

MEMORANDUM

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-19**

THE PEOPLE OF THE STATE OF NEW YORK : BY: STEPHEN A. KNOPF
: :
: DATED: March 19, 2007
-against- : :
: INDICTMENT NO. 423/06
: :
JONATHAN GONZALEZ : :
Defendant : :

The defendant, Jonathan Gonzalez, has filed a motion with this Court seeking an order severing counts two, three, four and six in the above-captioned indictment, from that of his co-defendant, Michael Chattergoon. This defendant seeks this relief claiming that his co-defendant Chattergoon has made a statement incriminating him in a robbery that took place on October 19, 2005 and while his co-defendant was charged in that robbery, the co-defendant was also charged in another robbery that took place on October 13, 2005 (counts one and five of this indictment). For these reasons, the

defendant claims he is unduly prejudiced, and cannot receive a fair trial.

The People oppose the defendant's application in its entirety. First, the People claim that the defendant's motion is untimely insofar as it was not submitted within forty-five days of the defendant's arraignment. Next, the People complain that the defendant's motion for severance is premature as there has been no decision issued on the co-defendant's suppression motion.¹ The People also assert that the defendant's constitutional rights and statutory rights are not violated by a joint trial. The People also argue that the defendant's claims are speculative.

This indictment arose out of two separate incidents; one taking place on October 13, 2005 and another taking place on October 19, 2005. On October 13, 2005, the co-defendant allegedly stole money from Nassar Huttemburg, threatening him with a dangerous instrument.

¹Said suppression motion was decided by the Hon. McGann on February 8, 2007, denying the co-defendant's motion to suppress his statement.

On October 19, 2005, the defendant, co-defendant and an apprehended juvenile allegedly approached the same complainant displaying what appeared to be a firearm. The complainant gave the defendant and co-defendant his money. Then they fled.

Co-defendant Chattergoon made a statement to police, after being advised of his Miranda rights.

The defendant and co-defendant were indicted pursuant to the above-captioned indictment.

CPL §200.20 describes the circumstances by where multiple offenses may be charged in one indictment. CPL §200.40 describes the circumstances by where multiple defendants may be tried under one indictment.

Under CPL § 200.40, a court may for good cause shown, order that one defendant be tried separately from another. "Good cause" mandates a finding that either the People or the defendant would be unduly prejudicial by a joint trial. (*See People v. Mahboubian*, 74

NY2d 174 [1989]).

At the outset, this Court will deal with the People's argument that this application is both untimely and premature! Despite the claim that this application is untimely and insofar as the co-defendant's statement was not suppressed, this Court will review the defendant's application on its merits.

In order to justify a separate trial, a defendant must show that a joint trial would substantially impair his defense. This prejudice must be weighed against the considerations of judicial economy, public interest, inconvenience of witnesses and the public policy that favors joinder (see, *Mahboubian, supra*). Severance is only compelled where the core of each defense is in conflict with the other and where there is significant danger that this conflict alone would lead a jury to infer a defendant's guilt. (See, *People v Correa, 188 AD2d 542 (2nd Dept.) [1992]*).

Severance is not per se required if there is hostility between

defendants; differences in trial strategies or inconsistencies in their defenses. (See *People v. Cruz*, 66 NY2d 61, 73 [1985]). Even if a co-defendant makes a statement that implicates another defendant, if the prejudice to that defendant can be eliminated by redaction of the statement severance is not required. (See. *Bruton v United States*, 391 US 123 [1968]).

It is well-settled that “[w]here proof against the defendants is supplied by the same evidence, only the most cogent reasons warrant a severance.” (*Mahboubian*, *supra* at P.183.)

This Court recognizes that the complainant in each robbery is the same person. Even through the charges are similar, appropriate limiting instructions can be giving to the jury regarding the issue of which counts relate to this defendant.

In examining the elicited statement from the co-defendant, this Court notes that reference is made to an individual perpetrator with the same first name and same first initial of the last name as that

of the defendant. Such statement, in it's present form, cannot be properly admitted into evidence in a joint trial of both defendants herein.

Accordingly, the defendant's motion for a separate trial is denied only if the People agree to effectively redact the co-defendant's statement to remove any reference to the defendant Gonzalez. Should the People elect to proceed to trial and utilize the co-defendant's statement in its entirety, separate trials will be ordered.

The foregoing constitutes the order, opinion and decision of this court.

STEPHEN A. KNOPF, J.S.C.