

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	: CR-197-2023
	: CR-228-2023
	: CR-231-2023
	:
vs.	: CRIMINAL DIVISION
	:
MARK T. ROBIONSON	:
Defendant.	: Omnibus Pretrial Motion

OPINION AND ORDER

This matter came before the Court for an evidentiary hearing on August 29, 2025, on the motion of Mark T. Robinson (hereinafter “Defendant”) to dismiss the two (2) remaining informations filed to Lycoming County dockets 197-2023 and 228-2023, pursuant to 18 Pa.C.S.A. Section 110. The Defendant attended the hearing, with counsel. Both the attorney for the Commonwealth and the attorney for the Defendant introduced exhibits. The attorney for the Commonwealth reviewed the factual background of the charges and the procedural history on the record, in which counsel for the Defendant concurred. Counsel for the Defendant conceded that, for purposes of this motion, the Court should assume that the facts alleged in the affidavits filed in support of the various complaints are accurate. These matters have a long and somewhat convoluted history, which the Court will review.

BACKGROUND:

On February 1, 2023, Defendant delivered a quantity of methamphetamine to an undercover detective employed by the Lycoming County District Attorney’s Office Narcotics Enforcement Unit (hereinafter the “NEU”). That delivery was charged on a criminal complaint filed on February 8, 2023 (Defendant Exhibit 1A), eventually resulting in the filing of an information to Lycoming County docket 231-2023 (Defendant Exhibit 1). Defendant Exhibit 1B is a copy of Lycoming County docket 231-2023.

On February 2, 2023, officers of the NEU served a search warrant at 836 High Street, Apartment 1, in the City of Williamsport. Officers located a woman’s purse, containing methamphetamine, packing materials, and a digital scale. One Ada Wells and her minor son advised the officers that the contents of the purse belonged to Defendant, who had left the

apartment to go to work. The search also revealed the presence of other digital scales, packaging material, and marijuana. A complaint was filed against the Defendant on February 2, 2023, alleging possession of the methamphetamine and marijuana (Defendant Exhibit 2A). Those charges resulted in the filing of an information to Lycoming County docket 197-2023 (Defendant Exhibit 2). Defendant Exhibit 2B is a copy of Lycoming County docket 197-2023.

After the search conducted at 836 High Street, officers of the NEU obtained a warrant for the arrest of the Defendant. He resisted that arrest, resulting in the filing of a complaint on February 16, 2023, for the charge of resisting arrest (Defendant Exhibit 3A). That complaint resulted in the filing of an information to Lycoming County docket 228-2023 (Defendant Exhibit 3). Defendant Exhibit 3B is a copy of Lycoming County docket 228-2023.

On March 3, 2023, the Commonwealth filed a Notice of Joinder of the informations filed to 228-2023 (the charge of resisting arrest on February 2, 2023) with 231-2023 (the charge of sale of methamphetamine on February 1, 2023).

On December 18, 2023, the Commonwealth filed a motion seeking to consolidate the three (3) criminal informations for trial, under Pa.R.Crim.P. 582. As noted above, the information filed to 228-2023 (the charge of resisting arrest on February 2, 2023) was consolidated with the information filed to 231-2023 (the charge of sale of methamphetamine on February 1, 2023) by the Commonwealth's Notice filed on March 3, 2023. The purpose of the Commonwealth's Motion to Consolidate was to consolidate those two (2) informations with the information filed to docket 197-2023 (possession with intent to deliver methamphetamine and marijuana on February 2, 2023). That Motion came before the Court for argument on January 29, 2024. At the time of argument, the Commonwealth argued that the matters were "one continuous transaction", and should be consolidated. The Defendant argued that the three (3) matters were distinct, and thus that the Commonwealth's Motion should be denied. Based upon Defendant's objection, the Commonwealth's Motion to Consolidate was denied by Order dated January 29, 2024, filed February 5, 2024. The Commonwealth appealed. Our Superior Court affirmed that Order by Opinion filed on October 28, 2024, to 282 MDA 2024, 283 MDA 2024, and 284 MDA 2024. This Court has carefully reviewed the Superior Court Opinion filed on October 28, 2024. It does not appear that the Superior Court reached any conclusion on the

merits of whether a failure to join the matters would implicate 18 Pa.C.S.A. Section 110, but only that the trial Court properly concluded that the Commonwealth's Motion to Consolidate was untimely, that the Commonwealth did not have a basis for its untimely filing, and that the Commonwealth failed to raise 18 Pa.C.S.A. Section 110 at the hearing on its Motion to Consolidate.

The two (2) questions which appear to be unaddressed by the Superior Court is whether consolidation is required by 18 Pa.C.S.A. Section 110, and, if so, whether the consolidation requirement of 18 Pa.C.S.A. Section 110 has been waived by Defendant by objecting to consolidation.

On November 14, 2024, Defendant filed a Motion to Sever 228-2023 from 231-2023. That Motion alleges that the alleged drug sale on February 1, 2023 and the alleged resisting arrest on February 2, 2023, are "two separate incidents that occurred on different dates with different alleged facts" (Paragraph 5). The Defendant further argued "that each case should be separated for trial purposes" (Paragraph 7) and that, if consolidated, "the cumulative weight of the allegations against him would result in a conviction if tried as one case." As a result of Defendant's Motion to Sever, the matters were severed. This Court notes that the argument advanced by the Defendant at the hearing on the Commonwealth's Motion to Consolidate conducted on January 29, 2024, is consistent with the argument advanced in the Defendant's Motion to Sever filed November 14, 2024; that the three (3) incidents alleged in the three informations are separate and distinct transactions.

The Defendant entered a guilty plea to docket 231-2023 (delivery of methamphetamine) on August 4, 2025. Sentencing is scheduled for October 28, 2025.

On August 27, 2025, Defendant filed a Motion to Dismiss the two (2) remaining informations filed to Lycoming County dockets 197-2023 and 228-2023, which Motion was the subject of the evidentiary hearing conducted on August 29, 2025.

ISSUES PRESENTED:

1. WHETHER THE COMMONWEALTH'S OBLIGATION TO CONSOLIDATE THE THREE (3) INFORMATIONS PURSUANT TO 18 PA.C.S.A. SECTION 110, WAS WAIVED BY THE DEFENDANT, EITHER BY FAILING TO SEEK CONSOLIDATION, OR BY RESISTING THE COMMONWEALTH'S MOTION TO CONSOLIDATE.
2. WHETHER THE COMMONWEALTH'S OBLIGATION TO CONSOLIDATE THE TWO (2) INFORMATIONS FILED TO DOCKET 2023-228 AND 2023-231 PURSUANT TO 18 PA.C.S.A. SECTION 110, WAS WAIVED BY THE DEFENDANT'S MOTION TO SEVER, FILED NOVEMBER 14, 2024.
3. WHETHER THE CHARGES ALLEGED BY THE COMMONWEALTH IN THE THREE (3) INFORMATIONS ARISE OUT OF A SINGLE CRIMINAL EPISODE, REQUIRING CONSOLIDATION PURSUANT TO 18 PA.C.S.A. SECTION 110.

RESPONSES TO ISSUES PRESENTED:

1. THE COMMONWEALTH'S OBLIGATION TO CONSOLIDATE THE THREE (3) INFORMATIONS PURSUANT TO 18 PA.C.S.A. SECTION 110, WAS WAIVED BY THE DEFENDANT, EITHER BY FAILING TO SEEK CONSOLIDATION, OR BY RESISTING THE COMMONWEALTH'S MOTION TO CONSOLIDATE.
2. IN THE ALTERNATIVE, THE COMMONWEALTH'S OBLIGATION TO CONSOLIDATE THE TWO (2) INFORMATIONS FILED TO DOCKET 2023-228 AND 2023-231 PURSUANT TO 18 PA.C.S.A. SECTION 110, WAS WAIVED BY THE DEFENDANT'S MOTION TO SEVER, FILED NOVEMBER 14, 2024.
3. IN THE ALTERNATIVE, THE CHARGES ALLEGED BY THE COMMONWEALTH IN THE THREE (3) INFORMATIONS DID NOT ARISE OUT OF A SINGLE CRIMINAL EPISODE.

DISCUSSION:

The Statute in Question:

18 Pa.C.S.A. 110 provides as follows:

Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as defined in section 109 of this title (relating to when prosecution barred by former prosecution for the same offense) and the subsequent prosecution is for:

(i) any offense of which the defendant could have been convicted on the first prosecution;

(ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered a separate trial of the charge of such offense or the offense of which the defendant was formerly convicted or acquitted was a summary offense or a summary traffic offense; or

(iii) the same conduct, unless:

(A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or

(B) the second offense was not consummated when the former trial began.

(2) The former prosecution was terminated, after the indictment was found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(3) The former prosecution was improperly terminated, as improper termination is defined in section 109 of this title (relating to when prosecution barred by former prosecution for the same offense) and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

Controlling authority:

In the matter of *Commonwealth v. Hude*, 500 Pa. 482, 458 A.2d 177 (Pa. 1983), our Supreme Court instructed us to consider the “temporal” and “logical” relationship between the charges to determine whether they arose from a “single criminal episode.” More recently, the Court cautioned us to “be aware that a mere de minimus duplication of factual and legal issues

is insufficient to establish a logical relationship between offenses. Rather, what is required is a substantial duplication of issues of law and fact.” *Commonwealth v. Bracalielly*, 540 Pa. 460, 472, 658 A.2d 755, 761 (Pa. 1995). In the matter of *Commonwealth v. Anthony* 553 Pa. 55, 717 A.2d 1015 (Pa. 1998), our Supreme Court observed that the consideration of whether acts constitute a single criminal episode must include not only the sequence of events, but also the policy considerations which underlie 18 Pa.C.S.A 110. The Court explained that:

As this court stated in *Hude*, “in defining what acts constitute a single criminal episode, not only is the temporal sequence of events important, but also the logical relationship between the acts must be considered.” 500 Pa. at 491, 458 A.2d at 181. In our consideration of the temporal and logical relationship between the criminal acts, we are guided by the policy considerations that § 110 was designed to serve:

(1) to protect a person accused of crimes from governmental harassment of being forced to undergo successive trials for offenses stemming from the same criminal episode; and (2) as a matter of judicial administration and economy, to assure finality without unduly burdening the judicial process by repetitious litigation. See *Commonwealth v. Stewart*, 493 Pa. [24] 29, 425 A.2d [346] 348 [(1981)]; *Commonwealth v. Holmes*, 480 Pa. 536, 541, 391 A.2d 1015, 1017 (1978); *Commonwealth v. Tarver*, 467 Pa. [401] 408, 357 A.2d [539] 542 [(1976)]. “By requiring compulsory joinder of all charges arising from ... [the same criminal episode], a defendant need only once ‘run the gauntlet’ and confront the awesome resources of the state.” *Commonwealth v. Campana*, (*Campana I*), 452 Pa. [233] 251, 304 A.2d [432] 440-441 [(1973)]. *Hude*, 500 Pa. at 489, 458 A.2d at 180.

553 Pa. 55, 63, 717 A.2d 1015, 1018-19 (Pa. 1998).

In *Commonwealth v. Reid*, 621 Pa. 245, 77 A.3d 579 (2013), our Supreme Court conducted a comprehensive review of its jurisprudence regarding 18 Pa.C.S.A 110, and reversed an order of our Superior Court reversing the order of the Court of Common Pleas of Clinton County, on the basis of 18 Pa.C.S.A 110. The Court explained that the question of whether there is a “logical relationship” between the charges turns “turns on whether the offenses present a *substantial* duplication of issues of fact and law. Such a determination depends ultimately on how and what the Commonwealth must prove in the subsequent prosecution.” *Commonwealth v. Reid*, 621 Pa. 245, 257, 77 A.3d 579, 585 (2013),

An important consideration under the facts of this matter is the notion that the compulsory joinder rule established by 18 Pa.C.S.A 110, can be waived. See, *Commonwealth v. Simmer*, 814 A.2d 696, 699 (Pa.Super. 2002). Where a defendant objects to an effort by the Commonwealth to consolidate matters for a single trial, the effect of that objection should be a waiver of any claim that the matters should be tried together. See, *Commonwealth v. Cicconi*, 439 Pa.Super. 81, 86-88, 653 A.2d 40, 43-44 (Pa.Super. 1995). Where a defendant affirmatively seeks to sever charges, the result may be a waiver of any claim that the charges should be consolidated for trial. See, *Commonwealth v. Dawson*, 2014 Pa.Super. 51, 87 A.3d 825, 829 (Pa.Super. 2014).

1. THE COMMONWEALTH'S OBLIGATION TO CONSOLIDATE THE THREE (3) INFORMATIONS PURSUANT TO 18 PA.C.S.A. SECTION 110, WAS WAIVED BY THE DEFENDANT, EITHER BY FAILING TO SEEK CONSOLIDATION, OR BY RESISTING THE COMMONWEALTH'S MOTION TO CONSOLIDATE.

It is impossible for the Court to ignore the reality that the Commonwealth made many efforts to consolidate all three informations for a single trial, but simply missed one. The Commonwealth failed to timely file a notice of consolidation listing all three (3) dockets. What the Commonwealth *did do*, is to file a Notice of Joinder of the informations filed to 228-2023 (the charge of resisting arrest on February 2, 2023) with 231-2023 (the charge of sale of methamphetamine on February 1, 2023), and to late file a motion seeking to consolidate all three (3) criminal informations for trial. At the hearing on that Motion conducted on January 29, 2024, the Defendant opposed the Motion, arguing both that the Commonwealth's Motion was untimely, and that the three (3) matters were distinct. Based upon Defendant's objection, the Commonwealth's motion to consolidate was denied by Order dated January 29, 2024, filed February 5, 2024. In the view of this Court, the fact that the Defendant vigorously objected to consolidation at the hearing on January 29, 2024, constitutes a waiver of the effect of 18 PA.C.S.A. Section 110.

2. IN THE ALTERNATIVE, THE COMMONWEALTH'S OBLIGATION TO CONSOLIDATE THE TWO (2) INFORMATIONS FILED TO DOCKET 228-2023 AND 231-2023 PURSUANT TO 18 PA.C.S.A. SECTION 110, WAS WAIVED BY THE DEFENDANT'S MOTION TO SEVER, FILED NOVEMBER 14, 2024.

In the alternative, even if Defendant's objection to consolidation at the hearing conducted on January 29, 2024, did *not* result in waiver, the Defendant certainly waived consolidation of the informations filed to 228-2023 and 231-2023 through the Defendant's Motion to Sever filed November 14, 2024. That motion alleges that the alleged drug sale on February 1, 2023 and the alleged resisting arrest on February 2, 2023, are "two separate incidents that occurred on different dates with different alleged facts" (Paragraph 5). The Defendant further argued "that each case should be separated for trial purposes" (Paragraph 7) and that, if consolidated, "the cumulative weight of the allegations against him would result in a conviction if tried as one case." The two (2) informations were severed, and the Defendant entered a plea to only 228-2023.

In the view of the Court, that procedural maneuvering (although perhaps a very good strategy) is exactly the type of conduct which the Court found to constitute waiver in the matter of *Commonwealth v. Dawson*, 2014 PA.Super. 51, 87 A.3d 825, 829 (Pa.Super. 2014).

3. IN THE ALTERNATIVE, THE CHARGES ALLEGED BY THE COMMONWEALTH IN THE THREE (3) INFORMATIONS DID NOT ARISE OUT OF A SINGLE CRIMINAL EPISODE.

In the alternative, even if Defendant's affirmative objection to consolidation at the hearing conducted on January 29, 2024, and the Defendant's subsequent Motion to Sever did *not* result in waiver, the informations actually charge different conduct, over a period of two (2) days. In the Defendant's Motion to Sever, the Defendant described the charges contained in the informations filed to docket number 228-2023 and 231-2023, as "two separate incidents that occurred on different dates with different alleged facts" (Paragraph 5). The Defendant further asserted "that each case should be separated for trial purposes" (Paragraph 7) and that, if

consolidated, “the cumulative weight of the allegations against him would result in a conviction if tried on one case.”

The Court has examined the three (3) affidavits of probable cause, in order to determine the extent to which the facts overlap. The affidavit related to the controlled buy of methamphetamine on February 1, 2023, alleges that the Defendant sold methamphetamine to an undercover NEU detective “at an apartment on Northway Road in Loyalsock Township, Lycoming County,” and that the Defendant was under law enforcement surveillance “from the apartment to his residence at 836 High St, Apt. 1 in the City of Williamsport, Lycoming County, where he entered the eastern residence.” The Court infers that the witnesses to this event would include one (1) undercover NEU detective and the law enforcement officers involved in the surveillance.

The affidavit related to the charges of possession of methamphetamine and marijuana with intent to deliver recites the facts of the search of 836 High Street, Apartment 1, Williamsport, Pennsylvania. That affidavit alleges that the search took place on February 2, 2023, at the apartment, that the search team had contact with Ada Wells and her 16-year-old son, and that the search team was advised that Defendant had left the apartment for work. The Court infers that the witnesses to this event would include the law enforcement officers involved in the search, which may be an overlap with the law enforcement officers involved in the surveillance of the preceding day.

The affidavit related to the charge of resisting arrest alleges the facts of the controlled buy on February 1, 2023, and the subsequent search on February 2, 2023. The affidavit further alleges that the NEU obtained an arrest warrant for the Defendant and that, on February 2, 2023, “Robinson returned to 836 High Street, Apt. 1 and four members of NEU attempted to take Robinson into custody. Robinson actively resisted arrest. It required four officers to struggle with Robinson for 4 minutes to overcome his resistance and to secure him in handcuffs.” The Court infers that the witnesses to this event would include the law enforcement officers involved in the arrest of the Defendant, which may be an overlap with the law enforcement officers involved in the surveillance of the preceding day.

Although the three (3) informations obviously arise out of the Defendant's criminal enterprise, the facts are distinct. The facts of the controlled buy of methamphetamine involve the testimony of the undercover officer, and the testimony of the officers who conducted the subsequent surveillance of the Defendant. The facts of the search involve the testimony of the officers who conducted the search, and might involve the testimony of Ada Wells and her 16-year-old son. The Defendant was not present during the search. The facts of the resisting arrest are distinct from the drug charges, although there may be some overlap between the officers who participated in the surveillance after the controlled buy, that those who conducted the search on the following day. Within the body of his Motion to Sever, the Defendant asserted that the charges arise from "separate incidents that occurred on different dates with different alleged facts" (Paragraph 5), and therefore "that each case should be separated for trial purposes" (Paragraph 7). In that Motion, Defense counsel contended that "the cumulative weight of the allegations against him would result in a conviction if tried as one case."

In addition to the fact that the three (3) informations arise out of different facts, they allege the violation of different crimes, containing different elements. See, *Commonwealth v. Copes*, 2023 PA.Super. 91, 295 A.3d 1277, 1280 (Pa.Super. 2023).

Defendant's Motion to Dismiss raises two (2) issues which commonly arise in cases involving the alleged sale of controlled substances. One of the most common law enforcement techniques in drug investigations is a "controlled buy" conducted by either law enforcement or a civilian informant. Days or weeks or months after those buys take place, law enforcement routinely conduct searches of the target's vehicle and residence. Under Defendant's theory in his Motion to Dismiss, any charge which arises from such a search must always be consolidated, even if the search was conducted by different law enforcement officers, long after the buys. In rare instances, criminal defendants resist arrest. Under Defendant's theory in his Motion to Dismiss, the charges of resisting arrest must always be consolidated with the charges which resulted in the arrest. In those cases, the defendant would nearly always prefer to avoid consolidation, since "the cumulative weight of the allegations against him would result in a conviction if tried as one case." Defendants are always free to seek consolidation by omnibus pretrial motion. It is no mystery to the Court that defendants rarely do so.

ORDER

AND NOW, this 4th day of September, 2025, for the reasons more fully set forth above, Defendant's Motion to Dismiss the two (2) remaining informations filed to Lycoming County dockets 197-2023 and 228-2023, pursuant to 18 Pa.C.S.A. Section 110, is DENIED.

BY THE COURT,

William P. Carlucci, Judge

WPC

cc: Court Administrator
Lycoming County District Attorney's Office
Lycoming County Public Defender Office