

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-11,154
	:
	:
vs.	: CRIMINAL DIVISION
	: Motion to Sever
DARRYL JONES,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with possession with intent to deliver cocaine, criminal conspiracy, possession of a controlled substance and possession of drug paraphernalia. The charges were filed after a search of a residence uncovered drugs allegedly belonging to Defendant as well as to a co-defendant, Tyreese Williams, who has been charged in No. 01-11,155 with similar crimes. The Commonwealth previously filed a Notice of Joinder of the two informations and Defendant now seeks in the instant Motion to Sever, to have his case severed from that of Tyreese Williams. Argument on the motion was heard March 24, 2003.

Rule 582 of the Rules of Criminal Procedure provides that defendants charged in separate informations may be tried together if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Pa.R.Crim.P. Rule 582 (A)(2). Rule 583 provides, however, the Court may order separate trials of defendants if it appears that any party may be prejudiced by defendants being tried together. Pa.R.Crim.P. Rule 583. In his motion, Defendant contends he will be prejudiced by a joint trial in several respects. First, he argues that if Tyreese Williams testifies but Defendant chooses not to, the jury will wonder why Defendant did not testify. Second, he argues that if Tyreese Williams takes the stand to testify, the Commonwealth will offer crimen falsi against him and the jury will then somehow hold this against Defendant for associating with

such a person. The Court believes that these allegations of prejudice, even if accepted as true, are not sufficient to justify severance in this matter.

The Court notes that as a general policy, joint trials are encouraged when judicial economy will be promoted by avoiding the expense and time consuming duplication of evidence. Commonwealth v Jones, 668 A.2d 491 (Pa. 1995). Further, when co-defendants have been charged with conspiracy, joint trials rather than separate trials are preferred. Id. Severance may be proper where a defendant can show he will be prejudiced by a joint trial, but defendant must show a real potential for prejudice and not just mere speculation. Id. And, the mere fact that one defendant might have a better chance of acquittal if tried separately is an insufficient ground to require severance. Id. Even hostility between defendants or where it appears one defendant may try to implicate the other in order to exculpate himself, constitutes insufficient grounds to require severance. Id. As far as Defendant's argument that the jury will wonder why Defendant failed to testify if Tyreese Williams does testify, the Court is mindful that the jury will be instructed, if requested by Defendant, that they are to make no adverse inference from the fact that Defendant failed to testify, and the jury is presumed to follow the Court's instructions. Commonwealth v Travers, 768 A.2d 845 (Pa. 2001). And, with respect to any *crimen falsi* offered against Defendant's co-defendant, Tyreese Williams, the jury can be instructed that the evidence offered against Tyreese Williams is to be considered only against Mr. Williams and not as evidence against Defendant in the instant matter. Id. The Court therefore believes Defendant has failed to show sufficient prejudice to justify severance.

ORDER

AND NOW, this 4th day of April, 2003, for the foregoing reasons, Defendant's Motion to Sever is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Emanuel Izuogu, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson