

THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 02-10,922

VS :

HEATH GRAY :

COMMONWEALTH OF PENNSYLVANIA : NO: 02-10,765

VS :

KEITH YOUNG :

OPINION AND ORDER

On April 30, 2002, the Williamsport Bureau of Fire (WBF) was called to 1486-1488 Mount Carmel Street, City of Williamsport shortly after midnight for a report of a structure fire. Once the WBF arrived on scene, they discovered the structure at 1486 was fully engulfed in flames. The firefighters discovered two individuals on the rear upstairs porch of 1488 and successfully rescued them. However, they were unable to revive the five-year-old child, Kalib Blase, found in his second floor bedroom. The youth was pronounced dead at the scene. Fire investigators determined the fire was intentionally set. A chair and couch in 1486 had been ignited and the gas stove had been lit.

Upon further examination of the fire scene, the Williamsport Bureau of Police (WBP) discovered that the tires of the cars belonging to one of the residents, Heath Brink, had been slashed. Police found that the cable (television) wires to 1488 were cut, and not by anyone responding to the fire. Later that day, WBP investigators had spoken with a witness who had knowledge of the incident. The witness stated that she was at the residence

of Keith Young and was there with another individual, Heath Gray. All three drove from Picture Rocks to Williamsport to the home of Young's former girlfriend, Dianna Blase, the mother of Young's son, Kalib. The witness stated that the two men entered 1486 Mt. Carmel Street and started the house fire. As a result of all the information gathered by investigators, Young and Gray were charged with Criminal Homicide and related charges. On June 12, 2002 after a preliminary hearing before District Justice James G. Carn, both Defendants were held for court on all charges. After filing a notice of joinder, the Commonwealth added a notice of intention to seek the death penalty pursuant to 42 Pa. C.S.A. §9711 and Pa. R. Crim. P. 801.

Defense counsel for both Defendants filed timely Omnibus Pretrial Motions alleging, *inter alia*, a Motion to Sever the two cases for trial. Hearing on all pretrial issues raised in the motion was scheduled for October 8, 2002. At the hearing, all counsel agreed that the Motion to Sever should be decided before testimony on any other issues is taken. Counsel agreed that briefs be submitted, and argument was scheduled for November 19, 2002.

The decision whether to sever trials of co-defendants is within the sound discretion of the trial court and will not be disturbed on appeal absent abuse of that discretion. Commonwealth v. Uderra, 550 Pa. 389, 706 A.2d 334 (1998). The critical factor that must be considered is whether the accused has been prejudiced by the trial court's decision not to sever. Id. The accused bears the burden of establishing such prejudice. Id. Joint trials are advisable whenever defendants are alleged to have participated in the same series of

acts or transactions and where conspiracy is charged. [Commonwealth v. Paoello](#), 542 Pa. 47, 70, 665 A.2d 439, 451 (1995).

After reviewing the applicable case law, the Court is not satisfied, at this time, either Defendant will be prejudiced by a joint trial. Appellate courts have required a **specific** showing of prejudice to justify severance. "Although Appellant's decision to forgo testifying may have been influence[d] by the joint trial, that speculative inference is insufficient to warrant severance." [Paoello](#), *supra*, 542 Pa. at 70, 665 A.2d at 451. See also, [Commonwealth v. Lambert](#), 529 Pa. 320, 331, 603 A.2d 568, 573 (1992) (trial court's decision to deny motion to sever will not be disturbed absent a strong showing of actual prejudice resulting from being tried jointly). Here, all either counsel can argue is the possibility that some evidence or testimony may be presented by one defendant that could be prejudicial to the other in the guilt phase of the prosecution. This Court is satisfied that should the case proceed to trial the Court will consider carefully the impact any evidence would have on each Defendant. In addition, any statements which either directly or indirectly implicate a co-defendant will be subject to a Bruton-Gray¹ analysis.

Counsel also argues that their clients would also be prejudiced by a joint trial during the penalty phase and therefore the cases should be severed

¹ [Bruton v. United States](#), 88 S. Ct. 1620 (1968) and later in [Gray v. Maryland](#), 523 U.S. 185, 118 S. Ct. 1151, 140 L. Ed. 2d 294 (1998), the United States Supreme Court ruled that to allow the introduction of a non-testifying co-defendant's statement to the jury which implicates the other defendant with a redaction which replaced any direct reference to the defendant with the words "the other man," and an appropriate cautionary charge, was sufficient to protect the defendant's Sixth Amendment confrontation clause rights. Pennsylvania has adopted the Bruton rule as explained in [Commonwealth v. Travers](#) 564 Pa. 362, 768 A.2d 845 (2001) Like other state courts interpreting Bruton, this [Supreme] Court has specifically

for trial. The Court does not agree. Defense Counsel must again speculate that their individual clients will be found guilty. Since that outcome is not a certainty, the Court cannot consider any effect a joint trial would have on the ultimate penalty unless and until the time arrives. Therefore, because the Court has nothing before it to specifically show prejudice to either defendant, severance is not warranted.

ORDER

AND NOW, this 2nd day of January, 2003, after hearing, the Defendant's Joint Motion to Sever is hereby DENIED. The Deputy Court Administrator is requested to schedule a joint hearing on the outstanding pretrial issues. It is anticipated that the hearing will require one-half day.

By The Court,

Nancy L. Butts, Judge

Xc: DA
PD
Kyle Rude, Esq.
Matthew Ziegler, Esq.
Gary Weber, Esq.
Eileen Grimes, DCt. Administrator

approved of redaction and a limiting instruction as a means of eliminating any possible prejudice arising from the admission of a co-defendant's confession at a joint trial. Id. at 368.