

**[J-52A-2021 and J-52B-2021] [MO: Dougherty J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 19 MAP 2021
	:	
Appellant	:	Appeal from the Order of the
	:	Superior Court at No. 2088 MDA
	:	2018 dated November 2, 2020
v.	:	Quashing the Order of the Centre
	:	County Court of Common Pleas,
	:	Criminal Division at Nos. CP-14-CR-
BRENDAN PATRICK YOUNG,	:	0001389-2017, CP-14-CR-0000784-
	:	2018 & CP-14-CR-0001540-2018
Appellee	:	dated November 21, 2018.
	:	
	:	ARGUED: September 21, 2021
COMMONWEALTH OF PENNSYLVANIA,	:	No. 20 MAP 2021
	:	
Appellant	:	Appeal from the Order of the
	:	Superior Court at No. 2089 MDA
	:	2018 dated October 28, 2020
v.	:	Quashing the Order of the Centre
	:	County Court of Common Pleas,
	:	Criminal Division, at Nos. CP-14-
DANIEL CASEY,	:	CR-0001377-2017, CP-14-CR-
	:	0000781-2018 & CP-14-CR-
Appellee	:	0001536-2018 dated November 21,
	:	2018.
	:	
	:	ARGUED: September 21, 2021

CONCURRING OPINION

JUSTICE MUNDY

DECIDED: December 22, 2021

I join in the Majority's holding that the exception to *Commonwealth v. Walker*, 186 A.3d 969 (Pa. 2018), announced in *Always Busy Consulting, LLC v. Bradford & Co.*, 247 A.3d 969 (Pa. 2018), does not apply in the instant matter. Nevertheless, while the instant matter does not fit within the narrow exception of *Always Busy Consulting*, it demonstrates

yet another problem with the practical application of the bright-line-rule announced in *Walker*. Here, the Majority posits that the filing by the Commonwealth of a single notice of appeal for each above-captioned defendant, resulted in effectively consolidating the three lower court dockets into one Superior Court docket number for each defendant. However, the procedural history of this case demonstrates that the multiple dockets for each defendant had already been consolidated for trial.¹

This Court held in *Walker*, “where a single order resolves issues arising on more than one docket, separate notices of appeal must be filed for each case.” *Id.* 185 A.3d at 971.² In *Walker*, four co-defendants each filed separate suppression motions at their respective docket numbers, raising related issues. The trial court heard the motions at the same time and issued a single order under the four docket numbers. The Commonwealth then filed a single notice of appeal related to four separate defendants, “effectively, and improperly, consolidating the appeals...for argument and joint resolution, without either the approval of the Superior Court or the agreement of the [a]ppellees.” *Id.* at 977.

¹ Despite consolidation the Majority notes without further explanation, “[t]he prosecutions proceeded at multiple docket numbers for each defendant and although the common pleas court consolidated the docket numbers for trial, the docket numbers were not consolidated for all purposes.” Majority Opinion at 2. A review of the trial court’s opinion and order reveals the Commonwealth had filed a motion to consolidate six defendants’ cases, and all docket numbers for trial, which the trial court granted with the caveat that any defendant could file a severance motion following the trial court’s disposition of the omnibus pre-trial motions. Trial Court Opinion and Order, 10/18/18 at 5. The trial court further noted the defendants’ objections to consolidation were on the basis that some evidence admitted pertaining to one defendant should not be permitted against another defendant. *Id.* at 3.

² I dissented from this prospective holding in *Walker*, noting “[i]n the interests of justice and judicial economy, I favor continuing the practice of addressing the merit of an appeal, despite a procedural error, where the circumstances permit.” *Walker*, 185 A.3d at 978 (Pa. 2018) (Mundy, J., concurring and dissenting).

By contrast, in this case, charges were filed on three separate occasions against Young and Casey. At the conclusion of each of the three separate preliminary hearings, charges were bound over for trial and each separate set of charges resulted in a new docket number. Upon motion of the Commonwealth, the dockets were consolidated for trial. As the majority notes, a lead docket number was not assigned, rather the defendants were directed by the trial court to include all three docket numbers on any filings. In accordance, each defendant filed one omnibus pretrial motion that included all three docket numbers. A hearing was held, and the court entered a single order granting the defendants' motion to suppress cell phone evidence. The order captioned each defendant separately and listed all three docket numbers for each defendant under their respective names. Thereafter, prior to proceeding to trial on the consolidated dockets, the Commonwealth filed two interlocutory notices of appeal. Each notice of appeal pertained to one defendant's suppression order, listing each of the defendant's three docket numbers on their respective notices of appeal as the trial court had instructed.

Under the Majority's interpretation of *Walker*, the Commonwealth was required to deviate from the procedure imposed by the trial court of including all three docket numbers on each defendant's respective filings, and instead file six separate notices of appeal. In turn, the Superior Court would docket six different appeals to resolve two interlocutory appeals in advance of trial. This illustrates my continued frustration over a *Walker* rule that pits form over substance to the detriment of practitioners.³ In my view, the *Walker* rule should not serve to sever one defendant's consolidated case into multiple separate appeals.

³ In fact, as a matter of substance, separate notices were effectively filed at each docket number when a photocopy was made for each certified record with the applicable docket number highlighted. This practice, is seemingly consistent with the Superior Court in *Commonwealth v. Johnson*, 236 A.3d 1141 (Pa. Super. 2020) (en banc), and arguably complies with *Walker*.

Nevertheless, while the bright-line-rule in *Walker* continues to remain precedential, I concur in the result, and join in the Majority's holding to remand for determination of whether under Pennsylvania Rule of Appellate Procedure 902, the Commonwealth should be permitted to correct the non-jurisdictional defect to its timely filed notices of appeal.