IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:
VS	:
ROBERT GOFF	: NO: 99-10,907
SHARON E. SCOTT	: NO: 99-11,189
KEVIN SMITH	: NO: 99-10,816
JAMES ALEXANDER	: NO: 99-11,162

OPINION AND ORDER

Before the Court are several motions filed on behalf of the above captioned Defendants. Hearings on the Motions were held February 4, 2000, and March 21, 2000. The Court will first address the issues in which all Defendants have joined, then address the issues pertaining to each individual Defendant.

JOINED ISSUES

MOTION FOR PRE-TRIAL DISCOVERY AND INSPECTION

Defendants first allege that on October 4, 1999, the Commonwealth provided partial discovery in connection with this case. Defendants argue that they are entitled to additional pre-trial discovery. At the time of the March 21, 2000 hearing, Defense counsel stated that they had been provided some of the requested information. Attorney Nenner further stated that the Commonwealth's attorney would be accompanying them on that date to the Williamsport Bureau of Police to inspect other records and evidence. As it appears that the requested information has been obtained, this issue is deemed moot.

The Defendants next argue that they are entitled to statements from eyewitnesses and confidential informants, including statements from one Leah Bess. The discovery of the names and addresses of eyewitnesses, and written or recorded

statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at trial is discretionary with the Court under Pa.R.Crim.P. 305(2)(i)(ii). The Court may order the Commonwealth to allow the Defendant's attorney to inspect the statements upon a showing that they are material to the preparation of the defense, and that the request is reasonable. Instantly, the Court is satisfied that the statements sought are material to the preparation of the Defense and that the request is reasonable. Additionally, the Commonwealth is under a continuing duty to disclose and shall promptly notify the opposing party or the Court of any additional statements received pursuant to Rule 305(D).

MOTION FOR GRAND JURY TRANSCRIPTS

Defendants next request that they be provided a transcript of the testimony before the Grand Jury. At the time of the hearing on the motion, the Commonwealth's attorney agreed that the Court could establish a timeframe for providing the transcript. Accordingly, the Court Directs that the transcripts be provided to Defense Counsel no later than the jury selection for each Defendant's case.

MOTION TO SEVER

Defendants next allege that that their cases have been improperly joined, and request that the cases be severed. Defendants charged in separate indictments may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, Pa.R.Crim.P. 1127. Joint trials are preferred where the crimes grew out of the same

acts and much of the same evidence is necessary or applicable to all defendants. Commonwealth v. Childress, 452 Pa.Super. 37, 680 A.2d 1184, (1996), *citing* Commonwealth v. Thomas, 346 Pa.Super. 11, 498 A.2d 1367 (1991). Additionally, where conspiracy has been charged, as is the case here, a joint trial, rather than separate trial are preferred, Commonwealth v. King, 554 Pa. 331, 721 A.2d 763 (1998)., reargument denied, stay granted 557 Pa. 187, 732 A.2d 1157, certiorari denied.

The Court may, however, order separate trials of defendants, if it appears that any party may be prejudiced by being tried together, Pa.R.Crim.P. 1128. In determining whether to sever certain defendants, the Court must balance the need to minimize the prejudice that may be caused by the consolidation against the general policy of encouraging judicial economy. Commonwealth v. Presbury, 445 Pa.Super. 362, 665 A.2d 825, (1995), appeal denied, 544 Pa. 627, 675 A.2d 1246. In the instant case, the Court finds that the interest of judicial economy does not outweigh the need to minimize the prejudice that may be caused by consolidation in this case.

These cases are not analogous to the cases involving co-conspirators participating in different roles in the same transactions. These are complex cases involving several transactions with various people over long spans of time. The Defendants are not alleged to have participated in all the same transactions. There would therefore be some evidence relevant to, and admissible against some of the Defendant's, but not the others. After a review of the evidence, the Court finds the potential for confusion of the jury to be great. The Court therefore grants the Defendants' Motion for severance.

DEFENDANT GOFF

MOTION TO PRODUCE INFORMANT

Defendant Goff requests that he be provided with the name of the confidential informant used in his case. At the time of the hearing, the Commonwealth's attorney agreed that the Defendant is entitled to the name of the informant. The Commonwealth alleged, however, that he has been unable to disclose the identity of the informant because the person is still being used by the Commonwealth for other, ongoing investigations. The Commonwealth agreed that he would disclose the name of the informant when the Court so Orders, or as soon as he is informed that he may do so, whichever is sooner. The Court now Orders that the identity of the confidential informant be turned over to Defense counsel no later than at the time of jury selection.

HABEAS

Defendant Goff alleges that his charges should be dismissed as there was insufficient evidence presented at the preliminary hearing to establish a prima facie case. The preliminary hearing was held August 12, 1999 before Magistrate Page. The testimony at the preliminary hearing was as follows: Vivian Young testified that she has known Defendant Goff for approximately four to five years. She testified that she met him in Philadelphia where she saw him daily. She knew him because he sold crack to her. (N.T. 8/12/99, p.5). She testified that she would just "cop and roll," meaning that she would buy the cocaine and leave. She would buy from the Defendant, or whoever was on the corner. (Id., p.6). She testified that she bought specifically from the Defendant approximately 25-30 times between 1994 and May of 1997. (Id., p.7). She testified that after moving to the Williamsport area in May of 1997, she stayed clean for

the first ten and a half months. She testified that she purchased one or two bags from the Defendant between April of 1998 and July of 1998 when she was arrested. (Id., p. 25-26).

Louise Young testified that she met the Defendant through some mutual friends. On another occasion, she paged Kevin Smith and the Defendant answered the pager. The Defendant told her that he would call Kevin Smith and have him bring drugs to her. On another occasion, approximately September 1, 1996, she paged Mr. Goff and he met with her and supplied her with 13 ten dollar bags of cocaine for a hundred dollars. On another occasion he brought her 20 bags for $150.00. Her transactions with the Defendant were all in 1996. She did not purchase drugs from the Defendant on any other occasions.

Detective Callaghan testified that he has been a Philadelphia police officer for over ten years, and in the narcotics division for eight years. (Id., p.67). Detective Callaghan testified that based on information that he had received from a confidential informant, he conducted surveillance on 5731 Willows Avenue, Philadelphia. Between the hours of 8:30 p.m. and 9:15 p.m., four persons approached the property, knocked on the door, entered and stayed for a short time, then left the property and the area. (Id., p.69). The fifth person was stopped by officers after leaving the address. Based on the information received from that person, Detective Callaghan prepared a search warrant for the address which was approved by the District Attorney's office and signed by Judge Schwartz.

The warrant was executed on June 25, 1997 at 9:20 p.m.. Detective Callaghan retrieved a white chunk of cocaine weighing slightly less that half an ounce, $197.00,

and three nine millimeter pistols –two of which were loaded (the serial number of one had been obliterated). Also found was a yellow box containing unused sandwich bags, a holster, tinted packets normally used for the packaging of cocaine, two plastic packets containing numerous unused clear packets, one 8 X 10 color photo of the Defendant, one Philadelphia Gas Works bill in the Defendant's name, two other bills in the Defendant's name, one small electronic scale, and one black phone book. Detective Callaghan did not know the dates the bills were issued.

Defendant argues that the evidence presented at the preliminary hearing did not establish a prima facie case of the charges of possession with the intent to deliver—January 1994-December 1995, possession with the intent to deliver – January – December 1996, possession with the intent to deliver – January – December 1997, possession with the intent to deliver – January – December 1998, and criminal conspiracy to possess with the intent to deliver a controlled substance. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). Under 75 Pa.C.S. § 13(a)(30), a person is guilty of possession with the intent to deliver a controlled substance if he possessed a controlled substance, and delivered, or intended to deliver the controlled substance.

Instantly, the Court finds sufficient evidence to establish a prima facie case that the Defendant possessed and delivered controlled substances in 1994, 1996, 1997, and 1998. There was testimony that he sold to Vivian Young between 1994 and May of 1997 in Philadelphia, and between April and July of 1998 in Williamsport. There was

also testimony that the Defendant possessed and delivered controlled substances to Louise Young in September of 1996. Additionally, there was testimony that drugs were being dealt from the apartment occupied by the Defendant in Philadelphia in 1997. The Court therefore denies the Defendant's Motion to Dismiss these charges.

The Defendant additionally argues that the Commonwealth did not present sufficient evidence to establish the elements of conspiracy to deliver a controlled substance. Under 18 Pa.C.S.§ 903 a person is guilty of conspiracy if he agrees with one or more persons that they will or one or more of them will engage in conduct which constitutes a crime. The testimony of Louise Young was that the Defendant answered when she paged Kevin Smith. When the Defendant answered, he indicated that he would have Kevin deliver drugs to her. The Court finds this sufficient evidence to establish a prima face of the charge of conspiracy to deliver controlled substances, and would deny the Defendant's motion.

MOTION TO SUPPRESS

Defendant Goff next alleges that all items seized from 5731 Willows Avenue, Philadelphia, should be suppressed. Defendant argues that the search warrant for the apartment was issued without probable cause in violation of the United States Constitution, the Pennsylvania Constitution, and the Pennsylvania Rules of Criminal Procedure. "Before an issuing authority may issue a constitutionally valid search warrant, he or she must be furnished with information sufficient to persuade a reasonable person that probable cause exists to conduct a search." Commonwealth v. Baker, 532 Pa. 121, 126, 615 A.2d 23, 25 (1992), *citing* Commonwealth v. Davis, 466 Pa. 102, 351 A.2d 642 (1976), *see also* Pa.R.Crim.P. 2003(a). Additionally, the issuing

authority's decision must be based on the four corners of the affidavit. *See* Commonwealth v. Dennis, 421 Pa.Super. 600, 617, 618 A.2d 972, 981 (1992), *see also* Pa.R.Crim.P. 2003(b).

The Commonwealth introduced the search warrant issued for the Defendant's residence. The Affiant, Detective Callaghan, provides that he received information from a first time informant that between 6/16/97 and 6/20/97, he had witnessed an individual by the name of "Rob" giving individuals "bundles" of cocaine base inside an apartment at 5731 Willows Avenue. A "bundle" was described as a plastic bag containing numerous packets of crack to be sold on the street. The informant told Callaghan that "Rob" supplies many of the street corner dealers, and they in turn give "Rob" the money, keeping some as profit. Based on his training and experience, Detective Callaghan found the confidential informant to be knowledgeable in the field of distributing narcotics.

After receiving this information, Detective Callaghan decided to conduct surveillance of the address. On June 24, 1997, between the hours of 8:30 and 9:15p.m., four persons approached the address and knocked on the door. The persons were admitted into the apartment, and after one or two minutes, the persons would exit the apartment and the area. At approximately 9:20 p.m. he observed a person, later identified as Elliot Harris ride up on a bicycle. Harris was admitted into the residence, and after one minute he left the residence and drove off on his bicycle. Within moments after departing from the apartment, Harris was detained by police officers. Recovered from Harris was a brown paper bag which contained one clear plastic bag containing 35 blue tinted packets, each containing what tested positive as cocaine base. Detective

Callaghan identified the items to be searched and seized as "cocaine-base, paraphernalia, documents and records of drug business, operations, ownership, occupancy of residence, jewelry, weapons, ammunition, and proceeds from illegal activity."

Defendant argues that the affidavit of probable cause did not provide sufficient information for the issuance of the search warrant. Specifically, Defendant alleges that the informant was unreliable, and that the magistrate did not, therefore, have a substantial basis for concluding that probable cause existed. "A tip from an unnamed informant can properly form the bases for probable cause to issue a search warrant, provided there is adequate evidence of the informant's reliability." Commonwealth v. Lemanski, 365 Pa.Super. 332, 353, 529 A.2d 1085, 1095 (1987). "A magistrate must consider four factors in determining the credibility of an unidentified informant and the reliability of his information: (1) Did the informant give prior reliable information? (2) Was the informant's story corroborated by another source? (3) Were the informant's statements a declaration against interest? (4) Does the defendant's reputation support the informant's tip? Commonwealth v. Gindlesperger, 706 A.2d 1216, 1225, (1997), alloc gr. 724 A.2d 933, *citing* Commonwealth v. Gray, 322 Pa.Super. 37, 469 A.2d 169 (1983). It is not necessary that the affidavit satisfy all four of the criteria.

In the instant case, the informant had not provided prior reliable information, as the affidavit provides that information was obtained from a "first time informant." Additionally, the statements were not against the informant's interest. The informant merely stated that he "was present" when the bundles of cocaine were given out. Finally, there is no information in the affidavit indicating that the Defendant had a

reputation in the community that would support the informant's tip. The issue before the court, therefore, is whether the informant's story was sufficiently corroborated by another source. The Court finds that Detective Callaghan's surveillance of the apartment and, subsequent detention of a person leaving the apartment with controlled substances, provided adequate corroboration to provide a substantial basis for concluding that a crime had been committed and that evidence of the fruits of the crime may be found at the place to be searched. The Court therefore denies the Defendant's motion to suppress on that basis.

Defendant Goff next moves to suppress $8,000.00 in US currency and any oral statements, confessions, or admissions made in connection with the currency. Specifically, Defendant moves to suppress a statement made to police on or about June 8, 1999 at the time of his arrest. The police reports indicate that $8,000.00 was recovered from the Defendant's belongings, and that the Defendant had stated that he was on his way to purchase a BMW with the money at the time of the apprehension. The Court defers until the time of trial to make a ruling on the relevancy of this evidence.

MOTION IN LIMINE

Defendant Goff next argues that the Commonwealth should be prohibited from introducing statements made by co-defendants or other third parties referencing his alleged illegal activities. Defendant argues that these are hearsay statements that do not fall within the co-conspirator exception to the hearsay rule. At the hearing on the motions, the Commonwealth agreed that any statements made by a co-conspirator would not be admissible unless they were made in the course and in furtherance of the

conspiracy. Any other concerns with regard to this issue may be brought at the time of trial.

MOTION TO REDACT STATEMENTS

Defendant Goff next argues that the statements of his co-defendants should be redacted under Bruton v. United States 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d. 476 (1968), appeal after remand 416 F.2d 310 (8th Cir. 1969). Based on the decision of the Court with regard to the severance, this issue is deemed moot.

DEFENDANT SCOTT

HABEAS

Defendant Scott (Scott) alleges that there was insufficient evidence presented at the preliminary hearing to establish a prima facie case against her. Scott has been charged with possession with the intent to deliver cocaine (PWID)– January 1994 – December 1995, PWID – January 1996 – December 1996, PWID January 1997 – December 1997, PWID – January 1998 – December 1998. Scott is additionally charged with conspiracy to possess with the intent to deliver during the time period of January 1994 – December 1998. A preliminary hearing was held July 27, 1999 before District Justice Allen Page. District Justice Page bound over the PWID charges for the years of 1996, 1998, and the charge of conspiracy for trial. The Court summarizes the evidence presented at the preliminary hearing with regard to Scott as follows:

Carl Hecknauer testified that he purchased drugs daily from Kevin Smith from approximately the end of 1994 until 1996. Mr. Hecknauer testified that he had seen Scott a few times at her Park Avenue home. He testified that Kevin Smith stopped at

her home on at least two occasions in approximately December of 1996, and picked up "stuff," or crack (N.T. 7/27/99, p.34, 71-72). On one occasion Scott came to the door, and on another occasion Robert Goff came to the door. On one occasion in December of 1996, he and Kevin Smith stopped at the Action Lounge and placed a call to Scott. Scott arrived a few minutes later and gave Kevin Smith a five pack. (Id., p. 35).

Tabitha Gillien testified that in July of 1998 she used cocaine approximately four times per week. She testified that on July 30, 1998, she went to her usual sources to purchase cocaine. Her sources did not have anything to sell her. One of her sources, Angela Mullins, offered to make some calls to locate some cocaine. (Id., p. 80) Mullins made a call, and instructed her to walk to the corner. Moments later, Scott pulled up and she got into her car. She testified that Scott looked skeptical, but she eventually gave her four "dime bags" in exchange for forty dollars. (Id., p. 81). The substance was packaged in "little yellow, tiny bags." (Id., p. 88). That was the only purchase she made from Scott. She testified that she did not personally use the cocaine she received, she got it for a friend. Her friend smoked the cocaine at her residence, then went home. (Id., p. 88).

Michael Sinatra testified that he primarily purchased drugs from Kenneth Hill, (Hill). (Id., p.91) He was also Hill's debt collector. Mr. Sinatra testified that he is familiar with Scott because from the middle of June of 1998 into September of 1998, he went to her residence approximately six to ten times with Hill. He testified that he would sit in the vehicle while Hill went into the residence. When he returned from the residence, Hill would have drugs. (Id., p. 92, 103).

Vivian Young testified that she was in the car with Kevin Smith on one occasion in approximately April of 1998, when he went to the home of Scott to pick up cocaine. (Id., p. 118). She sat in the car while he went into the house. He gave her one of the bags of cocaine at that time.

Joan Walker testified that in 1996, she purchased crack cocaine approximately two times per week from her friend "Diane," and others. She testified that she used cocaine at that time for "maybe a year or two. I don't know exactly." (Id., p.157). "On occasion," when Diane did not have drugs, Walker observed Diane walk to Scott's home, which was on the same street as Walker's home, and enter. (Id., p. 161). When Diane returned she had cocaine. She testified that she did not see Scott often, that she may have answered the door on one occasion. (Id., p.155). She testified that she did recall that she was still making these observations up until the time of her arrest in July or August of 1998. (Id., p. 164).

To successfully establish a prima facie case of possession with the intent to deliver, the Commonwealth must present sufficient evidence that there was a delivery or possession with the intent to deliver a controlled substance, and a probability that the Defendant could be connected with the crime. 35 P.S. § 780-113(30). Instantly, the Court finds, and the Defendant does not disagree that the testimony of Carl Hecknauer, who stated that he witnessed a transaction between Scott and Kevin Smith in December of 1996, establishes a prima facie case of count one, possession with the intent to deliver in 1996. Defendant argues, however, that the testimony presented with regard to the other transactions from 1996 do not establish a prima facie case of those transactions. As the Court has found that a prima facie case of the charge has been

established by the December 1996 transaction witnessed by Hecknauer, the Court finds it unnecessary to examine the other transactions.

The Court further finds that a prima facie case of the 1998 charge is established by the testimony of Tabitha Gillien that she made a purchase from Scott on 7/30/98. Although Defendant argues that the a prima facie case has not been established since she did not smoke the cocaine herself, the Court finds this argument without merit. The Court finds that the circumstantial evidence surrounding the transaction -- the fact that Ms. Gillien was sold a substance purported to be cocaine, it was packaged in the same manner as cocaine is packaged in this area, and although Ms. Gillien did not smoke the cocaine, she was with the person who smoked it, as he smoked it,-- establishes the probability that a controlled substance was delivered to Ms. Gillien, and that the Defendant could be connected with the delivery. *See* Commonwealth v. Heim, 12 Pa. D. & C.4th 310 (1991), affirmed 428 Pa.Super. 637, 627 A.2d 202, (chemical analysis of a controlled substance is not always necessary, and the identity of the substance may be established through circumstantial evidence.)

The Defendant further alleges that the Commonwealth did not present a prima facie case of conspiracy to deliver a controlled substance. Defendant argues that there was no evidence presented to establish that a conspiratorial agreement existed between Scott, Goff, Alexander, or Smith. Under 18 Pa.C.S.§ 903 a person is guilty of conspiracy if he agrees with one or more persons that they will or one or more of them will engage in conduct which constitutes a crime. The Court finds that there was sufficient evidence presented at the preliminary hearing to establish a prima facie case

that the Defendant conspired with Angela Mullins to deliver controlled substances to Tabitha Gillien.

MOTION TO DISMISS FOR VIOLATION OF DUE PROCESS

Scott next alleges that the Commonwealth's lack of specificity with regard to the dates and times that the alleged offenses are to have occurred violates her due process rights. Scott argues that without the specific information, she is not advised of the nature and circumstances of the alleged acts which constitute the offenses, and she is unable to properly and adequately prepare for trial. Scott additionally argues that she is in danger of being placed twice in jeopardy at some subsequent time, and she is unable to determine her alibi.

Pa.R.Crim.P. 225(b)(3) provides that an information shall be valid and sufficient in law if it contains

> "The date when the offense is alleged to have been committed if the precise date is known, and the day of the week if it is an essential element of the offense charged, *provided that if the precise date is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient."*
>
> (emphasis added)

The rule does not require that the information specify the exact date or dates upon which the offense is alleged to have occurred, especially where the offense is a continuing one. The Superior Court in Commonwealth v. Dennis, 421 Pa.Super 600, 618 A.2d 972, (1992), alloc. denied in 634 A.2d 218, found that "when the facts of a particular case indicate an ongoing, or continuing nature," . . . "the court is justified in finding that under Rule 225, an information is sufficient if the dates stated are within the

applicable statute of limitations." Dennis, 618 A.2d at 980. Similar to the Defendant in the instant case, the defendant in Dennis was charged with delivery of a controlled substance. The Court held that the information which charged the Defendant with delivery of a controlled substance between August of 1985 and November of 1996 was sufficiently certain where the facts indicated that numerous transactions occurred in that timeframe. Based on Dennis, the Court finds that the information in the instant case is sufficiently specific, and the Court would deny this motion.

MOTION TO SUPPRESS OR DISMISS FOR

IMPROPER USE OF INVESTIGATING GRAND JURY

Scott next argues that various documents, including various financial records, telephone toll records, vehicle records and registrations, Lycoming County housing records, and lease and rental records for her Park Avenue residence should be suppressed because they were obtained by subpoenas issued by the investigating grand jury, and without properly issued warrants. The Court finds that the investigating grand jury had the authority to subpoena the documents, and therefore did not need a warrant . 42 Pa.C.S.A. § 4548(a) provides that the powers of investigating grand jury "shall include *the investigative resources of the grand jury* which shall include but not be limited to the power of subpoena, the power to obtain the initiation of civil and criminal contempt proceedings, and every investigative power of any grand jury of the Commonwealth," (emphasis added).

"Investigative resources of the grand jury" is defined in 42 Pa.C.S.A. § 4542 as "[t]he power to compel the attendance of investigating witnesses; the power to compel the testimony of investigating witnesses under oath; the power to take investigating

testimony from witnesses who have been granted immunity; *the power to require the production of documents, records and other evidence;* the power to obtain the initiation of civil and criminal contempt proceedings; and every investigative power of any grand jury of the Commonwealth. Defendant's Motion to Dismiss is therefore denied.

MOTION TO SEVER

(see joined issues for discussion)

DEFENDANT ALEXANDER

HABEAS

Defendant Alexander (Alexander) alleges that there was insufficient evidence presented at the preliminary hearing to establish a prima facie case of the charge of conspiracy to deliver controlled substances between 1994 and 1998. A preliminary hearing was held July 27, 1999 before District Justice Allen Page. The Court summarizes the evidence presented at the preliminary hearing with regard to Alexander as follows:

Michael Sinatra testified that he purchased cocaine from Alexander in a controlled buy. He went to the home of Elizabeth Williams in July or August of 1998. Williams made a call, and approximately 15 – 30 minutes later, Alexander came to the residence with another black male in the car. Alexander went to Williams' apartment and handed her the cocaine. Sinatra in turn gave the money to Williams who in turn

gave it to Alexander. He purchased 11 or 12 bags for $100.00 on that occasion. (Id., p. 98). This was the only transaction he witnessed involving Alexander.

Elizabeth Williams testified that she met Alexander in approximately 1994. She testified that she started buying $20.00 bags from Alexander at that time, and would buy eight to ten bags at a time. (Id., p. 136). She purchased from him approximately one or two times per week. She testified that she purchased for herself, but also purchased for other people. She was the middle man. (Id., p.139). She purchased from Alexander from 1994 to August 14, 1998 when she was arrested. (Ibid.).

Bernard Alston testified that in December of 1996, Alexander was the manager of the apartment house that he lived in on Lloyd Street. Alston testified that he saw Alexander give drugs to one of his roommates on two occasions. (Id., p.168). Alston testified that his roommate received most of his drugs on credit. The arrangement was that the roommate would keep the profits from the sales in excess of $300.00. (Id., p.169). In approximately March of 1998, Alston asked Alexander if he could have a similar arrangement. Alston testified that Alexander reluctantly agreed. Alston was given 50 ten-dollar packages to sell, and Alexander let him keep any profits in excess of $225.00. (Id., p. 170). Depending on how quickly the packets sold, Alston would get approximately 13-14 packages containing 50 ten-dollar packages between a Wednesday and Saturday of a week. (Id., p. 171). Alston sold for approximately three months until he was arrested on July 8, 1998. Alston testified that Alexander told him that he was getting his supply of cocaine from Philadelphia.

Trooper Ritsick of the Pennsylvania State Police testified that on November 8, 1998, he stopped a vehicle in which Alexander was a passenger on Interstate 80 in

Luzerne County. After obtaining written consent to search the vehicle, Trooper Ritsick searched and found 114 grams of crack cocaine, (Id., p.181). After retrieving the cocaine, Alexander told Ritsick that the drugs were his, and that the other occupants of the vehicle were not aware of them. (Ibid.) Although Alexander did not verbally state for whom he was transporting the drugs, when he was shown a picture of Robert Goff, Alexander took off his hat as a signal to acknowledge that he was the one, (Ibid.) Alexander also stated that he had made two previous trips for Goff. Alexander told them that Goff was supposed to be at the bus terminal in Williamsport that evening to retrieve the cocaine.

Officer Leonard Dincher of the Williamsport Bureau of Police was contacted by the Pennsylvania State Police to set up surveillance of the exchange. The Williamsport Bureau of Police sent an undercover trooper inside the bus terminal, and had several officers and troopers outside waiting for the exchange. Goff never arrived. (Id., p. 190). Alexander was taken back to an interview room at City Hall. Alexander told them that if Rob doesn't meet him, he calls Sharon. Alexander refused to call Sharon, so he was taken back to Luzerne County with the troopers.

The Defendant argues that the Commonwealth did not present sufficient evidence to establish the elements of conspiracy to deliver a controlled substance from 1994 - 1998. Under 18 Pa.C.S.§ 903 a person is guilty of conspiracy if he agrees with one or more persons that they will or one or more of them will engage in conduct which constitutes a crime. The Court finds that the Commonwealth established a prima facie case of conspiracy through the testimony of Michael Sinatra who testified that Elizabeth Williams contacted Alexander for the purpose of getting drugs for him to purchase

(1998); through the testimony of Elizabeth Williams who testified that she acted as a "middle man" between Alexander and others who wished to buy cocaine (1994 – 1998); through the testimony of Bernard Alston, that Alexander gave him drugs for the purpose of selling to others (1998); and through the testimony of Trooper Ritsick that Alexander stated that he was transporting cocaine from Philadelphia to Williamsport for Robert Goff. (1998). The Court therefore Denies the Defendant's Habeas Motion.

MOTION TO DISMISS FOR VIOLATION OF DUE PROCESS

For the reasons set forth in the violation of due process section relating to Defendant Scott, the Court would deny the Defendant's motion.

MOTION TO SEVER

(see joined issues for discussion)

DEFENDANT SMITH

MOTION TO DISMISS

Defendant Smith (Smith) argues that the complaint against him should be dismissed. Smith argues that he testified under a grant of immunity under 42 Pa.C.S.A. § 5947 about the facts and circumstances giving rise to the charges pending against him in this case. Smith argues that because the Commonwealth will be unable to establish its burden to prove that his testimony will not be used against him, the Court should enter an Order dismissing the charges.

The Pennsylvania witness immunity statute provides for only use immunity. Commonwealth v. Parker, 531 Pa. 90, 611 A.2d 199, 201 (1992). Use immunity provides immunity only for the testimony actually given to the order compelling the testimony. Use immunity does not prohibit prosecution for all crimes arising out of transaction testified to, if evidence is obtained independently of compelled testimony, Parker, supra, 611 A.2d at 201.

Under Kastigar v. United States, 406 U.S. 441, 92 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972), once a defendant demonstrates that he has testified under a grant of immunity, the prosecution must overcome the taint that such testimony was used against him by establishing that they had an independent source for all of the disputed evidence. Kastigar, 406 U.S. at 460, 92 S.Ct. at 1664-65 quoting Murphy v. Waterfront Commission of New York Harbor, 378 U.S. 52, 79 n.18, 84 S.Ct. 1594, 1609 n.18, 12 L.Ed.2d 678 (1964). This burden of proof is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove by "clear and convincing evidence, that the evidence upon which a subsequent prosecution is brought arose

wholly from independent sources." Commonwealth v. Swinehart, 541 Pa. 500, 664 A.2d 957, 969 (1995).

In the instant case, the Court is satisfied by clear and convincing evidence that the evidence upon which the prosecution in this case is brought arose from wholly independent sources. The preliminary hearing with regard to the charges in this case was held on July 27, 1999. At the preliminary hearing the Commonwealth presented evidence with regard to all of the charges against the Defendant through the testimony of Louise Young, Carl Hecknauer, and Vivian Young. The evidence upon which the prosecution is based is therefore wholly independent from the evidence provided by the Defendant at the grand jury proceeding held *two months later* on September 21, 1999. *See* Commonwealth v. Parker, supra, (knowledge of parole violation was not only independently obtained, but was also obtained *prior to* the testimony). The Court therefore rejects this argument.

BILL OF PARTICUALRS

The Defendant next agues that the Commonwealth should be required to particularize each count of delivery by stating the date, time, place, and substance sold at each delivery. For the reasons set forth in the violation of due process section relating to Defendant Scott, the Court would deny the Defendant's motion.

SEVER

(see joined issues for discussion)

ORDER

AND NOW, this ____day of July, 2000, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

Defendants' pre-trial motion for discovery is GRANTED. The Commonwealth shall provide Defense Counsel with all names, addresses, and written or audio or video recorded statements, and substantially verbatim oral statements of eyewitnesses they intent to call at trial.

Defendants' motion for Grand Jury transcripts is GRANTED. It is ORDERED and DIRECTED that the Commonwealth provide Defense Counsel with the transcripts no later than the jury selection for each case.

Defendants' motion to sever is GRANTED. It is ORDERED and DIRECTED that the cases of Defendants Goff, Scott, Smith and Alexander shall be tried separately.

DEFENDANT GOFF

Defendant Goff's motion to produce the confidential informant used in his case is GRANTED. The Commonwealth is ORDERED and DIRECTED to provide Defense Counsel with the identity of the confidential informant no later than at the time of jury selection for Defendant Goff's case.

Defendant Goff's habeas motion is DENIED.

Defendant Goff's suppression motion is DENIED.

Defendant Goff's motion in limine is GRANTED. The Commonwealth may not introduce statements of co-defendants or other third parties unless the statements were made in the course of and in furtherance of the conspiracy.

DEFENDANT SCOTT

Defendant Scott's habeas motion is DENIED.

Defendant Scott's motion to dismiss for violation of due process is DENIED.

Defendant Scott's motion to suppress or dismiss for improper use of investigating grand jury is DENIED.

DEFENDANT ALEXANDER

Defendant Alexander's habeas motion is DENIED.

Defendant Alexander's motion to dismiss for violation of due process is DENIED.

DEFENDANT SMITH

Defendant Smith's motion to dismiss is DENIED.

Defendant Smiths motion for bill of particulars is DENIED.

By the Court,

_____
Nancy L. Butts, Judge

cc: Eric Linhardt, Esquire
Peter Campana, Esquire
David Nenner, Esquire
AG
CA
Honorable Nancy L. Butts
Law Clerk
Gary Weber