IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CR-1381-2011**
	:	
vs.	:	
	:	
AARON MEIXEL,	:	
Defendant	:	**Motion to Sever**

OPINION AND ORDER

Before the Court is Defendant's Motion to Sever filed on January 9, 2012. The argument and hearing was first set for April 2, 2012 but continued at Defendant's request to April 23, 2012.

At the argument, the parties stipulated that the Court could consider the Affidavit of Probable Cause attached to the Criminal Complaint in deciding the Motion to Sever.

Counts one through six and 16, of the Criminal Information filed against the Defendant on November 3, 2012 relate to alleged criminal conduct committed by the Defendant against M.M., his then twelve-year-old daughter. The Commonwealth stipulated that these charges could be severed for trial purposes from the remaining charges. Accordingly, an appropriate Order will be entered.

Counts 7 (indecent assault), 10 (unlawful contact with minor, 12 (obscene and other sexual materials) and 14 (corruption of minors) relate to K.B. Counts 8 (indecent assault), 9 (indecent assault), 11 (unlawful contact with minor), 13 (obscene and other sexual materials and 15 (corruption of minors) relate to M.T.

Defendant requests that the group of charges regarding K.B.s also be severed

from the group of charges relating to M.T.

As reflected in the Affidavit of Probable Cause, a few days before the start of the new 2011 school year, K.B. then nine (9) and her friend M.T. then eleven (11) decided with the permission of their parents to walk to Jackson School to see who they would have for teachers for the upcoming school year. As they were walking past Defendant's residence, the Defendant asked them if they would walk his two children to school. Defendant asked them if they wanted to see a picture. He then showed them a photograph which depicted Defendant's wife performing oral sex on Defendant.

On occasion, K.B. would visit Defendant's residence to play with his children J.M. and E.M. On at least ten (10) different occasions, Defendant would grab and pinch her breast area and tell her he was giving her "purple nurples." K.B. specifically remembered one of the incidents occurring around July 4 when they were watching fireworks. Defendant told K.B. that she was not to tell anyone what he was doing to her.

M.T. confirmed the incident outside of Defendant's residence when Defendant showed her and K.B. the inappropriate photograph.

M.T. also would visit Defendant's residence to visit E.M. On two separate occasions while she was visiting E.M., the Defendant placed his hands between her legs and fondled her vaginal area over her clothing. Defendant directed M.T. not to tell anyone that he was fondling her.

Counts 7, 8 and 9 are all indecent assault charges. Count 7 relates to the July 4, 2011 purple nurple incident with K.B. while Counts 8 and 9 relate to the fondling of M.T.'s

vaginal area on two separate occasions.

Counts 10 and 11 are unlawful contact with minor charges. Count 10 relates to the purple nurple incident with K.B. while Count 11 relates to the fondling of M.T..

Counts 12 and 13 charge the Defendant with obscene and other sexual materials and performances (dissemination to minors) and relate to the August 2011 incident when Defendant showed to both K.B. and M.T. the inappropriate photograph.

Counts 14 and 15 are corruption of minors' counts and concern the indecent assaults on K.B. and M.T., respectively

Rule 583 of Pennsylvania Rules of Procedure governs severance. "The Court may order separate trials of offenses…if it appears that any party may be prejudiced by offenses…being tried together." Pa.R.Cr.P. 583; Commonwealth v. Dozzo, 991 A.2d 898, 901-02 (Pa. Super. 2010).

Under Rule 583, the prejudice a Defendant suffers due to not severing charges must be greater than the general prejudice any Defendant suffers when the Commonwealth's evidence links him to a crime. Commonwealth v. Dozzo, 991 A.2d 898, 902 (Pa. Super. 2010), citing Commonwealth v. Lauro, 819 A.2d 100, 107 (Pa. Super. 2003), app. denied, 574 Pa. 752, 830 A.2d 975 (2003).

The Supreme Court has established a three-part test that the lower courts must apply in addressing a severance motion similar to that raised in this case. First, the Court must determine whether the evidence of each of the offenses would be admissible in a separate trial for the other. Second, the Court must determine whether such evidence is capable of separation by the jury so as to avoid danger of confusion. Third, if the answers to the previous two questions are in the affirmative, the Court must determine if the Defendant will be unduly

prejudiced by the consolidation of offenses. Commonwealth v. Collins, 550 Pa. 46, 703 A.2d 418, 422 (1997), cert. denied, 525 U.S. 1015, 119 S. Ct. 538 (1998).

In deciding the first question of whether the evidence of each offense would be admissible in a separate trial for the other, the Court is guided by the Pennsylvania Rules of Evidence. “Other crimes” evidence is admissible to show motive, intent, absence of mistake or accident, common scheme or plan, and identity. Dozzo, supra, citing Commonwealth v. Melendez-Rodriguez, 856 A.2d 1278, 1283 (Pa. Super. 2004) (en banc).

In determining whether evidence of one crime is admissible to prove a common plan, scheme or design, the Court must be satisfied that the crimes or bad acts are so related to each other that proof of one tends to prove the other. Commonwealth v. Judd, 897 A.2d 1224, 1231-32 (Pa. Super. 2006). The following factors should be considered in establishing similarities: the elapsed time between the crimes, the geographical proximity of the crime scenes, and the manner in which the crimes were committed. Judd, supra. at 1231, citing Commonwealth v. Clayton, 506 Pa. 24, 33, 43 A.2d 1345, 1345-1350 (1984).

Defendant argues that the evidence of each of the offenses would not be admissible in a separate trial for the other, in that it fails to show a common scheme or plan, or identity. The Court disagrees. The offenses are sufficiently linked in time and content so as to be admissible in separate trials to prove a common scheme, plan or design, or identity.

The sexual assaults took place in Defendant’s home while the victims were visiting Defendant’s children. The victims came in contact with the Defendant through his children. The assaults all took place during a six-month period in 2011. The victims were very similar in age, one being nine (9) and one being eleven (11). The crimes were all committed in a similar manner. Defendant fondled the intimate parts of each minor. Furthermore, the

Defendant made similar statements intimidating and/or directing the girls into not disclosing what occurred. Finally, two of the crimes involved both girls at the same time.

The Court concludes that the evidence of the separate crimes are so related to each other that proof of one tends to prove the other. Moreover, the evidence of the other crimes is admissible in that the proof of one naturally tends to show who committed the other. See for example, Commonwealth v. Zigler, 353 Pa. Super. 168, 509 A.2d 389, 391 (1986); Commonwealth v. Laurenson, 323 Pa. Super. 46, 470 A.2d 122, 125-26 (1983); Commonwealth v. Andrulewicz, 911 A.2d 162, 168 (Pa. Super. 2006), app. denied, 592 Pa. 778, 926 A.2d 972 (2007).

The Court notes as well that the exception language of 404 (b) (2) is not exclusive. See Commonwealth v. Watkins, 577 P. 194, 843 A.2d 1203, 1215 n. 11 (2003), cert. denied 543 U.S. 960 (2004). Numerous cases, for example, admit bad acts evidence to explain a course of conduct, to complete the story, to evidence the natural development of the case, or even to show a relationship between co-conspirators. Commonwealth v. Williams, 586 Pa. 553, 896 A.2d 523, 539 (2006), cert denied, 549 U.S. 1213 (2007); Commonwealth v. Drumheller, 570 Pa. 117, 808 A.2d 893, 905 (2002), cert denied, 539 U.S. 919 (2003).

Given the similarities as set forth above, the Court is also of the opinion that the prior crimes evidence and/or bad acts evidence is admissible to explain a course of conduct by the Defendant, to complete the story, to evidence the natural development of the case and as indicated previously to prove a common scheme.

Additionally, the Court is not concerned that the evidence would not be capable of separation by the jury or cause any danger of confusion. The facts are relatively simple and straightforward and certainly capable of being separated by the jury to the extent that the

Defendant is charged with different crimes involving different victims.

Finally, there does not appear to be any undue prejudice against the Defendant by consolidation of the offenses. While Defendant argues that the cumulative affect of the evidence would overwhelm the presumption of innocence, the Court does not agree.

Unfair prejudice means a tendency to suggest a decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially. Pa. R.E. 403, comment. The Court sees no danger of this. Further, the jury will be instructed to consider each charge separately and to not use any other crimes evidence as proof of Defendant's bad character.

Accordingly, the Court will enter the following Order:

O R D E R

AND NOW, this ____8th____ day of May 2012, following a hearing and argument, Defendant grants in part Defendant's Motion for Severance. Counts 1 through 6 and Count 16 will be severed from the remaining counts for trial purposes. Counts 7 through 15 will not be severed from each other and there shall be one trial with respect to such.

By The Court,

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Marc F. Lovecchio, Judge

cc: CA
District Attorney's Office

Public Defender’s Office (WM)
Gary Weber, Esquire (Lycoming Reporter)
Work File