

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:
	: CRIMINAL DIVISION
vs.	:
	:
BETH ELLEN CAMP,	: No. CR-0369-2009
Defendant	:

COMMONWEALTH OF PENNSYLVANIA	:
	: CRIMINAL DIVISION
vs.	:
	:
RANDAL LOWELL CAMP,	: No. CR-0370-2009
Defendant	:

COMMONWEALTH OF PENNSYLVANIA	:
	: CRIMINAL DIVISION
vs.	:
	:
GERALD LEWIS FISHER,	: No. CR-0371-2009
Defendant	:

OPINION AND ORDER

The Commonwealth filed a Motion to Consolidate Cases on June 11, 2010 regarding the three above-captioned matters. Arguments on the Motion were heard by this Court on June 25, 2010 and briefs were accepted until July 2, 2010. A letter brief was filed by Defendant Beth Camp. Defendant Fisher joined in Defendant Camp's brief. Therefore, the matter is now ripe for a decision.

The Defendants are charged with identical counts: Possession With Intent to Deliver a Controlled Substance, an ungraded felony, in violation of 35 P.S. §780-113(a)(30); Possession of a Controlled Substance, an ungraded misdemeanor, in violation of 35 P.S.

Section 780-113(A)(16); and Possession of Drug Paraphernalia, an ungraded misdemeanor, in violation of 35 P.S. Section 780-113(a)(32).

Discussion

The defense first argues that the Motion to Consolidate Cases filed by the Commonwealth on June 11, 2010 is untimely. Pennsylvania Rule of Criminal Procedure 582(B)(2) states “when notice has not been given under paragraph (B)(1), any party may move to consolidate for trial separate indictments or informations, which motion must ordinarily be included in the omnibus pre-trial motion.” Generally, all Omnibus Pre-trial Motions must be filed and served within 30 days after arraignment. Pa.R.Crim.P. 579. All of the Defendants were arraigned in April, 2009. Omnibus Motions were filed by each Defendant and argument was held on those Motions on July 31, 2009, and October 12, 2009. At no time did the Commonwealth raise the issue of consolidation until the filing of the Motion to Consolidate on June 11, 2010, approximately one year past the deadline to file Omnibus Motions. The Commonwealth failed to provide any argument to the Court as to why the Motion to Consolidate should not be considered untimely. The defense requests that the Motion be dismissed based solely on untimeliness. Though the Court is concerned regarding the Commonwealth’s significant delay in filing the Motion, the Court declines to dismiss the Motion to Consolidate solely on the basis of untimeliness. However, the untimeliness, in conjunction with the prejudice to Mrs. Camp, leads the Court to conclude

that Mrs. Camp's case should not be consolidated with Defendants Randal Camp and Gerald Fisher.¹

The Commonwealth cites Rule 582(A)(2) of the Pennsylvania Rules of Criminal Procedure in support of its Motion to Consolidate Cases, which provides in relevant part:

Defendants charged in separate indictments or informations 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.

The Commonwealth argues that the all of the Defendants participated in the same act which gave rise to the charged offenses. Specifically, the Commonwealth highlights the fact that the Defendants are all charged with the same three criminal counts, the physical evidence against the Defendants arose from the execution of one search warrant, the exact same factual scenario overlaps each case, and the same witnesses will be called to testify against each Defendant. As such, the Commonwealth urges this Court to consolidate the three cases against the Defendants into one case for trial purposes out of concern for expediency and judicial economy.

Rule 583 of the Rules of Criminal Procedure indicates that the Court may order separate trials of offenses if it appears that any party may be prejudiced by offenses or defendants being tried together. Defendant Beth Camp, through her attorney E. J. Rymysza, contends that her right to a fair trial trumps any interest in judicial economy or expediency. Specifically, Mrs. Camp stresses concerns with her ability to call witnesses should the cases be consolidated. Defendants Randal Camp and Gerald Fisher, through their respective

¹ The Court notes that Defendants Randall Camp and Gerald Fisher have, through their counsel, indicated their willingness for their cases to be consolidated. Based upon their agreement, the Court will grant the

attorneys Peter Campana and Ronald Travis, stated that they would not testify if a joint trial was held with Mrs. Camp. Mr. Camp and Mr. Fisher's counsel both indicated their client's willingness to testify in Ms. Camp's separate trial even if Ms. Camp's case is heard first. Therefore, Beth Camp argues that an inability to call her co-defendants at trial would be highly prejudicial.

Rule 582 is to be read in conjunction with Rule 583 regarding severance.

Commonwealth v. Morales, 494 A.2d 367, 372 (Pa. 1985). While there is a presumption that defendants with criminal charges arising from the same facts and evidence should receive joint trials, this presumption can be overcome by prejudice to a defendant.

Commonwealth v. Rainey, 928 A.2d 215, 231 (Pa. 2007). Rule 583 provides the mechanism for severing an otherwise appropriate consolidation request that results in a defendant's case being unduly prejudiced. In considering whether to sever a defendant for trial purposes, the court "must balance the need to minimize the prejudice that may be caused by consolidation, against the general policy of encouraging judicial economy."

Commonwealth v. Presbury, 655 A.2d 825, 828 (Pa. Super Ct. 1995) citing

Commonwealth v. Patterson, 546 A.2d 596 (Pa. 1988).

The decision to sever is within the discretion of the trial court, but the burden for demonstrating the prejudice involved with consolidation is placed on the defendant seeking severance. Commonwealth v. Smith, 985 A.2d 886, 903 (Pa. 2009). The prejudice required for severance must be stated with particularity beyond assertions and speculation. Morales, at 373. "The mere fact that a co-defendant might have a better chance of acquittal if tried

separately is not sufficient to grant a motion to sever.” Commonwealth v. Patterson, 546 A.2d 596, 600 (Pa. 1988)(citations omitted).

When the alleged prejudice is an inability to call co-Defendants to testify on one’s behalf, the United States Court of Appeals for the Third Circuit considers the following four factors: “(1) the likelihood of codefendant’s testifying; (2) the degree to which such testimony would be exculpatory; (3) the degree to which the testifying codefendants could be impeached; [and] (4) judicial economy.” United States v. Davis, 397 F.3d 173, 182-183 (3d Cir. 2005), quoting United States v. Boscia, 573 F.2d 827, 832 (3d Cir. 1978). The Court finds the Third Circuit’s analysis to be useful in determining the issue at hand.

The Court believes that Defendant Beth Camp has met her burden in demonstrating real prejudice to her case should the matters be consolidated. Mrs. Camp has advised the Court that she will be calling Mr. Camp and Mr. Fisher in her case-in-chief should her case remain severed. Mrs. Camp maintains that the Defendants will testify that she had no knowledge or involvement with the drug activities. In order to support her proposition that the Defendants will testify on her behalf, Mrs. Camp cites previous statements made by Mr. Fisher to the police assuming responsibility for the marijuana, Mr. Fisher’s attempts to cover the marijuana activities from Mrs. Camp, Mr. Camp’s previous statements to the police accepting responsibility of the marijuana, and Mr. Camp’s repeated apologies to his wife during the arrest. Mr. Camp and Mr. Fisher’s unwillingness to testify at a consolidated trial are indicia of potential prejudice to Mrs. Camp’s case.

Additionally, the four Boscia factors highlight the need to sever Mrs. Camp's case. Id. First, as explained above, Mr. Camp and Mr. Fisher have made it quite clear that they will not testify if a joint trial is held. Second, the testimony from Mr. Camp and Mr. Fisher has the potential to be exculpatory evidence. Both Mr. Camp and Mr. Fisher appear willing to corroborate Mrs. Camp's professed lack of knowledge and involvement with the marijuana. Third, given the consistency with which Mr. Camp and Mr. Fisher have provided so far, it seems unlikely to the Court that there will be an opportunity for impeachment. Finally, the Court is in agreement with the Commonwealth that it would be more judicially efficient to consolidate all of the Defendants' cases. However, judicial economy considerations alone, given the prejudicial effect to Mrs. Camp, is not sufficient to consolidate.

Therefore, the Court is of the opinion that while it may be more judicially efficient for one trial with the three defendants, Mrs. Camp would be highly prejudiced should the matter be consolidated.

ORDER

AND NOW, this 14th day of **July, 2010**, after an argument and consideration thereof, the Commonwealth's Motion to Consolidate Cases is hereby **GRANTED** for Randal Camp (No. CR-0370-2009) and Gerald Fisher (No. CR-0371-2009). The Motion is **DENIED** for Beth Camp (No. CR-0367-2009) whose case shall remain severed for trial purposes.

By The Court,

Joy Reynolds McCoy, Judge