

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

<b>COMMONWEALTH OF PA</b>	:	<b>No's. CR-1928-2017; CR-1976-2017</b>
<b>v.</b>	:	<b>CR-2038-2017</b>
	:	
<b>TYRONE SIMS,</b>	:	<b>Motion to Consolidate</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is the Commonwealth's Motion to Consolidate for trial all of the defendant's cases. Separate Informations may be joined and 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. 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. Crim. P. 583.

Under Information 1928-2017, the defendant is charged with delivery of controlled substances and related offenses involving alleged sales of heroin to a confidential informant (hereinafter CI) on October 24, 2017 and October 25, 2017. Under Information 1976-2017, the defendant faces possession with intent to deliver and related charges involving the attempted delivery of heroin to a third party on October 28, 2017. Finally, under Information 2038-2017, the defendant is charged with delivery of a controlled substance and related charges involving the alleged sale of heroin to a CI on October 24, 2017.

Initially, the court denied the Commonwealth's motion to consolidate because the cases were set for Call of the List in March. The cases were not called, however, and the court re-visited the Commonwealth's motion at a hearing and argument on April 9, 2018. The

parties stipulated that the court could consider the affidavits of probable cause in considering the Commonwealth's motion.

Under 1928-2017, the first alleged transaction involved a CI who called the defendant at telephone number: 215-435-9670. The defendant allegedly agreed to sell to the CI 30 bags of heroin for \$220.00. The parties first agreed to meet at Memorial and Seventh Street, changed the meeting place to Memorial and Cemetery Street and on Park Avenue, the defendant stepped into the CI's vehicle. They drove around for a bit, the delivery happened, and the defendant then left. The defendant indicated the bags were "pure heat" and the bags contained a red checkmark on them. This incident occurred at approximately 11:15 a.m.

The next incident under Information 1928-2017 allegedly occurred on October 25, 2017. The CI called the same number as previously called. The agreement was for 45 bags for \$300.00 although the CI wanted to buy a brick or 50 bags for \$350.00. The CI met the defendant at the YMCA parking lot at High and Walnut Street. The defendant got into the CI's vehicle, they drove around, the delivery was made, and the defendant was dropped off.

Under Information 1976-2017, on October 28, 2017, at High and Sixth Street, law enforcement officers suspected drug activity in a vehicle in which the defendant was present. They stopped the vehicle and learned from the driver that he attempted to purchase 10 bags of heroin from the defendant for \$70. This transaction was arranged via a telephone call. The defendant was searched and found to have 119 bags of heroin on him all stamped with a red checkmark. Among other things, the defendant was found to have at least four cellphones on him with one of the phone numbers being 267-521-9818.

Under Information 2038-2017, the defendant was called by a CI at 267-521-9818 for the purpose of purchasing \$100.00 worth of heroin. The defendant got into the CI's

vehicle at West Fourth Street and Grier Street, they drove around to Rose Street and West Third Street, and the transaction was made. The defendant allegedly sold to the CI 11 bags of heroin for \$100.00. The heroin was marked with the red checkmark.

The Supreme Court has established a three-part test under the Rules of Criminal Procedure in addressing consolidation and severance motions. First, the court must determine whether the evidence of each of the offenses 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 danger of confusion. Third, if the answers to the previous two questions are in the affirmative, the court must determine if the defendant will be unduly prejudiced by the consolidation of the offenses. Pa. R. Crim. P. 582; Pa. R. Crim. P. 583; *Commonwealth v. Collins*, 550 Pa. 46, 703 A.2d 418, 422 (1997), *cert. denied*, 525 U.S. 1015, 119 S. Ct. 538 (1998). *Commonwealth v. Newman*, 528 Pa. 393, 598 A.2d 275, 277-279 (1991).

In deciding whether the evidence of each offense would be admissible in a separate trial for the other, the court is guided by the Pennsylvania Rules of Evidence. “Other crimes” evidence is admissible to show motive, intent, absence of mistake or accident, common scheme or plan, or identity. Pa. R. Evid. 404 (b) (2); *Commonwealth v. Dozzo*, 991 A.2d 898, 902 (Pa. Super. 2010).

In this particular case, the Commonwealth argues that the dates of the incident are “close in time” and that it would be expedient and judicially economical to try these cases together.” At the oral argument in this matter, however, the Commonwealth further asserted that the evidence of the crimes were admissible to prove a common plan, scheme or design and to prove the identity of the defendant as the perpetrator of the crime.

In determining whether evidence of one crime is admissible to prove a common

plan, scheme or design, the court must be satisfied that the crimes are so related to each other that proof of one tends to prove the other. *Commonwealth v. Judd*, 897 A.2d 1224, 1231-32 (Pa. Super. 2006). The following factors should be considered in establishing similarities: the elapsed time between the crimes; the geographical proximity of the crime scenes; and the manner in which the crimes were committed. *Id.* at 1232 (citing *Commonwealth v. Clayton*, 506 Pa. 24, 33, 43 A.2d 1343, 1345-1350 (1984)).

The court finds that the details of the defendant's involvement in each transaction tends to prove that he was actively involved in each related transaction. The drug deliveries were clearly related and revealed a common plan through which defendant would through telephone calls from a third party arrange a meeting place to sell a specified type and amount of drugs and then conduct the transaction in the third party's vehicle. After the transaction took place, the defendant would be dropped off and would then walk away. Further, the details of each transaction tend to establish the defendant's identity as the perpetrator. All of the transactions took place in Center City Williamsport within, at the most, a mile of each other. The transactions took place utilizing similar telephone numbers. The transactions took place involving heroin with an identifying red checkmark on each bag and the heroin being sold an approximately range of \$7.00 to \$9.00 per bag. See for example *Commonwealth v. Boyle*, 733 A.2d 633 (Pa. Super 1999); *Commonwealth v. Janda*, 14 A.3d 147 (Pa. Super. 2011).

Accordingly, the court finds that the first prong of *Collins* is met as the evidence of one drug delivery would have been admissible in a separate trial for the other.

With respect to the second prong, the court finds that the evidence would be capable of separation by the jury and that there would not be any danger of confusion. The

facts are relatively simple and straightforward. The incidents took place with CIs in different areas of the city. It is expected that the affiant and other involved officers can clearly set forth the alleged details of each transaction. The testimony will certainly present to the jury facts which are not complex. The court sees no risk of confusing the jury.

The defendant argues that, if anything, the charges under Information 1976-2017 should be separated from the other charges predominantly because of prejudice. As noted above, the third prong of *Collins* requires the court to determine if the consolidation of the offenses will unduly prejudice the defendant. *Collins*, 703 A.2d at 422. “Prejudice...is not simply prejudice in a sense [the defendant] will be linked to the crimes for which he is being prosecuted. The prejudice...is rather that which would occur if the evidence tended to convict [the defendant] only by showing his propensity to commit crimes, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence. *Boyle*, 733 A.2d at 638.

While the court does see some danger of cumulating the evidence, the court finds on balance that the danger is not outweighed by the other factors in support of consolidation and further that the danger of cumulation can be addressed through appropriate instructions. The jury will be instructed to consider each charge separately and not to use any other crimes evidence as proof of defendant’s bad character or propensity.

**ORDER**

AND NOW, this \_\_\_\_ day of May 2018 following a hearing and argument, the Court **GRANTS** the Commonwealth’s Motion to Consolidate. The Informations under 1928-2017, 1976-2017, and 2038-2017 shall be consolidated for trial purposes.

By the Court,

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Judge Marc F. Lovecchio

cc: CA  
Nicole Ippolito, ADA  
Kirsten Gardner, APD  
Gary Weber, Esquire (Lycoming Reporter)  
Work file