

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 2073-2012
V. : Order granting Commonwealth's
DAMIEN MOTTER : Motion to Consolidate

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OPINION AND ORDER

The Commonwealth filed a Motion to Consolidate on May 10, 2013. A hearing on the motion was held on July 17, 2013.

BACKGROUND

The first charges included in the Commonwealth's Motion to Consolidate are found at docket number 2076-2012. Burglary, Conspiracy, and Theft charges were filed on July 23, 2012 against Defendant in relation to burglaries of two hunting cabins in Washington and McHenry Townships which occurred during the months of October and November 2011. Defendant is alleged to have committed these burglaries in conjunction with co-Defendant Kyle Dyer. These charges were filed following an interview with the affiant, a DCNR Ranger, and a PSP Trooper in which Kyle Dyer stated that he and Defendant would drive to various locations at night and commit the burglaries. Dyer was shown photographs of state leased camps which had been broken into and identified The Cove Road Hunting Club, in Washington Township, and The Glen Lyon Camp, in McHenry Township. According to Dyer, Motter would use a crowbar or break windows to gain access to the cabins while Dyer would use bolt-cutters on any padlocks.

Both would enter the buildings, load stolen items into the vehicle, then leave in order to be home before sunrise.

The second charges were filed later on October 2, 2012 following an interview with Kyle Dyer pertaining to an unsolved cabin burglary. These charges are docketed to 2073-2012. During an interview with the affiant concerning a recovered Squibman's .22 caliber pistol, Kyle Dyer again implicated himself and Damien Motter. Dyer stated that they went to the cabin at night, parked nearby, cut the gate lock with bolt-cutters, broke into the cabins with the crowbar and through windows, then loaded the stolen items into the vehicle. These stolen items included the Squibman's .22 caliber pistol. He said they arrived home at sunrise and unloaded the items into his shed before going to sleep for the day. Dyer and Motter went through the items the next day.

Kyle Dyer is expected to testify that he and Damian Motter committed these several burglaries between the summer of 2011 and January 2012 and describe the manner in which they committed the burglaries. Allegedly, the two men would travel together by truck, leaving around dusk in order to arrive after dark. They would park nearby, use bolt-cutters and a crowbar to gain access to the properties and the interiors of the cabins, and steal items from within.

DISCUSSION

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 of confusion; or (b) the offenses are based on the same act or transaction." Pa. R. Cr. P. 582. Conversely, a 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.

The Supreme Court has established a three-part test under these Rules in addressing consolidation or severance motions. First, the court must determine whether the evidence of each offense 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 confusion. Third, if the first two questions are answered in the affirmative, the court must determine if the defendant will be unduly prejudiced by the consolidation of the offenses. Commonwealth v. Collins, 550 Pa. 46, 703 A.2d 418, 422 (1997), cert denied, 525 U.S. 1015, 119 S. Ct. 538 (1998).

First, in determining 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, or identity. Pa. R. Cr. P. 404(b)(2); Commonwealth v. Dozzo, 991 A.2d 898, 902 (Pa. Super 2010), citing Commonwealth v. Melendez-Rodriguez, 856 A.2d 1278, 1283 (Pa. Super 2004) (en banc).

Evidence of other crimes is admissible when it tends to prove a common scheme or plan involving two or more crimes so related to each other that proof of one tends to prove the others. Commonwealth v. Judd, 897 A.2d 1224, 1231-32 (Pa. Super 2006). Factors to be considered in establishing similarities include (1) the elapsed time between the crimes, (2) the geographical proximity of the crime scenes, and (3) the manner in which the crimes were committed. Id. at 1232, citing Commonwealth v. Collins, 506 Pa. 24, 33, 483 A.2d 1345, 1349-1350(1984).

Here, the burglaries are similar enough that they tend to show a common scheme or plan; the two men would depart at night, break into secluded cabins using bolt-cutters and a crowbar, then store the stolen goods in a shed to be sorted later. The burglaries occurred within a six month period, well within “acceptable remoteness standards” for consolidation purposes. Commonwealth v. Robinson, 581 Pa. 154, 192, 864 A.2d 460, 482 (2004). Geographically, all the burglaries took place within Lycoming County. While there is arguably a significant distance between the various locations, hunting cabins are remote by nature. Defendant allegedly learned of these secluded locations while working for a gas company, who typically work in out-of-the-way areas. The manner in which the crimes were committed is also “strikingly similar” enough to warrant consolidation. Commonwealth v. O’Brien, 836 A.2d 966, 970 (Pa. Super 2003). All the charges stem from defendant burglarizing hunting cabins, as alleged by his co-Defendant. Each crime was committed at night using tools like bolt-cutters to gain access. The stolen goods would be stored on Defendant’s or co-Defendant’s property. Each incident involved tools stolen from empty cabins. Defendant provided the locations of these empty cabins based on his work with the gas company. These shared similarities of details, paired with similar locations and temporal proximity, show a common scheme or plan. Commonwealth v. Newman, 528 Pa. 393, 598 A.2d 275, 279 (1991) (stating that a commonality of roles and sites established a common design and that the court is to look at the shared details, which includes the perpetrator’s actions in addition to the location of the crimes). The evidence tends to show a common scheme or plan, rather than merely a propensity to commit crimes.

Accordingly, the Court finds that the first prong of Collins is met because the evidence of one burglary would have been admissible in a separate trial for the others.

Second, as to whether the evidence is capable of separation by a jury so as to avoid confusion, the Court finds that no danger of confusion exists. These cases involve only three locations, a limited number of actors, and essentially the same conduct, making them relatively uncomplicated. Commonwealth v. Boyle, 733 A.2d 633, 637 (Pa. Super 1999). While the general nature of the items taken from the cabins are similar, notable items like the .22 caliber Squibman's Pistol and the details of its recovery will help distinguish the separate incidents. Each burglary occurred in a distinct township and can be labeled as such. Because the burglaries took place in different locations on different dates, a jury should be able to distinguish the incidents without confusion. Commonwealth v. Janda, 14 A.2d 147, 158 (Pa. Super 2011) (consolidating nine burglaries over a five month period). Therefore, the Court finds the second prong of Collins is met.

Third, the Court must determine if the consolidation of the offenses will unduly prejudice Defendant. Collins, 703 A.2d at 422. The Court must also "weigh the possibility of prejudice and injustice caused by the consolidation against the consideration of judicial economy." Janda, at 155-156, quoting Commonwealth v. Morris, 493 Pa. 164, 171, 425 A.2d 715, 718 (1981). This prejudice exists "if the evidence [tends] to convict [the defendant] only by showing a propensity to commit crime, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence." Boyle, 733 A.2d at 638. The Court finds that the possibility of prejudice does not outweigh the judicial economy of consolidating these cases. The jury will be instructed to consider each charge separately and not to use any other crime evidence as proof of Defendant's character or propensity. Defendant will not be unduly prejudiced. Therefore, the third prong of Collins is met.

Whether to join or sever offenses for trial is within the trial court's discretion. Commonwealth v. Armstrong, 2013 PA Super 220 (Pa. Super 2013); Commonwealth v. Burton, 770 A.2d 771, 777 (Pa. Super 2001), appeal denied, 582 Pa. 669, 868 A.2d 1197 (2005). In this Court's discretion, consolidation is appropriate. Thus, the Court will enter the following order.

ORDER

AND NOW, this 8th day of August 2013, the Commonwealth's Motion to Consolidate is granted. The Informations docketed under CR-2076-2012 and CR-2073-2012 shall be tried together.

BY THE COURT:

Marc F. Lovecchio, Judge

cc: CA
Martin Wade, Esquire, ADA
William Miele, Esquire, PD
Gary Weber, Esquire (Lycoming Reporter)
Dance Drier, Intern for Judge Marc F. Lovecchio
Work file