

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

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-203-2011**

**SHARIF D. ALI,** :  
**Defendant** :

\*\*\*\*\*

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-61-2011**

**ERICA JULIANN SPLAIN,** :  
**Defendant** :

**OPINION AND ORDER**

Before the Court is a Motion to Consolidate for Trial the above-captioned Informations. Both Defendants are charged with Conspiracy to Commit Simple Assault, two counts of Simple Assault and three counts of Harassment relating to an incident which allegedly occurred on September 4, 2010 in which the Defendants physically assaulted and injured Allison Berger.

Consolidation of separate Informations is governed by the Pennsylvania Rules of Criminal Procedure. Defendants charged in separate Informations may be tried together if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Pa. R.Crim. P. 582 (A) (2).

As a general policy, joint trials are encouraged when judicial economy will be promoted by avoiding the expense and time consuming duplication of evidence. Commonwealth v. Jones, 542 Pa. 462, 668 A.2d 491 (1998). In this particular matter, neither Defendant denies that they are alleged to have participated in the same series of acts against the victim. As well, both Defendants acknowledge that they are charged with Conspiracy to Commit Simple Assault. When Defendants have been charged with a conspiracy, a joint trial is preferable. Jones, 668 A.2d at 501,

citing Commonwealth v. Jackson, 451 Pa. 462, 303 A.2d 924 (1973). While Defendant Splain does not oppose consolidation, Defendant Ali asserts that he may be prejudiced by a consolidation due to his alleged lesser involvement in the assault against Ms. Berger. Defendant Ali argues that his alleged involvement was minimal compared to the alleged involvement of Ms. Splain.

The parties stipulated that in deciding this Motion, the Court could consider the Affidavits of Probable Cause as well as the transcripts from the Preliminary Hearings, which were marked as Commonwealth Exhibits and provided to the Court.

According to the testimony at Defendant Ali's preliminary hearing, upon Ms. Berger leaving Club Z, a night club, Defendant Splain first attacked her pulling her hair and dragging her to the ground. Defendant Splain then repeatedly kicked and punched Ms. Berger around her head and face.

Defendant Ali joined in kicking Ms. Berger in her face and shoulder area.

Ms. Berger was subsequently dragged by her arms to a car. Defendant Splain repeatedly punched Ms. Berger and "at one point" Defendant Ali held her arms back while Defendant Splain continued to hit Ms. Berger in the face and the head "on the right side."

Apparently, Ms. Berger lost her memory at that point. The next thing she remembers was being on the hood of the car and being punched by Defendant Splain with Defendant Ali "standing to the left."

At Defendant Splain's preliminary hearing, Ms. Berger testified that she was initially attacked by Ms. Splain, pulled to the ground and then kicked and punched by Defendant Splain. The questioning regarding Mr. Ali's involvement was very brief. Ms. Berger testified that Defendant Ali restrained her so Defendant Splain could continue to hit her.

Defendant Ali's Affidavit of Probable Cause notes that Defendant Ali allegedly held Ms. Berger on the ground while both he and Defendant Splain punched and kicked her about the face and head. Witnesses reported seeing both Defendants punching, kicking and pushing Ms. Berger's face into the side of the vehicle. Witnesses also reported seeing Defendant Ali restrain Ms. Berger while Defendant Splain assaulted her. Furthermore, when those witnesses attempted to stop the assault, they were pushed and punched by both Defendants about the face and head area but not injured.

Defendant Ali submits that since his involvement was arguably to a lesser extent than Ms. Splain, that he would be prejudiced by consolidation.

The burden is on the party claiming prejudice; and such prejudice must be real. Commonwealth v. Patterson, 519 Pa. 190, 546 A.2d 596 (1988). The Court fails to see how consolidation of the cases would cause Defendant Ali to suffer a specific prejudice greater than the general prejudice any Defendant suffers when the Commonwealth's evidence links them to a crime. Commonwealth v. Dozo, 991 A.2d 898, 902 (Pa. Super. 2010), citing Commonwealth v. Lauro, 819 A.2d 100, 107 (Pa. Super. 2003), appeal denied, 574 Pa. 752, 830 A.2d 973 (2003). The Court fails to see how consolidation of the cases would result in a substantial injustice to the Defendant solely because of his alleged lesser involvement.

Indeed, the fact that there is an issue as to the extent to which the Defendants participated in the attack against the victim, is a reason for, rather than against a joint trial because the truth may be more easily determined if both are tried together. Commonwealth v. Martinelli, 690 A.2d 203, 213 (Pa. 1997), citing Commonwealth v. Chester, 587 A.2d 1367, 1373 (Pa. 1991).

Accordingly, the Court finds that consolidation is appropriate and will grant the Commonwealth's Motion to Consolidate.

**ORDER**

AND NOW, this \_\_\_\_ day of May 2011 following a hearing and argument, the Court **GRANTS** the Commonwealth's Motion to Consolidate. The Informations set forth at No's. CR-203-2011 and CR-61-2010 shall be tried together.

BY THE COURT,

---

Marc F. Lovecchio, Judge

cc: District Attorney (AB)  
Public Defender (JL)  
Don Martino, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File