

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1318-2016
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 SEAN LAURY, : Opinion and Order re Commonwealth's
 Defendant : Motion to Consolidate
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 COMMONWEALTH :
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 vs. : No. CR-831-2016
 :
 DERRICK PONDS, :
 Defendant :

OPINION AND ORDER

This matter came before the court on December 20, 2016 for a hearing and argument on the Commonwealth's motion to consolidate the above-captioned cases for trial. The parties agreed that, in deciding this motion, the court could consider the affidavits of probable cause and a supplemental police report dated September 20, 2016. Based on these documents, the relevant facts follow.

On the night of April 24, 2016, Ashlee Getz, Elliot Cruz and two minor children were in their second floor apartment at 873 Memorial Avenue in Williamsport, Pennsylvania. Derrick Ponds ("Defendant Ponds"), an ex-boyfriend of Ms. Getz, knocked on the rear door of the apartment and was allowed inside.

About a minute later, an armed, masked individual, who was later identified as Sean Laury ("Defendant Laury") entered through the same door. He grabbed Ms. Getz by the hair and pulled her into the living room. Mr. Cruz and at least one of the children were already in the living room. Defendant Laury ordered Ms. Getz and Mr. Cruz to the ground.

He yelled, "Lay down!" and "I'm not fucking playing" several times. He threatened to shoot the child if everyone did not listen. Mr. Cruz reacted by trying to disarm Defendant Laury, which resulted in a physical altercation during which Defendant Laury pistol whipped Mr. Cruz and bit Ms. Getz on the arm. During the fight over the gun, Defendant Ponds yelled at Defendant Laury: "Come on man"; "Don't let him get the gun;" and "Give me the gun!" Mr. Cruz got the firearm from Defendant Laury. Then Defendant Laury yelled to Defendant Ponds, "Grab the gun, D!" A moment later, Defendant Ponds was able to gain control over the firearm after re-engaging Mr. Cruz in a physical altercation.

Defendant Laury lost his gray sweatshirt and mask during the altercation. He fled out of the rear exit of the residence. Defendant Ponds, with the gun in his possession, fled out of the front of the residence.

Police were dispatched to the scene at 2350 hours. Lycoming County Communications provided a description of the actors. Police had contact with Defendant Ponds in the 800 block of Rafferty Lane. He did not have a firearm in his possession at that time.

Defendant Laury was not located that night. Through photographs provided by the victim and police investigation, the armed actor was identified as Defendant Laury.

Defendant Laury was charged with two counts of robbery, conspiracy to commit robbery, person not to possess a firearm, terroristic threats, four counts of simple assault, recklessly endangering another person, aggravated assault, burglary, and criminal trespass. Defendant Ponds was charged with conspiracy to commit robbery, person not to

possess a firearm, two counts of robbery (as an accomplice to Defendant Laury), and possession of a controlled substance.

On December 5, 2016, the Commonwealth filed a motion to consolidate Defendant Laury's and Defendant Ponds' cases for trial on the basis that: (1) both 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; (2) the evidence of the offenses would be admissible in a separate trial for the other and are capable of separation by the jury so that there is no danger of confusion; (3) it would be expedient and judicially economical to try these cases together; and (4) there is no prejudice to the defendants.

Both defendants opposed the Commonwealth's consolidation motion. Counsel for Defendant Laury argued that there was a substantial question whether Defendant Laury was present, i.e. whether Defendant Laury was the armed actor. Counsel asserted that Defendant Laury would suffer prejudice from consolidation in that the jury would see Defendant Laury and Defendant Ponds sitting together during trial and would assume they were in the same location and acted in concert.

Counsel for Defendant Ponds joined in these arguments. He also argued that Defendant Ponds was further prejudiced by the fact that Defendant Laury allegedly wrote a letter to another individual asking the individual to assert undue influence on the victims in this case. Furthermore, counsel contended that Defendant Ponds was not a participant in the incident. Rather, he was also a victim, who was pistol-whipped by the armed, masked actor.

Rule 582(A)(2) states:

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). Since the defendants are alleged to have participated in the same act(s) or transaction(s) constituting the offenses charged against them, their cases are clearly subject to consolidation under Rule 582. In fact, joint trials are advisable where conspiracy is charged. *Commonwealth v. Patterson*, 546 A.2d 596, 600 (Pa. 1988).

Rule 583 permits the court to “order separate trials of offenses or defendants if it appears that any party may be prejudiced by offenses or defendants being tried together.”

Defendants contend that they would be prejudiced by consolidation.

The court cannot agree.

The fact that the defendants have conflicting versions of what took place or their involvement in it is a reason for, rather than against, a joint trial because the truth may be more easily discerned if all are tried together.

Commonwealth v. Chester, 587 A.2d 1387, 1373 (Pa. 1991). Defendant Laury’s letter does not mention Defendant Ponds. Therefore, there isn’t a *Bruton* problem with a joint trial at which Defendant Laury’s letter will be utilized against only Defendant Laury. Furthermore, there is a specific standard jury instruction to ensure that the jury only considers the statements in the letter against Defendant Laury. See Pa.SSJI §3.12 (joint trial, confession or admission admissible against

defendant making it only). The defendants' concerns about a "spill over" effect from their mere presence near each other during trial can also be negated through the use of a jury instruction. See *Commonwealth v. Childress*, 680 A.2d 1184, 1187 (Pa. Super. 1996)(any prejudice which may have resulted from "spill over" effect of evidence admissible only against co-defendant was cured by lower court's jury instruction that "although there are two defendants you should consider each defendant separately as if he were on trial on his own").

Accordingly, the following order is entered:

ORDER

AND NOW, this 24th day of January 2017, the court grants the Commonwealth's motion to consolidate.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Cuica, Esquire (ADA)
Kyle Rude, Esquire
Julian Allatt, Esquire
File 831-2016
Work File