

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No's. CR-2186-2013; CR-1868-2014  
 DAVID C. BEAN, :  
 Defendant : Omnibus Pretrial Motion, Motion for Severance

**OPINION AND ORDER**

On December 5, 2014, the Commonwealth filed a notice of joinder in the above-captioned cases. By order of court dated December 8, 2014, said cases were joined. This order was without prejudice to Defendant requesting severance at a later time.

Under Information 2186 of 2013, Defendant is charged with one count of burglary, one count of conspiracy to commit burglary, one count of criminal trespass, one count of possessing an instrument of a crime, one count of resisting arrest, one count of loitering and prowling, and one count of criminal mischief.

According to the criminal complaint and affidavit of probable cause, Defendant is alleged to have committed these crimes on or about November 14, 2013. Defendant is alleged to have burglarized a residence in Loyalsock Township by breaking in through the back door. This burglary and the related crimes were alleged to have occurred while law enforcement was conducting surveillance on Defendant.

Under Information 1868 of 2014, Defendant is charged with 15 counts of burglary, three counts of attempted burglary, nine counts of theft, nine counts of receiving stolen property, seventeen counts of criminal use of a communication facility, five additional counts of theft, five additional counts of receiving stolen property, and thirteen counts of

criminal mischief.

According to the criminal complaint and affidavit of probable cause, Defendant is alleged to have committed these crimes between December 4, 2012 and November 8, 2013. Defendant is alleged to have burglarized and attempted to burglarize numerous residences located in several municipalities throughout Lycoming County.

Defendant filed an omnibus pretrial motion on January 8, 2015 which included a motion for severance. A hearing was held on March 9, 2015. At the hearing, the parties stipulated that in connection with the severance motion, the Court could consider the respective criminal complaints and affidavits of probable cause. Subsequently, the parties submitted briefs in support of their respective positions.

Defendant argues that under Information 1868 of 2014 all of the counts relating to the “winter burglaries,” those burglaries that allegedly occurred between December of 2012 and January of 2013 should be severed from those counts relating to the “autumn burglaries,” those burglaries which allegedly occurred between July of 2013 and November of 2013. While Defendant’s delineation of the relevant counts may not be entirely accurate (defendant does not include in his winter burglaries, for example, count 17 which is an attempted burglary that allegedly occurred on January 24, 2013), the court acknowledges Defendant’s argument and if it agrees with Defendant, will fashion an order accordingly. Defendant argues, as well, that the counts under the different Informations should also be severed for trial purposes.

In his argument, Defendant asserts that he is prejudiced by the joinder of the

different Informations and the different counts. In support of his argument, Defendant first contends that there is a significant lapse in time between the respective alleged crimes and a “lack of corresponding details in the crimes.” Defendant alleges that there is a six-month time gap between the respective groups of charges, that more of the stolen property was recovered with respect to one set of charges, and that one set of charges involved a different modus operandi, different vehicles, different hours, different supporting evidence and different witnesses.

Accordingly, Defendant argues that the jury may cumulate the evidence, not consider the offenses separately and infer guilt.

The Commonwealth argues to the contrary that the cases should remain joined and that there is no danger of prejudice. The Commonwealth argues that all of the burglaries are “correlated [to] one another in a number of ways.” The Commonwealth argues that all of the burglaries involved a number of individuals to help “scout” for locations for the burglaries, the use of individuals to travel with Defendant to the different burglaries to either act as a lookout or get-away driver or to actively perform the burglaries, all of the burglaries occurred at a residential setting in a building adapted for overnight accommodation, all of the burglaries included the taking of cash and jewelry as the main property, all of the burglaries included the laundering of the jewelry through a local goldsmith, and all of the burglaries used the same plan or scheme.

In reviewing the respective Informations, criminal complaints and supporting affidavits of probable cause, there are both factual distinctions and similarities between the

respective groups of crimes.

With respect to the winter group, Defendant was allegedly assisted by cooperating witness Eck in the vast majority of the alleged offenses. In the autumn group, the Defendant was assisted by Mr. Eck in a few while he was assisted by Ms. Harzinski in the others. Yet, whether it was Mr. Eck or Ms. Harzinski, they provided the same type of assistance by scouting the residence, acting as lookouts, acting as get-away drivers and/or assisting in the burglary. As well, during the alleged burglaries, Defendant and his “assistant” stayed in communication via cellphone.

During all of the respective burglaries, Defendant is alleged to have taken primarily jewelry. During the winter burglaries, however, he is also alleged to have taken pillowcases which he used to carry the stolen items.

During all of the respective burglaries, Defendant is alleged to have entered the residence in a similar manner, namely breaking windows or doors located in the back portion of the residence and then entering.

From what the court can best determine, much of the jewelry from all of the respective burglaries was pawned or fenced at Nik’s Goldsmith. The owners of such are cooperating witnesses and there is an alleged undercover purchase of stolen jewelry with respect to the autumn burglaries.

All of the alleged burglaries occurred in Lycoming County in different municipalities, although there is a similarity of some municipalities in connection with both sets including Loyalsock Township, Clinton Township and Fairfield Township.

Most of the burglaries were committed at different times although all of the burglaries from both sets of charges occurred between the early morning hours and mid-evening hours, or between 6:00 a.m. and 11:00 p.m. None of the alleged burglaries occurred between 11:00 p.m. and 6:00 a.m. From what the court can best decipher, three of the autumn burglaries occurred between 6:00 a.m. and at least 10:00 p.m. while at least three or four of the burglaries from the winter set occurred during the same timeframe.

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 these cases. 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 the 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, 491-97 (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 that there is the danger of confusion and prejudice.

Contrary to what Defendant claims, the court concludes that the evidence in all of the cases is capable of separation by the jury so as to avoid confusion. The cases involve separate locations, a limited number of actors, 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 noted in its brief, “each theft took place at a different residence, involved a different victim and distinct physical evidence in the form of the property stolen from each residence.” *Id.* Therefore, the court finds that this prong of *Collins* is met.

Next, the court must determine if consolidation of the offenses will unduly prejudice 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.

The court finds that the possibility of prejudice does not outweigh the judicial economy of consolidating the cases. 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 and dealing with different charges separately. Accordingly, Defendant will not be unduly prejudiced and the third prong of *Collins* is met.

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

**ORDER**

**AND NOW**, this \_\_\_ day of April 2015, Defendant's motion to sever is **DENIED**.

By The Court,

---

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)  
Josh Bower, Esquire (APD)  
Gary Weber, Lycoming Reporter  
Work File