

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 03-11,823  
:   
vs. : CRIMINAL  
:   
SHARON RUBIO, :   
Defendant : Motion to Consolidate

\* \* \* \* \*

COMMONWEALTH : No. 03-11,873  
:   
vs. :   
: Motion to Consolidate  
SCOTT MULL :

**ORDER**

AND NOW, this \_\_\_ day of October 2004, the Court DENIES the Commonwealth's motion to consolidate the above-captioned cases for trial. At the argument on the motion, counsel for Ms. Rubio objected to consolidation on the following bases: (1) that there was evidence presented at the suppression hearing regarding Mr. Mull's drug activities during the weeks immediately preceding the offenses in this case which would not be admissible against her at trial and (2) if the cases were tried separately Mr. Mull would testify in her defense. After the conclusion of the argument the Court reviewed its notes of the testimony of the confidential informant presented at the suppression hearing. Although during the argument the Court believed the jury would be able to easily separate this testimony, after reviewing the extensive testimony of the confidential informant that he was selling drugs for Defendant Mull, the Court became concerned about prejudice to Defendant Rubio. Although the Court could instruct the jury to disregard this evidence as to Defendant Rubio, the strength of the confidential informant's testimony is such that the Court believes

that such an instruction would not alleviate the prejudice to Defendant Rubio. Other than the confidential informant's testimony about selling drugs for Mr. Mull, the only evidence to establish the drugs were possessed with the intent to deliver them is the amount of the drugs, its street value, and expert testimony from police that the quantity is consistent with intent to deliver and not personal use. The Defendants, however, intend to present their own expert testimony, however, that the quantity is consistent with personal use for a heroin addict. Thus, the confidential informant's testimony greatly strengthens the Commonwealth's case for possession with intent to deliver against Mr. Mull. The Court's concern is that after hearing that testimony the jury will have a difficult time not considering this evidence when determining whether Ms. Rubio is guilty of possession with intent to deliver.

The Court also has some concern about the testimonial issue as well. If Defendant Mull does not testify and the portion of his statement to the police exculpating Defendant Rubio is not admissible at a joint trial,<sup>1</sup> the Commonwealth conceded Defendant Rubio would be entitled to a new trial.

By The Court,

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Kenneth D. Brown, P.J.

cc: Peter T. Campana, Esquire  
Jay Stillman, Esquire  
Kenneth Osokow, Esquire (ADA)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)

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<sup>1</sup> The Commonwealth could argue that only the portion of Defendant Mull's statement inculcating him would be admissible under the statement against penal interest exception to the hearsay rule. Whether that argument would ultimately be successful, however, is not currently before the Court.