



The Commonwealth's Motion to Join Informations states that "[e]ach Defendant is alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting the offenses with which they are charged." Alford argues that the cases should be severed because there are antagonistic defenses and that the Commonwealth will introduce evidence that Moore stole one of the firearms used in the shooting, which the jury will not be able to separate. Moore also argues that joint trials would be prejudicial and that the Defendants have antagonistic defenses.

Pennsylvania Rules of Criminal Procedure states that "Defendants charged in separate indictments or informations may be tried together 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." Pa.R.Crim.P. 582(A)(2). "[I]t is well established that 'the law favors a joint trial when criminal conspiracy is charged.'" Commonwealth v. Serrano, 61 A.3d 279, 285 (Pa. Super. 2013) (citing Commonwealth v. Housman, 986 A.2d 822 (Pa. 2009)).

It would impair both the efficiency and the fairness of the criminal justice system to require . . . that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last tried defendants who have the advantage of knowing the prosecution's case beforehand. Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability.

Id. On the other hand, "[t]he court may order separate trials of . . . defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by . . . defendants being tried together. Pa.R.Crim.P. 583.

The argument against joinder or consolidation is that where a defendant is tried at one trial for several offenses, several kinds of prejudice may occur: (1) the defendant may be confounded in presenting defenses, as where his defense to one charge is inconsistent with his defenses to the others; (2) the jury may use the evidence of one of the offenses to infer a criminal disposition and on the basis of that inference, convict the defendant of the other offenses; and (3) the jury may cumulate the evidence of the various offenses to find guilt when, if the evidence of each offense had been considered separately, it would not so find.

Commonwealth v. Janda, 14 A.3d 147 (Pa. Super. 2011). The Defendant bears the burden of proof to “show real potential for prejudice rather than mere speculation.” Serrano, 61 A.3d at 285.

Here, the charges against the Defendants arose from the same course of events. Based upon the evidence previously presented to this Court, the Defendants arrived at Flannigan Park together and engaged in a verbal argument with the victim and his brother. Alford and Moore then pulled out guns and began to fire, which resulted in the death of the victim. Following the shooting, the Defendants fled the scene in the same direction.

Both the Defendants argue that they have antagonistic defenses. An antagonistic defense is not merely defenses that are conflicting, but rather require a jury to disbelieve one defendant’s potential defense in order to believe a co-defendant’s defense.

A claim of mere hostility between defendants, or that one defendant may try to exonerate himself at the expense of the other, however, is an insufficient basis upon which to grant a motion to sever. Indeed, this Court has noted that ‘the fact that defendants have conflicting versions of what took place, or the extent to which they participated in it, is a reason for rather than against a joint trial because the truth may be more easily determined if all are tried together.’ Instead, severance should be granted only where the defenses are so antagonistic that they are irreconcilable – *i.e.*, the jury essentially would be forced to disbelieve the testimony on behalf of one defendant in order to believe the defense of his co-defendant.

Commonwealth v. Brown, 925 A.2d 147, 161-62 (Pa. 2007) (citations omitted). Based on the Defendants’ arguments, the Court finds that the defenses are not antagonistic to the point that they are irreconcilable.

Lastly, Alford argues that he is prejudiced by the fact that the Commonwealth will introduce evidence that Moore stole one of the guns used in the shooting. The Court finds that this will be clearly capable of separation by the jury and easily compartmentalized. See Commonwealth v. Patterson, 546 A.2d 596 (Pa. 1988). Based on the criminal conspiracy charges, that the charges arose out of the same course of events, and the length of the anticipated trial, the Court finds that the Defendants should be joined for trial.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of June, 2013, based upon the foregoing Opinion, the Court finds that the above captioned Defendants participated in the same series of acts which constituted their offenses. Therefore, the Commonwealth's Motion to Join Informations is **GRANTED**. It is **ORDERED** and **DIRECTED** that each of the Defendants' one count of Criminal Homicide, one count of Criminal Conspiracy, two counts of Aggravated Assault, one count of Possessing Instruments of Crime, one count of Recklessly Endangering Another Person, and one count of Firearms not to be Carried Without License will be joined for trial. Alford's count 5 of Persons Not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms will not be joined for trial.

By the Court,

Nancy L. Butts, President Judge

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