THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2016-0006

State of New Hampshire

v.

Ernesto Rivera

Appeal Pursuant to Rule 7 from Judgment
of the Hillsborough (South) Superior Court

BRIEF FOR THE DEFENDANT

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(15 minutes oral argument)

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QUESTION PRESENTED

Whether the court erred by denying the defense request to sever for trial the drug charge from the other charges.

Issue preserved by defense motion to sever, the State's objection, the hearing on the motion, and the trial court's ruling. AD 25-31; A3-A25; H 18-65.*

* Citations to the record are as follows:
"AD" refers to the attached addendum, containing the order from which Rivera appeals;
"A" refers to the separate appendix to this brief, containing relevant pleadings and other materials;
"H" refers to the transcript of the hearing on the motion to sever, held on May 14, 2014;
"T" refers to the transcript of trial over two days in December 2015;
"S" refers to the transcript of the two-day sentencing hearing held in January 2020.

STATEMENT OF THE CASE

In 2013, the State charged Ernesto Rivera with crimes arising out of an incident in Nashua on July 21, 2013. Specifically, the State charged possession of cocaine with intent to distribute, criminal threatening committed against Rivera's girlfriend, C.G., and five counts of simple assault-domestic violence, also committed against C.G. T 70-73. Four counts of simple assault alleged that Rivera slapped C.G. in the face, and the fifth alleged that he grabbed the back of her neck. T 71-73.

Rivera stood trial over two days in December 2015. The jury acquitted Rivera of possession with intent to distribute but found him guilty of the lesser-included offense of possession of cocaine. T 199-200. The jury returned verdicts of guilty on all other charges. T 200-02.

In subsequent post-conviction proceedings, Rivera challenged Armed Career Criminal ("ACC") convictions entered after a separate trial held earlier in 2015.[1] After a post-conviction court reversed the ACC convictions, the court (Temple, J.) in 2020 convened a consolidated re-sentencing hearing in the ACC case and in this case. At that hearing, with respect to Rivera's convictions in this case, the court re-sentenced him to a stand-committed term of three and a half to seven years in prison for the drug possession conviction,

[1] Rivera's appeal from that trial is before this Court under docket 2016-0007.

and to a concurrent, stand-committed twelve-month term for criminal threatening. S 71-74. In addition, the court pronounced suspended twelve-month terms for the five simple-assault convictions, and ordered that, if ever imposed, those assault sentences would run consecutively to each other.[2] Id.

[2] Rivera's appeal from the re-sentencing is before this Court under docket 2021-0009.

STATEMENT OF THE FACTS

One evening in July 2013, Rivera and his girlfriend, C.G., went out for dinner and drinks at the San Francisco Kitchen, a Nashua restaurant. T 84, 96, 101-02. Around midnight, a quarrel arose between them. T 95, 104, 125. C.G. testified that Rivera, whom she judged to be "a little intoxicated,"[3] became angry when C.G. reminisced with their hostess, a school acquaintance of C.G.'s sister. T 103-04, 116. When questioned by the police later that night, Rivera acknowledged that there had been a verbal argument, but he did not describe its details. T 138-39.

Leah Heuston, a restaurant patron seated at a nearby table, testified that she heard an argument from Rivera's and C.G.'s table, marked by Rivera's increasingly loud voice. T 84-86, 89. Heuston testified that she then saw Rivera slap C.G.'s face. T 87, 93. At trial, Heuston could not recall the number of slaps, beyond that it was more than one, or other details of the event. T 87, 91-94. However, she described Rivera's demeanor as "very, very angry and scary." T 87. Upon seeing the assault, Heuston went to find a police officer. T 87-88.

C.G. testified that, during the argument, Rivera threatened her by saying that he "was going to push [her] face into the window and smash it." T 104. She denied "arguing

[3] The police officer who interacted with Rivera that night testified that Rivera did not appear to be intoxicated. T 151.

with him," saying that she said little in response, beyond "maybe sorry a few times and … [she] won't do it again…." T 105. At some point, Rivera "grabbed the back of [her] neck, and he pushed [her] face up against the glass window of the restaurant." T 105, 118-19. She testified that he slapped her "a few times" in the face. T 105-06. When questioned further, she said that he slapped her four times. T 106, 119. The assaults did not cause any cuts or bruises, and the responding police officers testified that they saw no injuries. T 107, 152-53, 161-62.

The first-arriving officer, Richard Sprankle, testified that he was driving in a marked police cruiser near the San Francisco Kitchen when a pedestrian reported to him that an "altercation" was happening in the restaurant involving "a male hitting a female." T 130-31. Sprankle pulled over and encountered another person who directed his attention to the restaurant. T 131-33. As Sprankle approached the restaurant, he saw the outside table at which Rivera and C.G. sat, and observed that Rivera "was leaning forward significantly into what seemed to be the female's face." T 133. As Sprankle approached the table, Heuston and two men called his attention to the incident, saying that Rivera had slapped C.G. in the face several times. T 134-36.

Sprankle then went to the table to speak with Rivera and C.G. T 109, 136. He first addressed Rivera, asking him to

step away from the table so that they could speak privately. T 110, 136-37. Rivera agreed. T 137. Rivera told Sprankle that he and C.G. had just had a verbal argument. T 137. Sprankle recalled Rivera as being "very agitated," and Sprankle asked to pat search him. T 137-38. Rivera agreed, and the search disclosed nothing that felt like a weapon. T 138. Rivera did not respond to Sprankle's inquiries with details about the argument, but rather continued to say that nothing had happened – that it was just a verbal argument. T 138-39.

After speaking with Rivera for a couple of minutes, Sprankle took C.G. aside and spoke to her. T 110, 139. C.G. initially told Sprankle that she was fine, that nothing had happened, and that she did not wish to press charges. T 111-12, 122, 140-41, 155. She testified at trial that she did so because she feared Rivera and could see that he was watching her. T 111-12, 123. After Sprankle told her that other witnesses had reported the incident, C.G. briefly remained silent. T 141. Sprankle then told her that witnesses had seen Rivera grab her by the neck. T 142. C.G. then began to provide details, saying that Rivera had grabbed her neck with his left hand and had slapped her with an open hand. T 142.

Meanwhile, a few minutes after Sprankle's arrival, a second police officer, Ryan McDermott, also arrived. T 110-11, 142, 157. When McDermott arrived, Sprankle was

speaking with C.G., so McDermott stood by Rivera. T 157. McDermott testified that Rivera was "very argumentative [and] kind of defensive." T 158. McDermott saw that Rivera was trying to watch C.G.'s interaction with Sprankle. T 158-59. Rivera told McDermott that there had been a verbal argument. T 162.

After speaking with C.G., Sprankle arrested Rivera. T 142, 160. After Sprankle left the restaurant with Rivera, McDermott spoke with C.G. T 160. McDermott described C.G. as "petrified, very scared." T 160. She told McDermott that she did not want to press charges. Id. Later, during their interaction, C.G. told McDermott that Rivera had "pushed her face up against a piece of glass and … slapped her four times." T 161. She also reported that Rivera had said that he was "going to put her face through the window" and that "he was going to break her face…." T 161.

At the police station, during an inventory of the contents of Rivera's pockets, the police found fourteen glassine baggies containing cocaine, weighing in total 10.83 grams. T 144-45, 147. The police also found $743 in cash, mostly in small bills. T 145, 148. Sprankle estimated that each bag contained $80 to $100 worth of the drug. T 146.

SUMMARY OF THE ARGUMENT

The court erred in denying the request to sever the drug charge from the other charges. Those charges were not "related" within the meaning of Criminal Procedure Rule 20's "single criminal episode" variant of relatedness. Especially in the context of continuing offenses such as possession, the mere simultaneity of crimes does not alone make them part of a single criminal episode. Rather, the crimes must be directed at the accomplishment of a single criminal objective. Because the crimes here were not related as part of a single criminal episode, Rivera had a right to sever them.

Alternatively, even if the charges were "related" within the meaning of Rule 20, the court should have severed them in the interests of justice. Here, the principal concern was that a jury hearing evidence about the assaults and the drug possession might draw an inference that Rivera is a bad person prone to committing crimes, and thus dismiss any doubts it might have deliberating as to his guilt on the charges separately.

I. THE COURT ERRED IN JOINING FOR TRIAL THE DRUG CHARGE WITH THE OTHER CHARGES.

Criminal Procedure Rule 20 governs the joinder of charges. A defendant has the right to sever unrelated charges. State v. Brown, 159 N.H. 544, 549 (2009); N.H. R. Crim. Pro. 20(a)(3). Offenses are "related" within the meaning of the rule if they occur during a single criminal episode, constitute parts of a common scheme or plan, or 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. Pro. 20(a)(1)(A) – (C). If offenses are "related," a court shall join them "unless the trial judge determines that joinder is not in the best interests of justice." N.H. R. Crim. Pro. 20(a)(2).

Before trial, the defense filed a motion to sever the charges for trial, identifying initially seven unrelated sets of charges. A3-A11. One set encompassed the charges arising on July 21, 2013. The court subsequently convened a hearing on the motion. H 18-65. At the hearing, the defense expanded the argument by asserting that the drug charge arising on July 21 should be severed from the assault and threatening charges arising that day. H 24, 42-43. The State objected. A12-A25. The court ruled on the matter by a written order. AD 25-31. As relevant to the charges at issue here, the court denied the motion to sever the drug charge from the other

charges. AD 27-28. In so ruling, the court reasoned that these charges arose during a single criminal episode. Id.

This Court has not yet had occasion in a published opinion to define the boundaries of a "single criminal episode." See Brown, 159 N.H. at 550 (addressing the "logically and factually connected" prong and noting that "[s]ince [State v.] Ramos, [149 N.H. 118 (2003),] our opportunities for addressing relatedness have been confined largely to the 'common plan' category…."). However, in a variety of contexts, this Court has defined the boundaries separating one unit of events from another. In those settings, this Court has not adopted a simplistic definition focused only on the simultaneity of the events. Rather, other considerations also influence the boundaries of a unit of events.

For example, in the context of describing other-act evidence that is "intrinsic" to a charged offense for the purpose of determining whether Rule 404(b) applies, this Court defined the concept not merely in terms of chronological simultaneity. Rather,

> "[i]ntrinsic" or "inextricably intertwined" evidence will have a causal, temporal, or spatial connection with the charged crime. Typically, such evidence is a prelude to the charged offense, is directly probative of the charged offense, arises from the same

> events as the charged offense, forms an integral part of a witness's testimony, or completes the story of the charged offense. This type of evidence is admissible under the rationale that events do not occur in a vacuum, and the jury has a right to hear what occurred immediately prior to and subsequent to the commission of the charged act so that it may realistically evaluate the evidence.

State v. Wells, 166 N.H. 73, 77-78 (2014) (citations and quotation marks omitted). Thus, two events are intrinsically connected if they shed explanatory light on each other.

On several occasions, this Court has used the labels "single criminal episode" or "same criminal episode" to describe events that encompass multiple crimes. See, e.g., State v. Folds, 172 N.H. 513, 522 (2019) (three convictions for drug offenses that arose from search of defendant's residence and person on same day, said to form single criminal episode); State v. Glenn, 167 N.H. 171, 177 (2014) (attempted armed robbery part of same criminal episode as murder); State v. Locke, 166 N.H. 344, 350 (2014) (charges of first degree assault and second degree assault, arising out of act of throwing victim into Merrimack River, were part of single criminal episode); State v. Wells, 166 N.H. 73, 77 (2014) (act of digital penetration shortly before charged sexual intercourse occurred during single criminal episode); State v.

Nightingale, 160 N.H. 569, 572-74 (2010) (interlocking conversation about sale of cocaine and of oxycontin part of single criminal episode). Such cases invariably involve crimes that occur not only during an uninterrupted and simultaneous span of time, but also manifest a common purpose or otherwise shed light on each other. For example, a defendant's sexual assaults of two victims at the same time and in each other's presence are said to occur during a single criminal episode. See, e.g., State v. Abram, 153 N.H. 619, 626 (2006); In re Petition of State, 152 N.H. 185, 188 (2005) (thus describing crimes in State v. Gordon, 148 N.H. 710 (2002)).

Because possessory offenses can continue for a long time, they can overlap temporally with other offenses with which they have little or no connection, other than their commission by the same person. In the context of continuing offenses, the concept of simultaneity therefore often does not meaningfully add to the joinder/severance rule's relatedness analysis. In particular, the mere simultaneity of crimes does not make them part of a single criminal episode.

In State v. Papillon, 173 N.H. 13 (2020), for example, the State proffered evidence that, at the same time that the defendant was conspiring to kill the murder victim, he also offered to commit the murder of another informant in an unrelated case. Id. at 22-23. This Court held that the trial court erred in admitting that evidence. Id. at 25-26. This

Court observed that, despite the "arguable temporal connection, … without a sufficient underlying factual nexus, these statements are merely coincidental to the charged offenses." Id. at 25. Rather, "the defendant's apparent willingness to facilitate the murder of another, unrelated, suspected 'snitch' was not 'part of the same criminal episode' or at all part of a sequence of events leading to the charged conspiracy to murder" the victim. Id. at 26.

Law in other jurisdictions confirms that the boundaries of a single criminal episode are not defined by mere simultaneity. For example, an Oregon statute governing concepts relevant to double jeopardy defines "criminal episode" as a "continuous and uninterrupted conduct that establishes at least one offense *and is so joined in time, place and circumstances that such conduct is directed to the accomplishment of a single criminal objective.*" Ore. Rev. Stat. §131.505(4) (emphasis added). To constitute a single criminal episode, thus, two acts must be not only simultaneous, but also directed to the accomplishment of the same criminal objective. See also Utah Code Ann. §76-1-401 (defining "single criminal episode" as "all conduct which is closely related in time and is incident to an attempt or accomplishment of a single criminal objective"); Indiana Stat. 35-50-1-2(b) (defining "episode of criminal conduct" as "offenses or a

connected series of offenses that are closely related in time, place, and circumstance").

Good reason exists to define the "single criminal episode" variant of relatedness in this way. The point of Rule 20 is to define as "related" those charges for which a sound basis exists to require their prosecution in a single trial. When it cannot be said that two crimes are directed to the accomplishment of a single criminal objective, the mere simultaneity of their commission cannot justify describing them as occurring during a single criminal episode. This observation holds true especially of possessory crimes, which being continuing offenses, can occur over a prolonged period and which, being relatively passive offenses, do not interfere with the possessor's simultaneous commission of other unrelated crimes. This Court therefore should hold that the "single criminal episode" version of relatedness requires more than mere simultaneity of commission.

Applying that rule here, this Court must further conclude that the charged assaults were not joined with the charged drug possession as parts of a single criminal episode. No reason existed to think that the assaults on C.G. had anything to do with Rivera's possession of drugs. The State did not proffer, and no witness testified, that the assaults were motivated by the drugs. Rather, the drugs happened to

be in Rivera's pocket when he was arrested for assaults on his girlfriend.

Alternatively, even if the Court adopts a "mere simultaneity" interpretation of the concept of a single criminal episode and finds the charges "related" within the meaning of the rule, it should still hold that the trial court erred in joining the charges for trial. Rule 20(a)(2) authorizes the severance even of related charges. In pertinent part, the rule provides that "the judge shall join [related] charges for trial unless the judge determines that joinder is not in the best interests of justice." Rivera accordingly argues, in the alternative, that even if the offenses were "related" within the sense of Criminal Procedure Rule 20(a)(1), the trial court still had to sever them for trial, in the interests of justice. The inquiry here focuses on the risk of unfair prejudice. Brown, 159 N.H. at 554.

In Brown, this Court described the rule's interests-of-justice standard as "at least encompass[ing] the considerations outlined in Ramos." Brown, 159 N.H. at 555. The Court explained that

> charges should be tried separately whenever it is deemed appropriate to promote a fair determination of the defendant's guilt or innocence, which includes evaluating whether, in view of the number of offenses charged and the complexity of the evidence to be

> offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently to each offense.

Id. at 555 (citing Ramos, 149 N.H. at 128) (quotation marks omitted). The Brown Court identified "other concerns of undue prejudice as well, which may cause the best interests of justice to override conducting a single trial." Id. at 555. By way of example, the Court noted the risks that "some charges may be likely to unusually inflame the jury against the defendant," and that the "State may gain an unfair advantage if a weak case is joined with a strong case." Id. A further concern arises "if the defendant wants to testify as to one offense but not as to others." Id. at 555-56. "Ultimately, in determining the best interests of justice, the purposes underlying joinder, i.e. efficiency and economy, must give way when conducting a single trial would jeopardize a defendant's right to a fair trial." Id. at 556.

Here, the principal concern is that a jury hearing evidence of both the assaults and the drug possession might draw an inference that Rivera is a bad person prone to committing crimes, and thus dismiss any doubts it might have deliberating as to his guilt on the charges separately. Certainly, evidence of a defendant's commission of a drug offense can shed negative light on his character. See, e.g., State v. Pelkey, 145 N.H. 133 (2000) (reversible error to admit evidence of defendant's drug-dealing activity in trial on charge

of driving under influence). Likewise, evidence of Rivera's commission of assaults on his girlfriend could induce a jury to draw an improper propensity inference on the question of his guilt for possession of drugs. The court therefore erred, on this ground also, in refusing to sever the charges for trial.

CONCLUSION

WHEREFORE, Mr. Rivera respectfully requests that this Court reverse his convictions.

Undersigned counsel requests fifteen minutes of oral argument before a full panel.

The appealed decision is in writing and is appended to the brief.

This brief complies with the applicable word limitation and contains approximately 3370 words.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief is being timely provided to the Criminal Bureau of the New Hampshire Attorney General's office through the electronic filing system's electronic service.

/s/ Christopher M. Johnson
Christopher M. Johnson

DATED: October 4, 2021

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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ERNESTO RIVERA

Docket Nos. 226-2013-CR-612, 613, 636, 637, 722;
226-2014-CR-183

ORDER ON DEFENDANT'S MOTION TO SEVER

The defendant, Ernesto Rivera, is facing a variety of criminal charges. These charges stem from various incidents alleged in the following indictments:

1. Docket No. 13-CR-612 (868766-71C): Simple Assault.
2. Docket No. 13-CR-612: Criminal Threatening (868757C); Simple Assault (868758-62C); and Possession of Narcotic Drug with Intent to Sell or Dispense (815944C).
3. Docket No. 13-CR-613 (829942C): Possession of Narcotic Drug With Intent to Sell or Dispense.
4. Docket No. 13-CR-636: Felon in Possession (8542288C) and Armed Career Criminal (838674C).
5. Docket No. 13-CR-637: Felon in Possession (834139C) and Armed Career Criminal (838662C).
6. Docket No. 13-CR-722: Felon in Possession (854313C) and Armed Career Criminal (854312C).

7. Docket No. 14-CR-183: Conspiracy-Witness Tampering (913795-97C); Criminal Solicitation to Witness Tampering (913798-99C); and Criminal Solicitation to Criminal Liability to Witness Tampering (913800-01C).

The defendant filed a Motion to Sever on April 21, 2014. The State filed its Objection to the Motion to Sever on May 1, 2014. A hearing was held before the Court on the Motion to Sever on May 14, 2014. For the reasons set forth in this Order, the Defendant's Motion to Sever is GRANTED IN PART and DENIED IN PART.

ANALYSIS

Superior Court Rule 97-A(1)(B) provides that: "if a defendant is charged with two or more related offenses, either party may move for joinder of such charges. Related charges shall be joined for trial unless the trial judge determines that joinder is not in the best interests of justice." The decision to join, or alternatively to sever the charges, is a discretionary matter left to the trial court. State v. Brown, 159 N.H. 544, 550 (2009). In determining whether multiple charges may be joined, the Court looks at whether the charges are related or unrelated. Id. at 548. Rule 97-A (1)(A) provides the following definition of "related offenses":

> Two or more offenses are related if they:
>
> (i) are alleged to have occurred during a single criminal episode; or
> (ii) constitute parts of a common scheme or plan; or
> (iii) 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. Super. Ct. R. 97-A(I)(A)(i-iii). [1]

[1] "The Court utilizes the following factors in assessing whether charges arising from separate episodes are related: (1) the temporal and spatial relationship among the underlying charged acts; [*552] (2) the commonality of the victim(s) and/or participant(s) for the charged offenses; (3) the similarity in the defendant's mode of operation; (4) the duplication of law regarding the crimes charged; and (5) the duplication of witnesses, testimony and other evidence related to the offenses." Brown, 159 N.H. at 551-552.

Importantly, the New Hampshire Supreme Court recently adopted a rule of compulsory joinder of criminal charges. State v. Jamie Locke, ___ N.H. ___ (June 13, 2014). In essence, the Court adopted a same criminal episode test for compulsory joinder of criminal charges. This Court is now obligated to apply the compulsory joinder rule adopted by the New Hampshire Supreme Court in Locke. An analysis that involves Rule 97-A, Brown and Locke is necessary to an informed ruling on the Motion to Sever.

The Court rules that the various charges pending against Mr. Rivera can be severed into three separate jury trials. Docket No. 13-CR-612 (868766-71C) involves six (6) informations alleging Simple Assault by Mr. Rivera against C.G. on August 30, 2012. These charges involve an isolated single criminal episode without any significant temporal or spatial connection to the various other charges pending against Mr. Rivera. All of these assault charges stemming from an incident on August 30, 2012, must be joined for a single trial under the compulsory joinder rule recently announced in Locke. However, the Court does not find that this set of charges is part of a common scheme or plan involving the other charges. Additionally, the Court does not find that this isolated criminal episode is logically and factually connected in any meaningful way to the other sets of criminal charges. These simple assault charges will be the subject of one separate trial.

The events of July 21, 2013 represent another single criminal episode (Docket No. 13-CR-612). This episode has resulted in a charge of Criminal Threatening (868757C), five (5) charges of Simple Assault (868758-62C) and a charge of Possession of a Narcotic Drug with Intent to Dispense or Sell (815944C). The parties do not dispute that the Criminal Threatening and Simple Assault charges arose out of a

single criminal episode. These charges involve the defendant and the alleged victim, C.G. Additionally, the drug charge arose directly out of this criminal episode. The drugs were allegedly discovered on the defendant as part of an inventory search immediately following his arrest on July 21, 2013. Again, all of these charges arise out of a single criminal episode. As such, they are subject to compulsory joinder under Locke. However, the Court also finds that this set of charges does not constitute part of a common scheme or plan related to the other sets of criminal charges. Further, the Court finds that the facts and circumstances surrounding this single criminal episode are not logically and factually connected to the facts in the other sets of charges. Again, this is a separate and isolated criminal episode that is not in any significant manner related to the various other sets of crimes alleged in the other docket numbers. These alleged offenses simply do not have a close relationship in time, place, modus operandi, scheme or plan to the other alleged criminal incidents. Brown, 159 N.H. at 553. The charges related to the incident of July 21, 2013 will be the subject of one separate jury trial.

After considering the Motion to Sever, the Objection to Motion to Sever and the arguments made at the hearing of May 14, 2014, it is obvious to the Court that the various Felon in Possession and Armed Career Criminal charges are separate criminal episodes that are logically and factually related to one another. The facts and circumstances surrounding the defendant's alleged possession of the firearm at issue share a temporal and spatial relationship. The participants and witnesses involved in these charged offenses are nearly identical. All of the charges involve the defendant's possession of the same firearm. Additionally, the applicable law to these various

charges is identical. The Court finds that these charges are logically and factually connected in a manner that does not solely demonstrate that the accused has a propensity to engage in criminal conduct. Sup. Ct. R. 97-A(1)(A)(iii); Brown, 159 N.H. at 551. The Court rules that the various Felon in Possession and Armed Career Criminal charges in docket numbers 13-CR-636, 13-CR-637 and 13-CR-722 shall be joined for trial.

The Possession of Narcotic Drug with Intent to Dispense or Sell in docket number 13-CR-613 (829942C) has its origin in the police search for weapons in the Felon in Possession/Armed Career Criminal cases. The indictment for this particular offense resulted from a search during which the police found drugs, but did not locate the gun at issue. This particular charge has a logical and factual connection to the Felon in Possession and Armed Career Criminal charges. It arises out of the same circumstances. It shares a spatial and temporal relationship to the Felon in Possession and Armed Career Criminal charges. It also shares the same basic participants and witnesses. Specifically, Elvira Kersey is a key witness who provided the police with information regarding the defendant's use and possession of a firearm in May which ultimately led to the seizure of the firearm on August 23, 2013, as well as the seizure of the drugs on August 20, 2013. These offenses share a close relationship with respect to both the underlying conduct and the evidence to be used to prove the various charges. Brown, 159 N.H. at 551.

Finally, docket number 14-CR-183 involves Conspiracy for Witness Tampering (913795-97C), Criminal Solicitation to Witness Tampering (913798-99C) and Criminal Solicitation for Criminal Liability to Witness Tampering (913800-01C). All of these

witness tampering charges involve allegations that the defendant was attempting to tamper with a State's witness, Elvira Kersey. It appears, both by the pleadings and the offer of proof made by the State at the hearing, that Ms. Kersey and C.G. had involvement with the defendant in terms of the firearm. The alleged tampering with Kersey clearly relates to the Felon in Possession and Armed Career Criminal charges. As such, there is a direct logical and factual connection between the various Witness Tampering charges and the Felon in Possession/Armed Career Criminal charges. Id. There is a close nexus between the Witness Tampering charges and the Felon in Possession and Armed Career Criminal charges. Brown, 159 N.H. at 553. In simple terms, the Witness Tampering charges allege tampering related to the Felon in Possession and Armed Career Criminal charges. There is a temporal and spatial relationship among the various charged acts. Further, the charged acts share commonality of participants. All of the evidence in these various charged acts relates to the defendant's possession of the firearm at issue and his alleged acts to influence a crucial witness who had knowledge of his possession. The Court finds that the Witness Tampering charges are logically and factually related to the Felon in Possession, Armed Career Criminal and Possession of a Narcotic Drug with Intent to Dispense and Sell charges.

The close relationship of the Possession of a Narcotic Drug with Intent to Sell or Dispense charge (13-CR-613) to the Felon in Possession/Armed Career Criminal charges (13-CR-636, 13-CR-637 and 13-CR-722) along with the Witness Tampering charges (14-CR-183) demand that all of these related charges be subject to one jury trial.

CONCLUSION

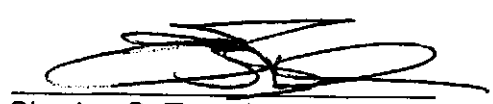
The following trials are ordered in this case:

1. Docket number 13-CR-612 (868766-71C);
2. Docket number 13-CR-612 (868757C; 868758-62C; and 815944C);
3. Docket number 13-CR-613 (829942C); 13-CR-636 (854288C and 838674C); 13-CR-637 (834139C and 838662C); 13-CR-722 (854313C and 854312C); and 14-CR-183 (913795-801C).

A dispositional hearing will be scheduled on all of these cases. At the dispositional hearing, three separate jury trials will be scheduled by the Court.

So ordered.

June 17, 2014



Charles S. Temple
Presiding Justice

CST/trn