

2019 WL 10786230 (Minn. Dist. Ct.) (Trial Order)
District Court of Minnesota.
Seventh Judicial District
Douglas County

STATE of Minnesota, Plaintiff,
v.
Jacob Elmo LARSON, Defendant,
and
STATE OF MINNESOTA, Plaintiff,
v.
Troy Nathan TRAUT, Defendant.

Nos. 21-CR-18-852, 21-CR-18-853.
June 5, 2019.

Order Denying Joinder or Consolidation

Timothy M. Churchwell, Judge.

*1 The above-entitled matters came on for hearings on June 4, 2019, before the Honorable Timothy M. Churchwell, Judge of District Court, at the Douglas County Courthouse in Alexandria, Minnesota, for consideration of the State's Motion for Consolidated Trial dated May 24, 2019, requesting the two matters be consolidated pursuant to Rule 17.03, subd. 2. These are criminal proceedings.

The State appeared through its attorney, Chad Larson, Douglas County Attorney.

Defendant, Jacob Larson, was present together with his attorney, Todd V. Peterson.

Defendant, Troy Traut, was not present but appeared through his attorney, Gary R. Leistico.

At the hearings, both Defendants advised they objected to the State's motion to consolidate, primarily on grounds the co-defendants may present antagonistic defenses at trial and the untimeliness of the request. Following submissions, the matter was taken under advisement.

Based upon the motion, briefs, arguments of counsel, relevant law, and all of the file and record herein, the Court hereby makes the following:

ORDER

1. The State's Motion for Consolidated Trial dated May 24, 2019, is DENIED. The matters shall proceed separately.
2. The attached Memorandum of Law is incorporated by reference.

State v. Larson, 2019 WL 10786230 (2019)

It is so **ORDERED** this 5th day of June, 2019.

<<signature>>

Hon. Timothy M. Churchwell

Judge of District Court

MEMORANDUM

When two or more defendants are charged with the same offense, they may be tried separately or jointly at the court's discretion. Minn. R. Crim. P. 17.03, subd. 2. This rule neither favors nor disfavors joinder. *State v. Jackson*, 773 N.W.2d 111, 118 (Minn. 2009). In determining whether joinder is appropriate, the district court must balance four factors: (1) the nature of the offense charged; (2) the impact on the victim; (3) the potential prejudice to the defendant; and (4) the interests of justice. Minn. R. Crim. P. 17.03, subd. 2(1)–(4). The Court examines each factor in turn.

The first factor, nature of the offense charged, favors joinder when the overwhelming majority of the evidence presented is admissible against both defendants, and substantial evidence is presented the co-defendants worked in close concert with one another. *State v. Martin*, 773 N.W.2d 89, 99-100 (Minn. 2009). Here, the respective charges and complaints are essentially identical. Although the co-defendants are alleged to have jointly participated in the assault, as well as events leading up to it, the Court has little upon which to critically evaluate the evidence which may be presented at trial. Presently, neither party has submitted any police reports, witness statements, or similar. Further, there is a pending motion on the admissibility of Defendant Larson's statement. Accordingly, the Court concludes this factor is either neutral or slightly favors joinder.

The second factor, impact on victim, is also neutral. Potential trauma to either the victim or an eyewitness to a crime weighs in favor of joinder. *Martin*, 773 N.W.2d at 100 (potential trauma to 10 year old child who saw the murder from his porch was significant); *State v. Blanche*, 696 N.W.2d 351, 371 (Minn. 2005) (separate trials will result in significant trauma for eyewitness children who saw their young friend and cousin being murdered). In this instance, the alleged victim is deceased. Apart from generalized statements, the State has not presented any information a potential witness will be traumatized if required to testify potentially twice. Instead, the State argues the alleged victim's family and friends, especially those who witnessed his passing in the days following the incident, may be traumatized by having to testify in separate trials. Although the Court is mindful of the impact of these proceedings to the family, this type of potential impact is outside the scope of Rule 17.03, *Martin*, and *Blanche*.

*2 The third factor, potential prejudice to defendant, weighs very heavily against joinder. When co-defendants have antagonistic defenses, joinder or consolidation is not appropriate. *Martin*, 773 N.W.2d at 100; *State v. Hathaway*, 379 N.W.2d 498, 503 (Minn. 1985) (defining "antagonistic defenses" as inconsistent theories of defense, such as co-defendants blaming each other or providing inconsistent testimony). Presently, both defendants not only object to joinder, but specifically note the anticipation of antagonistic defenses, i.e., blaming the other. Further, the parties have disclosed a proffer by Defendant Traut, which strongly indicates antagonistic defenses will be presented at trial.

The fourth factor, interests of justice, also weighs against joinder. *State v. Traut* is set for a date certain, two-week jury trial commencing June 14, 2019, less than ten days away. *State v. Larson* is still at the omnibus stage. Counsel for Mr. Larson is not ready for trial, whereas counsel for Mr. Traut indicates he is ready to go. Jurors have been summoned and significant efforts have been made to accommodate the upcoming trial.

After carefully weighing the four factors, the Court concludes joinder is not appropriate, and the State's motion is denied.

TMC

State v. Larson, 2019 WL 10786230 (2019)

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

**ORDER DENYING THE
MOTION FOR JOINDER**

vs.

**DANIEL NEGASE ASEFAW,
HASSAN AMEEN KHAN,
ABEDESSA DERESSA WANJALATAN,
ABDURAHMAN ABDELLA MAMA,
ANDREW LETA HAWKINS,
ROBIN IANUARI HAWKINS,**

Case No.: 27-CR-16-8324
Case No.: 27-CR-16-8326
Case No.: 27-CR-16-8321
Case No.: 27-CR-16-8327
Case No.: 27-CR-16-8325
Case No.: 27-CR-16-8323

Defendants.

INTRODUCTION

This matter came before the Honorable Lisa K. Janzen on the State's *Motion for Joinder*. A hearing was held on this motion on March 14, 2017, in the District Court of Hennepin County. The court has reviewed the evidence and arguments of the parties, and now finds that the motion shall be **denied**.

APPEARANCES

The State of Minnesota is represented by Zachary Stephenson, *Assistant Hennepin County Attorney*. Defendant Daniel Asefaw is represented by Darcy Sherman. Defendant Robin Hawkins is represented by Michael Colich. Defendant Abdurahman Mama is represented by Bruce Rivers. Defendant Andrew Hawkins is represented by Robert Paule. Defendant Hasaan Khan is represented by Geoffrey Isaacman. And Abedessa Wanjalatan is represented by Daniel Homstad.

CASES ON CONSIDERATION FOR JOINDER

On March 25, 2016, the State of Minnesota filed criminal complaints leveling the same charge against the following defendants:

1. Daniel Negase Asefaw, 27-CR-16-8324: One count of Identity Theft-Transfers/Possesses/Uses Identity of Other Person in violation of Minn. Stat. Ann. § 609.527.2.
2. Hassan Ameen Khan, 27-CR-16-8326: One count of Identity Theft-Transfers/Possesses/Uses Identity of Other Person in violation of Minn. Stat. Ann. § 609.527.2.
3. Abcdessa Deressa Wanjalatan, 27-CR-16-8321: One count of Identity Theft-Transfers/Possesses/Uses Identity of Other Person in violation of Minn. Stat. Ann. § 609.527.2.
4. Abdurahman Abdella Mama, 27-CR-16-8327: One count of Identity Theft-Transfers/Possesses/Uses Identity of Other Person in violation of Minn. Stat. Ann. § 609.527.2.
5. Anddrew Leta Hawkins, 27-CR-16-8325: One count of Identity Theft-Transfers/Possesses/Uses Identity of Other Person in violation of Minn. Stat. Ann. § 609.527.2.
6. Robin Ianuari Hawkins, 27-CR-16-8323: One count of Identity Theft-Transfers/Possesses/Uses Identity of Other Person in violation of Minn. Stat. Ann. § 609.527.2.

The State has moved to join all six cases pursuant to MINN. R. CRIM. P. 17.03 sub. 2

FINDINGS OF FACT

On March 23, 2016, Police at the MSP Airport received a call about a suspicious FedEx package. The package was addressed to "Ali Khalifa" at a local hotel in Bloomington, Minnesota. Officers conducted a dog sniff of the package which resulted in a positive hit for controlled substances. After obtaining a search warrant, police discovered credit card fraud devices inside.

The officers resealed the package and conducted a controlled delivery to the Bloomington hotel. Before the delivery, police spoke with hotel staff and obtained "Ali Khalifa's" room number and positioned themselves nearby. Hotel staff then called the suspect and told him that a package had just arrived.

One of the Defendants (later revealed to be Defendant Hassan Amcen Khan) walked to the front desk, requested the package, and was immediately apprehended. Officers simultaneously entered the suspect's room, finding the other five Defendants inside. The defendants were all detained. Inside this room, in plain view, officers found multiple credit cards, a laptop computer, and bags of new merchandise. Police obtained a search warrant for the room which yielded multiple credit card fraud evidence. All six Defendants were arrested and taken into custody.

CONCLUSIONS OF LAW

When two or more defendants are charged with the same offense, the trial court may allow a joint trial. MINN. R. CRIM. P. 17.03 sub. 2. However, the trial court must consider the following four factors when making its decision:

1. The nature of the offense charged;
2. The impact on the victim;
3. The potential prejudice to the defendant; and
4. The interests of justice.

MINN. R. CRIM. P. 17.03 subd. 2. The court will discuss each factor below.

1. The nature of the offense charged does not favor joinder

“The nature of the offense charged favors joinder when the overwhelming majority of the evidence presented is admissible against both defendants, and substantial evidence is presented that codefendants worked in close concert with one another.” *State v. Johnson*, 811 N.W.2d 136, 142 (Minn. App. 2012) (citing *State v. Martin*, 773 N.W.2d 89, 99–100 (Minn. 2009)).

The nature of the offenses does not favor joinder. While the State charged all six defendants with the same crime, the factual circumstances do not necessarily reveal that all six defendants worked in close concert with each another. According to the alleged facts, police conducted a controlled delivery of a package containing credit card fraud devices. That package was eventually claimed by Defendant Hassan Khan at a local hotel. And while all six defendants shared the same hotel room, the facts do not clearly demonstrate that all six were involved in the criminal enterprise and were working “in close concert with one another.”

The State argues that because all six defendants shared a hotel room where evidence of the fraud was discovered, then all six defendants were clearly “acting in close concert and close proximity” together. (*State’s Brf.* at 4). But this connection is too tenuous, and the court finds that this factor weighs against joinder.

2. Separate trials would not necessarily cause potential trauma to the victim and eyewitnesses

“Potential trauma to either the victim or an eyewitness to a crime is a factor that weighs in favor of joinder.” *Martin*, 773 N.W.2d at 100. Here, the State argues that there are multiple witnesses it intends to call at these trials. Without a joint trial, the State believes these witnesses would be burdened with providing the same testimony in six separate cases.

However, Minnesota’s appellate courts favor a finding of “trauma” on the victims and witnesses in this analysis. For instance, in *State v. Martin*, the Minnesota Supreme Court concluded that forcing the family members of a murder victim, and a 10-year-old witness, to testify in multiple trials would be traumatic, favoring joinder under the “potential trauma” analysis. *Id.* at 100. Similarly in *State v. Powers*, the Supreme Court held that the survivors of a shooting in a hotel room, including a 14-year-old boy, would be traumatized by testifying in multiple trials; this finding also favored joinder. 654 N.W.2d at 675. And in *State v. Blanche*,

the Supreme Court found trauma and upheld joinder where “two of the witnesses were young children who saw the shooting and watched their young friend and cousin die.” 696 N.W.2d 351, 371 (Minn. 2005).

By contrast, the Court of Appeals declined to say whether an aggravated robbery victim’s case either favored or disfavored joinder in *State v. Johnson*, 811 N.W.2d 136, 143 (Minn. App. 2012). In that case, the trial court noted that there were “no indications that [the victim] is a particularly vulnerable victim,” continuing, “I’m sure [the robbery] was upsetting, but I don’t know that it was particularly. And it was traumatic for the victim, but I don’t know that he’d appreciate reliving it at least two times, two separate trials.” *Id.* On appeal, the Court of Appeals held that it would not be “cavalier” about “the lack of any impact on an aggravated-robbery victim [...] being required to testify in separate trials,” but concluded that “this factor neither favored nor disfavored joinder.” *Id.*

In these cases, there is no indication that asking the victims and eyewitnesses to testify at multiple trials rises to the level of “trauma” as expressed in *Martin, supra*, *Powers, supra*, or *Blanche, supra*. While requiring these witnesses to appear for six separate trials would certainly be inconvenient, precedent requires a heightened finding of “trauma” for this factor to tip the scales in favor of joinder. Without this finding, the court concludes that this factor neither favors nor disfavors joinder.

3. The potential prejudice to the defendant

“Joinder is not appropriate when there would be substantial prejudice to the defendant, which can be shown by demonstrating that codefendants presented antagonistic defenses.” *State v. Johnson*, 811 N.W.2d 136, 143 (Minn. App. 2012). “Antagonistic defenses occur when the defenses are inconsistent, and the jury is forced to choose between the defense theories advocated by the defendants.” *Id.* Substantial prejudice “is not simply whether the defenses presented were different, but whether the defenses were inconsistent, or whether the defendants sought, through their chosen defenses, to shift blame to one another.” *State v. DeVerney*, 592 N.W.2d 837, 842 (Minn. 1999).

A classic antagonistic defense can be seen in *Santiago v. State*, 644 N.W.2d 425 (Minn. 2002). *Santiago* was a murder case where the two defendants “pointed the finger at each other” in their defense strategies. *Id.* at 446. The result was that each defendant “sought to shift the blame for the shooting to the other.” *Id.* The Minnesota Supreme Court held that

this was a “classic example[] of antagonistic defenses,” that warranted severance into two trials. *Id.*

There is a high risk of prejudice to the Defendants if this court were to join their cases. It is true that as of this order’s date, no defendant has noticed an affirmative defense. But the central facts present a real risk of antagonism. For instance, five of the Defendants were discovered in a hotel room containing evidence of credit card fraud, but it is unclear if all the Defendants were participating in the alleged fraud, or if some were merely present in the room. The risk that some of these Defendants will attempt to shift blame to one another is high, and prudence cautions the court against joinder. For these reasons, the court finds that this factor weighs against joinder.

4. The interests of justice.

The last factor requires the court to weigh “the interests of justice.” This factor cannot be “solely related to economy of time or expense,” but it does require “that the state, representing the collective interest of the people, be afforded a fair chance to present its case.” *State v. Higgins*, 376 N.W.2d 747, 748 (Minn. Ct. App. 1985) (quoting comment; *State v. Strimling*, 265 N.W.2d 423, 431-32 (Minn. 1978)).

In *State v. Strimling*, Minnesota’s Supreme Court confronted alleged misappropriations at several nursing home facilities by multiple defendants. 265 N.W.2d 423 (Minn. 1978). The Court ultimately upheld joinder of these defendants, writing that,

[I]n a prosecution for a “white-collar” crime where the defendants have acted in concert to spin a complex web of legal and illegal entrepreneurial activity, we think justice requires that the members of the jury be confronted with both participants in order to facilitate their fullest comprehension of the alleged wrongdoing and the accompanying proofs and defenses. We conclude, therefore, that a joint trial was not only allowable, but also well-suited to the unusual demands of this prosecution.

Id. at 432. More recent Minnesota cases have interpreted *Strimling*’s holding as favoring joinder in the “interests of justice” under the following circumstances:

- i. Where two or more defendants act in concert with one another,¹
- ii. When the defendants' overall endeavor paints a "complex" and "intricate" crime,² and
- iii. Generally in complex, white-collar cases.³

Weighing this guidance, this court concludes that the interests of justice may favor joinder, but this interest is not enough to overcome the previous factors. Joinder may be favored under this prong because all six cases involve multiple defendants allegedly acting with one another to carry out a complex and intricate white-collar crime. However, the risk of prejudice to the Defendants, the lack of trauma to the witnesses, and the insufficient showing that the defendants were all working in *close* concert with one another disfavor joinder.

For all the reasons discussed in this order, the court believes that joinder is not appropriate in these cases.

IT IS HEREBY ORDERED:

The State's *Motion for Joinder* is **DENIED**.

Date: May 2, 2017.

BY THE COURT:



Lisa K. Janzen
Judge of District Court

¹ See *State v. DeVerney*, 592 N.W.2d 837, 842 (Minn. 1999); *State v. Greenleaf*, 591 N.W.2d 488, 499 (Minn. 1999).

² See *Garrido v. State*, 2000 WL 1869579, at *3 (Minn. Ct. App. Dec. 26, 2000).

³ See *State v. Eaton*, 292 N.W.2d 260, 265 (Minn. 1980).