

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

**COMMONWEALTH OF PENNSYLVANIA** : **No. 00-11115**  
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:   
**vs.** : **CRIMINAL DIVISION**  
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:   
**DIANDRE EDWARD WILLIAMS,** :   
:   
**Defendant** : **Motion to Sever**

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**COMMONWEALTH OF PENNSYLVANIA** : **No. 00-10105**  
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:   
**vs.** : **CRIMINAL DIVISION**  
:   
:   
**ABDUL CLARK,** :   
:   
**Defendant** : **Motion to Consolidate**

**OPINION AND ORDER**

The Commonwealth has filed a Motion to Consolidate the Williams and Clark cases for trial.<sup>1</sup> Defendant Diandre Edward Williams has filed a Motion to Sever the Trial of his case from the case of Co-defendant Abdul Clark, No. 00-10,105. Both defendants are charged with criminal homicide, three counts of robbery, possessing instruments of crime, firearm not to be carried without a license, and conspiracy to commit the aforementioned crimes.

The Commonwealth alleges the following facts: On November 18, 1999, Defendants Williams and Clark went to the residence of Kristopher Harris, 949 Vine Avenue,

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<sup>1</sup>Although Defendant Clark initially opposed consolidation of these cases, he has since withdrawn his opposition. Thus, Defendant Clark does not object to consolidation of his case for trial with the Williams case.

Williamsport, Pennsylvania at about 10:30 p.m. Curtis Robinson was in the bathroom.<sup>2</sup> Ryan Pancher entered the room where the homicide occurred shortly before the shooting. The defendants ordered him to get down on the floor and place his forehead on the floor so that he could not see what they were about to do. Both defendants pointed guns at the victim, and one of the defendants shot Mr. Harris in the head, causing his death. The defendants fled the scene after shooting Mr. Harris.

In Defendant Williams' Motion for Severance, he alleges that he will suffer prejudice if his case is consolidated with the Clark case because the Williams' defense will be a defense of alibi. He submits his alibi witnesses will be "unfairly and improperly questioned" if Defendant Clark would not testify at trial in support of the alibi. See Motion for Severance, averment No. 16. Further, Defendant Williams contends he will be unfairly prejudiced by the consolidation of his case with the Clark case, because the Commonwealth plans to call Floyd Steadley as a witness at trial. In a taped statement to the police, Mr. Steadley claimed he had a "jail house" conversation with Mr. Clark wherein Mr. Clark told Mr. Steadley that he (Clark), Defendant Williams, and a third party, with the nickname of Ant, went to the victim's residence and that Defendant Williams allegedly shot the victim. Apparently, Mr. Steadley will claim Defendant Clark told him that they went over to the victim's apartment to collect money for fronting the victim's drugs, that words were exchanged and that the victim was shot in the head. Defendant Williams contends that, even if Mr. Steadley's testimony is redacted to remove the names of the individuals allegedly with Mr. Clark when the shooting occurred, the context of the statement would imply to the jury that Defendant Williams was with Defendant Clark when the homicide occurred.

Defendant Williams has filed a notice of alibi, claiming that at the time of the

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<sup>2</sup>The Commonwealth does not assert that Mr. Robinson was a participant in the crimes.

homicide he was at the home of Defendant Clark. However, in the notice, Defendant Williams claims that a third party, William West, was present with him at the time in question.

The Commonwealth has filed a notice that they are seeking the death penalty to both Defendants, Williams and Clark.

The law regarding severance of co-defendants' cases is well developed. In determining whether a request for severance should be granted, a trial court has broad discretion which will not be disturbed absent a manifest abuse thereof. See Commonwealth v. Chester, 526 Pa. 578, 587 A.2d 1367 (1991), cert. denied, 502 U.S. 849, 959, 112 S.Ct. 152 (1991). Further, where defendants are charged with operating in a conspiracy, joint, rather than separate, trials are preferred. See Commonwealth v. Marinelli, 690 A.2d 203, 212-213, (Pa. 1997); Pa.R.Cr.P. 1127. In Richardson v. Marsh, 481 U.S. 200, 210, 107 S.Ct. 1702, 1708-09 (1987), the United States Supreme Court rejected a rule of automatic severance of co-defendants' trials because of the vital role in the criminal justice system which joint trials play, stating:

The basic theory of redaction seems sound. If a confession can be edited so that it retains its narrative integrity and yet in no way refers to defendant, then use of it does not violate the principles of Bruton. The practical application of the theory may be difficult and in many cases it may be decided that separate trials are necessary. However, this kind of determination must be made on a case by case basis.

See also Commonwealth v. Wharton, 607 A.2d 710, 718 n.5 (Pa. 1992).

While antagonistic defenses may be considered by the Court in determining whether a case should be severed from a co-defendant's case, defenses only become antagonistic when the jury, in order to believe the testimony offered by one defendant, must necessarily disbelieve the testimony of the co-defendant. See Commonwealth v. Marinelli, 690 A.2d at 213. Thus, where defenses are merely inconsistent, not antagonistic, such would not be a basis for severance. Id.; See also Commonwealth v. Childress, 680 A.2d 1184 (Pa.Super.

1996)(where one defendant relied on the presumption of innocence and the other defendant relied on alibi, the Superior Court concluded the defenses were not antagonistic.)

Defendant Williams plans to present an alibi defense at trial. Defendant Williams, in his severance motion, raises concerns that his alibi defense would be harmed if Defendant Clark asserted his Fifth Amendment right to remain silent. If this indeed happened, the Court sees no particular prejudice to Defendant Williams, since the jury would be instructed that Defendant Clark has an absolute right to remain silent and that no adverse inference could be drawn against him for exercising his constitution right. This would not appear to create a defense inconsistent with Defendant Williams' alibi; more than a bare assertion of antagonism is required. See Commonwealth v. Morales, 494 A.2d 367, 373 (Pa. 1985). Even if the defenses might be seen as mildly antagonistic to each other, such does not in and of itself necessarily pose such a significant risk of prejudice as to require severance. Id. ; See also Commonwealth v. Chester, supra.

The Court must also consider Defendant Williams' claim that the testimony of Commonwealth witness, Floyd Steadley against Defendant Clark will prejudice him. Potential prejudice to a defendant from use of non-testifying co-defendants' statements must be balanced against the demands of judicial economy and the desire for verdict consistency. See Commonwealth v. Oliver, 635 A.2d 1042, 1044 (Pa.Super. 1968). In Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968), the United States Supreme Court held that a defendant is deprived of his rights under the confrontation clause of the Sixth Amendment to the United States Constitution when his non-testifying co-defendant's confession naming him as a participant in the crime is introduced at a joint trial. Since the Bruton decision, it is well settled that redaction of one defendant's confession by eliminating the name of the co-defendant can be an appropriate method of protecting a defendant's right. Commonwealth v. Wharton, 607 A.2d at 716. The

hallmark test for a trial court in considering Bruton issue is still one of balancing the prejudice to a defendant from consolidation against the general policy of encouraging judicial economy.

Commonwealth v. Patterson, 519 Pa. 190, 546 A.2d 596 (1988).

To comply with the mandate of Bruton, Pennsylvania Courts have approved the practice of redaction of co-defendants confessions, whereby all testimonial references in a confession to anyone other than the declarant are omitted. See Commonwealth v. Chestnut, 511 Pa. 169, 512 A.2d 603 (1986); Commonwealth v. Hess, 378 Pa.Super. 221, 548 A.2d 582 (1988); Commonwealth v. Council, 355 Pa.Super. 442, 513 A.2d 1003 (1986), appeal denied 518 Pa. 654 (1988); Commonwealth v. Sanford, 323, Super. 436, 470 A.2d 998 (1984); Commonwealth v. Rawls, 276 Pa.Super. 89, 419 A.2d 109 (1980); Commonwealth v. Avers, 266 Pa.Super. 359, 404 A.2d 1330 (1979); Commonwealth v. Resbury, 665 A.2d 825 (Pa.Super 1995).

While accepting redaction as a potentially appropriate response to a Bruton concern, the Court acknowledges that redaction of testimony is not the end of a trial judge's consideration of a Bruton issue. As stated by our Appellate Courts:

Redacting testimony is not a magic curative elixir, but still requires a court to balance the potential prejudice to the defendant against the probative value of the evidence, the possibility of minimizing prejudice, and the benefits to the criminal justice system of conducting joint trials. Redacted testimony may still violate the Bruton rule if it is 'powerfully incriminating' and lends 'substantial, perhaps critical weight to the prosecution's case.'

Commonwealth v. Oliver, 635 A.2d at 1045, citing Commonwealth v. Rawls, 276 Pa.Super. 89, 97, 419 A.2d 109, 113 (1980).

Defendant Williams argues that he will suffer prejudice through contextual implication even if the Clark statement is redacted, because the jury will infer he is one of the other unnamed individual to whom Clark referred in the statement. Similar arguments have been

considered by our Appellate Courts on many occasions. In the case of Commonwealth v.

Presbury, 665 A.2d 825 (Pa.Super. 1995), the Superior Court stated:

In Chestnut, supra, our Supreme Court, citing Rawls, also rejected the 'contextual implication' argument of an appellant whose co-defendant's confession was redacted and introduced at trial. Id. at 173, 512 A.2d, 605, (allowing such an argument 'would have the likely effect of making all statements by a co-defendant inadmissible, regardless of whether they could be properly redacted').

665 A.2d at 829; See also Commonwealth v. Wharton, 607 A.2d at 717.

While it is clear that contextual implication is not a blanket rule prohibiting consolidation in all cases where a co-defendant's statement is being offered into evidence, the Court must still carefully examine and balance any prejudice caused against the benefits of a consolidated trial, and in doing this, the Court must determine that the redacted statement of a co-defendant is not "powerfully incriminating" and that it does not lend critical weight to the prosecution's case. See Commonwealth v. Rawls, supra, 419 A.2d 109, 113 (1980); Commonwealth v. Presbury, supra, (Bruton inapplicable since redacted statement was not powerfully incriminating to defendant).

The Court believes that the balance in this case favors consolidation. There are significant benefits in trying these cases at the same time. The alleged statement in the instant case is from a jailhouse witness. The Court expects there will be several significant avenues of attack regarding the credibility of this witness. The Court also believes redacting the statement in question by referring to Mr. Williams and Ant simply as the other guys or other individuals significantly eliminates any prejudice to Defendant Williams. This is especially true where Defendant Williams is presenting an alibi defense, claiming he was not at the crime scene. Thus, a jury could very well accept Defendant Williams' alibi and find no inconsistency with Defendant Clark's statement, because Defendant Williams is not disputing that the crime was committed by

two or three individuals. Rather, he is disputing that he was one of the individuals involved.

Finally, the Court will give clear instructions to the jury that the testimony presented from witness Steadley is not evidence in the case of Commonwealth v. Williams. The Court believes it is clear that the co-defendant's statement will not be prejudicial or powerfully incriminating to Defendant Williams. Therefore, consolidation of this case with the case of Commonwealth v. Abdul Clark, No. 00-10,105, is appropriate.

Accordingly, the following Orders are entered:

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COMMONWEALTH OF PENNSYLVANIA	: No. 00-11115
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vs.	: CRIMINAL DIVISION
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	:
DIANDRE WILLIAMS,	:
Defendant	: Motion to Consolidate

O R D E R

AND NOW, this \_\_\_\_ day of November 2000, the Commonwealth's Motion to Consolidate the above-captioned case with the case of Commonwealth v. Abdul Clark, is GRANTED.

The Motion of Defendant Diandre Williams to Sever the above-cases is DENIED.

Counsel for the Commonwealth and counsel for both defendants shall review the Steadley statement to try reach an agreement regarding how the statement will be redacted. If there is some dispute between counsel, counsel shall notify the Court within thirty (30) days of the date of this Order so that the Court can rule on the redaction of the statement.

By The Court,

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Kenneth D. Brown, J.

cc: William Miele, Esquire (PD)  
Nicole Spring, Esquire (APD)  
Michael Rudinski, Esquire  
Kyle Rude, Esquire  
District Attorney  
Work File  
Gary Weber, Esquire (Lycoming Reporter)



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	:
ABDUL CLARK,	:
Defendant	: Motion to Consolidate

O R D E R

AND NOW, this \_\_\_\_\_ day of November 2000, without objection from the defense, the Court GRANTS the Commonwealth's Motion to Consolidate the above-captioned case with the case of Commonwealth v. Diandre Williams, No. 00-11,115.

BY THE COURT,

\_\_\_\_\_  
Kenneth D. Brown, J.

cc: William Miele, Esquire (PD)  
Nicole Spring, Esquire (APD)  
Michael Rudinski, Esquire  
Kyle Rude, Esquire  
District Attorney  
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