. Connell killed so that Rivers could collect on a life insurance policy that named Rivers as the beneficiary. The State alleges that Joshua Bey, acting on behalf of Mr. Rivers, hired Dominique Benson and an "unnamed coconspirator" to carry out the murder.

Joshua Bey has become a cooperating witness for the State. Mr. Bey is expected to testify that Rivers wanted Joseph Connell killed, and that Bey recruited defendant Benson who, along with an "unnamed coconspirator," eventually carried out the murder. The evidence indicates that the only time Rivers had any direct contact with Benson was when Bey set up a brief meeting in a parked car outside of the business that Rivers and Joseph Connell owned together. According to Bey, Benson and an "unnamed coconspirator" eventually carried out the killings. Although Bey was initially charged in this case, he has since pled guilty to Conspiracy First Degree, and has agreed to testify against Rivers and Benson.

Rivers and Benson have been charged with two counts of Murder First Degree, two counts of Possession of a Firearm During the Commission of a Felony, and Conspiracy First Degree. Rivers was also charged with Criminal Solicitation First Degree. A joint trial against both defendants is scheduled to start in September 2015. The defendants have both filed motions to sever, each arguing that a joint trial will result in a reasonable probability of substantial injustice and unfair prejudice.

ANALYSIS

Pursuant to Superior Court Criminal Rule 8(b), two or more defendants may be joined in a joint trial if "they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or

offenses."[1] "Normally, judicial economy dictates that the State should jointly try defendants indicted for the same crime or crimes. But, if the defendants can show a reasonable and not hypothetical probability that substantial prejudice may result from a joint trial, the trial court may grant separate trials."[2]

The factors that this Court must consider to determine whether severance should be granted include:

> (1) problems involving a co-defendant's extra-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.[3]

1. *Problems involving a co-defendant's extra-judicial statements.*

This factor has particular import in cases in which one defendant's statements to the police implicate the other co-defendant, who is not able to cross examine the declarant in a joint trial.[4] Although Rivers and Benson both made

[1] Del. Super. Ct. Crim. R. 8.

[2] *Floudiotis v. State*, 726 A.2d 1196, 1210 (Del. 1999) (citations omitted).

[3] *Id.*

[4] *Bruton v. United States*, 391 U.S. 123, 126 (1968) ("We hold that, because of the substantial risk that the jury, despite instructions to the contrary, looked to the incriminating extrajudicial statements in determining petitioner's guilt, admission of Evans' confession in this joint trial violated petitioner's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment."

extra-judicial statements, neither implicated the other. This factor does not militate in favor of severance.

2. *An absence of substantial independent competent evidence of the movant's guilt.*

When these factors were first articulated by the Supreme Court in *Jenkins v. State*,[5] the Court cited *Burton v. State*,[6] but *Burton* was actually a pre-*Bruton*[7] case, concerned primarily with the admissibility of co-defendant statements. *Jenkins* was itself a co-defendant statement case. So it is not a stretch to say cases with "*Bruton* problems" are the most difficult to sort through.

Exactly what constitutes "substantial" or "independent" or "competent" evidence of the defendant's guilt is somewhat amorphous, but in context, we think "independent" refers to independence from the co-defendant's statement. Here, the defendants both concede the evidence does not derive from co-defendant statements and so it is all "independent." There is a healthy dose of forensic and cell phone data evidence in this case, and the very pivotal statements of the turned co-defendant Bey, whose testimony is "substantial" "independent" and "competent" and implicates both defendants. We are not convinced that this factor favors severance.

[5] *Jenkins v. State*, 230 A.2d 262, 273 (Del. 1967).

[6] *Burton v. State*, 149 A.2d 337 (1959).

[7] *Bruton v. United States*, 391 U.S. 123 (1968).

3. *Antagonistic defenses as between the co-defendant and the movant.*

Perhaps it is only a matter of timing, but neither defendant has proffered to the Court that his defense is antagonistic to that of his co-defendant. A general observation that, upon completion of discovery, at some point the defenses may become antagonistic is not cause for the Court to find antagonistic defenses actually exist now.

The leading case in Delaware on antagonistic defenses is the *Bradley*[8] case. In it, the Supreme Court held that "[w]hen it became evident during the course of the trial that the defendants' defenses were so mutually antagonistic that a jury could not reasonably believe either one without rejecting the other, the trial court should have granted severance *sua sponte*."[9]

This is not a case where one act produced one result yet two are being prosecuted under some conspiratorial theory of liability.[10] Rather, the liability of each defendant is separately addressed by proof of individual culpability. So while *Bradley* instructs the Court to be mindful of the possibility of antagonistic defenses

[8] *Bradley v. State*, 559 A.2d 1234 (Del. 1989).

[9] *Id*. at 1242.

[10] *See generally Manley v. State*, 709 A.2d 643 (Del. 1998); *Stevenson v. State*, 782 A.2d 619 (Del. 2001).

even when not raised by the parties, the Court sees nothing in this record to suggest that such antagonism may be a factor to consider.

4. Difficulty in segregating the State's evidence as between the co-defendant and the movant.

Benson candidly asserts in his pleading that "the evidence is not difficult to present separately." From what we know, he is correct. Rivers' liability hinges completely on the jury's acceptance of his accomplice liability, while Benson is being tried as a principal in the commission of the murders. Appreciating that many factual scenarios do indeed make segregation of the evidence problematic, this is not one of them.

A trial judge should "grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence."[11] That risk is not present here.

CONCLUSION

For the foregoing reasons, the Defendants' motions to sever are **DENIED**.

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler

[11] *Stevenson*, 782 A.2d at 631 (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993).).