

COMMONWEALTH OF PENNSYLVANIA
v. SIDNEY ORLANDO BRUNSON, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 1016-2008 and 1627-2008

Joinder of Separate Informations - Motion to Sever - Prejudice

1. Although joinder is left to the discretion of the trial court, generally offenses charged in separate informations will be tried separately.
2. Offenses charged in separate informations may be joined if the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion; such offenses may also be tried together when the offenses charged are based on the same act or transaction.
3. Joinder may be accomplished by filing a notice of joinder with the clerk of court and serving the defendant at or before his arraignment.
4. A court may order separate trials of offenses if it appears that any party may be prejudiced by the offenses being tried together.
5. Prejudice, in the context of a motion to sever, means harm that would occur if evidence tended to convict the defendant only by showing his propensity to commit crimes.

Appearances:

Jeremiah D. Zook, Esq., *Assistant District Attorney*

Stephen D. Kulla, Esq., *Counsel for Defendant*

Facts

The Court must decide Defendant's Motion to Sever Informations Joined for Trial.^[1] In action 1016-2008, Defendant is charged with burglary, theft, and criminal conspiracy to commit burglary, and, in case 1627-2008, Defendant is charged with three counts of receiving stolen property. According to the respective affidavits of probable cause, the salient facts are as follows. On November 1, 2007, an employee at the Wayne Avenue Shell reported that when he arrived to open the store for the day, he discovered that someone had entered the building by cutting a hole through the roof and dropping down through the ceiling of the business. A surveillance video showed the unknown suspect wearing a ski mask, baggy shirt, and jeans with the cuffs rolled up and stealing over \$5,300 of cigarettes, snuff, cigars, and Pennsylvania Lottery Tickets during his forty-five minutes in the store. While Defendant was busy inside the store, Jafari Jefferson acted as a lookout. Defendant and Jefferson loaded six trash bags full of loot into Defendant's van and left the area.

On November 7, 2007, the Pennsylvania Lottery Security Office notified police that, on November 1, 2007, twenty-five of the stolen lottery tickets had been cashed; nine of these tickets were cashed at Choice at 9:15 a.m. Accordingly, on November 7, 2007, police obtained a copy of a surveillance video from Choice for November 1, 2007 at 9:15 a.m. The video depicted an unknown black male wearing sunglasses and baggy jeans with the cuffs rolled up. When photos of the suspect were circulated to law enforcement agencies, Defendant emerged as a suspect. Furthermore, on November 13, 2007 at a photo array, the Choice employee, who was working when the tickets were cashed, identified Defendant as the person who cashed the lottery tickets.

On May 23, 2008, Defendant was charged with burglary, theft, and criminal conspiracy to commit burglary in case 1016-2008, while, on August 28, 2008, Defendant was charged with three counts of receiving stolen property. On September 26, 2008, the Commonwealth filed a Notice of Joinder of Separate Informations for Trial under Pa. R.Crim.P. 582(B)(1). On October 28, 2008, Defendant filed an Answer to Notice of Joinder of Separate Information for Trial under Pa. R.Crim.P. 582(B)(1), and the Court held a hearing on December 4, 2008. At the hearing, the parties stipulated that the police officers would, if called, testify consistent with the facts laid out in the affidavits of probable cause, and the parties submitted the case to the Court on that basis. The parties also agreed that Defendant's Answer to Notice of Joinder should be treated as a Motion to Sever, and the Court will do so. Effectively, the Court must analyze whether joinder was appropriate and, if it was, then whether Defendant will be prejudiced by the joinder. Commonwealth v. Boyle, 733 A.2d 633, 637 (Pa. Super. 1999). With these issues in mind, the Court will now decide the case.

Discussion

I. Joinder

Although joinder is left to the discretion of the trial court, generally offenses charged in separate informations will be tried separately. See Comment Pa. R.Crim.P. 582. Nonetheless, offenses charged in separate informations may be tried together under two circumstances. Pa. R.Crim.P. 582(A)(1). First, offenses may be joined if "the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation

by the jury so that there is no danger of confusion." Pa. R.Crim.P. 582(A)(1)(a). Second, offenses may be tried together when "the offenses charged are based on the same act or transaction." Pa. R.Crim.P. 582(A)(1)(b). Furthermore, joinder may be accomplished by filing a notice of joinder with the clerk of court and serving Defendant at or before his arraignment. Pa. R.Crim.P. 582(A)(2). Here, the Commonwealth followed the proper procedure in joining the offenses for trial, so the Court will examine only the appropriateness of joinder under Pa. R.Crim.P. 582(A)(1).

Here, the offenses of burglary, theft, criminal conspiracy to commit burglary, and receiving stolen property are proper for joinder under Pa. R.Crim.P. 582(A)(1)(a) because the evidence of each offense would be admissible in a separate trial for the other and the evidence is capable of separation by the jury. For example, the evidence of the burglary, theft, and conspiracy, would all be admissible in a separate trial for receiving stolen property, because overlapping identification evidence would be admissible and since the lottery tickets would have to be established as stolen. Furthermore, Defendant was identified as a suspect by police for the theft-related crimes in connection with his cashing of the stolen lottery tickets, which is also essential evidence to the receiving stolen property charges. So the evidence of all offenses would be admissible in separate trials.

Also, the evidence is easily separable for the jury. For instance, the evidence relevant to the theft, burglary, and conspiracy charges will be easily separated from the evidence demonstrating that Defendant cashed in stolen lottery tickets, because the crimes charged are different in nature and occurred at different locations. Truly, Defendant will not be more likely to be convicted of burglary, theft, and criminal conspiracy to commit burglary simply because the jury will hear evidence that he was identified while he cashed in lottery tickets stolen during the burglary. And, similarly, no cognizable risk exists that Defendant will be more likely to be convicted of receiving stolen lottery tickets if the jury hears that he burglarized Shell. Thus, joinder is appropriate under Pa. R.Crim.P. 582(A)(1)(a).

Additionally, joinder is proper under Pa. R.Crim.P. 582(A)(1)(b) because the offenses charged are based on the same transaction. This case is analogous to Commonwealth v. DeHart, 516 A.2d 656 (Pa. 1986), in which the Pennsylvania Supreme Court held that joining homicide, robbery, and burglary charges to an escape charge was appropriate since the additional offenses were committed to facilitate the escape. Here, the other crimes were committed to accomplish the underlying criminal transaction, the theft of property from Shell. The burglary and conspiracy to commit burglary were preliminary steps to obtain the stolen items, and the Defendant's cashing in of the lottery tickets, which led to the receiving stolen property charges, was merely the logical conclusion of the theft. Therefore, all of the offenses charged are based on the same transaction, and joinder is appropriate under Pa. R.Crim.P. 582(A)(1)(b).

II. Prejudice

After concluding that the Commonwealth has properly joined the offenses, the Court must determine Defendant's Motion to Sever under Pa. R.Crim.P. 583. "The court may order separate trials of offenses . . . if it appears that any party may be prejudiced by the offenses . . . being tried together." Pa. R.Crim.P. 583. Prejudice, in the context of a motion to sever, means harm "which would occur if evidence tended to convict the defendant only by showing his propensity to commit crimes." Commonwealth v. Boyle, 733 A.2d 633 (Pa. Super. 1999). In paragraph two of his Answer, Defendant vaguely asserts that joinder would prejudice him, but he points to no legally cognizable prejudice. And, in fact, Defendant will suffer no prejudice here, because the evidence will suggest that Defendant actually committed the crimes rather than merely showing his general propensity to commit crimes. Thus, since joinder will not prejudice Defendant, the Court will deny his Motion to Sever.

Conclusion

In conclusion, the Commonwealth has properly joined cases 1016-2008 and 1627-2008. First, the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury. Second, all of the offenses charged stem from the same criminal transaction, the theft of property from Shell. Third, since Defendant will suffer no prejudice, the Court will deny his Motion to Sever.

ORDER OF COURT

December 11, 2008, this matter having come before the Court on Defendant's Answer to Notice Joinder of Separate Informations for Trial under Rule 582(B)(1), which the Court has treated as a motion to sever, and the Court having reviewed the record and the law, it is hereby ordered that Defendant's Motion to Sever is denied.

[1] Defendant actually filed an Answer to Notice of Joinder of Separate Information for Trial under Pa. R.C.P. 582(B)(1), but, at the December 4, 2008 hearing, the parties agreed that joinder had already occurred and that the Court could treat the Answer as a Motion to Sever.