

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:
	:
vs.	: No. CR-1014-2013
	:
DONTE JONES,	:
Defendant	:
* * * * *	: * * * * *
COMMONWEALTH	:
	:
vs.	: No. CR-1968-2013
	:
BILLY GOLDEN,	: Opinion & Order re Commonwealth's Motion to
Defendant	: Consolidate

OPINION AND ORDER

Before the Court is the Commonwealth's Motion to Consolidate filed in the above-captioned matters on January 7, 2014. The respective Defendants are charged under separate Informations with Criminal Attempt to Commit Murder and Numerous other Offenses.

The Commonwealth contends that the Defendants participated in the same act or transaction or in the same series of acts or transactions constituting those offenses charged against them, that the evidence 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. Accordingly, the Commonwealth requests that the Court order consolidation of the Informations for trial purposes.

An argument on the Motion was held before the Court on January 13, 2014.

At the argument, the parties stipulated that the Court could consider the respective Criminal Complaints, Affidavits of Probable Cause and transcripts from the preliminary hearings. The June 24, 2013 preliminary hearing transcript with respect to Defendant Jones was marked and submitted as an exhibit. At the request of counsel for Defendant Golden, the record was kept open until February 24, 2014 for submission of Defendant Golden's preliminary hearing transcript. On said date, not having received the transcript, the Court contacted said counsel. Said attorney indicated that the transcript would be forthcoming.

As of the writing of this Opinion, however, no transcript has been submitted. The record will be deemed closed.

Defendant Jones is charged by Information filed on July 26, 2013 with Criminal Attempt to Commit Murder and numerous Criminal Conspiracies related to an incident that allegedly occurred on May 28, 2013.

Defendant Golden is charged by Information filed on December 26, 2013 with Criminal Attempt to Commit Murder and numerous Criminal Conspiracies also arising out of an incident that allegedly occurred on May 28, 2013.

On May 28, 2013, law enforcement officers responded to a report of gun shots fired in the area of 324 Jordan Avenue in Montoursville. When arriving, the police confronted Chad Stutzman, the occupant of the property.

Mr. Stutzman related that he believed the incident was a result of some heroin and guns that he had stolen from two drug dealers approximately a week earlier. He believed that the two people who kicked in his door and shot at him were the Defendants. He

explained that approximately one month ago, he was introduced to them through a fellow heroin addict.

Eventually, Mr. Stutzman began transporting the Defendants to Philadelphia to obtain heroin to eventually sell in the city of Williamsport. As well, Mr. Stutzman would transport the Defendants “around” to different places in Williamsport.

The previous week, Mr. Stutzman was short of money and agreed to transport the Defendants to Philadelphia. At some point later Mr. Stutzman fled Philadelphia without the Defendants but with their heroin. After May 22 but before May 28, Mr. Stutzman was driving his vehicle on Little League Boulevard in Williamsport. He was stopped in traffic when Defendant Jones abruptly entered the passenger side of the vehicle. Defendant Jones confronted Mr. Stutzman stating, “Where is my Shit?” Defendant Jones tried assaulting Mr. Stutzman by doing “something around [his] neck.” Mr. Stutzman put his thumb in Defendant’s eye to get Defendant out of the vehicle.

On May 28, Mr. Stutzman was at his apartment on Jordan Avenue in Montoursville. He first heard a knock which then became loud banging on his back door. He looked through the peephole and “recognized them (Defendants)” based on their size differential. Mr. Stutzman related that while the Defendants did not speak during the incident, he knew who they were based on their height, weight, posture and mannerisms. He heard them “come through the door” at which point he “just bolted to the front door.” The assailants kicked in the back door and the molding fell down “almost on them.” At that point, after the assailants broke through the door, and as Mr. Stutzman was running to the front

door, he heard shots. The shots were fired from where the Defendants were located.

A Felicia Weinhardt was also purchasing drugs from Defendant Jones in May. Prior to the May 28 entry into Mr. Stutzman's home, she had a few conversations with Defendant Jones regarding Mr. Stutzman. Defendant Jones was aware that Mr. Stutzman had taken drugs and guns from him and specifically told Ms. Weinhardt that "the cops betters get to him before he did." On another occasion, they were talking about the guns that were apparently stolen. Defendant Jones told her he was not worried about the old gun, because "he got a new gun now and it had Chad's name all over it."

On May 28, at approximately 11:41 a.m., Defendant Jones went to Ms. Weinhardt's residence on Memorial Avenue in Williamsport to obtain Mr. Stutzman's address and Ms. Weinhardt gave "Chad's address" to Defendant Jones in exchange for "some dope."

During the argument in this matter, the Defendants opposed consolidation claiming that their respective positions in defending against the charges would be prejudiced if both cases were tried together.

Defendant Golden claimed that the case against Defendant Jones was much stronger. He further argued that there were some essential facts upon which the Defendants disagreed such as who and when the Defendants or either one of them, went to Philadelphia with Mr. Stutzman. Defendant Jones argued that he never drove Mr. Stutzman to Philadelphia on May 22. He argued further that he would have returned on other occasions via a bus. He argued that there was a corroborating video from the bus station in support of

his position. He further argued that it would be prejudicial to each Defendant if the jury had to decide if any one of them was telling the truth.

Both Defendants argued that it would be prejudicial to their respective clients if at trial while advocating on behalf of their client they were advocating against the Co-Defendant.

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).

Separate 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 or confusion; or

(b) the offenses charged are based on the same act or transaction.” Pa. R. Cr. P. 582.

Conversely, a Court may order separate trials of offenses if it appears that any party may be prejudiced by offenses being tried together. Pa. R. Cr. P. 583.

The Supreme Court has established a three-part test under these Rules in addressing Consolidation Motions. First, the Court must determine whether the evidence of each offense would be admissible in a separate trial for the other. Second, the Court must determine whether such evidence is capable of separation by the jury so as to avoid confusion. Third, if the first two questions are answered in the affirmative, the Court must

determine if the Defendant will be unduly prejudiced by the consolidation of the offense. Commonwealth v. Collins, 550 Pa. 46, 703 A.2d 418, 422 (1997), cert. denied, 525 U.S. 1015, 119 S. Ct. 538 (1998).

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. 462, 668 A.2d 491 (1998). In this particular matter, the Defendants are alleged to have participated in the same acts against the alleged victim. As well, they are both charged with Conspiracy to Attempt to Commit Murder. When Defendants have been charged with a Conspiracy, a joint trial is preferable. Jones, 668 A.2d at 501, citing Commonwealth v. Jackson, 451 Pa. 462, 303 A.2d 924 (1973).

As set forth above, Defendants assert that they may be prejudiced by a consolidation due to inconsistent defenses or contrary statements they may have made or intend on making with respect to the version of events. 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. Commonwealth v. Martinelli, 690 A.2d 203, 213 (Pa. 1997), citing Commonwealth v. Chester, 587 A.2d 1367, 1373 (Pa. 1991). Moreover, the fact that one Defendant might try to save himself at the expense of the other constitutes insufficient grounds to require a severance. Martinelli, supra. Defendants do not argue that the crimes alleged against them do not arise out of the same transaction or series of transactions, Defendants do not argue that the evidence would not be admissible against each other in a

separate trial. Defendants only argue prejudice.

The Court fails to see how consolidation of the Defendants' cases would cause the Defendants to suffer a specific prejudice greater than a general prejudice any Defendant suffers when the Commonwealth's evidence links them to a crime.

Commonwealth v. Dozo, 991 A.2d 898, 902 (Pa. Super. 2010), citing Commonwealth v. Lauro, 819 A.2d 100, 107 (Pa. Super. 2003), appeal denied, 574 Pa. 752, 830 A.2d 973 (2003). Accordingly, the Court finds that consolidation is appropriate and will grant the Commonwealth's Motion to Consolidate.

ORDER

AND NOW, this ___ day of March 2014, following a hearing and argument, the Court GRANTS the Commonwealth's Motion to Consolidate. The Informations set forth at No's. CR-1014-2013 and CR-1968-2013 shall be tried together.

By The Court,

Marc F. Lovecchio, Judge

cc: CA
DA (AB)
PD (RC)
Julian Allatt, Esquire
Gary Weber, Lycoming Reporter
Work File