

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

**COMMONWEALTH OF PENNSYLVANIA** : **CR-1972-2017**  
 : **CR-2139-2017**  
 **v.** :  
 :  
 **KASAN ROBERT SANDERS** :

**OPINION AND ORDER**

This matter came before the Court on March 26, 2018 for an argument on the Commonwealth's Motion to Consolidate the above-captioned cases for trial.

In CR-1972-2017, Defendant, Kasan Sanders, was charged with four counts of Possession with Intent to Deliver<sup>1</sup>, four counts of Delivery of a Controlled Substance<sup>2</sup>, four counts of Possession of a Controlled Substance<sup>3</sup>, and four counts of Criminal Use of a Communication Facility<sup>4</sup>.

The charges relate to four controlled buys of heroin from Defendant by a Confidential Informant on October 18<sup>th</sup>, 23<sup>rd</sup>, 25<sup>th</sup>, and November 7<sup>th</sup>, 2017. The Confidential Informant (CI) was utilized by Detective Cassandra McCormack (McCormack) of the Lycoming County District Attorneys Office Narcotic Enforcement Unit (NEU).

The first controlled buy took place on October 18, 2017; McCormack and Detective Burns (Burns) met with the CI, who was searched to eliminate the presence of any contraband or money. McCormack and Burns then provided the CI with \$100.00 of pre-recorded police funds. The CI placed a phone call to a black

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<sup>1</sup> 35 P.S. § 780-113(a)(30)

<sup>2</sup> 35 P.S. § 780-113(a)(30)

<sup>3</sup> 35 P.S. § 780-113(a)(16)

<sup>4</sup> 18 Pa. C.S.A. § 7512

male, whom the CI referred to as "Sam." "Sam" gave the CI the address of a residence, 513 High Street, City of Williamsport to meet up for the purchase of drugs, specifically heroin. Upon arrival at High Street, the NEU officers observed the CI enter the residence. A short time later, the officers observed the CI exit the residence with a black male in his early thirties with shoulder length dread locks. The CI then returned to the CI's vehicle and proceeded to a pre-determined location where surveillance was maintained at all times. The CI turned over ten pink waxen bags suspected of containing heroin. The CI was again searched and then verbally debriefed. In his debrief, the CI confirmed that "Sam" sold the heroin to the CI and was the same male that the officers had observed exiting the residence with the CI on that date.

The second controlled buy took place on October 23, 2017. McCormack and Burns again met with the CI at a pre-determined location. The CI was again searched and then provided with \$100.00 of pre-recorded police funds. The CI placed a phone call to "Sam" at the same cell phone number utilized during the first controlled buy. The CI told "Sam" that the CI wanted a bundle of heroin in exchange for \$100.00. The CI was again directed to the same residence on High Street. The officers maintained surveillance of the CI as they drove to the residence. The officers observed the CI enter the residence, then exit a short time later. The CI again met the officers at a pre-determined location, where the CI turned over ten white waxen bags suspected to contain heroin. The CI was again searched and debriefed. The CI stated that the CI met with "Sam" inside the residence and exchanged the \$100.00 of pre-recorded police funds with "Sam" for the ten white waxen bags of suspected

heroin. The CI stated that this was the same male that the CI bought heroin from during the first controlled buy.

The third controlled buy took place on October 25, 2017. McCormack and Burns met with the CI at a pre-determined location where the CI was searched and provided with \$200.00 of pre-recorded police funds. The CI placed a phone call to "Sam" at the same phone number utilized during both the first and second controlled buys. The CI told "Sam" that the CI wanted to purchase \$200.00 worth of heroin. "Sam" instructed the CI to return to the same residence as the CI had reported to during the first and second controlled buys. Surveillance of the CI was maintained by the officers as the CI drove to the residence. The officers observed the CI enter the residence and exit a short time later. The CI then returned to a pre-determined location where the CI turned over twenty yellow waxen bags suspected to contain heroin. The CI was again searched and debriefed again stating that the CI reported that inside the residence the CI met with "Sam" and confirmed he was the same black male that the CI had met with during the first and second controlled buys. The CI stated that the CI exchanged \$200.00 of pre-recorded police funds with "Sam" in exchange for the twenty yellow waxen bags containing suspected heroin.

The fourth controlled buy was conducted on November 7, 2017. McCormack and Burns met the CI at a pre-determined location where the CI was again searched. The officers provided the CI with \$200.00 of pre-recorded police funds. The CI then placed a phone call to "Sam" at the same phone number that was utilized during the first, second, and third controlled buys. The CI told "Sam" that the CI wanted to purchase \$200.00 worth of heroin. "Sam" directed the CI to the same residence as

the first, second, and third controlled buys. The officers maintained surveillance of the CI en route to the address. The officers observed the CI enter the residence and then exit a short time later. The CI returned to a pre-determined location and turned over twenty yellow waxen bags suspected to contain heroin. The CI was again searched and debriefed. The CI stated that inside the residence, the CI had met with “Sam” who was the same black male that the CI had bought heroin from during the first, second, and third controlled buys. Inside the residence, the CI exchanged \$200.00 of pre-recorded police funds with “Sam” in exchange for the twenty yellow waxen bags containing suspected heroin.

Prior to the fourth controlled buy, McCormack created an eight-person photo line-up containing a photo of Defendant. After the fourth controlled buy, the photo line-up was shown to the CI. The CI immediately identified Defendant, as the black male the CI knew as “Sam,” who sold the heroin to the CI during all four of the controlled buys.

As a result of the four successful controlled buys, McCormack obtained and executed a search warrant for the residence, 513 High Street, on November 9<sup>th</sup>, 2017. The charges filed in CR- 2139-2017 are the product of this search warrant. In CR-2139-2017, Defendant was charged with four counts of Persons Not to Possess a Firearm<sup>5</sup>, two counts of Possession with intent to Deliver<sup>6</sup>, and two counts of Possession of a Controlled Substance<sup>7</sup>.

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<sup>5</sup> 18 Pa. C.S.A. § 6105

<sup>6</sup> 35 P.S. § 780-113(a)(30)

<sup>7</sup> 35 P.S. § 780-113(a)(16)

Upon execution of the search warrant, police found many items of contraband within the residence. These items included: a total of 166 yellow waxen bags containing suspected heroin, 149 of which were broken down into bundles containing ten bags each, a practice common for the sale and distribution of heroin. The remaining seventeen yellow waxen bags were broken into two bundles, one containing ten bags and the other containing seven bags. The 166 yellow waxen bags were consistent with the twenty yellow waxen bags which were obtained during the fourth controlled buy. Additionally, ten yellow waxen bags were found in Defendant's front left pocket when he was taken into custody. Further, three cellphones were found within the residence; a common practice of those selling drugs is to have multiple phones. One of the phones was a black Samsung flip phone; the number of this phone was verified to be the same number that was utilized during all four controlled buys when arranging the sale of heroin.

Additionally, four firearms were located within the residence, all of which were later found to have been reported stolen, with exception of the fourth gun, whose owner was unaware the gun was missing. Upon finding the firearms in Defendant's residence, Defendant's criminal history was run to determine whether he could legally be in possession of a firearm. Since Defendant was convicted of Robbery in Philadelphia, Pennsylvania on June 19, 2014, he is a felon who cannot legally possess a firearm.

The suspected heroin which was found inside the residence and the suspected heroin found on Defendant's person were sent with the heroin from all four

controlled purchases to the Pennsylvania State Police Wyoming Regional Lab for additional testing on November 10, 2017.

On March 12, 2018, the Commonwealth filed a Motion to Consolidate both of Defendant's cases for trial pursuant to Pa. Rule of Criminal Procedure 582(A) (1). Commonwealth alleges that: (1) both cases arise from the same incident, and the reports are written by the same affiant; (2) the informations may be tried together as Defendant has participated in similar acts or transactions; (3) the dates of the incidents are close in time; (4) it would be expedient and judicially economical to try these cases together; and (5) there is no prejudice to Defendant.

Defendant opposed the Commonwealth's consolidation motion. Counsel for Defendant argues that (1) there is danger of confusion by the jury if the cases are consolidated, and (2) Defendant would suffer prejudice from consolidation from the sheer number of cases and quantity of controlled substance found in the residence as a result of the warrant.

Rule 582(A) (1) states:

Offenses charged in separate indictments or 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 of confusion; or

(b) the offenses charged are based on the same act or transaction.

Pa. R. Crim. P. 582(A)(1). Since the offenses charged are based on the same act(s) or transaction(s), the cases are subject to consolidation under Rule 582.

Additionally, the Pennsylvania Supreme Court established a three-part test for 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 previous two questions are answered affirmatively, the court must determine if Defendant would be unduly prejudiced by the consolidation of the offenses. *Commonwealth v. Collins*, 703 A.2d 418, 422 (1997).

To determine whether evidence of each offense would be admissible in a trial for the other, the court is guided by the Pa. Rule of Criminal Procedure 404(b) (2). Rule 404 permits the introduction of evidence to show motive, intent, preparation, common scheme, or plan. Pa. R. Crim. P 404(b)(2); *Commonwealth v. Dozzo*, 991 A.2d 898, 902 (Pa. Super 2010). Additionally, evidence is admissible when it proves a common scheme involved crimes so related that proof of one tends to prove the other. *Commonwealth v. Judd*, 897 A.2d 1224, 1231-32 (Pa. Super 2006). In establishing similarities, factors for consideration include: (1) time elapsed between the crimes, (2) geographical proximity of the scenes of the crimes, and (3) the manner in which the crimes were committed. *Id.* at 1232. Further, evidence of other crimes may be introduced to establish the identity of Defendant charged. *Commonwealth v. Armstrong*, 74 A.3d 228, 233 (Pa. Super 2013).

In these cases, the offenses are so similar that they tend to show a common scheme; they are similar in perpetration and took place in both close temporal and geographic proximity. *Commonwealth v. Newman*, 598 A.2d 275, 278 (1991).

Geographically, all of the crimes occurred in the same location. Defendant conducted the four sales of the waxen bags suspected to contain heroin to the CI at the same location which the 166 waxen bags suspected to contain heroin, the ten waxen bags on defendant's person, and the four stolen firearms were found.

The incidents had temporal proximity; all four controlled buys were executed within a twenty-day span, and the search warrant was executed within two days of the last controlled buy. This span is within the adequate "remoteness standards" for consolidation by far. *Commonwealth v. Robinson*, 864 A.2d 460, 482 (2004).

Further, the cases tend to establish the identity of the perpetrator. The CI identified Defendant as the individual who sold the CI the waxen bags suspected to contain heroin. The CI confirmed Defendant as this individual to the police officers when they observed Defendant exit the residence with the CI at the first controlled buy, and in the photo line-up conducted after the fourth controlled buy.

Additionally, no danger of confusion by the jury should exist if these cases are consolidated. The evidence in both cases was established by the same detective and there were a limited number of actors, including the CI. The cases involve distinguishable events; the controlled buys in which essentially identical conduct was exhibited by Defendant, and the execution of a search warrant. There should be no danger of a jury being unable to distinguish these instances. *Commonwealth v. Boyle*, 733 A.2d 633, 637 (Pa. Super. 1999).

In weighing "the possibility of prejudice and injustice caused by the consolidation against the consideration of judicial economy," *Commonwealth v. Janda*, 14 A.3d 147 (Pa. Super. 2011), the prospect of prejudice in this case does



not outweigh the judicial economy of consolidation. The prejudice would exist “if the evidence tended to convict [the defendant] only by showing a propensity to commit crime, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence.” *Boyle*, 733 A.2d at 637. The evidence against Defendant, in which the similarities of the crimes show a common scheme and the identity of the correct perpetrator, likely, would serve as justification for a verdict found by the jury, not merely an accumulation of the offenses. Therefore, judicial economy is best served by the consolidation of the two cases into one, in light of the common scheme shown by the evidence and the shared witnesses of the crimes in both cases.

However, Counts 1, 2, 3, and 4 of CR-2139-2017 shall be severed for trial. The parties agree to the severance. Defendant was previously convicted of robbery, which makes him ineligible to own a firearm. Clearly the fact that Defendant committed the former violent crime is of no evidentiary value to the proof of any of the other crimes with which he is so charged; its only relevance is to satisfy the requirements of “Former convict not to own a firearm”. *Commonwealth v. Carroll*, 275 Pa. Super. 241, 245, 418 A.2d 702, 704 (1980). Therefore it is not admissible in the trial of the purchase of heroin from the Defendant.

**ORDER**

**AND NOW**, this            day of April, 2018 after hearing and argument on the Commonwealth's Motion to Consolidate, the same is hereby GRANTED.

It is ORDERED AND DIRECTED that information numbers 1972-2017 and 2139-2017 are hereby consolidated for trial, with the exception that Counts 1, 2, 3 and 4, Persons Not to Possess a Firearm from information 2139-2017 shall be severed for trial from the remaining counts.

By The Court,

Nancy L. Butts, President Judge

Cc: Nicole Ippolito, Esq. Assistant District Attorney  
Matt Welickovitch, Esq. Defense Counsel