

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

STATE OF DELAWARE,	:	
	:	ID NO. 1107013054 (Gibbs)
_____ v. _____	:	1107013050 (Hicks)
	:	1107012994 (Johnson)
AREON GIBBS, DION HICKS, and	:	
DAVID JOHNSON	:	
	:	
Defendants.	:	

Submitted: February 28, 2013
Decided: March 12, 2013

Upon Defendants' Renewed Motion to Sever Defendants
GRANTED

ORDER

Kathleen A. Dickerson, Esq., and Christopher R. Parker, Esq., Deputy Attorneys General, Department of Justice, Dover, Delaware for the State of Delaware.

Patrick J. Collins, Esq., Collins & Roop, Wilmington, Delaware, and Natalie S. Woloshin, Esq., Woloshin, Lynch, Natalie & Gagne, P.A., Wilmington, Delaware for Defendant Areon Gibbs.

James M. Stiller, Jr., Esq., Schwartz & Schwartz, Dover, Delaware, and Michael G. Rushe, Esq., Hudson, Jones, Jaywork & Fisher, Dover, Delaware for Defendant Dion Hicks.

Andre M. Beauregard, Esq., Brown, Shiels & Beauregard, LLC, Dover, Delaware, and Leroy A. Tice, Esq., Wilmington, Delaware for Defendant David Johnson.

Young, J.

Counsel on behalf of both Defendant Hicks and Defendant Gibbs have moved the Court to reconsider the previous denial of Motion for Severance of the cases between and among the Defendants herein. This sort of a request, at this point in time, was anticipated by the Court, and is considered appropriate.

Circumstances and case details have developed which have demonstrated to the satisfaction of both the State and the Court that decidedly antagonistic defenses between and among the various Defendants exist. The three Defendants, through the arguments of counsel, have shown that the acceptance of any one Defendant's position would be inimical to those of the other Defendants, thus creating the "second (and, in this case, third) prosecutor" by virtue of counsel for the State plus cross-examination by counsel for each of the other Defendants of any witness called by the one Defendant. As noted in *United States vs. Tootick*, 952 F2d 1078 (9th Cir. 1991) that may infringe upon a Defendant's right to a fair trial. Less philosophically, the criterion in *Floudiotis vs. State*, 726 A2d 1196 (Del. 1999) referencing antagonistic defenses, now appears to be met clearly, indicating the propriety of severance.

Concerns, expressed in the prior decision on this topic, that a severance may well create a situation where the order of going to trial could very well affect outcomes, and other concerns described, still exist. However, the now abundantly clear antagonism demands that the Motions for Severance of each of these individual cases from each of the others be **GRANTED**.

Because activities regarding potential resolutions of some of these cases are, as of this moment, dynamic and fluid, this Order does not comment upon which of the three cases will proceed first, second, or third. At this point, then, all three will need

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to anticipate going forward on April 3, 2013. As soon as various positions become clear, counsel will be advised of the trial order, specifically which case will commence on April 3, 2013.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBV/lmc

oc: Prothonotary
cc: Opinion Distribution
Counsel
File