

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CP-41-CR-0000089-2017**
: **CP-41-CR-0000090-2017**
v. : **CP-41-CR-0000407-2017**
:
JORDAN RAWLS, :
JOSEPH COLEMAN, :
Defendants : **CONSOLIDATE/SEVER**
:
:

OPINION AND ORDER

The Commonwealth filed a Motion to Consolidate for trial the above captioned docket numbers on October 13, 2017. A prior Notice of Joinder had been filed by the Commonwealth on February 3, 2017 for dockets numbers CR-89-2017 and CR-90-2017 only. Defense Counsel for Defendant Rawls filed a Motion to Sever on November 15, 2017. Argument on the Motions took place on November 28, 2017. Un-redacted transcripts of the interviews of Defendants Coleman and Rawls were provided to the Court for review. Transcripts were ordered by the Court and Counsel submitted briefs on the issues.

Background

Joseph Coleman and Jordan Rawls (co-Defendants) are charged identically with Criminal Homicide (two open counts)¹; Criminal Conspiracy (criminal homicide)², Robbery³; Criminal Conspiracy (robbery)⁴; Criminal Attempt (robbery)⁵; Persons not to Possess Firearms⁶; Firearms not to be Carried without a License⁷; and Possessing Instruments of a

¹ 18 Pa.C.S. § 2501(a).
² 18 Pa.C.S. § 903(a)(1).
³ 18 Pa.C.S. § 3701(a)(1)(iii).
⁴ 18 Pa.C.S. § 903(a)(1).
⁵ 18 Pa.C.S. § 901(a).
⁶ 18 Pa.C.S. § 6105(a)(1).
⁷ 18 Pa.C.S. § 6106.

Crime⁸. The charges arise from a shooting that occurred on October 31, 2016, at 613 Poplar Street in Williamsport, PA.

Discussion

Whether the Court should consolidate the above captioned dockets number for trial.

The Commonwealth seeks consolidation as the offenses charged are based on the same alleged series of acts or transaction. The Court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offense of defendants being tried together. Pa.R.Crim.P. 583 (Severance of Offenses or Defendants). The Defendant bears the burden of proof to “show real potential for prejudice rather than mere speculation.” *Serrano*, 61 A.3d at 285. Under *Commonwealth v. Brookins*, a defendant may be entitled to severance if the evidence of the conduct of other defendants would be inadmissible against the defendant if the trials were conducted separately. *Commonwealth v. Brookins*, 10. A.3d 1251 (2010). Prejudice is lessened when the severing of the defendants would not remove all evidence of crime against the defendant. *Commonwealth v. Stocker*, 622 A.2d 333 (1993).

Defendants 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). Additionally, “the law favors a joint trial when criminal conspiracy is charged.” *Commonwealth v. Serrano*, 61 A.3d 279, 285 (2013). This is due to the necessity of “efficiency and fairness of the criminal justice system” which would not be fulfilled if the Commonwealth were required to bring nearly identical, separate proceedings against each defendant, as this can lead to inconsistent verdicts and the favoring of the

⁸ 18 Pa.C.S. § 907(b).

defendant tried last. *Id.* The Court in *Commonwealth v. King* stated factors which favor a joint trial: “Appellants were charged with conspiracy; the majority of the crimes charged were the same; the circumstances giving rise to the crimes were identical with respect to both defendants; and the witnesses necessary to prove the crimes were the same.” *Commonwealth v. King*, 721 A.2d 763, 771 (Pa. 1998).

Since the offenses charged are based on the same act(s) or transaction(s), the cases may be subject to consolidation under Rule 582. Here, the charges against the Defendants arose from identical circumstances; the witnesses necessary to the cases against both Defendants are the same; and the crimes that the Defendants are charged with are the same, including conspiracy.

Defense Counsel raises two primary issues justifying their opposition to the Commonwealth’s motion to consolidate and request of the court to sever. First, the Defendant’s argue that their defenses are antagonistic and there would be a possibility that the jurors would either find them both guilty because of the amount of evidence presented in the case, or the fact that by playing Defendant Coleman’s video despite redaction would implicate Defendant Rawls. Commonwealth alleges that Defendant Coleman will never testify against Rawls at a separate trial and cannot point to any evidence in the redacted transcript of Coleman’s statement which implicates Rawls.

Defendant Rawls argues that there would be a disproportionate spill-over affect from the evidence against Defendant Coleman onto Defendant Rawls. Defendant Rawls relies on *Zafiro v. US*, in which the court stated “evidence of a co-defendant’s wrongdoing in some circumstances could lead a jury to conclude erroneously that a defendant was guilty.” *Zafiro v. US*, 506 U.S. 534, 539. However, the court in *Zafiro* went on to state that “[w]hen many

defendants are tried together in a complex case and they have markedly different degrees of culpability, this risk of prejudice is heightened.” *Id.*

In this case, there are only two defendants being tried together and the degrees of culpability are not markedly different. The Commonwealth asserts that the evidence it would introduce in regards to Mr. Coleman’s post-incident activities would be limited to witness testimony of individuals who drove Mr. Coleman out of town. The jury should find the information regarding the conduct of each defendant as easily distinguishable. Therefore, the Court would not find severance necessary based on this issue.

Defendants Coleman and Rawls both argue that consolidation would violate their respective rights under the Sixth Amendment to confront witnesses against them. Defendants both allege that the Commonwealth’s redactions of their respective statements to the police are inadequate and would obviously implicate the co-defendant, thereby making the Defendants statements antagonistic. Severance may be granted when defendants have antagonistic defenses, however, defenses are not antagonistic unless the jury must believe the testimony of one defendant and disbelieve the testimony of another defendant. *Commonwealth v. Williams*, 720 A.2d 679, 685 (Pa. 1998), *cert. denied*, 526 U.S. 1161 (1999). Redaction is an efficient and appropriate method of introducing statements at trial. *Commonwealth v. Johnson*, 378 A.2d 859 (Pa. 1977). A co-defendant’s statements may be admitted at trial in redacted form if the statement does not tend to identify the Defendant as one who participated in the crime. *Commonwealth v. Marsh*, 566 A.2d 296, 298 (1989). These redacted statements are admissible, even if other evidence presented at trial indicates that the unmentioned defendant was involved. *Commonwealth v. Rawls*, 419 A.2d 109 (1980). When it is not clear whether the statement can be redacted without prejudice, it must be excluded. *Johnson*, 378 A.2d 859. If the statement

directly implicates the defendant, this can add substantial weight to the prosecution's case, as well as substantially prejudicing the defendant and violating his 6th Amendment right to cross-examine. *Bruton v. US*, 391 U.S. 123 (1968). However, as long as the statements alone don't connect the defendant with the crime, they are admissible. The possibility that a jury may conclude the identity of the co-conspirator referenced in the redacted statement through other admitted evidence does not require severance. *Commonwealth v. Lambert*, 603 A.2d 568, 573 (Pa. 1992).

In this case, neither Defendant's redacted statement would directly implicate the other, thereby not violating the requirements of *Bruton*. Both Defendant Coleman and Defendant Rawls offer completely distinct versions of events. Defendant Coleman maintains that the only person who joined him at the victims' home was Mr. Wilson, and that Defendant Rawls was not present. Defendant Coleman also insists that no robbery or shooting occurred while Defendant Coleman was at the home but must have occurred at a later time. Conversely, Defendant Rawls alleges that he went to the address where Defendant Coleman entered the house with two guns and shot the victims. In both Defendants' statements, the co-Defendant's name is redacted to the "other guy." These statements are diverse, offer two different sequences of events, and would not require the jury to believe one in favor of the other. Further, under *Lambert*, the prospect that the jury may conclude, based on other admissible evidence, that the co-conspirator referenced in Defendant Rawls's statement is Defendant Coleman does not demand severance of the cases.

Defendant Rawls argues that the Commonwealth's proposed redactions will be useless as the statements will still strongly suggest the participation of the other co-defendant. Defendant Rawls argues that under *Commonwealth v. Ma*, 721 A.2d 1108, even where a

defendant is not expressly named, a *Bruton* violation occurs if a statement identifies a defendant in any manner. However, under *Ma*, the violation was harmless where eyewitnesses identified the defendant as one of the perpetrators of the crime. Here, the eyewitness identified both Defendants and testified as to their respective roles in the crime. Therefore, even if the jury were to conclude the Defendant's identities in the respective statements, the conclusion would likely be a result of the accumulation of evidence and witness statements, not purely from the redacted statements. Therefore, the Court would not find that the Defendant's Sixth Amendment rights would be violated or that the statements made by each Defendant would be considered antagonistic.

Next, Defendants also join in the second argument presented that to join the cases for trial will infringe on their right to a fair trial. The Commonwealth argues that the redacted transcripts they will use at trial will not violate the Rule of Completeness. In fact the Commonwealth believes that defendant Rawls will not present his entire video as it not only possesses information about him which unfavorable to him but that the Court would find to be not relevant and therefore inadmissible.

While judicial economy is important, this Court must weight economy against a defendant's Constitutional rights. The Supreme Court of the United States has held that a defendant has a constitutional right to a reliable determination of the voluntariness of his statement. *Jackson v. Denno*, 378 U.S. 368, 376. In Pennsylvania, a defendant is entitled to a second opportunity at trial to test the voluntariness of his statement even if a court denies the suppression of such evidence. *See* Pa. R. Crim. P. 581(J); *Commonwealth v. Cunningham*, 370 A.2d 1172, 1179. (Pa. 1977). "(R)equiring the jury to pass on the issue of voluntariness . . . preserves to the defendant his right to a jury trial on this critical issue. Pa.Const. art. I, § 9." *Id.*

(Roberts, J. Dissenting) at 1188 (citing *Commonwealth v. McLean*, 213 Pa.Super. 297, 304 (1968)).

Further, in *Commonwealth v. Cameron*, the court held that the trial court erred in ruling the audio recording of the defendant's confession inadmissible. *Commonwealth v. Cameron*, 780 A.2d 688 (Pa. Super. 2001). The court reasoned that it is well established that the totality of the circumstances must be considered in determining voluntariness, including a defendant's speech, demeanor, physical and psychological state, conditions of detainment, and any other conditions in which statements were obtained. *See Id.* at 693-695 (citing *Commonwealth v. Hughes*, 555 A.2d 1264, 1273 (Pa. 1989)). The court further held that a defendant does not need to testify in order to challenge the voluntariness of his statements at trial. *Id.* at 694.

Under Pennsylvania Rules of Evidence, Rule 1002, the original recording is required to prove its content, unless the original is unavailable. Secondary evidence, such as the Commonwealth's redacted transcripts, is susceptible to inaccuracy. *Commonwealth v. Bango*, 685 A.2d 564, 566 (Pa. Super. 1996). Redacted statements may cause a misleading impression and distort the meaning of the statements. *See Commonwealth v. McClure*, 144 A.3d 970 (Pa. Super 2016). Additionally, under Pennsylvania Rules of Evidence 106, "[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time." The purpose of this rule, sometimes referred to as the Rule of Completeness, is to allow a party to correct any misleading impressions that were created by a partial or redacted statement. *McClure*, *supra.* at 977.

In this case, the Court finds that the video of Defendant Rawls's interrogation would be critical in the jury's determination of the voluntariness of Defendant Rawls's statements.

Defendant Rawls has the right to present the full recording to the jury for determination. The redacted transcript of the interrogation prepared by the Commonwealth would not sufficiently show the totality of the circumstances, including Defendant Rawls's demeanor, speech, and mental and physical states. Therefore, the video of Defendant Rawls's interrogation provides the best evidence to determine voluntariness based on the totality of the circumstances. The video would be both incriminating and prejudicial against Defendant Coleman; there is no feasible way to redact the video in order to protect Defendant Coleman's right to receive a fair trial.

Therefore, due to Defendant Rawls's intention to exercise his right to have the entirety of the recording of his interrogation played during trial in order for the jury to determine the voluntariness of his statements, during which his statements which would unquestionably prejudice Defendant Coleman, this Court finds that the cases of Defendant Rawls and Defendant Coleman must be severed.

ORDER

AND NOW, this day of July, 2018 after hearing and argument on the Commonwealth's Motion to Consolidate and the Defendant's Rawls and Coleman's Motion to Sever, the Motion to Consolidate is DENIED and the Defendants' Motions to Sever are GRANTED.

It is ORDERED AND DIRECTED that the trials of Jordan Rawls and Joseph Coleman are SEVERED for trial.

By The Court,

Nancy L. Butts, President Judge

DA (MW);
E.J. Rymysza, Esq.;
William J Miele, Esq.; Nicole J. Spring, Esq.
Deputy Court Administrator