

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

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR-1236-2019
V.	:	
WILIAM LINCOLN	:	Motion to Consolidate
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COMMONWEALTH OF PENNSYLVANIA	:	NO. CR-1786-2019
V.	:	
WILLIAM LINCOLN	:	Motion to Consolidate
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COMMONWEALTH OF PENNSYLVANIA	:	NO. CR-1792-2019
V.	:	
WILLIAM LINCOLN	:	Motion to Consolidate

**OPINION AND ORDER**

Before the Court is a motion filed by the Commonwealth to consolidate the above-captioned cases for trial purposes.

Under 1236-2019, the defendant is charged with four counts of possession with intent to deliver controlled substances including heroin, cocaine, crack cocaine and methamphetamine. He is also charged with possession of a firearm with an altered manufacturing number and persons not to possess. These two firearm counts were severed for trial purposes upon stipulation of the parties. The defendant is also charged with possession of controlled substances including cocaine, crack cocaine, methamphetamine, buprenorphine and heroin. Finally, he is charged with possession of drug paraphernalia.

These charges arise out of a search warrant that was executed at the defendant's residence on July 25, 2019. The residence is listed as 1210 Packer Street, 2<sup>nd</sup> Floor, Williamsport, Lycoming County, Pennsylvania, 17701.

Prior to the search warrant being executed, the defendant was taken into custody. At the time he was taken in to custody, he was in a white Cadillac vehicle and in his possession was a set of keys that the police found in the ignition. One of keys on the set was for a door to his residence and another was for a safe located in the defendant's bedroom in the residence. As well, the defendant had in the vehicle a cell phone with the number: 267-355-9836, a false Pepsi can utilized for concealing drugs and a Pennsylvania photo identification card for the defendant showing that he was William Tyree Lincoln.

During the search of the defendant's residence, the police found the following controlled substances: 87 glassine bags of heroin, 74 of which were stamped "Demolition Man" with a red skull and 13 of which were stamped "New Arrival;" a bag of suspected cocaine weighing approximately 4 grams; 48 baggies of suspected crack cocaine packaged for sale; 3 bags of suspected methamphetamine weighing approximately 10 grams; and 13 orange pills of suspected buprenorphine. Inside a safe, the police found a pistol and magazine, a PA ID card for the defendant, and \$5486 in currency, which was preliminarily searched and included at least one bill from the third controlled buy of heroin in case 1792-2019.

Under 1786-2019, the defendant is charged with possession with intent to deliver, delivery of cocaine, possession of cocaine and criminal use of a communications facility. These charges arose out of an incident that allegedly occurred on March 29, 2019.

Utilizing a “reliable” confidential informant (CI), members of the Lycoming County Narcotics Enforcement Unit met with the CI on March 29, 2019. The CI was provided \$100.00 of pre-recorded police funds. The CI spoke with an individual known to him as “JAG” and from whom the CI could buy cocaine. The target directed the CI to meet him at Brandon Park in Williamsport.

The CI and Detective Loudenslager drove to a point on Hepburn Street near the park. The CI exited the vehicle and was observed meeting with a black male wearing a green coat and Philadelphia 76ers beanie hat. The CI then returned to the vehicle and surrendered 1.21 grams of suspected cocaine that he indicated he just purchased from the target. The telephone number utilized for the transaction was 267-355-9836.

Detective Loudenslager later was involved in another controlled purchase involving “JAG” and recognized him as the target in this case. When “JAG” was taken into custody, Detective Loudenslager also viewed “JAG’s” Pennsylvania identification card and learned that JAG’s name was William Lincoln.

Under 1792-2019, the defendant is charged with four counts of possession with intent to deliver, four counts of delivery, four counts of criminal use of a communications facility, four counts of possession of a controlled substance and four counts of possession of drug paraphernalia. These charges arose out of four controlled buys of heroin by a different CI from the defendant from July 16, 2019 through July 24, 2019. The CI indicated that the suspect was known as “J” or “JAG”, had a phone number of 267-355-9836, drove a white Cadillac, wore a Philadelphia 76ers cap and was known to live at 1201 Packer Street in Williamsport. All four transactions occurred in similar manners utilizing a CI, calls and/or texts to the defendant’s

alleged telephone number, meeting at or near Brandon Park and conducting the transaction for the sale of heroin. The heroin packets were stamped “Demolition Man” and “New Arrival.”

The Commonwealth filed a motion to consolidate all three cases for trial. The Commonwealth asserted that the evidence of each of the offenses would be admissible in a separate trial for the other to show identity, intent, common plan or scheme, and *res gestae* or the history or development of the case. The Commonwealth also argued that the evidence was capable of separation by the jury so that there would be no danger of confusion.

The defendant argued that joinder would not be appropriate because the evidence of each offense would not be admissible in a separate trial for the other(s) and that the offenses involved different acts or transactions.

## **DISCUSSION**

“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).

“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. Johnson*, 2020 PA Super 164, 2020 WL 3869723, \*6 (July 9, 2020), citing *Commonwealth v. Patterson*, 546 A.2d 596, 600 (Pa. 1988). “Whether to join or sever offenses

for trial is within the trial court's discretion and will not be reversed on appeal absent a manifest abuse thereof, or prejudice and clear injustice to the defendant." *Johnson, id.* citing *Commonwealth v. Wholaver*, 989 A.2d 883, 898 (Pa. 2010).

This court has no hesitation in concluding that the charges under docket numbers 1792-2019 and 1236-2019 are based on the same act or transaction. The defendant was allegedly actively engaged in the sale of controlled substances and using his residence as his home base to store and package those controlled substances. The police conducted surveillance of the defendant's residence prior to, during and after the alleged four controlled buys of heroin in case 1792-2019. The police allegedly observed the defendant leaving his residence at 1201 Packer Street immediately prior to and returning to that residence immediately after three of the sales. The police then obtained a search warrant for the defendant's residence, which resulted in the discovery of a firearm, additional controlled substances and a large amount of currency and, in turn, led to charges in case 1236-2019. Moreover, the evidence of each alleged crime would be admissible at trial under Pa. R. E. 404(b)(1). The Commonwealth would not be using the evidence to show propensity to commit a crime. The evidence would be admissible to prove identity, intent, common scheme or plan, the history of the event and part of the natural development of the facts. See *Johnson, id.*; *Commonwealth v. Collins*, 703 A.2d 418, 422-23 (Pa. 1997). Furthermore, while there is clearly overlapping evidence, each charge is sufficiently distinct in time, location and action such that the jury could evaluate the charges without confusion.

"If the trial court finds that the evidence is admissible and the jury can separate the charges, the court must also consider whether consolidation would unduly prejudice the defendant." *Commonwealth v. Lively*, 2020 PA Super 100, 2020 WL 1915340 at \*2 (April 20,

2020), quoting *Commonwealth v. Knoble*, 188 A.3d 1199, 1205 (Pa. Super. 2018)(citing *Commonwealth v. Thomas*, 879 A.2d 246, 260 (Pa. Super. 2005)).

Defendant claims that he would be prejudiced because of the sheer number of cases and the fact that the jury would presume guilt because of the number. Furthermore, the defendant claims prejudice because of the varied substances involved.

The court disagrees. The trial court is not required to sanitize the trial to eliminate all unpleasant facts from the jury's consideration where those facts are relevant to the issues at hand and form a part of the history and natural development of the events and offenses for which the defendant is charged. *Commonwealth v. Lark*, 543 A.2d 491, 501 (Pa. 1988). Furthermore, prior acts are not prejudicial when they are necessary for the prosecution of the case. *Commonwealth v. O'Brien*, 836 A.2d 966, 972 (Pa. Super. 2003).

As for case number 1786-2019, the resolution of the issue is a little more difficult. The incident allegedly occurred months before the other incident. While it involved a confidential informant, it was a different confidential informant. Furthermore, it involved a different substance. Nevertheless, the court finds that the evidence of cases 1792-2019 and 1236-2019 would be admissible to show identity and intent.

Clearly, the identity of "JAG" is at issue in case 1786-2019. The CI in this case spoke to "JAG" by telephone. "JAG" directed the CI to meet him at Brandon Park. Surveillance units observed the CI meet with "JAG", a black male who was wearing a green coat and a Philadelphia 76ers beanie hat. In exchange for \$100 in pre-recorded police funds, "JAG" sold the CI approximately 1.21 grams of cocaine. The CI returned to Detective Loudenslager's vehicle and surrendered the cocaine.

Although a different CI was utilized in case 1792-2019 and the CI made purchases of heroin instead of cocaine, this second CI also knew the seller as “JAG.” The CI indicated that he typically would meet “JAG” at Brandon Park. The CI described “JAG” as a skinny black male in his 30s with dark skin and of an average height who lives somewhere north of Brandon Park, drives an older white four-door Cadillac and wears a Philadelphia 76ers cap in the wintertime. The CI knew “JAG” to sell heroin, cocaine, crack cocaine and methamphetamine. Detective Loudenslager assisted the Pennsylvania State Police with two of the controlled buys of heroin from “JAG.” He recognized “JAG” as the same individual who sold cocaine to the first CI and the same phone number was used to arrange the controlled buys.

“JAG’s” identity was determined to be the defendant, William Lincoln, when he was taken into custody in case 1236-2019 and the police found the defendant’s Pennsylvania ID.<sup>1</sup>

To summarize, evidence from 1236-2019 and 1792-2019 would be admissible in case 1786-2019 to show the defendant’s identity as “JAG”. Similarly, evidence from 1236-2019 and 1786-2019 would be admissible in case 1792-2019 to show the defendant’s identity as “JAG.” Evidence from 1792-2019 and 1786-2019 would be admissible in 1236-2019 to show that the defendant intended to deliver the controlled substances found in his residence which were packaged and/or stamped similarly, if not identically, to the substances that the defendant delivered to the CIs. In light of the amount of overlapping evidence in these cases, consolidation clearly promotes judicial economy. Furthermore, the defendant would not be unduly

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<sup>1</sup> Unless there were two PA ID cards, it is unclear to the court where the police found the PA ID card. The second paragraph of the affidavit of probable cause in case 1236-2019 indicates that a PA ID for William Tyree Lincoln was seized from the Cadillac, but the fourth paragraph indicates that a PA ID card for the defendant was found in the safe inside the defendant’s residence at 1201 Packer Street.

prejudiced by the joinder because the different dates, different substances and different CIs make it unlikely that the jury will confuse the cases or improperly consider the evidence.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of July, 2020 following a hearing and argument, the court grants the Commonwealth's Motion to Consolidate. Case numbers 1786-2019, 1792-2019 and 1236-2019 are consolidated for trial purposes.

BY THE COURT:

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Marc F. Lovecchio, Judge

cc: CA  
Devin Walker, Esquire, ADA  
Jessica Feese, Esquire, APD  
Gary Weber, Esquire (Lycoming Reporter)  
Work file