

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

**COMMONWEALTH OF PA** :  
**vs.** : **No's. CR-1243-2011**  
 : **CR-369-2012**  
**DANTE JERMAIN HALL,** :  
**Defendant** :

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**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-1134-2011**  
 :  
**ANDERA MIDDLETON,** :  
**Defendant** :

**OPINION AND ORDER**

Defendant Hall has been charged under Information No. 1243-2011 with Burglary and related offenses and under Information No. 369-2012 with Conspiracy and Solicitation to Commit Delivery of a Controlled Substance. Defendant Andera Middleton has been charged under Information No. 1134-2011 with Burglary and related offenses.

On April 13, 2012, the Commonwealth filed a Motion to Consolidate the Informations for trial purposes. Defendant Middleton does not object to the consolidation while Defendant Hall does object.

A hearing and argument was held on the Motion to Consolidate on May 4, 2012. In connection with determining the Motion, the parties stipulated that the Court could consider the factual allegations set forth in the respective Affidavits of Probable Cause.

Under Information No. 1243-2011, Defendant Hall is specifically charged with two counts of Criminal Conspiracy to Commit Burglary, two counts of Possessing Instruments of Crime, one count of Burglary, one count of Criminal Trespass, six counts of Robbery, three counts of Aggravated Assault, three counts of Simple Assault, three counts of Theft, three counts of Receiving Stolen Property, one count of Criminal use of a Communication Facility and another count of Receiving Stolen Property.

Under Information No. 1134-2011, Defendant Middleton is charged with the same counts as Defendant Hall except for Criminal use of a Communications Facility and the one additional count of Receiving Stolen Property.

The charges arise out of a “robbery-home invasion” which allegedly occurred on May 24, 2011 when the Defendants along with another individual “burst open” the back door of 942 Vine Avenue (first floor), threatened the victims, including a Mr. Bemah, with serious bodily injury or death and stole various items from them.

The additional charges of Criminal Use of a Communications Facility and Receiving Stolen Property alleged against Defendant Hall relate to Defendant Hall calling one of the victims earlier stating that he was going to the residence to play videogames. As a result, the victim left the back door ajar allowing the Defendant to enter the premises. The Receiving Stolen Property charge relates to Defendant Hall receiving or retaining his friend’s cell phone which was apparently stolen in the home invasion.

With respect to Information No. 369-2012, Defendant Hall is alleged to have contacted Mr. Bemah on the day before the home invasion to arrange for the sale of marijuana from Mr. Bemah to Defendant Hall in order that he could provide it to Defendant Middleton. Apparently, this arrangement was a ruse in order to ensure that Mr. Bemah would be present at the home and would have marijuana and other items of value in his possession.

Consolidation of separate Informations is governed by the Pennsylvania Rules of Criminal Procedure. Defendants charged in separate Informations may be tried together if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Pa. R.Crim. P. 582 (A) (2).

If the offenses charged are not based on the same act or transaction, they still may

be tried together if the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion. Pa. R. Crim. P. 582 (A) (1) (a).

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, 542 Pa. 464, 668 A.2d 491, 501 (1998). While there is 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, 593 Pa. 67, 928 A.2d 215, 231 (2007). The Court must, however, balance the need to minimize any prejudice that may be caused by consolidation against the general policy of encouraging judicial economy. Commonwealth v. Presbury, 665 A.2d 825, 828 (Pa. Super. 1995).

Defendant Hall does not argue that the majority of the offenses charged against him and Defendant Middleton are not based on the same act or transaction. Indeed, the first twenty-four (24) counts of each Information filed against each Defendant include the same charges based on the same alleged conduct.

Defendant Hall argues, however, that unlike Defendant Middleton, he is charged with crimes relating to alleged conduct that occurred the day prior to the home invasion as well as charges relating to a conversation he allegedly had with Mr. Bemah immediately prior to the home invasion and his obtaining possession of Mr. Bemah's cell phone. He asserts that these offenses are not based on the same act or transaction or series of acts or transactions.

The Court cannot agree. The calling of the victim the day prior to the home invasion in order to ensure that he was present and in possession of marijuana and perhaps money,

as well as the calling of Mr. Bemah immediately prior to the home invasion under the pretext of going to his residence to play videogames and thus requesting that he keep the door open, are all part of the same events and same story. Clearly, it is the same criminal episode. These charges are logically and/or temporally related to the other charges and share common issues of law and fact. Commonwealth v. Shirey, 333 Pa. Super. 85, 481 A.2d 1314, 1333 (1984).

Even if the offenses were not based on the same act or transactions or on the same series of acts or transactions, the evidence of the additional charges would be admissible in a separate trial for the other charges and certainly is capable of separation by the jury so that there is no danger of confusion. Commonwealth v. Wholaver, 605 Pa. 325, 989 A.2d 883, 898-99, cert. denied 131 S.Ct. 332 (2010); Commonwealth v. Dozzo, 991 A.2d 898, 902 (Pa. Super. 2010). The evidence establishes the history of the case, a motive and a plan.

Defendant Hall, however, bases his primary argument against consolidation on an assertion of prejudice. He claims that because of the number of charges against Defendant Middleton combined with the number of charges against him, the jury would be inclined to find him guilty by association and volume, and not based on the evidence. Defendant Hall argues that he would generally have a much better chance of acquittal if the charges were severed.

Nonetheless, “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, 519 Pa. 190, 546 A.2d 596, 600 (1988) (citations omitted). The prejudice required for severance must be stated with particularity beyond assertions and speculation. Commonwealth v. Morales, 508 Pa. 51, 494 A.2d 367, 373 (Pa. 1985). The burden is on the party claiming prejudice, and such prejudice must be real. Patterson, 546 A.2d at 599.

The Court fails to see how consolidation of the cases would cause Defendant Hall

to suffer a specific prejudice greater than the general prejudice any Defendant faces when the Commonwealth's evidence links them to a crime. Dozzo, 991 A.2d. at 902, citing Commonwealth v. Lauro, 819 A.2d 100, 107 (Pa. Super. 2003), appeal denied, 574 Pa. 752, 830 A.2d 972 (2003).

A joint trial is preferable for many reasons in addition to judicial economy. First, both Defendants have been charged with a conspiracy. Commonwealth v. Jones, 542 Pa. 464, 668 A.2d 491, 501 (1998). Secondly, the truth as to each Defendant's involvement can be more easily determined if both are tried together. Commonwealth v. Martinelli, 547 Pa. 294, 690 A.2d 203, 213 (1997), citing Commonwealth v. Chester, 526 Pa. 578, 590, 587 A.2d 1367, 1373 (Pa. 1991). Finally, Defendant's claim of prejudice has not been stated with particularity. The Court fails to see how consolidation of the cases would result in a substantial injustice for Defendant Hall solely because of the involvement of Defendant Middleton.

Accordingly, the Court finds that consolidation is appropriate and will grant the Commonwealth's Motion to Consolidate.

**ORDER**

AND NOW, this \_\_\_\_ day of May 2012 following a hearing and argument, the Court **GRANTS** the Commonwealth's Motion to Consolidate. The Informations set forth at No's. CR-1134-2011, CR-1243-2011 and CR-369-2012 shall be tried together.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: CA  
District Attorney

George Lepley, Esquire  
E.J. Rymza, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File