

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-1659-2019
	:	CR-126-2020
v.	:	
	:	
NAFIS JONES,	:	MOTION TO CONSOLIDATE
Defendant	:	

OPINION AND ORDER

Nafis Jones (Defendant) was charged on November 27, 2019 with Delivery of a Controlled Substance, Criminal Use of a Communication Facility, and related charges under CR-1659-2019. On February 24, 2020, Defendant was charged with Delivery of a Controlled Substance, Possession with Intent to Deliver a Controlled Substance, and related charges under CR-126-2020. These charges arise from three controlled buys that occurred in the area of 2500 Federal Avenue in Lycoming County, Pennsylvania. The Commonwealth filed this Motion to Consolidate the two above cases on June 23, 2020. This Court held a hearing on the motion on October 12, 2020.

Background

The Court relies solely on argument and the similarities of the allegations in the two affidavits of probable cause since no testimony was provided at the time of the hearing. In the matter of CR-1659-2019, the alleged conduct took place on October 23rd and 24th of 2019. On each of those days, the affiant, Detective Sarah Edkin (Edkin) initiated the purchase of heroin by contacting the Defendant through his cellular phone. Both times, the Defendant instructed Edkin where to meet, entered her vehicle at that location, deposited 10 waxine bags of heroin (approximately 0.3 grams) into the center console of the car, and accepted payment for the narcotics. He had Edkin take a loop around the parking lot before exiting her car. From his

separate position, Detective Havens was able to observe Defendant entering Apartment #245 following both encounters with Edkin.

In the matter of CR-126-2020, the allegations occurred on October 25, 2019. On that day the affiant, Detective Edkin, reached out to the Defendant on his cell phone and arranged to meet Defendant just as she had done the last two days. Upon doing so, the Defendant entered Edkin's car, provided her with 30 bags of heroin (approximately 0.9 grams), left it in the center console, and accepted payment from Edkin. Following the controlled buy, the Defendant was taken into custody and a search warrant for Apartment #245 was executed. Suspected drugs and drug paraphernalia were discovered as a result of the search.

Discussion

Under Pennsylvania Rules of Criminal Procedure 582, charges may be consolidated and tried together 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); *See also Commonwealth v. Lark*, 543 A.2d 491 (Pa. 1988). 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). A common scheme exists when there is the "commission of two or more crimes so related to each other that proof of one tends to prove the others." *Commonwealth v. Morris*, 425 A.2d 715, 720 (Pa. 1981).

Moreover, the court must also compare the details of each crime for similarities, such as a common victim, location, remoteness in time, and common relationship between the defendant and any victims. Commonwealth v. Newman, 598 A.2d 275, 279 (Pa. 1991); Commonwealth v. O'Brien, 836 A.2d 966, 969 (Pa. Super. 2003). However, “the importance of a temporal nexus between crimes declines as the similarity of the crimes increases.” Commonwealth v. Weakley, 972 A.2d 1182, 1190 (Pa. Super. 2009). 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.”). Nevertheless, “[t]he 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’s position, citing only generally to O’Brien in its motion, is that the evidence of each case against the Defendant arises from the same transaction or occurrence and the facts contained in the separate informations show a common scheme or plan to sell narcotics. In assessing the cases against the Defendant, the cases are practically identical. The drug deals in both charges were conducted between the same people, namely the Defendant and Detective Edkin while in her undercover capacity. The deals were initiated using the same contact method to the Defendant’s phone and heroin was exchanged in both charges. Additionally, the controlled buys all happened in Edkin’s car and in the same location. Furthermore, the series of drug sales and the search of the apartment happened over a short span of three days. Since the conduct on each day was essentially the same, the timespan is not

of particular importance, but is still well within an accepted range. *See* Commonwealth v. Newman, 598 A.2d 275, 279 (Pa. 1991) (consolidating two rape charges which occurred eighteen months apart). Based on these similarities, the evidence would appear to be admissible in either trial to show a common scheme or plan.

The Defendant asserts that consolidation creates a danger of jury confusion and unfairly prejudices the Defendant and his ability to argue his case. The Court must disagree on this issue for a number of reasons. First, each controlled buy occurred on a separate day from the others. The jury will be able to differentiate each transaction by date in time and separate the evidence accordingly. Secondly, the evidence is not for the purpose of trying to show that the Defendant has a propensity for criminal behavior, but instead demonstrates a common scheme or plan to deliver heroin. Lastly, the search warrant and the results of said warrant are distinctive from the controlled buys and confusion is unlikely. Similarly, for the reasons stated this Court finds that the evidence's probative value outweighs any potential prejudice the Defendant may face.

Furthermore, it appears that judicial economy would be served best by trying all the charges against the Defendant simultaneously. If not joined, the Commonwealth's presumed witnesses will be nearly identical for each case, primarily Detective Edkin. The evidence from each charge is relevant to establish a common scheme because it deals with the "commission of two or more crimes so related to each other that proof of one tends to prove the others." Commonwealth v. Morris, 425 A.2d 715, 720 (Pa. 1981).

Conclusion

The Commonwealth's Motion to Consolidate would advance judicial economy, evidence from either case would be permitted at the trial for the other under the rules of

evidence, a jury is capable of separating the facts of each charge, and the probative value is not outweighed by any potential prejudice. Therefore, the Commonwealth's Motion is granted.

ORDER

AND NOW, this 3rd day of November, 2020, based upon the foregoing Opinion, the Commonwealth's Motion to Consolidate is **GRANTED**. The cases at docket numbers CR-1659-2019 and CR-126-2020 shall be joined for trial.

By the Court,

Nancy L. Butts, President Judge

cc: DA (DW)
Matthew Welickovitch, Esquire
Eileen Dgien

NLB/jmh