

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 03-10,664
:
vs. : CRIMINAL DIVISION
:
MARY ALICE AMBROSE, :
Defendant : Motion to Consolidate
.....

COMMONWEALTH OF PENNSYLVANIA : NO. 03-10,677
:
vs. : CRIMINAL DIVISION
:
BRIAN A. McCLUSKEY, :
Defendant : Motion to Consolidate
.....

COMMONWEALTH OF PENNSYLVANIA : NO. 03-10,846
:
vs. : CRIMINAL DIVISION
:
BRIAN A. McCLUSKEY, :
Defendant : Motion to Consolidate
.....

COMMONWEALTH OF PENNSYLVANIA : NO. 03-10,880
:
vs. : CRIMINAL DIVISION
:
MICHAEL W. McCLOSKEY, :
Defendant : Motion to Consolidate

OPINION AND ORDER

Before the Court is the Commonwealth's Motion to Consolidate the informations filed to Nos. 03-10,677, 03-10,846 and 03-10,880. Argument on the motion was heard November 6, 2003.

By way of background, the Court notes that on May 8, 2003, complaints were filed to Nos. 03-10,677 and 03-10,664, against Brian McCluskey and Mary Ambrose, respectively, charging McCluskey with robbery, conspiracy, theft and receiving stolen property, and

Ambrose with conspiracy, both sets of charges arising out of a robbery alleged to have occurred at the Giant Food Store on April 23, 2003. On May 15, 2003, the Commonwealth filed a Notice of Joinder of these two informations. On June 6, 2003, a second complaint was filed against McCluskey, to No. 03-10,846, charging him with intimidation of a witness, in connection with an incident alleged to have occurred at McCluskey's preliminary hearing on the robbery charges. The witness alleged to have been intimidated is Defendant's co-defendant, Mary Ambrose. On June 20, 2003, the Commonwealth filed a Notice of Joinder of the intimidation of witness charge with McCluskey's robbery charge.¹

In the meantime, on June 11, 2003, a complaint was filed against a third alleged participant in the robbery, Michael McCloskey, to No. 03-10,880, charging him with conspiracy. In the instant Motion to Consolidate, the Commonwealth seeks to join Michael McCloskey's case with Brian McCluskey's two cases.²

Rule 582 of the Rules of Criminal Procedure provides, in pertinent part, that defendants charged in separate indictments or informations may be tried together if they are alleged to have participated in the same transaction. Pa.R.C.P. Rule 582(A)(2). Rule 583 provides, however, that the Court may order separate trials of offenses or defendants if it appears that any party may be prejudiced by offenses or defendants being tried together. Pa.R.C.P. Rule 583.

While the Court believes no prejudice inures to Mary Ambrose as a result of the consolidation of her case with McCluskey's two cases, since she is the witness alleged to have been intimidated, the same cannot be said of McCloskey. Evidence of McCluskey's intimidation of the witness, who is also alleged to have participated in the robbery, will most likely be introduced by the Commonwealth as evidence of McCluskey's consciousness of guilt. McCluskey has filed an alibi notice, indicating that he plans to introduce evidence that he was not at the Giant Food Store at the relevant date and time, including the testimony of McCloskey. The Court therefore believes that evidence of McCluskey's consciousness of guilt is sufficiently prejudicial to McCloskey as to warrant a separate trial.

¹ No mention of Ambrose's case was made in the Notice.

² Again, there is no mention of Mary Ambrose's case, which has already been joined with McCluskey's robbery case.

ORDER

AND NOW, this day of November, 2003, for the foregoing reasons, the Motion to Consolidate is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
 Ron Travis, Esq.
 R. Bruce Manchester, Esq., 124 West Bishop Street, Bellefonte, PA 16823
 Eric Linhardt, Esq.
 Gary Weber, Esq.
 Hon. Dudley Anderson