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COMMON PLEAS COURT
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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

STATE OF OHIO	*	CASE NOS: 23-2126 and 23-2204
	*	
Plaintiff,	*	Judge Joseph V. McNamara
	*	
vs.	*	**MOTION FOR JOINDER OF**
	*	**CASE NOS 23-2126 and 23-2204**
	*	
ADAM ALEKHTIAR	*	Mark Hanusz (103870)
	*	Assistant Prosecuting Attorney
Defendant.	*	Lucas County Prosecutor's Office
	*	700 Adams St., Ste. 250
	*	Toledo, Ohio 43604
	*	T: 419-213-4700
	*	F: 419-213-4595
	*	E: mhanusz@co.lucas.oh.us
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COMES NOW the State of Ohio by and through the office of the Lucas County Prosecuting Attorney, who pursuant to Crim.R.13, files this motion to join together for trial the following cases: 23-2126 and 23-2204. A Memorandum in Support follows.

Respectfully submitted,

Mark Hanusz (103870)
Assistant Prosecuting Attorney

MEMORANDUM IN SUPPORT

A. Factual Background

The State moves for joinder of two cases for trial. The cases are each titled *State of Ohio vs. Adam Alekhtiar* and are numbered 23-2126 and 23-220. Both cases are currently pending before this Court. The following is a brief synopsis of each case.

23-2126: Adam Alekhtiar is charged with Failure to Comply with Signal of a Police Officer. Here, the State is alleging that on or about the 7th day of June 2023 the Defendant operated a motor vehicle so as to willfully flee a police officer after receiving a visible and audible signal from the office to stop, and the operation of the motor vehicle by the defendant caused a substantial risk of serious physical harm to persons or property.

23-2204: Adam Alekhtiar is charged with Intimidation and Operating a Vehicle under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them. Here, the State is alleging that on or about the 1st day of June 2023, the Defendant did attempt to intimidate a public servant in the discharge of the person's duty and operated a motor vehicle while under the influence of alcohol, a drug of abuse, or a combination of them.

B. Law and Argument

Ohio Criminal Rules 8 and 13, control joinder of criminal cases for trial. Crim.R. 8 states, pertinently:

> **(A) Joinder of Offenses:** Two or more offenses may be charged in the same indictment, information or complaint, in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

Crim.R.8.

In conjunction, Crim.R. 13 states:

> The court may order two or more indictments or informations, or both to be tried together, if the offenses or the defendants could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

Crim.R.13.

When read together, if a defendant is facing multiple charges in separate indictments, a court can join the cases together for trial, if the charges themselves are of the same or similar character, are connected together as parts of a common scheme, or are part of a course of criminal conduct. Thus, the State must first show that the separate indictments could have been charged together under just one indictment.

1. Under Crim.R.8, the defendant's two cases are of the same or similar character, arise out of the same common scheme or plan and are a part of a course of criminal conduct and therefore could have been joined in a single indictment.

R.C.2901.12(H) states that "without limitation on the evidence that may be used to establish a 'course of criminal conduct,' any of the following is prima-facie evidence of a course of criminal conduct:

> … (3) The offenses were committed as part of the same transaction or chain of events, or in.furtherance of the same purpose or objective. [Emphasis added];
> (4) The offenses were committed in furtherance of the same conspiracy.
> (5) the offenses involved the same or a similar modus operandi.

Here, the defendant's case 23-2126, Failure to Comply, stems from the Defendant's realization that he had an outstanding arrest warrant for the case 23-2204. As such, under Crim.R.8, both of the defendant's cases could have been joined in a single indictment.

2. Because Crim.R.8 is satisfied. under Crim.R.13. the Court should order the joinder of all the defendant's indictments for trial.

According to *State v. Thomas* (1980), 61 Ohio St. 2d 223,225, "joinder and the avoidance of multiple trials is favored for many reasons, among which are conserving time and expense, diminishing the inconvenience to witnesses and minimizing the possibility of incongruous results in successive trials before different juries." Further, the Ohio Supreme Court has previously held that joinder is liberally permitted to conserve judicial resources. *State v. Wampler*. 5th Dist. App. 13-CA-3; 2014-Ohio-37 (Jan. 2, 2014) citing *State v. Schaim*, 65 Ohio St. 3d 51; 1992 Ohio LEXIS 2504 (1992).

Despite the Supreme Court's preference for the joinder of cases at trial, under Crim.R.14, the accused may move to sever the offenses upon a showing of prejudice. However, the accused "must furnish the trial court with sufficient information so that it can weigh the considerations favoring joinder against the defendant's right to a fair trial." *State v. Lott* (1990), 51 Ohio St.3d 160, 163. Moreover, the State can defeat a claim of prejudice when:

(1) evidence of the other crimes would have been admissible as 'other acts' evidence under Evid.R.404(B); or

(2) the evidence of each crime joined at trial is simple and direct.

Id. at 163; and *State v. Franklin*, 62 Ohio St.3d 118,580 N.E.2d (1991). These tests are commonly referred to as the "other acts" test and the "simple and direct" test. These two tests are disjunctive and need not be satisfied together to negate a claim of prejudicial joinder. *State v. Mills*, 62 Ohio St.3d 357,582 N.E.2d 972 (1992).

3. Under the "simple and direct" test, the Defendant would not be prejudiced by joinder.

The Ohio Supreme Court has ruled that under the "simple and direct" test, an accused is not prejudiced by joinder if:

(1) the jury is capable of readily separating the proof required for each offense

(2) the evidence is unlikely to confuse jurors

(3) the evidence is straightforward; and

(4) there is little danger that the jury would improperly consider testimony on one offense as corroborative of the other.

State v. Lott (1990), 51 Ohio St.3d 160, 163.

In *State v. Gibson*, 2015-Ohio-1679, 2015 Ohio App. LEXIS 1614, the Sixth Appellate District addressed the issue of prejudicial joinder in an analogous case. In *Gibson*, the defendant was charged in two separate indictments with committing two separate murders on two separate dates as part of his participation in the Moody Manor Bloods--a Toledo street gang. *Id*. Under Crim.R.8, the State moved to join the indictments claiming that the murders were "connected." The trial court joined the matters for trial and Gibson appealed claiming that the trial court abused its discretion by failing to take into consideration the "highly prejudicial nature of the evidence that would be presented to the jury on two separate and unrelated accusations of murder." *Id*. The Sixth District held that because the two murders involved "separate witnesses, separate victims and separate evidence" the simple and direct test was satisfied and the defendant could not demonstrate prejudice. *Id*.

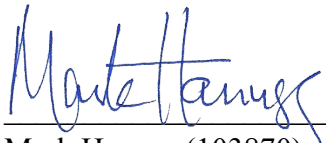
The Sixth District included in its analysis its opinion in *State v. Lewis*, where it held, "Ohio appellate courts routinely find no prejudicial joinder where the evidence is presented in an orderly fashion as to the separate offenses or victims without significant overlap or conflation of proof." *Id*., see also *State v. Lewis*, 6th Dist. 2010-Ohio-4202, 2010 Ohio App. LEXIS 3568. Finally, the Court concluded by stating, "any prejudice that may result from the joinder of offenses is minimized when a trial court cautions a jury before deliberations to consider each count and the evidence applicable to each count separately, and to state its findings as to each count uninfluenced by its verdict on any other counts. *Id*.

In the present matter, the defendant's two cases involve separate witnesses (one in 23-2126 and two in 23-2204) and separate evidence - all connected through a common scheme. The State will present the evidence in a direct, straight-forward manner to avoid confusion, overlap of testimony or co-mingling of the charges. Moreover, this Court can lessen any prejudicial effect of the joinder by instructing the jury to consider each count and evidence separately. As such, under the "simple and direct" test the State can negate any claim of prejudice from the joinder of these cases for trial.

C. Conclusion

For the foregoing reasons, that State of Ohio respectfully requests that 23-2126 and 23-2204 be joined for trial.

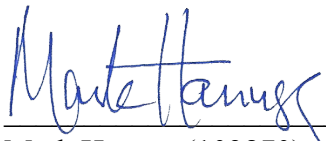
Respectfully submitted,



Mark Hanusz (103870)
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion was served on Martin Dow, counsel for the defendant, via email to martindow@bex.net on February 5, 2023.



Mark Hanusz (103870)
Assistant Prosecuting Attorney