

Montoursville Police positioned themselves in the McDonald's lot across the street from the Best Buy parking lot. Gyurina observed a white Pontiac Bonneville with dark tinted windows pull next to Paulhamus' vehicle, stop, and then leave. Paulhamus stated at the hearing that the drug dealer pulled his white Bonneville next to his vehicle, they each rolled down their windows, and he threw the \$110.00 into the white Bonneville. The driver in the Bonneville then threw eleven (11) bags of heroin into Paulhamus' vehicle and left. Montoursville Police approached the Bonneville identifying themselves as police and ordering the driver out of the vehicle. The driver began to back his vehicle away from the officers but after his vehicle stopped he was taken into custody. The driver was identified as Aliek Carr (Defendant). A search incident to arrest resulted in cash being found in the Defendant's right pant pocket and three cellphones. Gyurina also observed that a vent was missing from the dashboard of Defendant's vehicle and that he could see in plain view a bag with multiple smaller bags within it. From Gyurina's past experience he believed the smaller bags contained heroin.

Paulhamus drove his vehicle to the police waiting nearby and while doing so consumed three (3) bags of the heroin. Gyurina had questioned Paulhamus about whether he had consumed any of the heroin because he saw a piece of wax paper outside the pavement of his vehicle. Paulhamus originally denied consuming the heroin and stated that he tried to consume a single bag but the heroin blew out of the packaging. At the suppression hearing, however, Paulhamus stated for the first time that he had consumed three (3) bags of heroin.

The Defendant was transported to the Montoursville Police Department where he waived his Miranda Rights. Officer Kurt Hockman (Hockman) asked the Defendant whether he would consent to a search of his vehicle or whether they should obtain a search warrant. At the time, Hockman stated that the Defendant was in a holding cell cuffed to a bench. Hockman would have been in full uniform and it would be possible that he had a holstered gun on his person. Hockman stated that the Defendant wanted to get to Lycoming County Prison as soon as possible and that he wanted to consent to a search. Hockman then read the Defendant the consent to search form and the Defendant signed the document. The document, in part, states:

“Without a search warrant, and of my right to refuse to consent to such search without a warrant, hereby authorize members of the Montoursville Police and their agents, to conduct a complete search of the above located at Montoursville Police Department.

These police officers are authorized by me to take from the item searched any letters, materials or other property that they may desire. Drugs, phones, guns, money.

I am giving this written permission to the Montoursville Police and its officers and agents voluntarily and without threats or promises of any kind.”

As a result of this consent, Montoursville Police searched the white Pontiac Bonneville and heroin and cash were found. As seen by Gyurina at the time of arrest, heroin was found in one of the vehicle's air vents.

The charge for the Defendant's second case, under docket number 840-2013, resulted from a subsequent search that occurred almost two (2) months later. On December 17, 2012, Montoursville Police obtained a search warrant for the Defendant's white Bonneville, which had been previously searched and resulted in some of the charges filed to docket number 1990-2012. The second search of the vehicle found a hidden compartment in the center console of the vehicle. The hidden console contained 282 individual packets of heroin and the Defendant was charged with one count of Possession with Intent to Deliver.³

Discussion

The Defendant contends that the two (2) sets of charges should not be consolidated because they are separated by time, location, and nature of offense. In addition, counsel argues that consolidation would result in prejudice to the Defendant due to an inference of "guilt by association." The Pennsylvania Rules of Criminal Procedure states that "[o]ffenses charged in separate indictments or informations may be tried together if: (a) 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; or (b) the offenses charged are based on the same act or transaction. Pa.R.Crim.P. 582. "The court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants being tied together." Pa.R.Crim.P. 583. The prejudice the defendant suffers due to the joinder must be greater than the general prejudice any defendant suffers when

³ 35 P.S. § 780-113(a)(30).

the Commonwealth's evidence links him to a crime.⁴ Commonwealth v. Lauro, 819 A.2d 100, 107 (Pa. Super. 2003).

Generally, evidence of crimes other than the one in question is not admissible to show bad character or the propensity to commit a crime. Pa.R.E. 404(b). Exceptions to this rule exist within the Commonwealth of Pennsylvania:

[E]vidence of other crimes is admissible to demonstrate (1) motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme, plan or design embracing the commission of two or more crimes so related to each other that proof of one tends to prove the others; or (5) the identity of the person charged with the commission of the crime on trial.

Commonwealth v. Dozzo, 991 A.2d 898, 902 (Pa. Super. 2010) (citing Commonwealth v. Collins, 703 A.2d 418, 422-423 (Pa. 1997)); see also Pa.R.E. 404(b)(2). "Factors to be considered to establish similarity are the elapsed time between the crimes, the geographical proximity of the crime scenes, and the manner in which the crimes were committed." Id. (citing Commonwealth v. Taylor, 671 A.2d 235 (Pa. Super. 1996).

In addition, other crimes are admissible under the "same transaction" exception, which is argued by the Commonwealth. Under this rule, other crimes may be relevant and admissible when such evidence was part of the chain or sequence of events which became part of the history of the case and formed part of the natural development of the facts. Commonwealth v. Horvath, 781 A.2d 1243, 1246 (Pa. Super. 2001). "This special circumstance, sometimes referred to as the 'res gestae' exception to the general proscription against evidence of other crimes, is also known as the 'complete story' rationale, i.e., evidence of other criminal acts is admissible 'to complete the story of the crime on trial by proving its immediate context of happenings near in

⁴The Supreme Court of Pennsylvania has summarized all these rules into three determinations: (1) whether the evidence of each of the offenses would be admissible in a separate trial for the other; (2) whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and (3) whether the defendant will be unduly

time and place.” Id. (citing McCormick, *Evidence*, § 190 (1972 2d ed.)).

In Camperson, after a controlled buy and being arrested with 238.8 grams of methamphetamine, the defendant was charged with possession with intent to deliver and other drug related charges. Commonwealth v. Camperson, 612 A.2d 482, 482 (Pa. Super. 1992). A subsequent search of his house resulted in separate charges including possession of methamphetamine with intent to deliver. The Pennsylvania Superior Court found that evidence of the controlled buy under the first case was relevant to show the specific intent for possession with intent to deliver for the drugs found in the defendant’s home. Id. at 484. The Superior Court found that the trial court abused its discretion by finding the evidence too prejudicial and excluding it from trial.

Similarly, the Commonwealth has argued the facts of Henry, where the defendant was first arrested based on reported drug activity. Commonwealth v. Henry, 599 A.2d 1321 (Pa. Super. 1991). The first set of charges stemmed from a search of the defendant’s vehicle that found cocaine in the back seat. A later search of his home in another county resulted in separate drug charges. The Superior Court found that evidence of the first charges were admissible for the second set of charges based on the “same transaction” exception and that it was relevant to the defendant’s intent. Id. at 1324 n.2.

Here, the Court finds that evidence of the Defendant’s prior charges under docket number 1990-2012 would be admissible in trial under docket number 840-2013. The Defendant was observed selling drugs to an informant. After his car was seized and searched heroin was found in an air vent. The same vehicle was then held by Montoursville Police for two months and after

prejudiced by the consolidation of offenses. Commonwealth v. Collins, 703 A.2d 418, 422 (Pa. 1997).

getting a search warrant additional heroin was found in the vehicle.⁵ The prior controlled buy would be relevant to the Defendant's specific intent for the Possession with Intent to Deliver charge against him for the additional drugs found in his vehicle.

Further, the Court finds that the Possession with Intent to Deliver charge would be easily separable by the jury and would not cause undue prejudice to the Defendant, and therefore should be consolidated. The additional charge is the result of a separate search of the vehicle, occurred on a separate day, and is just a single count of Possession with Intent to Deliver. Additionally, the charge would be admissible in a separate trial and is relevant for the Commonwealth to meet their burden for trial. See Camperson, 612 A.2d at 485.

ORDER

AND NOW, this _____ day of August, 2013, based upon the foregoing Opinion, the

⁵ The Court does not know why a search warrant was obtained approximately two (2) months after the vehicle was seized and initially found with contraband. The Defendant, however, was in possession of the additional contraband when he conducted the controlled buy with Paulhamus.

Court finds that the evidence of each of the offenses would be admissible in a separate trial for the other, are easily separable by a jury, and would not result in undue prejudice. Therefore, the Commonwealth's Motion to Consolidate is GRANTED.

By the Court,

Nancy L. Butts, President Judge

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