

STATE OF MINNESOTA  
COUNTY OF CLEARWATER

IN DISTRICT COURT  
NINTH JUDICIAL DISTRICT

---

STATE OF MINNESOTA,

Court File No. 15-CR-16-413

Plaintiff,

15-CR-16-414

15-CR-15-425

15-CR-16-25

vs.

**ORDER AND  
MEMORANDUM**

ANNETTE MARIE KLAPSTEIN,  
EMILY NESBITT JOHNSTON,  
STEVEN ROBERT LIPTAY, and  
BENJAMIN JOLDERSMA,

Defendants.

---

The above-entitled matter came on for a contested omnibus hearing before the undersigned Judge of District Court on August 15, 2017, at the Clearwater County Courthouse, Bagley, Minnesota. The State of Minnesota was represented by David Hanson, Clearwater County Attorney, 213 Main Avenue North, Bagley, Minnesota. Defendants, Annette Klapstein, Emily Johnston, Steven Liptay, and Benjamin Joldersma, were personally present and represented by their attorney, Timothy Phillips, 2836 Lyndale Avenue South, Minneapolis, Minnesota.

On November 16, 2016, the State filed a Notice of Motion and Motion to Consolidate all four Defendants' cases for trial purposes. All four Defendants initially objected to their cases being consolidated. However, Defendants Klapstein and Johnston agreed to be joined for trial purposes. Defendants Liptay and Joldersma did not stipulate to any agreement to be joined. The Court has yet to rule on consolidation for trial purposes. Defendants did not object to being joined for purposes of the omnibus phase. Therefore, the Court joined all four Defendants for a consolidated contested omnibus hearing.

On December 20, 2016, Defendants filed a Notice to Present Necessity Defense at Trial. The State objects to Defendants presenting the necessity defense at trial. The State's Motion to Consolidate will be addressed in the same order as Defendants' Necessity Defense Notice.

On May 11, 2017, prior to the contested omnibus hearing, Defendants submitted three affidavits from various experts in support of Defendants' necessity defense. At the contested omnibus hearing, all four Defendants testified in support of the necessity defense. The State did not present any witnesses. The Court allowed the parties to simultaneously file any additional briefs by September 15, 2017. Both parties timely filed additional briefs. On August 17, 2017, Defendants filed expert declarations. The Court took the matter under advisement on September 18, 2017.

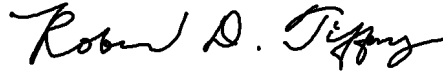
Based upon all the files, records, and proceedings herein, the Court makes the following:

**ORDER**

1. The State's Motion to Consolidate is **DENIED in part** and **GRANTED in part**. Defendant Klapstein's and Defendant Johnston's trials shall be joined. Defendant Liptay's and Defendant Joldersma's trials shall be joined.
2. Defendants' Motion to Present Necessity Defense at Trial is **GRANTED**.
3. The Clearwater County Court Administrator shall promptly schedule all the above-entitled matters for pretrial/settlement conferences.
4. The attached Memorandum of the Court is incorporated by reference herein.

**IT IS SO ORDERED.**

BY THE COURT:

Tiffany, Robert  
Oct 11 2017 11:41 AM

---

**Robert D. Tiffany**  
Judge of District Court

## MEMORANDUM

### **A. Joinder of Defendants for Trial**

Under Minn. R. Crim. P. 17.03, subd. 2, a court should consider the following factors in determining whether multiple defendants' cases should be joined for trial: (1) the nature of the offense; (2) the impact on the victim; (3) the potential prejudice to the defendant(s); and (4) the interests of justice. This rule neither favors nor disfavors joinder. *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002). Extended duration of multiple trials favors joinder. *State v. Powers*, 654 N.W.2d 667, 675–76 (Minn. 2003).

The court has approved joinder of criminal trials in cases where codefendants acted in close concert with one another. *See State v. Blanche*, 696 N.W.2d 351, 371 (Minn. 2005). “The identical nature of the charged offenses and the nearly identical evidence against each defendant supports the trial court's decision to join [defendants] for trial.” *State v. Greenleaf*, 591 N.W.2d 488, 499 (Minn. 1999).

Here, Defendants Klapstein and Johnston are both charged in a four count complaint with I) Criminal Damage to Property of critical public facilities, utilities, and pipelines in violation of Minn. Stat. § 609.594, subd. 2; II) Aid and Abet Criminal Damage to Property of critical public service facilities, utilities, and pipelines in in violation of Minn. Stat. § 609.594, subd. 2, with reference to Minn. Stat. § 609.05, subd. 1 and subd. 2; III) Trespass on critical public service facility, utility, or pipeline in violation of Minn. Stat. § 609.6055, subd. 2(b); and IV) Aid and Abet Trespass on critical public service facility, utility, or pipeline in violation of Minn. Stat. § 609.6055, subd. 2(b), with reference to Minn. Stat. § 609.05, subd. 1 and subd. 2.

Defendants Liptay and Joldersma are both charged in a two count complaint with I) Trespass on critical public service facility, utility, or pipeline in violation of Minn. Stat. §

609.6055, subd. 2(b); and II) Aid and Abet Trespass on critical public service facility, utility, or pipeline in violation of Minn. Stat. § 609.6055, subd. 2(b), with reference to Minn. Stat. § 609.05, subd. 1 and subd. 2.

Criminal Damage to Property of critical public facilities, utilities, and pipelines is defined as “[w]hoever causes damage to the physical property of a critical public service facility, utility, or pipeline with the intent to significantly disrupt the operation of or the provision of services by the facility, utility, or pipeline and without the consent of one authorized to give consent...” Minn. Stat. § 609.594, subd. 2. Trespass on critical public service facility, utility, or pipeline is defined as “[w]hoever enters an underground structure that (1) contains a utility line or pipeline and (2) is not open to the public for pedestrian use, without claim of right or consent of one who has the right to give consent to be in the underground structure...” Minn. Stat. § 609.6055, subd. 2(b). Aid and Abet is defined as when an individual “intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime,” and an individual is also liable for a crime in pursuance of the crime if “reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” Minn. Stat. § 609.05, subd. 1 and subd. 2.

Defendants argue that the State has not shown a need to consolidate because the case is not so complex as to require joinder, the alleged victim has not demonstrated that separate trials would impact it in any way, joint trials present the potential of substantial prejudice, and the interests of justice favor separate trials.

The State argues that because Defendants have the same defenses, are part of the same behavioral incident, are charged with the same or affiliated crimes, and are represented by the same attorney, the joinder of trials of all four Defendants is appropriate.

The facts present do not lead to any bright-line determination. Rather, the Court has determined to join the defendants whose apparent roles in the protest and whose pending charges most closely align and are similar. The Court does not find consolidation of all four cases in a single trial to be appropriate. The Court makes no determination as to any heightened potential for conflict of interest for the individual defendants based upon this ruling. The Court strongly encourages defense counsel and each individual defendant to thoroughly review and discuss the conflict issues present. Accordingly, the Court hereby DENIES in part and GRANTS in part the State's Motion to Consolidate.

#### **B. Defense of Necessity**

“A party is entitled to an instruction if the evidence produced at trial supports the instruction.” *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006). To be entitled to a jury instruction on the necessity defense, a defendant must make a *prima facie* showing of necessity. *State v. Brodie*, 532 N.W.2d 557, 557 (Minn. 1995). The necessity defense is a common-law affirmative defense that has been applied in criminal cases. *State v. Hanson*, 468 N.W.2d 77, 78 (Minn. Ct. App. 1991), *review denied* (Minn. June 3, 1991). Minnesota's standard for the necessity defense is high; to successfully assert the defense, a criminal defendant must show that the harm that would have resulted from obeying the law would have significantly exceeded the harm actually caused by breaking the law, there was no legal alternative to breaking the law, the defendant was in danger of imminent physical harm, and there was a direct causal connection between breaking the law and preventing the harm. *State v. Rein*, 477 N.W.2d 716, 717 (Minn.App.1991), *review denied* (Minn. Jan. 30, 1992). The defense “applies only in emergency situations where the peril is instant, overwhelming, and leaves no alternative but the conduct in question.” *State v. Johnson*, 289 Minn.

196, 199, 183 N.W.2d 541, 543 (1971); *see Weierke v. Comm'r of Pub. Safety*, 578 N.W.2d 815, 816 (Minn. Ct. App. 1998) (“The necessity defense applies in emergency situations w[h]ere peril is imminent and the defendant has no other option but to violate the law.”).

The Court GRANTS Defendants’ request to present evidence on the defense of necessity at trial. The Court’s grant is not unlimited and the Court expects any evidence in support of the defense of necessity to be focused, direct, and presented in a non-cumulative manner. The State of Minnesota may object at trial on the above or other lawful grounds.



Tiffany, Robert  
Oct 11 2017 11:42 AM