

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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**Re: State of Delaware v. Grace A. Krawiec ID # 1308001172
State of Delaware v. Daniel S. Krawiec ID # 1308001178
State of Delaware v. Kaitlyn E. White ID # 1308001186**

Submitted: February 25, 2014
Decided: March 5, 2014

On Defendant Kaitlyn E. White's Motion to Sever Case from Co-Defendants.
GRANTED.

Dear Counsel:

This letter opinion resolves the Motion to Sever filed by Defendant Kaitlyn E. White ("White"). White was charged with Attempted Rape First Degree, Unlawful Imprisonment Second Degree, Assault Third Degree, and Conspiracy First Degree. The charges stem from an altercation August 2, 2013 with the Krawiec's roommate, in which the roommate was severely injured. She seeks a separate trial from co-defendants Daniel Krawiec and Grace Krawiec, indicted on the same charges.

There is a presumption that the State should jointly try co-defendants indicted for the same crimes.¹ Rule 8(b) of the Delaware Rules of Criminal Procedure provides that “[t]wo or more defendants may be charged in the same indictment or information 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.”²

However, “[i]f 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.”³ Severance should be granted “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.”⁴ The Supreme Court of Delaware has articulated the following factors be considered when determining whether a separate trial should be granted:

- 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.⁵

The Delaware Supreme Court held in *Jenkins* that denial of severance in a case which relied on extra-judicial statements of co-defendants denied them their right to confrontation, and therefore was an abuse of discretion.⁶ The Court stated in that case that even cautionary measures such as redactions or jury instructions would be unable to “eradicate inadmissible evidence from the minds of the jury nor

¹ *Floudiotis v. State*, 726 A.2d 1196, 1210 (Del. 1999) (“Normally, judicial economy dictates that the State should jointly try defendants indicted for the same crime or crimes.”) (citation omitted).

² Del. Super. Ct. Crim. R. 8.

³ Del. Super. Ct. Crim. R. 14.

⁴ *Manley v. State*, 709 A.2d 643, 653 (Del. 1998) (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993)).

⁵ *Id.* at 652.

⁶ See *Jenkins v. State*, 230 A.2d 262, 273 (Del. 1967).

obviate the possibility of the jury being misled by the statement of a co-defendant.”⁷

White seeks to sever her charges from that of her co-defendants. She argues that the State’s use of an extra-judicial statement of co-defendant Daniel Krawiec implicating her in criminal activity will prejudice her case.⁸ White contends that her right to confront witnesses will be violated if the statement is used and Daniel Krawiec chooses not to testify.⁹ Notably, the State does not oppose this motion.¹⁰ Co-defendant Grace Krawiec is the only party to oppose the motion. Her position is set forth *in toto*:

1. Defendant White has sought to sever her charges from those of her co-Defendants based on a statement made by co-Defendant Daniel Krawiec that incriminates White. White claims an inability to confront Daniel Krawiec at trial.
2. However, the State would be required to redact any statement made by Krawiec against White in it’s case-in-chief. Similarly, were Daniel Karwiec to testify, White would have no confrontation issues.¹¹

This Court does not find Grace Krawiec’s opposition, which fails to cite any relevant supporting facts or legal authorities, a compelling argument to require White to be tried in the same proceeding. In light of the fact that 1) White has provided arguments that in her view there is a serious risk that her rights could be compromised as outlined under the first factor of the *Manley* test and 2) there is either no or insufficient opposition to her motion, White’s Motion to Sever is **GRANTED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary

⁷ *Id.*

⁸ Def.’s Mot. to Sever at 2.

⁹ *Id.*

¹⁰ Ltr. dated of February 25, 2014 from Eric H. Zubrow, Esquire, Deputy Attorney General to the Court.

¹¹ Opposition to Mot. to Sever at 1.