

6/4/15 After being allowed in Part: Court joins the two indictments for purposes of pre-trial proceedings but defers ruling on Commonwealth's request for Joinder at Trial, Locke Ltd

Attest: *[Signature]*  
ACM

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CRIMINAL #2014-SUCR-10417  
CRIMINAL #2015-SUCR-10384

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT'S MOTION TO DEFER ADJUDICATION OF  
COMMONWEALTH'S MOTION FOR JOINDER OF RELATED OFFENSES**

Aaron Hernandez, defendant in the above-captioned criminal cases, hereby moves this Court to defer the adjudication of the Commonwealth's Motion for Joinder of Related Offenses until a date after the Commonwealth has identified the witnesses it plans to call and the evidence it plans to offer on each allegedly "related" offense and after the defendant has had an opportunity to respond thereto and review all relevant discovery respecting each alleged offense. As grounds therefore defendant avers as follows:

1. On the same date the defendant was arraigned on a new indictment charging him with intimidation of a witness on February 13, 2013, the Commonwealth filed a motion to join that indictment with pending indictments charging the defendant with first degree murder and related offenses on July 16, 2012. On the date of arraignment (May 21, 2015), the Commonwealth also provided the defendant with three thousand pages of additional discovery, much of it relating to the new witness intimidation indictment. Defense counsel has not yet had an opportunity to review all of that new discovery.
2. Rule 9 (a)(3), Mass. R. Crim. P., provides that if a defendant is charged with two or more **related** offenses, either party may move for joinder and “[t]he trial judge shall join the charges for trial unless he determines that joinder is not in the best interests of justice.” “Thus, joinder requires first that the offenses are related, and second that joinder be in the best interests of justice.” *Commonwealth v. Gray*, 465 Mass. 330, 335 (2013), quoting *Commonwealth v. Sullivan*, 436 Mass. 799, 803 (2002).
3. Rule 9 (a)(1) defines the term “related offenses” as follows: “Two or more offenses are related offenses if they are based on the same criminal conduct or episode or arise out of a course of criminal conduct or series of criminal episodes connected together or constituting parts of a single scheme or plan.” The Supreme Judicial Court has stated that joinder is appropriate where the offenses “constitute a single line of conduct, grow out of essentially one transaction, and would be proved by substantially the same evidence.” *Commonwealth v. Montanez*, 410 Mass. 290, 303 (1991), quoting *Commonwealth v. Gallison*, 383 Mass. 659, 671 (1981). “Severance

is required, however, where these criteria are not satisfied and the defendant would be prejudiced by the cumulative evidence of different offenses.” *Montanez*, 410 Mass. at 303.

4. Even where the offenses at issue are deemed to be “related” under Rule 9(a)(1), joinder should still not be ordered if it is not in the best interests of justice. As the SJC has explained: “A judge is required to do more than determine whether the explicit requirements for joinder are met, and must ‘decide the question in the context of the guarantee of a fair trial for every defendant. The determination of what will be in the best interests of justice requires weighing in each case, the defendant’s interests against judicial economy’” *Gray*, 465 Mass. at 335, quoting *Commonwealth v. Sylvester*, 388 Mass. 749, 758 (1983).
5. The defendant is not yet in a position to endeavor to meet his burden of demonstrating that the offenses at issue here are unrelated in the absence of: (1) an offer of proof detailing the evidence the Commonwealth expects to introduce at trial showing that the two alleged offenses are “related” under Rule 9; and (2) an opportunity to review all of the discovery on both sets of charges in order to address the Court on whether they are “based on the same criminal conduct or episode or arise out of a course of criminal conduct or series of criminal episodes connected together or constituting parts of a single scheme or plan,” as required by Rule 9.


6. Even if these offenses were somehow deemed to be “related” (a dubious proposition, at best), the defendant is not yet in a position to demonstrate that joinder is not in the best interests of justice in the absence of an offer of proof by the Commonwealth detailing the evidence it plans to offer at trial to prove each respective offense. This Court cannot possibly carry out the careful balancing test required by *Sylvester* and its progeny in the absence of such a specific proffer. It is one thing, for example, to permit Alexander Bradley, a cooperating prosecution witness, to testify that the defendant shot him on February 13, 2013. It is quite another thing to permit the Commonwealth to try a Florida shooting case (using a bevy of out-of-state witnesses) within the context of a Massachusetts murder case. It is simply premature, at this juncture, for this Court to adjudicate the Commonwealth’s motion for joinder in the absence of this critical information, just as it is impossible for the defendant to demonstrate to the Court at this early stage that joinder would not be in the best interests of justice.
7. Finally, there is absolutely no legal, equitable, or pragmatic reason why the motion for joinder needs to be addressed now. Once a trial date has been set, the parties can prepare as if the indictments may be tried together. Once all of the necessary information has been disclosed by the Commonwealth and the defendant has had an opportunity to review that information and timely respond to the Commonwealth’s motion for joinder, the motion would be ripe for adjudication. That is likely to occur much closer to the date of trial than it is to the date of arraignment.

WHEREFORE, the defendant moves that the Court defer adjudication of the Commonwealth's Motion for Joinder until after all information necessary for the litigation and adjudication of that motion, as specified herein, has been provided by the Commonwealth and the defendant has had a fair opportunity to respond thereto.

Respectfully submitted,

**AARON HERNANDEZ**

By his attorneys,



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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing document upon the Commonwealth by delivering a copy thereof, IN HAND, to: Patrick M. Haggan, First Assistant District Attorney, Suffolk County, One Bulfinch Place, Boston, MA 02114-2997 on June 2, 2015.



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James L. Sultan