

Commonwealth argues that the same evidence would be used against each Defendant if they were given separate trials. Collins argues, however, that the cases should be severed because there are antagonistic defenses.

Pennsylvania Rules of Criminal Procedure states that “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.” Pa.R.Crim.P. 582(A)(2). “[I]t is well established that ‘the law favors a joint trial when criminal conspiracy is charged.’ Commonwealth v. Serrano, 61 A.3d 279, 285 (Pa. Super. 2013) (citing Commonwealth v. Housman, 986 A.2d 822 (Pa. 2009)).

It would impair both the efficiency and the fairness of the criminal justice system to require . . . that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last tried defendants who have the advantage of knowing the prosecution’s case beforehand. Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability.

Id. On the other hand, “[t]he court may order separate trials of . . . defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by . . . defendants being tried together. Pa.R.Crim.P. 583.

Where the defendant moves to sever offenses not based on the same act or transaction that have been consolidated in a single indictment or information, or opposes joinder of separate indictments or informations, the [trial] court must . . . determine: [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, if the answers to these inquiries are in the affirmative, [3] whether the defendant will be unduly prejudiced by the consolidation of offenses.

Commonwealth v. Collins, 702 A.2d 418, 422 (Pa. 1997). The Defendant bears the burden of proof to “show real potential for prejudice rather than mere speculation.” Serrano, 61 A.3d at 285.

Here, the charges against the Defendants arose from the same course of events. The Defendants were pulled over in a vehicle that contained heroin, cocaine, and guns. Contraband was found under the driver's seat, the rear middle console area, and the trunk. Further, both the Defendants have been charged with Conspiracy. The Court finds that evidence against both Defendants would still be admissible in separate trials.

Moreover, the Court finds that the jury would be able to separate the evidence against each co-Defendant. In fact, the Court is unaware of any evidence to be presented by the Commonwealth that is solely against one Defendant and not the other. However, even if this was not the situation, the Court finds from the information presented that a jury would still be able to separate evidence so as to avoid confusion.

Finally, Collins alleges that the co-Defendants' antagonistic defenses would result in undue prejudice if the two cases were consolidated. An antagonistic defense is not merely defenses that are conflicting, but rather require a jury to disbelieve one defendant's potential defense in order to believe a co-defendant's defense.

A claim of mere hostility between defendants, or that one defendant may try to exonerate himself at the expense of the other, however, is an insufficient basis upon which to grant a motion to sever. Indeed, this Court has noted that 'the fact that defendants have conflicting versions of what took place, or the extent to which they participated in it, is a reason for rather than against a joint trial because the truth may be more easily determined if all are tried together.' Instead, severance should be granted only where the defenses are so antagonistic that they are irreconcilable – *i.e.*, the jury essentially would be forced to disbelieve the testimony on behalf of one defendant in order to believe the defense of his co-defendant.

Commonwealth v. Brown, 925 A.2d 147, 161-62 (Pa. 2007) (citations omitted).

While Collins' defense was not fully disclosed to the Court at the hearing, it was inferred that Collins' defense would be that of implicating Eiland and that Eiland's defense would be to implicate Collins. However, "[m]ere fingerprinting alone – the effort to exculpate oneself by

inculcating another – is insufficient to warrant a separate trial.” Commonwealth v. Housman, 986 A.2d 822, 834 (Pa. 2009) (citing Commonwealth v. Lambert, 603 A.2d 568, 573 (Pa. 1992)). Therefore, this Court finds that the Defendants’ defenses are not so antagonistic that they are irreconcilable. See also Commonwealth v. Marinelli, 690 A.2d 203 (Pa. 1997); Commonwealth v. Chester, 587 A.2d 1267 (Pa. 1991).

ORDER

AND NOW, this _____ day of October, 2013, based upon the foregoing Opinion, the Court finds that the above captioned Defendants participated in the same series of acts which constituted their offenses and that they would not be unduly prejudiced by consolidation. Therefore, the Commonwealth’s Motion to Consolidates is GRANTED. It is ORDERED and DIRECTED that the Informations for the Defendants will be consolidated for trial.

By the Court,

Nancy L. Butts, President Judge

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