

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-153-2015**  
 v. :  
 :  
 **DURWARD ANTHONY ALLEN,** : **CRIMINAL DIVISION**  
 **Defendant** :

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**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-144-2013**  
 v. : **CR-341-2013**  
 :  
 **DAVID EMANUEL COLLINS,** :  
 **TIMOTHY D. EILAND,** : **CRIMINAL DIVISION**  
 **Defendants** :

**OPINION AND ORDER**

On October 1, 2015, the Commonwealth filed a Motion to Consolidate the above-captioned cases. Collins' case and Eiland's case were previously consolidated by order filed on October 17, 2013. On November 10, 2015, the Court heard argument on the consolidation motion.

**I. Background**

All of the above-captioned Defendants were in a vehicle when it was stopped by police. Police found the following in the vehicle: two firearms, 922 packets of heroin under the driver's seat, 303 packets of heroin in the trunk, 30 grams of cocaine in the trunk, and bags containing approximately 109.9 grams of heroin in the trunk. Eiland had \$7,285.00 of currency in his pocket; Allen had \$2,650.00 of currency in his pocket. Collins was allegedly carrying marijuana; he also allegedly "threw" 93 packets of heroin on the prison floor after his arrest.

All of the above-captioned Defendants are charged with possessing heroin and cocaine with intent to deliver, conspiring to possess heroin and cocaine with intent to deliver, possessing

drug paraphernalia, receiving stolen property, and firearms not to be carried without a license. Collins is charged with possessing a small amount of marijuana as a result of the marijuana that the Commonwealth alleges he was carrying. Allen and Eiland are not charged with possessing marijuana. Collins is also charged with contraband as a result of the 93 packets of heroin on the prison floor. Allen and Eiland are not charged with contraband. Allen is charged with persons not to possess a firearm; Collins and Eiland are not. However, the Commonwealth conceded that the persons not to possess a firearm charge requires a separate trial.

The Commonwealth argued that all of the above cases can and should be consolidated for the following reasons. All of the charges arose from same course of events. All of the Defendants were charged with conspiracy. The evidence would be admissible in separate trials. The defenses are not so antagonistic that they are irreconcilable. The Defendants have not met their burden of showing they would be unduly prejudiced by consolidation.

Eiland does not oppose the consolidation. Allen argued he will be unduly prejudiced by consolidation because Collins and Eiland are charged with more offenses. Allen also argued that since he has no prior criminal record, the introduction of the criminal history of Collins and Eiland will unduly prejudice him. In response, the Commonwealth noted that Allen has a prior adjudication for possession with intent to deliver and a 2007 adjudication for theft. Collins argued that consolidation creates antagonistic defenses because Allen's best defense is "it's not my stuff, it's theirs." Collins noted that one potential witness said that he/she never met Allen but knew Collins and Eiland. In addition, Collins noted that he is charged with possessing items that Allen is not charged with possessing.

## II. Discussion

“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). “Where . . . the crimes charged grew out of the same acts and much of the same evidence is necessary or applicable to all defendants, joint rather than separate trials are to be preferred.” Commonwealth v. Childress, 680 A.2d 1184, 1187 (Pa. Super. 1996). “As a general policy, joint trials are encouraged when judicial economy will be promoted by avoiding the expensive and time-consuming duplication of evidence. Where . . . defendants have been charged with conspiracy, joint rather than separate trials are preferred.” Commonwealth v. Jones, 668 A.2d 491, 501 (Pa. 1995) (internal citations omitted).

“Where the defendant . . . opposes joinder of separate indictments or informations, the court must . . . determine: whether the evidence of each of the offenses would be admissible in a separate trial for the other; 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, whether the defendant will be unduly prejudiced by the consolidation of offenses.” Commonwealth v. Lark, 543 A.2d 491, 496-97 (Pa. 1988). “While the possibility of conflicting or antagonistic defenses is a factor to be considered in determining whether to grant a motion for severance, [the defendant] must show a real potential for prejudice and not just mere speculation. The fact that hostility exists between the defendants or that one defendant may try to save himself at the expense of the other constitutes insufficient grounds to require severance. Moreover, the mere fact that one defendant might have a better chance of acquittal if tried separately is an insufficient ground to require severance. Further, defenses only become antagonistic when the

jury, in order to believe the testimony offered on behalf of the one defendant, must disbelieve the testimony offered by his or her co-defendant.” Jones, 688 A.2d at 501 (internal citations omitted). “[T]he fact the co-defendants blamed one another is insufficient to warrant separate trials based on antagonistic defenses. ‘Mere fingerpointing alone – the effort to exculpate oneself by inculcating another – is insufficient to warrant a separate trial.’ Indeed, if truth is the goal, having all the fingerpointing before the same fact-finder is quite efficacious.” Commonwealth v. Housman, 986 A.2d 822, 834 (Pa. 2009) (quoting Commonwealth v. Lambert, 529 Pa. 320, 603 A.2d 568, 573 (Pa. 1992)).

Here, the heroin, cocaine, and firearms found in the vehicle would be admissible in separate trials because each Defendant is charged with possessing the heroin, cocaine, and firearms. The currency found in the pockets of Allen and Eiland would also be admissible in separate trials because each Defendant is charged with conspiring to possess heroin and cocaine with intent to deliver. In addition, the 93 packets of heroin that Collins allegedly “threw” on prison floor would be admissible in separate trials because each Defendant is charged with conspiring to possess heroin with intent to deliver.

The Defendants will not be unduly prejudiced by consolidation. Allen and Eiland are not charged with possessing marijuana, but the evidence of the marijuana allegedly carried by Collins will not unduly prejudice Allen or Eiland because of the amount of heroin and cocaine found in the vehicle and on the prison floor. Collins argues that Allen’s best defense is “it’s not mine, it’s theirs,” but “[m]ere fingerpointing alone . . . is insufficient to warrant a separate trial.” Housman, 986 A.2d at 834. Allen argues that the criminal history of Collins and Eiland will unduly prejudice him, but “[e]vidence of prior crimes is not admissible for the sole purpose of

demonstrating a criminal defendant's propensity to commit crimes." Commonwealth v. Tyson, 119 A.3d 353, 358 (Pa. Super. 2015).

### **III. Conclusion**

Consolidation of the above-captioned cases is appropriate, and the Defendants will not be unduly prejudiced by the consolidation.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of January, 2016, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Motion to Consolidate, which was filed on October 1, 2015, is hereby GRANTED, and the above-captioned cases are consolidated.

By the Court,

Nancy L. Butts, President Judge