

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CR-1955-2018</b>
	:	<b>CR-1956-2018</b>
<b>v.</b>	:	
	:	
<b>KALIEF BRADSHAW,</b>	:	<b>MOTION TO CONSOLIDATE</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

Kalief Bradshaw (Defendant) was charged on December 11, 2018 with Delivery of a Controlled Substance, Criminal Use of a Communication Facility, and related charges under CR 1956-2018. On December 19, 2018, Defendant was charged with Delivery of a Controlled Substance, Criminal Use of a Communication Facility, and related charges under CR 1955-2018. The charges arise from two controlled buys that occurred in the area of the Trail Inn in Lycoming County, Pennsylvania. The Commonwealth filed this Motion to Consolidate the two above cases on July 13, 2020. A hearing on the motion was held by this Court on July 27, 2020.

**Background**

No testimony was provided at the time of the hearing, the Commonwealth relies solely on argument and the similarities of the allegations in the two affidavits of probable cause. Under CR 1956-2018, the allegations took place on November 9, 2018. On that date the affiant, Detective Tyson Havens (Havens), had a CI call a 267 number to purchase \$100 worth of heroin. A three-way call was then initiated by the recipient of the call and CI was instructed to go to the rear of the Trail Inn. Havens and CI went to that location at which time Defendant was walked past the vehicle. Defendant then drove past them in a van and called CI to have them follow him. After driving for some distance, Defendant pulled over and as did Havens and CI. CI then approached the driver's side of the vehicle, where a hand to hand transaction

occurred. CI returned to the vehicle and handed over thirteen blue glassine baggies of suspected heroin.

Under CR 1955-2018, the allegations occurred on December 11, 2018. On that date the affiant, Detective Curtis Loudenslager (Loudenslager), met with a different CI to set up a buy for cocaine. CI called the same 267 number as used on the November 9, 2018 controlled buy with Havens. When calling the number a three-way call was initiated by an individual that CI knew as Reese. CI was directed to travel to the Trail Inn and park behind the restaurant. Loudenslager and the CI traveled to the location and parked. Defendant then entered the parking lot and motioned for the CI to approach. CI got out of the vehicle and conducted a hand to hand exchange with Defendant. CI then returned to the vehicle and gave Loudenslager the suspected cocaine.

### **Discussion**

Charges may be consolidated and tried together, under the Pennsylvania Rules of Criminal Procedure 582, when “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 . . . the offenses charged are based on the same act or transaction.” Pa. R. Crim. P. 582(A)(1). Additionally a defendant may oppose consolidation “if it appears that any party may be prejudiced by offenses . . . being tried together.” Pa. R. Crim. P. 583; *see also* Pa. R. Crim. P. 582 cmt. (“A party may oppose such a motion either on the ground that the standards in paragraph (A) are not met, or pursuant to Rule 583.”). Evidence of one offense is admissible at trial for another offense when the evidence is “admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of

the evidence outweighs its potential for unfair prejudice.” Pa. R. Evid. 404(b)(2). “The general policy of the laws is to encourage joinder of offenses and consolidation of indictments when judicial economy can thereby be effected, especially when the result will be to avoid the expensive and time consuming duplication of evidence.” *Commonwealth v. Patterson*, 546 A.2d 596, 600 (Pa. 1988).

The Commonwealth relies on two cases to bolster its position, *Commonwealth v. Weakley* and *Commonwealth v. Janda*. In *Weakley*, the Pennsylvania Superior Court overturned the lower court’s finding that the crime the Commonwealth was attempting to consolidate was “so distinctive in method and so similar to the charged crime that proof appellees committed one tends to prove they committed the other.” *Commonwealth v. Weakley*, 972 A.2d 1182, 1188 (Pa. Super. 2009). Both crimes were committed by the same individuals, in the same manner, with the same materials, and the victims were of similar financial and economic stature. *Id.* at 1187-88. In *Janda*, the Pennsylvania Superior Court agreed with the consolidation of the nine burglaries when they occurred within five to six miles of each other, the jury would not be confused by the short testimony for each burglary, and judicial economy was best effectuated by trying all the charges at once. *Commonwealth v. Janda*, 14 A.3d 147, 155-57 (Pa. Super. 2011).

This Court denies the Commonwealth’s Motion to Consolidate for a number of reasons. First, procedurally a motion of this nature may be raised by “any party, [who] may move to consolidate for trial separate indictments or informations, which motion must ordinarily be included in the omnibus pretrial motion.” Pa. R. Crim. P. 582(B)(2). Any such “omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the

Commonwealth, was not aware of the grounds for the motion.” Defendant’s case has been on the trial list since early 2019 and the allegations of both criminal informations have not changed since the affidavits of probable cause. Therefore, the Commonwealth’s filing of such a joinder motion this far along, prejudices Defendant who has been in a position to defend his cases separately over the past year.

Secondly, the issue of judicial economy is not as prevalent as it exists in *Janda*. In *Janda*, the majority of the burglaries were raised in a singular indictment and one of the other burglaries was raised in a separate indictment. *Janda*, 14 A.3d at 155. Therefore, it made sense that judicial economy would be effectuated by trying the one stand-alone burglary with the indictment that included the defendant’s other eight burglaries. Here, that same judicial economy argument does not exist. Defendant has been charged with two sales of narcotics. Each indictment is for one of those sales. Additionally, judicial economy would not at all be effected as the sales included two different affiants and two different CIs, which would presumably be the Commonwealth’s witnesses at each trial. This leaves no overlap of witnesses between the two cases.

Lastly, the cases are not part of the same series or transaction and they do not satisfy Pennsylvania Rules of Evidence 404(b)(2), which would allow evidence from each case to be presented at trial for the other. In *Weakley*, the similarities were so prevalent that the court determined that a jury finding the commission of one crime had to so find the commission of another. *Weakley*, 972 A.2d at 1188. In CR 1956-2018, Havens is the affiant. For CR 1955-2018, Loudenslager is the affiant. Both cases used separate CIs and one controlled buy was for heroin while the other was for cocaine. Although the same number was called, both CIs were told to meet at the same location, and Defendant allegedly committed both sales, both buys

occurred in a different manner and were committed at a different location. Additionally, the potential for prejudice is too high to allow the introduction of one controlled purchase at the trial of the other. A jury that finds Defendant guilty of one of the controlled buys would be tempted to find that because Defendant sells one drug he likely sells another. This propensity to sell drugs is exactly the potential bias that Rule 404 was designed to curb. *See* Pa. R. Evid. 404(b)(1) (“Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.”).

### **Conclusion**

The Commonwealth’s Motion to Consolidate the cases is untimely, would not advance judicial economy, and evidence from either case would not be permitted at the trial for the other under the rules of evidence. Therefore, the Commonwealth’s Motion is denied.

### **ORDER**

**AND NOW**, this 5<sup>th</sup> day of August, 2020, based upon the foregoing Opinion, the Commonwealth’s Motion to Consolidate is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)  
Peter Campana, Esquire

NLB/kp