IN THE YOUTH JUSTICE COURT OF NOVA SCOTIA

R. v. M.S. 2012 NSPC 42

Date: May 18, 2012
Docket: 2257974 and
2257960 - 2257973
Registry: Sydney

BETWEEN:

Her Majesty The Queen

v.

M.S.

DECISION ON AN APPLICATION BY THE CROWN FOR JOINDER

JUDGE: The Honourable Anne S. Derrick

HEARD: May 14, 2012

DECISION: May 18, 2012

CHARGES: sections 235(1)of the *Criminal Code* and sections 267(1)(a) x 2; 88 x 1; 137 x 3; 145(3) x 3; 139 x 3

COUNSEL: Daniel MacRury, Q.C. and Stephen Drake, for the Crown

Darlene MacRury, for M.S.

By the Court:

Introduction

[1] On December 3, 2010, M.S. was with his girlfriend, B.G. at his grandfather's home in Sydney. M.S.'s grandfather was also in the house, in the living room. M.S. and B.G. were in a bedroom together. At about 5:50 p.m., B.G. called her grandmother to ask if she and M.S. could come to her home to watch some movies. B.G.'s grandmother took the request under advisement.

[2] At 6:06:22 p.m., the grandfather became aware that something might have happened in the bedroom and called 911. The call was interrupted. At approximately this same time, a family friend, D.M. arrived at the house and was directed to the bedroom. D.M. saw B.G. lying on the bedroom floor. There was blood everywhere.

[3] D.M. backed away slowly from the scene in an effort to leave the house. M.S. entered the kitchen/living room area waving a large knife. D.M. heard him make threats to her and his grandfather. There was a verbal exchange between M.S. and his grandfather and D.M. left the house.

[4] D.M. drove a short distance to a nearby convenience store and made a 911 call. The recorded time for the call was 6:13:58 p.m.

[5] By this time the police were responding to the earlier interrupted 911 call. Cst. T.J. Martel located M.S. on the street. After a short chase on foot, M.S. was apprehended. He was arrested for breaching various Court orders and placed in a police car.

[6] As a result of certain utterances made by M.S., Cst. Martel went into the grandfather's residence to investigate further. He observed B.G. in the bedroom. She appeared to be dead. Cst. Martel returned to the police car where he arrested M.S. for B.G.'s murder.

[7] M.S. was charged on two separate Informations – for second degree murder, an indictable offence, on a single count Information, and on a 14 count Information for assaulting his grandfather and D.M., and threatening them, possession of a knife for a purpose dangerous to the public peace, and breaching Court orders. The Crown proceeded by Indictment on eight counts from the second Information (threats, assaults, possession of a knife dangerous to the public peace, and two undertaking breaches) and summarily on the remaining six (breaches of probation and undertaking.)

[8] On February 22, 2012, the Crown gave notice that, in the event of a conviction or convictions, it will be seeking a serious violent offence determination under section 42(9) of the *Youth Criminal Justice Act* and the imposition of an adult sentence. M.S. elected to be tried on both Informations by a judge alone in the Youth Justice Court. Trial dates of July 9 – 20, 2012 were set.

[9] It has since been agreed that a trial of the charges on the 14 count Information will take no more than a day. The murder trial is expected to take two weeks, as scheduled.

Crown and Defence Positions on Joinder

[10] The Crown wants the murder charge and the assault, threats, possession of a knife, and breach charges - the 14 count Information - to be heard together as one trial. The Defence does not. The Crown bears the burden of satisfying me, on a balance of probabilities, that joinder should be ordered in this case, that "the ends of justice" require it, *(R. v. McNamara, [1981] O.J. No. 3254, (C.A.) paragraph 119)*, and I will add, that, as there is a murder charge, the requirements of section 589(a) of the *Criminal Code* have been met.

[11] Essentially, the Crown submits that there is a legal and factual nexus between the counts charged, that there will be no prejudice to M.S. if joinder is granted, that a multiplicity of proceedings will be avoided by joinder, and that, as is required for joinder involving a murder charge, the 14 charges arise "out of the same transaction" as the murder. In the Crown's submission, two trials will impair the efficiency and truth-seeking function of the criminal justice process.

[12] The Defence strenuously objects to joinder of the 14 counts with the murder charge. On M.S.'s behalf, Ms. MacRury submits that joinder is contrary to the interests of justice and her client. She asserts there will be prejudice to M.S., and disagrees with the Crown's assertion that a legal and factual nexus exists between the counts. She does not accept that there was a single transaction giving rise to all the charges. It is her submission that two trials should occur, enabling Crown and Defence to fully focus on the most serious charge – murder – without the distraction of the other charges.

[13] Crown and Defence agree on one issue: section 143 of the *Youth Criminal Justice Act* permits indictable offences and offences punishable on summary conviction to be tried jointly. Such joinder may occur "where trial on the indictable offence is to take place before the provincial court." *(R. v. Clunas, [1992] S.C.J. No. 17, paragraph 39)* The election by M.S. to be tried in the Youth Justice Court satisfies the *Clunas* requirement and dispenses with the question of whether joinder is available. Joinder is an option in the circumstances of this case: the issue is whether it should be ordered.

Applicable Legal Principles

[14] The general principles governing joinder (and the flip side of the same coin, severance) are found in the *Criminal Code*, and most pertinently for this case, in section 591(3) where it is provided that the court "may, where it is satisfied that the interests of justice so require order that the accused or defendant be tried separately on one or more of the counts." *(s. 591(3)(a))*

[15] Joinder in the case of a charge of murder is specifically dealt with under section 589 of the *Criminal Code* which provides: "No count that charges an indictable offence other than murder shall be joined in an indictment to a count that charges murder unless the count that charges the offence other than murder arises out of the same transaction as a count that charges murder." *(s. 589(a))*

[16] An accused can consent to the joinder of indictable counts to a count of murder (*Criminal Code* section 591(b)) but that route to joinder is obviously not applicable to this case.

[17] Applying the general principles, I must be satisfied that "the interests of justice" require joinder. The interests of justice is a concept of broad scope and a great deal of discretion is afforded a court considering a joinder request. *(R. v. Litchfield, [1993] S.C.J. No. 127, paragraph 30; R. v. Last, [2009] S.C.J. No. 45, paragraph 14)* There is nothing that mandates joinder and indeed, as I noted earlier, where a murder charge has been laid, joinder of non-murder counts to the murder charge is only permitted where the alleged offences arise "out of the same transaction" as the murder.

[18] The *Last* decision from the Supreme Court of Canada did not involve a murder charge. It concerned two separate sexual assaults alleged to have been perpetrated by Mr. Last on different victims. A pre-trial severance application was denied by the trial judge, a determination that was ultimately reversed by the Supreme Court. The Court, invoking section 591(3) of the *Criminal Code*, identified the interests of justice as "the overarching criteria" on a severance application. *(Last, paragraphs 1, 16)* The trial judge is expected to engage in a "weighing exercise" of the relevant factors in order to achieve "a reasonable balance…between the risk of prejudice to the accused and the public interest in a single trial." *(paragraph 17)*

[19] The Supreme Court went on to note that the interests of justice "often call for a joint trial", referencing *Litchfield*, a sexual assault prosecution, where the severance order was set aside because it "worked an injustice towards the Crown, the complainants and the administration of justice in that it placed an artificial barrier to the trial judge's ability to consider [Litchfield's] conduct in all the circumstances." *(Litchfield, paragraph 33)* Using *Litchfield* as "one such example", the Supreme Court observed in *Last* that, "Severance can impair not only efficiency but the truth-seeking function of the trial." *(Last, paragraph 17)*

[20] The factors to be considered by a trial judge on a severance application have been described by the Supreme Court of Canada as "not exhaustive." They are

intended to guide a trial judge in identifying how "the interests of justice may be served in a particular case, avoiding an injustice." *(Last, paragraph 18)* What follows is a listing of those factors that are relevant to my task in this case:

- The general prejudice to the accused;
- The legal and factual nexus between the counts;
- The complexity of the evidence;
- Whether the accused intends to testify on one count but not another;
- The desire to avoid a multiplicity of proceedings;
- The length of the trial having regard to the evidence to be called;
- The potential prejudice to the accused with respect to the right to be tried within a reasonable time.

[21] Other factors do not play a role in this case. The potential for inconsistent verdicts or antagonistic defences as between co-accused are not issues. Crown counsel have also advised that there will be no application to introduce similar fact evidence so that is also not an issue. These are three of the "*Last*" factors and are not material to my assessment of the Crown's application.

[22] It is useful at this point to identify the factors that have been diluted by counsel's oral submissions. The nature of the evidence as it relates to the non-murder charges is not complex. Crown and Defence agree those charges can be tried in a day. The Crown indicates that no expert evidence will be called in relation to these charges. Potential prejudice to M.S.'s right to be tried within a reasonable time is not an issue. Even though the parties advised that if joinder is not granted they may want to order transcripts of the evidence of certain witnesses from the murder trial, Ms. MacRury stated in her oral submissions that M.S. will not be making a section 11(b) *Charter* claim in relation to any delay occasioned by having the non-murder charges heard some time after the murder trial. She confirmed M.S.'s understanding that if transcripts are ordered, a trial on the non-murder charges could not occur in the scheduled time frame of July 9 – 20. M.S. is making an explicit choice; to ask for two separate trials even though that means the trial of the non-murder charges would be delayed.

[23] Joinder is therefore not necessary to prevent undue delay and a subsequent trial of the non-murder charges will not be complicated or lengthy. Concerns that would be in play if this were a jury trial are not present: impermissible credibility bolstering or propensity reasoning are not issues in a judge-alone trial. *(Last, paragraph 44; R. v. Chan, [2011] N.S.J. No. 667 (S.C.), paragraphs 15, 24)*

[24] This is the appropriate juncture for me to examine what *is* material to my analysis and how the factors to be weighed are to be balanced in the circumstances of this case.

Examining the Relevant Factors

[25] It is vital to remember that there is nothing that mandates joinder of the counts in the Informations sworn against M.S. The determination to grant or deny the requested order is to be made in accordance with a broad, thoughtfully exercised discretion. That discretion must be exercised judicially, with careful consideration given to what, in this case, constitutes the "interests of justice" and whether joinder is appropriate under section 589(a) of the *Criminal Code* where M.S. is facing a murder charge. Even if I determine that the 14 non-murder charges arose out of the same transaction as the murder charge, I am still not compelled to order joinder. The balancing of the relevant factors occurs in the context of a broad, overarching discretion to determine a result that best serves the interests of justice in this case.

Avoiding a Multiplicity of Proceedings

[26] I accept that it is in the interests of justice to avoid a multiplicity of proceedings, one of the factors the Supreme Court of Canada identified in *Last.* In this case it is not so much a resource issue as the non-murder charges trial is expected to be quite time-efficient. What two trials will mean is a heavier load on the shoulders of family and witnesses. The Crown has argued that two separate trials will be onerous for family members, requiring them to experience aspects of the proceedings twice. Certain witnesses would have to testify on two separate occasions if joinder is not ordered. These are real burdens to be borne by people who are no doubt already struggling to cope with the events of last December and

the ongoing criminal justice proceedings. Keeping the trials separate is undesirable when viewed from the perspective of the families and the witnesses - two of whom are also alleged victims - who will face the obligation of testifying on two separate occasions about very distressing events. I do note that the *YCJA* Declaration of Principle, section 3(1)(d)(ii) provides that victims "should suffer the minimum degree of inconvenience as a result of their involvement with the criminal justice system."

[27] I will pause for a moment to examine the nature of the testimony that would have to be called twice if joinder is not ordered. The critical events in this case appear to have occurred over about 16 minutes. The Crown has submitted that the evidence on the non-murder charges is probative of the murder charge and will have to be repeated if M.S. has two separate trials. In oral submissions, the Crown confirmed its intention to call the evidence of M.S.'s grandfather and D.M. in relation to the murder charge as post-offence conduct evidence going to the issue of M.S.'s intent. Post-offence conduct may be admissible on the issue of intent although its relevance or probative value will depend on the facts of the case. *(R. v. White, [2011] S.C.J. No. 13, paragraph 38)* To be admissible such evidence must be relevant to a live issue and not subject to a specific exclusionary rule. It may also be excluded if its probative value is found to be outweighed by its prejudicial effect. *(White, paragraph 31)*

[28] Admissibility of post-offence conduct will have to be determined whether or not there is joinder. If there is no joinder and the Crown is successful in obtaining a ruling in the murder trial that M.S.'s post 911-call conduct in relation to his grandfather and D.M. is admissible evidence, these witnesses will be testifying twice, as post-offence conduct witnesses in the murder trial and as victim-witnesses at the trial of the assaults and threats charges.

[29] I will add that this is not a case where the severance of charges "undercuts" the ability of the Crown to prove the murder charge. Severance is inappropriate where certain alleged offences are, effectively, components of other charges such as where kidnapping and aggravated sexual assault are components of a first degree murder charge. "The interests of justice cannot be met where separate trials

of charges operationally prohibit the Crown from proving a criminal charge." *(R. v. Briscoe, [2011] A.J. No. 1555 (Q.B.), paragraph 50)*

Accused's Desire to Testify in Relation to Some Counts But Not Others

[30] Ms. MacRury has indicated this may be an issue for M.S., that is to say, according to her submissions on his behalf, he "would like to consider testifying on one of the Informations" without then being exposed to questioning on the other charges. Ms. MacRury characterizes this possibility in a joined trial as "very prejudicial" to M.S., interfering with his ability to make a full answer and defence to the charges. She goes on to emphasize a point I will come back to in these reasons: "The accused should be able to focus on defending himself on the murder and not have to weigh the other charges against defending himself on this charge." *(Written submissions of Defence dated May 9, 2012)*

[31] The Supreme Court of Canada held in *Last* that an accused's intention to testify should be "objectively justifiable." Not only does there need to be an expression of interest in testifying by an accused, a trial judge on a severance application must satisfy herself "that the circumstances objectively establish a rationale for testifying on some counts but not others." It is a threshold requirement if this factor is to be considered in the mix on a severance application. *(Last, paragraph 26)*

[32] As the Crown points out, it has been held that an "expression of desire by an accused to testify in and of itself will not always outweigh all the other factors when a trial judge comes to decide what is in the interests of justice." *(R. v. Steele, [2006] B.C.J. No. 492 (C.A.), paragraph 15)* The British Columbia Court of Appeal in *Steele* found that the issue is whether the accused will be subject to an injustice, in the event of severance not being granted, by having to make the stark choice of testifying or remaining silent where he wants to offer an explanation in relation to only some of the charges. Furthermore, the burden lies on an accused "to provide the trial judge with sufficient information to convey that, objectively, there is substance to his testimonial intention." That information "could consist of the type of potential defences open to the accused or the nature of his testimony." *(Last, paragraph 26)* There really has been no such substance provided by M.S.

Legal and Factual Nexus

[33] In the Crown's submission, the events of December 3, 2011 which led to the charges against M.S. are a contiguous chain of events that unfolded in just 16 minutes in one location. According to the Crown they are interconnected, starting with a homicide followed by assaults and threats against witnesses. The Crown argues that the temporal proximity of the alleged offences and the overlapping facts relating to them satisfy the requirements for joinder. *(R. v. R.W.D., [2004] O.J. No. 3091 (S.C.J.), paragraph 50)* Interconnected facts are a significant aspect of finding the necessary nexus as a temporal nexus alone does not create either a factual or a legal nexus. *(R. v. Giroux, [2002] A.J. No. 719, (Q.B.), paragraph 40)*

[34] As I have already mentioned, the Crown indicates it will have to duplicate some of the evidence from the murder trial in the trial on the non-murder charges if joinder is not ordered. The Crown asserts that it cannot prosecute the murder charge without calling evidence about the assaults and threats against M.S.'s grandfather and D.M, although as I have already pointed out, the admissibility of that evidence in relation to the murder charge will have to be addressed whether joinder is ordered or not.

[35] The Defence is prepared to concede only that the alleged offences share a nexus of time and place but argues that the non-murder charges have their own "separate and distinct set of facts necessary to prove guilt." The murder, says Ms. MacRury, "stands on its own set of facts." *(Written submissions of Defence dated May 9, 2012)*

[36] This is not a case like *Last* or *Giroux* where different victims, circumstances, locations, and times meant that no factual and legal nexus could be established. Here there is a factual nexus and the Crown submits, also a legal one as it is intending to use evidence of assaults and threats to prove the mental element for murder.

[37] Indeed the Crown submits that the charges M.S. is facing are so closely related that it can be said they all arise out of the same transaction. To repeat what I said earlier in these reasons, where there is a murder charge there can only be

joinder if the non-murder charges arise out of the same transaction as the murder charge.

Arising Out of the Same Transaction

[38] The factors I have been reviewing are to be weighed in the assessment of whether, pursuant to section 591(3), the interests of justice require joinder. However before I assess the interests of justice issue I must deal with section 589(a) and whether I am satisfied that the charges all arose out of the same transaction. *(see, Briscoe, paragraph 42)*

[39] There does not seem to be a consensus on the scope encompassed by the term "transaction" which is used in various *Criminal Code* provisions. *(R. v. Brown, [1990] O.J. No. 493 (Ont. S.C.); R. v. Melarangi, [1992] O.J. No. 2294 (C.J., Gen. Div.); R. v. Giroux, [2002] A.J. No. 719 (Q.B.); R. v. Jackson, [2007] O.J. No. 58 (S.C.J.); R. v. Riley, [2008] O.J. No. 881 (S.C.J.); R. v. Twitchell, [2010] A.J. No. 1632 (Q.B.); R. v. Manasseri, [2011] O.J. No. 3190 (S.C.J.))* In *Melarangi*, the term was described as "elastic" in nature, with its definition being very broad or restrictive, depending on the context.

[40] Offences perpetrated against different victims, one of whom was murdered, some time apart, in different locations have been found not to have arisen "out of the same transaction." *(Giroux, paragraphs 17, 38)* Two accused, one of whom was charged with murder, and the other with non-murder offences in relation to the same incident and victim, have been denied severance as their offences were held to have "arisen out of the same transaction." *(Melarangi)* These appear to me to be quite obvious examples of what "the same transaction" will and will not encompass. A rapidly unfolding series of events involving different offences against different victims is not so easy to categorize.

[41] In *Manasseri*, the Ontario Superior Court of Justice reached the conclusion, based on decisions that have considered the issue of joinder pursuant to section 589(a) of the *Criminal Code*, that each case must be decided on its individual facts and that factors to consider are: a close connection in time and space; a legal connection; or a factual connection. *(paragraph 23)*

[42] In *Riley*, a decision of the Ontario Superior Court of Justice, joinder under section 589(a) was viewed through a lens that focused on the significance of a murder charge:

> **25** I do think that it is helpful, however, to bear in mind the purpose of the relaxation of the prohibition against joinder of a count charging another offence with a count of murder in the 1991 amendment. The amendment preserves the principle that in a murder case, the attention of the jury ought not to be diverted by an inquiry into a wholly different offence. But it permits a degree of diversion where the facts underlying the other offence are substantially the same. The most obvious examples of this are the ones referred to by the parliamentary secretary when s. 589 was before the House: murder committed in the course of the commission of another serious crime. It is noteworthy that the government, in its statements about the purpose of the amendment, referred to "offences arising out of the same *incident*" as murder and "offences committed at the same *time* as murder" as synonymous with offences other than murder arising "out of the same *transaction* as a count that charges murder." Equating the "same transaction" with the "same incident" or the same time is a narrower approach than the one advanced by the Crown in this case. If that narrower approach to s. 589 is adopted, than the joinder permitted by s. 589 will rarely prejudice an accused, and will usually contribute to trial economy and consistent fact-finding, exactly what Parliament intended.

[43] The Crown prosecuting M.S. favours a broad definition for “the same transaction” that will encompass all the events that occurred on December 3, 2011 at the grandfather’s home. The events following the murder are so closely related, argues the Crown, as to constitute part of the same transaction as the murder.

Exercising a Broad, Overarching Discretion

[44] Although there is a credible argument to be made that a factual connection exists between the murder charge and the non-murder charges due to the non-murder offences having followed so closely on the heels of an apparent homicide at the same location, I am not persuaded that these alleged offences arose from “the same transaction” that resulted in B.G.’s death. In saying this I note what I just referenced from the *Riley* decision and adopt the view that, in the circumstances of this case, a narrower approach to what constitutes the “same transaction” should be taken.

[45] This is also not a situation like *Briscoe* where the kidnapping and sexual assault were components of the Crown's proof of first degree murder. Here, the "transaction" that was the homicide and the "transaction" that constituted the alleged assaults and threats are distinct even though they are temporally proximate, indeed, within minutes of each other.

[46] Even if I am wrong to view the murder charge and the non-murder charges as not arising "out of the same transaction", a conclusion that leads to joinder being prohibited under section 589(a), I nonetheless believe I should exercise my considerable discretion and deny the Crown's application. My reasons are rooted in concerns about the fairness of these proceedings where they involve a young person charged with murder.

[47] The Crown has indicated its intention to call M.S.'s grandfather and D.M. to testify about M.S.'s conduct following the homicide, in other words, to give post-offence conduct evidence. I have substantial concerns about that evidence also being the underpinning, in a joined trial, of charges of assault and threats relating to those witnesses. Presumably counsel and I will be able to differentiate the use to be made of this evidence, but I am of the view that it will be very difficult for a 17 year old facing a murder charge to do so. While I am, as I discussed earlier, conscious of the burden that two trials will place on these witnesses, and acknowledge that one trial would be somewhat more efficient than two, it is essential that I also recognize M.S.'s right to participate in the proceedings against him, which means he is entitled to understand what is happening and be able to participate in the conduct of his trial. *(section 3(d)(i), Youth Criminal Justice Act, Declaration of Principle))*

[48] Even if the murder and the non-murder charges were all part of the same transaction and I am wrong to find otherwise, that does not mandate joinder, it simply means no prohibition against it would exist. Even if I was satisfied that the Crown's application for joinder of the non-murder charges to the murder charge had cleared the "same transaction" hurdle under section 589(a), I would still have to consider whether joinder is in the "interests of justice." This determination has to be made on the basis of my balancing all the relevant factors and being satisfied

that, in the language of section 591(3), “the interests of justice” require joinder in this case.

[49] I find that, in the circumstances of this case, the “interests of justice” do not require joinder. The factors I reviewed earlier in these reasons - avoiding multiple proceedings, sparing victim-witnesses the stress of testifying on two separate occasions, and the close connection of the relevant events, all of which favour joinder – do not, in my view, outweigh the general prejudice that joinder would represent to this accused young person charged with murder and facing a life sentence if convicted and then sentenced as an adult, which is what the Crown is seeking to achieve. M.S.’s vulnerability as a young person facing such serious potential consequences is an essential factor for me to consider is determining this application.

[50] The heightened vulnerability of young persons in dealing with the criminal justice system has been emphatically acknowledged in a number of Supreme Court of Canada decisions: *R. v. S.J.L., [2009] S.C.J. No. 14, paragraph 64; R. v. D.B., [2008] S.C.J. No. 25, paragraph 41; R. v. R.C., [2005] S.C.J. No. 62, paragraph 41*.

[51] The Supreme Court of Canada has thoughtfully examined the vulnerability of young persons in relation to the criminal justice process in *R. v. D.B., [2008] S.C.J. No. 25*. The Court observed that there has been a “consistent acknowledgement of the diminished responsibility and distinct vulnerability of young persons in all of the *Youth Criminal Justice Act*’s statutory predecessors.” *(paragraph 48)* The Court went on to note broad acceptance of the fact that “age plays a role in the development of judgment and moral sophistication.” *(paragraph 62)* Professor Nicholas Bala’s statement that “adolescents generally lack the judgment and knowledge to participate effectively in the court process and may be more vulnerable than adults” was cited with approval. *(paragraph 64)*

[52] It is my view that the interests of justice cannot be served without a keen appreciation of the factors I just referenced especially where a young person is being prosecuted for such a serious offence as murder. I do not regard the truth-seeking function of the trial process will be enhanced by joinder where age and

enhanced vulnerability are understood to compromise the ability of young persons to understand and participate in the court process. I do not believe it is necessary to demonstrate this in relation to a particular young person in a particular case: as the Supreme Court of Canada has said: “In creating a separate criminal justice system for young persons, Parliament has recognized the heightened vulnerability and reduced maturity of young persons.” *(R.C., paragraph 41)*

[53] Ms. MacRury’s principal opposition to the Crown’s application for joinder is reflected, I think, in her written submission that trying the murder charge alone will allow for “proper focus and attention” being trained on that charge, without the distraction of the assaults and threats charges. Although the Crown attacked this argument as having nothing to do with the factors to be assessed in a joinder application, I have determined that the interests of justice calculus in this case favours the result that will best ensure M.S. can concentrate his attention on making a full answer and defence to the murder charge in the first instance. His vulnerability as a young person faced with the most serious offence under the *Criminal Code* - murder – is a significant factor in my exercising my discretion to deny the joinder application. The post-offence conduct issue I discussed earlier in these reasons is just one example of how joinder could make the trial process confusing and overwhelming for M.S. Having weighed all the relevant factors I find that the option that is most compatible with the interests of justice in the circumstances of this case is separate trials on the charges.

[54] The joinder application is dismissed. The murder trial will proceed on July 9 – 20, 2012 and a separate date will be set for M.S.’s trial on the 14 count Information.