

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
DOCKET NO. 226-2019-CR-00814

SUPERIOR COURT
SOUTHERN DISTRICT

STATE OF NEW HAMPSHIRE

v.

DALE HOLLOWAY

**STATE'S OBJECTION TO MOTION TO SEVER CID 1678544C (FELON IN
POSSESSION CHARGE)**

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, and objects to the Defendant's Motion to Sever CID 1678544C, stating in support as follows:

1. The defendant, Dale Holloway is charged in the above-captioned docket number with Attempted Murder, First Degree Assault, Second Degree Assault, Felon in Possession of a Deadly Weapon, and Simple Assault.

2. The defendant was indicted Charge ID 1678544C on or around January 21, 2020.

The indictment for CID 1678544C alleges that the defendant:

did commit the crime of PISTOLS & REVOLVERS; CONVICTED FELONS, FELONY in that he knowingly had in his possession a firearm, specifically a .380 caliber pistol after having previously been convicted in the Commonwealth of Massachusetts of a felony against a person or property of another, specifically Assault and Battery with a Dangerous Weapon and Assault to Kill in the Suffolk County Superior Court in 2022 in docket no. 0110467001 and 0110467002.

3. Jury Selection in this matter is presently scheduled for October 30, 2023, with a Trial Management Conference scheduled for October 19, 2023.

4. On or around September 25, 2023, the State received notice of the defendant's pleading titled *Motion to Sever the Charge ID: 1678544C (Charge 4) (Convicted Felon) From*

Charges 2, 3, 5, 6, 7, 8. See Def. Mot. To Sever (Court Index # 396).

5. In his Motion, the defendant argues in part that “Evidence of any [prior][convictions] will cause the jurors to [automatically] [assume] [guilt] in the other charges.” ¶ 2 Def. Mot. To Sever (internal brackets in original).

6. The State objects.

RELEVANT FACTS¹

7. On October 12, 2019, the wedding of C.M. and M.C. took place at the New England Pentecostal Church (hereinafter “the church”) in Pelham, New Hampshire. Bishop S.C. performed the wedding ceremonies, with a gathering of other individuals present for the wedding. At the conclusion of the wedding vows, an individual later identified as the defendant approached the altar area of the church. Upon approaching the altar area, the defendant fired multiple shots, shooting Bishop S.C. and C.M. In an ensuing fracas, the defendant pistol-whipped M.C. after defendant’s gun apparently malfunctioned. Subsequently, some churchgoers tackled the defendant and held him on the ground.

8. At approximately 10:12 a.m., the Pelham Police Department received a report at that an individual had been shot at the church. Upon responding to the scene, police observed people inside the church crying, yelling, and screaming for help. Police also observed a male, later identified as the defendant, lying face down with multiple people on top of him, close to the raised platform that held the altar. Lieutenant Anne Perriello of Pelham Police Department immediately obtained the defendant’s weapon, a .380 silver and black pistol, and secured it.

9. Upon securing the scene, police located Bishop S.C. lying on his back with a

¹ The factual recitation in this Objection to Defendant’s Motion to Sever is not an exhaustive list of facts pertinent to the case, but rather a recitation intended to convey relevant factual considerations pertinent to the arguments in this Objection.

gunshot wound to his neck area. C.M., the bride, had also been shot in the arm and M.C., the groom, had a large cut on his head.

10. Multiple witnesses saw the defendant enter the church wearing black clothing and appearing out of place for the ceremony. Witnesses recounted that the defendant briefly sat several pews back from the altar, until the end of the ceremony when he stood up and rapidly approached the altar raising his right arm holding something before shooting.

11. During their investigation, police observed surveillance footage from the exterior of the church. The footage depicts the defendant arriving at the church at approximately 10:09 a.m. The defendant is depicted standing outside the church smoking a cigarette before entering the church approximately a minute later. Various wedding guests are depicted on the footage as fleeing the church at approximately 10:13 a.m. Surveillance video also captured a BMW SUV vehicle enter the church parking lot from the south and the defendant exit from it. The footage further depicted the SUV backing up and leaving the area upon guests fleeing the church.

12. Pursuant to rule 20(a) of the New Hampshire Rules of Criminal Procedure:

“(a) Joinder of Offenses

(1) *Related Offenses*. Two or more offenses are related if they:

(A) Are alleged to have occurred during the same criminal episode; or

(B) Constitute parts of a common scheme or plan; or

(C) Are alleged to have occurred during separate criminal episodes, but nonetheless, are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct.”

N.H. R. Crim. P. 20(a)(1).

13. As the New Hampshire Supreme Court has interpreted the meaning of “single criminal episode”:

Accordingly, we construe “single criminal episode” as used in Rule 20(a)(1)(A) to mean an uninterrupted criminal occurrence or series of occurrences that are connected in some way.

This definition has two components: a temporal limitation imposed by the word “single” — that the episode be “undivided” or continuous — and a “connected” element, which requires that a series of occurrences be connected in some way in addition to their temporal relationship. This “connected” component could be met in a variety of ways — spatial, causal, logical, common objective, or otherwise. In short, for multiple offenses to be considered part of a “single criminal episode,” they must: (1) have a close temporal relationship; and (2) be connected in some other way.

State v. Rivera, 175 N.H. 496, 500 (2022).

14. In the instant case, CID 1678544C alleges a crime that occurred during a single criminal episode. Namely, the defendant’s alleged shootings of C.M. and S.C., in addition to the alleged Simple Assault that the defendant is alleged to have committed against M.C. The defendant’s possession of a firearm is inherent in the charges he stands accused of. Because CID 1678544C is part of a single criminal episode perpetrated by the defendant, it should not be severed for purposes of trial.

15. The defendant’s Motion raises his concerns regarding CID 1678544C, specifically his contention that “prior conviction(s) are unrelated, and consolidation serves no legitimate State goal other than prejudicial entry likely to confuse the jury and permit the jury to consider automatic guilt of any and all crimes, offenses and charges from the particular evidence of prior conviction(s) that otherwise would not be admissible under N.H. R. Evidence 404(b).” ¶ 2 Def. Mot. To Sever. As the State best interprets the defendant’s arguments, the defendant’s assertions regarding CID 1678544C are connected to Rules of Evidence 403 and 404(b).

16. As set forth in New Hampshire Rule of Evidence 403, “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.” N.H. R. Ev. 403. Certainly, an element of a crime is not only probative, but vital in terms of the State’s burden of proof. See RSA 625:10 (“No person may be

convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.”).

17. In CID 1678544C, the defendant’s prior felony conviction is an essential element the State is tasked with proving beyond a reasonable doubt. See State v. Nocella, 124 N.H. 163, 164 (1983) (noting that “[t]he defendant’s prior conviction of a felony was an essential element of the State’s case which the State had to prove beyond a reasonable doubt.”). Because the defendant’s prior felony conviction is an element of the offense charged in CID 1678544C, its probative value is not substantially outweighed by the danger of any unfair prejudice to the defendant, nor any danger of confusing or misleading the jury. Moreover, the Court can provide a limiting instruction to the jury; instructing it to only consider the evidence of the defendant’s prior conviction in determining whether the State has met that element of CID 1678544 beyond a reasonable doubt and not his propensity to commit crimes. See State v. Remick, 149 N.H. 745, 747 (2003) (explaining “We presume that jurors follow the trial court’s instructions.”). A limiting instruction appropriately safeguards against the risk of any improper consideration of the defendant’s prior felony conviction by the jury.

18. Regarding the defendant’s implicit contention that the State seeks to use his prior felony convictions as propensity evidence, that is not the case. Rule of Evidence 404(b) specifically prohibits the admission of other crimes, wrongs or acts for propensity purposes. See N.H. R. Ev. 404(b). Here, the State isn’t seeking the introduction of the defendant’s qualifying felony convictions for propensity purposes, or, as the defendant claims, to “bombard its complaint(s) unrelated to the ‘alleged’ shooting incident.” See ¶ 2 Def. Mot. To Sever. Rather, the State seeks introduction of the defendant’s qualifying felony conviction because such

conviction is an element of the crime charged in CID 1678554C.

19. The defendant’s concerns regarding the admission of his conviction could be mitigated by a stipulation that prior to October 12, 2019, he had been convicted of a qualifying felony offense in a Massachusetts court. However, such stipulation would be read aloud to the jury. See State v. Young, 159 N.H. 332, 337 (2009) (proclaiming that “[t]o the extent the defendant argues that the trial court was obligated to accept his stipulation without reading it to the jury, we reject his argument,” and elaborating “[b]y contrast, the defendant's status as a convicted felon is what rendered his gun possession illegal. Thus, unlike in *Cardin*, the defendant's stipulation in this case pertained to an essential element of the firearm charge. Indeed, the defendant admitted before the trial court that reading a stipulation of an essential element of a crime to the jury is normal procedure.”).

WHEREFORE, the State respectfully requests that this Honorable Court:

- A. Deny the Defendant’s Motion to Sever; or
- B. Schedule a hearing thereon, if necessary; and
- C. Grant the State any such other relief as may be proper and just.

DATED: September 26, 2023

Respectfully Submitted,

/s/ Seth Dobieski
Seth S. Dobieski #273674
Assistant County Attorney

CERTIFICATION

I hereby certify that a copy of the foregoing pleading has this day been sent to the defendant via mail.

/s/ Seth Dobieski
Seth S. Dobieski