

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 1279-2015
 :
 RAHEEM RULEY, :
 :
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on August 21, 2015 with numerous criminal offenses. A detailed description of each charge is necessary.

Count 1 charges Defendant with delivery of a controlled substance, because he allegedly sold seven grams of cocaine to a confidential informant (CI) on June 3, 2015.

Count 2 charges Defendant with delivery of a controlled substance for allegedly selling seven grams of cocaine to a CI on June 10, 2015.

Count 3 also charges Defendant with delivery of a controlled substance. Defendant is alleged to have sold 21 grams of cocaine to a CI on June 16, 2015.

Count 4 charges Defendant with possession with intent to deliver a controlled substance. On June 16, 2015, Defendant is alleged to have possessed with intent to deliver 116 grams of heroin at 321 Tinsman Avenue in Loyalsock Township.

Count 5 charges Defendant with possession with intent to deliver a controlled substance. On June 16, 2015, Defendant is alleged to have possessed with intent to deliver eleven grams of cocaine at 321 Tinsman Avenue in Loyalsock Township.

Count 6 charges Defendant with possession with intent to deliver a controlled substance. On June 16, 2015, Defendant is alleged to have possessed with intent to deliver

two ounces of crack cocaine at 321 Tinsman Avenue in Loyalsock Township.

Counts 7, 8 and 9 all charge Defendant with possession with intent to deliver the respective controlled substances allegedly delivered on June 3, 2015, June 10, 2015 and June 16, 2015 as charged in Counts 1, 2 and 3.

Count 10 charges Defendant with conspiracy to possess with intent to deliver controlled substances with respect to Counts 4, 5 and 6. The co-conspirator is alleged to be co-defendant Antoine Davis.

Count 11 charges Defendant with possession of drug paraphernalia. Defendant is alleged to have possessed various items of drug paraphernalia at 321 Tinsman Avenue in Loyalsock Township.

Counts 12, 13 and 14 all charge Defendant with criminal use of a communication facility. Defendant is alleged to have used a phone to facilitate the controlled substance delivery charges in Counts 1, 2 and 3.

Counts 15, 16, 17 and 18 charge Defendant with possession of a controlled substance. Counts 15, 16, 17 relate to the controlled substances allegedly delivered on June 3, 2015, June 10, 2015 and June 16, 2015. Count 18 relates to marijuana allegedly possessed by the Defendant at 321 Tinsman Avenue in Loyalsock Township.

Defendant filed a motion in limine on November 12, 2015. Defendant asserts that he does not reside at 321 Tinsman Avenue and that the evidence of the controlled substances and paraphernalia allegedly found at that address should be precluded. Defendant alleges that their admission in evidence would be unfairly prejudicial.

As set forth above, Counts 4, 5, 6, 10, 11 and 18 all relate to controlled substances allegedly found at 321 Tinsman Avenue and allegedly possessed by Defendant. As part of its proof, the Commonwealth will be required to prove that Defendant constructively possessed the heroin, cocaine, crack and marijuana allegedly found at 321 Tinsman Avenue.

Surely, the Commonwealth cannot be precluded from offering relevant evidence to meet its burden of proof. Defendant contends that the evidence of the controlled substances found in the home would prejudice Defendant. The court agrees. “[A]ll of the prosecution’s evidence is intended to ‘prejudice’ the jury, and simply because it is damaging to the defense is no reason to exclude the evidence.” *Commonwealth v. Rigler*, 488 Pa. 441, 412 A.2d 846 (1980)(emphasis in original), *cert. denied*, 451 U.S. 1016 (1981).

Defendant has not advanced any argument that the aforesaid evidence is unduly prejudicial. The probative value of the evidence is clear. The probative value is not at all outweighed by the danger of unfair prejudice. The evidence is certainly detrimental to Defendant but it would not create any undue tendency for the jury to decide the case on an improper basis. PA. R. EVID. 403, comment; *Commonwealth v. Hairston*, 624 Pa. 143, 84 A.3d 657, 666, *cert. denied*, 135 S.Ct. 164 (U.S. 2014).

Defendant also argues that his charges should be severed from those of his co-defendants. On August 21, 2015, the Commonwealth filed a notice of joinder, which consolidated for trial Defendant’s case and the cases of Angelie Lopez and Antoine Davis.

Defendant claims that the joinder of the cases will prejudice him in that the

jury will “automatically” find him to be guilty, not necessarily because of what he may have done criminally, but because of his association with his co-defendants. Defendant further claims that each defendant has or will essentially implicate the others and that each defendant will assert “conflicting and antagonistic” defenses. Finally, Defendant argues that the Commonwealth may attack the credibility of his co-defendants through *crimen falsi* convictions and that this evidence will improperly incriminate Defendant, who has no criminal record.

The factual premise upon which Defendant’s arguments is primarily based is that Defendant was only allegedly involved in sales to others “on the street”, while his co-defendants allegedly participated in criminal conduct at the 321 Tinsman Avenue address. Defendant asserts that his connection with 321 Tinsman Avenue is minimal while the others’ connection is far more substantial.

Defendant’s factual premise, however, is in error. In fact, an abundant amount of evidence will connect Defendant with Tinsman Avenue and the 321 Tinsman Avenue address. While there may be little evidence that Defendant resided at 321 Tinsman Avenue, there is substantial evidence that Defendant was allegedly using the address as a base for his drug dealings.

The June 3, 2015 incident involved a controlled purchase. The police utilized a confidential informant and an undercover officer. Much of the alleged transaction was under surveillance. Following the alleged transaction, Defendant directed the driver to drop him off not far from Tinsman Avenue. Later that day, Vice Unit members observed

Defendant on the porch of 321 Tinsman Avenue.

The June 10, 2015 incident also involved a controlled purchase. When the participants arrived at the arranged meeting place, they were at the rear entrance to Kmart along Tinsman Avenue. Defendant was seen walking north along the western side of Tinsman Avenue. Prior to meeting at the Kmart, Vice Unit members observed Defendant leaving from of 321 Tinsman Avenue. Following the alleged transaction, Defendant was seen returning to the same address.

On June 16, 2015, another controlled substance transaction was arranged. Following the arrangement, Defendant was seen departing 321 Tinsman Avenue and walking north on Tinsman Avenue. Once inside the undercover vehicle, the transaction allegedly took place. Following the alleged transaction, Defendant was dropped off near the intersection of Homewood Avenue and Tinsman Avenue. Upon exiting the vehicle, Defendant began walking toward Tinsman Avenue.

Within approximately 15 minutes of Defendant being taken into custody, a search warrant was served at the residence of 321 Tinsman Avenue. Co-defendants Davis and Lopez were found in the residence as were two other individuals.

Found in the kitchen of the residence in a drawer was a wallet with “indicia for” Defendant. Also located in the drawer were three glass vials containing marijuana and blue packets containing crack cocaine.

There were two safes located in the residence. One had a substantial amount of controlled substances. Another contained three twenty dollar bills that were prerecorded

and were utilized in the transaction that occurred on June 10, 2015 between Defendant and a confidential informant.

Rule 583 of the Pennsylvania Rules of Criminal Procedure governs severance. The court may order separate trials of defendants if it appears that any party may be prejudiced by the defendants being tried together. PA. R. CRIM. P. 583.

“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)(citing *Commonwealth v. Patterson*, 519 Pa. 190, 197, 546 A.2d 596, 600 (1988)). In this particular matter, Defendant, Lopez and Davis are alleged to have participated in similar acts or transactions related to the evidence found at 321 Tinsman Avenue. As well, Defendant has been charged with a conspiracy wherein Co-defendant Davis is named as a co-conspirator. When defendants have been charged with a conspiracy, a joint trial is preferable. *Id.* (citing *Commonwealth v. Jackson*, 541 Pa. 462, 464, 303 A.2d 924, 925 (1973)).

With respect to Defendant’s prejudice argument, under Rule 583, the prejudice the defendant suffers due to consolidation must be greater than the general prejudice any defendant suffers when the Commonwealth’s evidence links him to a crime. *Commonwealth v. Dozzo*, 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 975 (2003)).

Defendant’s assertions of prejudice are not sufficient. Merely arguing that

there may be prejudice in that a defense is “inconsistent” or “in conflict” with a co-defendant is insufficient. *Commonwealth v. Morales*, 508 Pa. 51, 494 A.2d 367, 373 (1985). Further, “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. Marinelli*, 547 Pa. 294, 690 A.2d 203, 213 (1997)(quoting *Commonwealth v. Chester*, 526 Pa. 578, 587 A.2d 1367, 1373 (1991), *cert. denied*, 502 U.S. 959 (1991)). Finally, the fact that one defendant may try to save himself at the expense of the other constitutes insufficient grounds to require severance. *Id.*

Finally, any of Defendant’s concerns regarding different charges, different burdens of proof and different facts can and will be addressed by appropriate jury instructions. The charges against Defendant and his Co-defendants from both a factual and legal standpoint should be tried together. Otherwise, it would result in a substantial waste of judicial time and resources. Perhaps more importantly, the court sees no prejudice whatsoever inuring to Defendant as a result of consolidation.

Defendant’s final motion is a motion to reduce bail, which was heard and decided at the December 11, 2015 hearing in this matter.

ORDER

AND NOW, this __ day of December 2015, following a hearing and argument, the court **DENIES** Defendant’s motion to suppress (considered as a motion in limine) and motion for severance as set forth in Defendant’s omnibus pretrial motion filed on

November 12, 2015.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Jerry Lynch, Esquire
Gary Weber, Esquire, Lycoming Reporter
Work file