



the area of the Best Western Hotel on East Third Street in Williamsport. Specifically, they were looking for an individual who had been selling controlled substances in the area, and they knew what the individual looked like based on a photograph of the individual that other troopers had taken during surveillance of drug transactions that occurred a few days earlier. A vehicle drove by the troopers, and they recognized the passenger (Smith) as the individual they were searching for. The vehicle parked in the hotel parking lot. Smith exited the vehicle and began walking towards the hotel. Trooper Havens followed Smith on foot, detained him, and took him back to the vehicle. Trooper Williamson remained with the driver of the vehicle, who was identified as Wilson. Law enforcement discovered that Wilson was wanted on an alleged outstanding warrant and, accordingly, he was taken into custody.

Smith was also taken into custody. He was searched and had 22 bags of heroin in his pocket, “a whole bunch of cash” and a key for Room 123 at the hotel.

A search warrant was eventually executed on the hotel room. In the room, there was a closed duffle bag in which troopers discovered 136 bags of heroin and digital scales, as well as a pair of Smith’s shoes.

A small amount of marijuana was found among some clothing that was similar in size to that of Wilson.

After being taken into custody and Mirandized, Wilson gave a statement to law enforcement. He admitted that he was not the heroin dealer but that he was driving Mr. Smith around so that Mr. Smith could sell his heroin. In exchange, he received \$200.00. When Wilson was searched, he had on his person \$50.00, which apparently was “what was left from the

\$200.00 that he had received to drive Mr. Smith around.”

In order to clarify Wilson’s statements, Trooper Havens of the PSP, who spoke with Wilson, specifically indicated that Wilson admitted he was driving Smith around for the purpose of conducting heroin related sales. As well, Smith told law enforcement that Wilson was driving him to the areas that Smith was conducting his heroin sales. Wilson testified at a previous hearing in this matter that he and Smith were “sharing a room” at the hotel. The day before he was arrested, he had arrived in Williamsport to obtain employment. While Wilson denied knowing what Smith was doing with respect to heroin related sales, he indicated that “maybe [he] had an idea” that Mr. Smith was selling drugs, but he “didn’t ask him.”

On November 25, 2015, the Commonwealth filed a Motion to Consolidate the cases for trial. Argument was subsequently held on December 14, 2015.

Defendants object to the consolidation contending that they have different versions of what occurred, they would be prejudiced by the alleged criminal behavior of the other, and if the jury concluded that one of them committed criminal misconduct, the jury would “automatically” find the other guilty as well.

Consolidation of separate informations is governed by the Pennsylvania Rules of Criminal Procedure. Defendants charged in separate 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).

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). In this particular matter, the defendants are alleged to have participated in the same acts or transactions. As well, both have been charged with conspiracy wherein the other is named as a co-conspirator. When defendants have been charged with a conspiracy, a joint trial is preferable. *Id.* (citing *Commonwealth v. Jackson*, 451 Pa. 462, 464, 303 A.2d 924, 925 (1973)).

Under Rule 583, the prejudice the defendants suffer due to consolidation must be greater than the general prejudice any defendant suffers when the Commonwealth’s evidence links them 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)).

More than a bare assertion of prejudice, however, is required. It must be stated with particularity, and merely arguing abstractly that there may be prejudice in that a defense is “inconsistent” or “in conflict” with a co-defendant is insufficient. See *Commonwealth v. Morales*, 508 Pa. 51, 494 A.2d 367, 373 (Pa. 1985). Further, “the fact that defendants have conflicting versions of what took place, or the extents 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 (Pa. 1997)(quoting *Commonwealth v. Chester*, 526 Pa. 578, 590, 587 A.2d 1367, 1373 (Pa. 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.*

The Court finds that consolidation is proper and will grant the Commonwealth's Motion to Consolidate. To the extent Defendants are concerned about the jury cumulating offenses and/or inferring guilt based on the other's guilt, the jury instructions will properly address those concerns.

**ORDER**

**AND NOW**, this \_\_\_ day of February 2016 following a hearing and argument, the Commonwealth's Motion to Consolidate is **GRANTED**. The above-captioned Informations shall be joined for trial purposes.

By The Court,

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Marc F. Lovecchio, Judge

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