

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

COMMONWEALTH	:	No. CR-563-2012
v.	:	
	:	
AISHA N. SABUR,	:	Order denying Commonwealth's
Defendant	:	Motion to Consolidate

* * * * *	:	* * * * *
COMMONWEALTH	:	No. CR-570-2012
v.	:	
	:	
KADIJAH L. SABUR,	:	Order denying Commonwealth's
Defendant	:	Motion to Consolidate

OPINION AND ORDER

On April 27, 2012, Defendant Aisha Sabur was charged under Information No. 563-2012 with one count of Retaliation Against a Witness or Victim, a misdemeanor two offense. On April 27, 2012, Defendant Kadajah Sabur was charged under Information No. 570-2012 with one count of Retaliation Against a Witness or Victim, a misdemeanor two offense. Under 18 Pa. C.S. § 4953(a), Retaliation requires that a person “harms another by an unlawful act or engages in a course of conduct or repeatedly commits acts which threaten another in retaliation for anything lawfully done in the capacity of witness, victim or a party in a civil matter.”

On June 5, 2012, the Commonwealth filed a Motion to Consolidate these cases for trial.

A hearing and argument was held on the Motion to Consolidate on July 16, 2012. In connection with determining the Motion, the parties stipulated that the Court could consider the factual allegations set forth in the respective Affidavits of Probable Cause. The relevant facts follow.

On January 29, 2011, Bilal Sabur shot Dawine Jeffreys in the leg. The shooting occurred in the 400 block of Mifflin Place.

At the time, Bilal Sabur was living with Nicole Kramer. The two shared an apartment at Timberland Apartments, which is located on 750 W. Edwin Street, Williamsport, Pennsylvania 17701.

After shooting Dawine Jeffreys, Bilal Sabur ran back to his apartment. Nicole Kramer assisted Bilal Sabur in disposing of the firearm used during the incident.

Nicole Kramer was subsequently arrested for assisting Bilal Sabur in disposing of the firearm. Bilal Sabur and Nicole Kramer attended a preliminary hearing in front of District Judge Carn regarding the charges. During the hearing, Ms. Kramer testified against Bilal Sabur.

Bilal Sabur has two nieces, Defendant Aisha Naheemah Sabur and Defendant Kadijah Sabur. Both Defendants either reside in or near Timberland Apartments.

The Defendants visited Bilal Sabur at the Lycoming County Jail on several occasions between April 15, 2011 and January 17, 2012. Bilal Sabur also called the Defendants on the telephone from jail. Per the jail's policies, all of the telephone calls and visitations were recorded.

Officers at the Lycoming County Jail reviewed the recordings of the telephone calls and visits between Bilal Sabur and the Defendants. Numerous comments were made either by Defendant Aisha Sabur and/or Defendant Kadijah Sabur threatening to physically harm Ms. Kramer for testifying against Bilal Sabur. Both Defendants referred to Ms. Kramer as a "Rat" and a "Snitch" for testifying.

From April 15, 2011 through February 16th, 2012, Defendant Aisha Sabur and Defendant Kadajah Sabur made various contacts with Ms. Kramer. The Defendants approached Ms. Kramer on numerous occasions outside of Timberland Apartments. During these unwelcomed visits, the Defendants threatened to physically harm Ms. Kramer. The Defendants also called Ms. Kramer a “Rat” and a “Snitch” for testifying against Balil Sabur.

As a result of the repeated threats and unwelcome visits from the Defendants, Ms. Kramer filed a police report with the Williamsport Bureau of Police on November 10, 2011.

Rule 582 of the Pennsylvania Rules of Criminal Procedure governs the joinder of separate indictments or information for trial. The relevant portion is as follows:

- (1) Offense charged in separate indictments or informations may be tried together if:
 - (a) 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 or confusion; or
 - (b) the offenses charged are based on the same act or transaction.

- (2) Defendants charged in separate indictments or informations may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

Pa. R. Crim. P. 582(A)(1),(2).

Rule 583 governs severance of offenses or defendants. “The court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants tried together.” Pa. R. Crim. P. 583.

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, 668 A.2d 491, 501 (Pa. 1988). While there is presumption that

defendants with criminal charges arising from the same facts and evidence should receive joint trials, the presumption can be overcome by prejudice to the defendant. Commonwealth v. Rainey, 928 A.2d 215, 231 (Pa. 2007). The Court must, however, balance the need to minimize any prejudice that may be caused by consolidation, against the general policy of encouraging judicial economy. Commonwealth v. Presbury, 665 A.2d 825, 828 (Pa. Super. Ct. 1995).

Both Defendants objected to the Commonwealth's Motion to Consolidate. The Defendants argued that the cases should not be consolidated due to the danger of confusion. Defense counsel believes that the jury would be unable to differentiate between the two Defendants. The Defendants also submit that the indeterminate language in the Affidavit of Probable Cause convolutes the issue of whether the Defendants contacted Ms. Kramer together or separately. Further, it was argued that both Defendants have a Sixth Amendment right to confrontation. If the cases are consolidated, then Defendant Aisha Sabur will be unable to call Defendant Kadajah Sabur and vice versa due to the possibility that each Defendant may invoke her right to remain silent under the Fifth Amendment.

The Commonwealth asserted that the Affidavit of Probable Cause clearly suggests that both of the Defendants' charges are based on the same act or transaction.

The Commonwealth bears the burden of proving that the Defendants' charges arose from the same act or transaction. The Court finds under Pa. R. Crim. P. 582(A)(1)(b) that the Commonwealth has failed to satisfy its burden. Relying upon the Affidavits of Probable Cause, the Court finds that it is unclear whether the charges are from the same act.

The Affidavits note that "both Aisha Sabur and Kadajah Sabur would" visit Bilal Sabur at the jail. It is unclear, however, whether the Defendants visited Bilal Sabur

together or separately. The Commonwealth did not provide a visitation record that indicated both Defendants visited Bilal Sabur together. Further, the Commonwealth did not offer as evidence the recordings of the visits to show that both of the Defendants visited Bilal Sabur at the same time.

The Affidavits also state that “Bilal Sabur would call Aisha Sabur and/or Kadijah Sabur” on the telephone. It is unlikely that an inmate would be permitted to conference call two people. Even if it is permitted, the recordings of the phone conversations were not offered to the Court. Based upon the Affidavits alone, it is unclear whether Bilal Sabur called both of the Defendants at the same time.

The Commonwealth asserted that both of the Defendants visited and threatened Ms. Kramer together. The Court finds, however, that the Commonwealth has not met its burden of proof. The Affidavits state that Ms. Kramer told police that both of the Defendants contacted and threatened her between April 15, 2011 and February 6, 2012. This sentence is vague because it does not specify if the Defendants visited Ms. Kramer together. Later in the Affidavits, it notes that “throughout these visitations/phone calls numerous comments were made by either Aisha Sabur and/or Kadijah Sabur.” If only Defendant Aisha Sabur or only Defendant Kadijah Sabur visited or spoke to Bilal Sabur, then the charges would not be from the same act.

The Commonwealth did not provide evidence of the specific visits to Ms. Kramer by the Defendants. Neither the Victim nor the Affiant testified at the hearing. As a result, the vagueness of the Affidavit was not clarified. It is still unclear when the Defendants visited and whether they visited Ms. Kramer together or separately.

The Court also notes that the Defendants are not charged with conspiracy.

Based on the record, the Court cannot find that the charges are based on the same act or transaction. Since this was the sole theory upon which the Commonwealth sought joinder, the Court will deny the Commonwealth's motion.

ORDER

AND NOW, this ___ day of July, 2012, the Court DENIES the Commonwealth's Motion to Consolidate. The Informations set forth at No's. CR-563-2012 and CR-570-2012 shall not be tried together.

By the Court,

Judge Marc F. Lovecchio

cc: CA
Martin Wade, Esquire
Jeana Longo, Esquire
Amy Boring, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Angeline Allen, Intern
Work file