

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA  
COMMONWEALTH**

**vs.**  
**JONATHAN BAIR,**  
**Defendant**

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:  
: No. CR-1512-2016  
:  
:  
: Motion to Sever**

**OPINION AND ORDER**

Defendant is charged by Information filed on September 8, 2016 with six counts of burglary, six counts of criminal trespass, nine counts of theft by unlawful taking or disposition, seven counts of receiving stolen property, one count of obtaining a controlled substance by misrepresentation, one count of possession of a controlled substance, one count of possession of drug paraphernalia, four counts of theft by deception, one count of possessing instruments of a crime, and two counts of criminal mischief.

The criminal complaint was filed against Defendant on August 5, 2016. The charges are based in large part on burglaries that occurred at five different residences and at one business between June 30, 2016 and July 23, 2016. Specifically, on June 30, 2016, a residence at 1401 Elliott Street in Loyalsock was burglarized. Both money and jewelry were taken. On July 3, 2016, the Family Eye Care Center at 801 Shiffler Avenue in Loyalsock was burglarized. Cash was taken. On July 5, 2016, a residence at 1301 Mansel Avenue in Loyalsock Township was burglarized. Jewelry was taken. On July 11, 2016, a residence at 430 Russell Avenue in Loyalsock was burglarized. Jewelry was taken. Between July 13, 2016 and July 23, 2016, a residence at 2600 Grand Street in Williamsport was burglarized. Jewelry, cash and prescription drugs were taken. On July 15, 2016, a residence located at

1220 Shiffler Avenue in Loyalsock was burglarized. Cash and jewelry were taken.

Defendant was taken into custody at some point following the burglaries and admitted to burglarizing residences in Loyalsock and Williamsport and admitted to stealing jewelry along with cash. He admitted that he sold the jewelry at Nik's Goldworks. The owners of the four residences that were burglarized in Loyalsock Township were able to identify at least some of their jewelry that had been stolen and sold at Nik's Goldworks. With respect to the residence that was burglarized in Williamsport, when defendant was taken into custody, he was found in possession of the jewelry, cash and controlled substances that were taken from said residence.

Defendant worked as a general contractor during the period in which the burglaries occurred. He worked in Loyalsock and Williamsport at or near residences where the burglaries took place. Defendant worked at the Family Eye Care Center doing renovations as well as at the 2600 Grand Street residence in Williamsport.

All of the residences or the one business were entered during the daytime through either a door or a window. At some of the residences, a white male was identified as being present prior to the time of the burglaries.

Defendant seeks to sever the offenses based on the identified victims. Defendant argues that he would be prejudiced by trying the offenses together. Defendant's motion to sever was filed on March 20, 2018 and argued on May 9, 2018.

Defendant argues that he would be prejudiced if the counts were not severed. Specifically, he argues that he may have alibi witnesses for some of the burglaries, that the

description of the “white male” may be different with respect to the separate burglaries, that the manner of breaking into the residences was different and essentially that because of the material differences, if the cases were not severed, the jury would lump them together and find him guilty. Defendant argues that the jury is not capable of separating the offenses.

Preliminarily, the court notes that there are no outstanding motions regarding any bill of particulars nor has a notice of alibi been filed with respect to any aspect of the case.

The Pennsylvania Supreme Court has established a three-part test that the lower courts must apply in addressing a severance motion similar to the one raised in this case. The court must determine:

(1) whether the evidence of each of the offenses would be admissible in a separate trial for the other; (2) whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and, if the answers to the previous two questions are in the affirmative, (3) whether the defendant will be unduly prejudiced by the consolidation of offenses.

*Commonwealth v. Collins*, 550 Pa. 46, 703 A.2d 418, 422 (1997) (quoting *Commonwealth v. Lark*, 518 Pa. 290, 302, 543 A.2d 491, 497 (1988)), cert. denied, 525 U.S. 1015, 119 S. Ct. 538 (1998).

Defendant does not argue that the evidence of each offense would not be admissible in a separate trial for the other. Instead, Defendant argues as indicated above that there is the danger of confusion and prejudice.

Contrary to what Defendant claims, the court concludes that the evidence with respect to all of the charges is capable of separation by the jury so as to avoid confusion. The

charges involve separate locations, and essentially the same conduct, making them relatively uncomplicated. *Commonwealth v. Boyle*, 733 A.2d 633, 637 (Pa. Super. 1999). Each burglary occurred in a different residence and can be labeled as such. Because the burglaries took place in different locations on different dates, a jury should be able to distinguish the incidents without confusion. *Commonwealth v. Janda*, 14 A.3d 147, 157 (Pa. Super. 2011).

As the Commonwealth specifically argues in its brief:

In *Janda*, the Superior Court held that the record [did] not reflect the potential for confusion or unfair cumulation of evidence by the jury, because, each theft took place at a different residence, involved a different victim and distinct physical evidence in the form of property stolen from each residence and the evidence pertaining to each of the...victims...was relatively short and simple. *Janda*, 14 A.3d at 157.

The court agrees with the Commonwealth and finds that the second prong of *Collins* has been satisfied.

Next, the court must determine if consolidation of the offenses will unduly prejudice the defendant. *Collins*, 703 A.2d at 422. The court must “weigh the possibility of prejudice and injustice caused by the consolidation against the consideration of judicial economy. *Janda*, 14 A.3d at 155-156 (quoting *Commonwealth v. Morris*, 493 Pa. 164, 171, 425 A.2d 715, 718 (1981)). This prejudice exists “if the evidence [tends] to convict [the defendant] only by showing his propensity to commit crimes, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence.” *Boyle*, 733 A.2d at 637 (quoting *Lark*, *supra* at 499).

The admission of relevant evidence connecting a defendant to the crimes

charged is a natural consequence of a criminal trial and not grounds for a severance.

*Commonwealth v. Brown*, 2018 PA Super 115, 2018 WL 2076026, \*6 (May 4,2018)(quoting *Commonwealth v. Dozzo*, 991 A.2d 898, 901 (Pa. Super. 2010)).

The court finds that the possibility of prejudice does not outweigh the judicial economy of consolidating the charges. The jury will be instructed to consider each charge separately and not to use any other crimes evidence as proof of Defendant's character or propensity. It is the court's experience in similar cases that juries are not only capable but entirely compliant with following the court's instructions in dealing with different charges separately. Accordingly, Defendant will not be unduly prejudiced and the third prong of *Collins* has been satisfied.

In light of the aforesaid discussion, the court will deny Defendant's motion to sever.

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of May 2018, Defendant's Motion to Sever is

**DENIED.**

By The Court,

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Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)  
Joseph Ruby, Esquire (ADA)  
Michael Rudinski, Esquire  
Gary Weber, Esquire, Lycoming Reporter  
Work File