

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

|                         |   |                                   |
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| <b>COMMONWEALTH</b>     | : | <b>No. CR-35-2013; CR-17-2013</b> |
| <b>v.</b>               | : | <b>CR-63-2013; CR-1382-2013</b>   |
|                         | : |                                   |
| <b>REUBEN McDOWELL,</b> | : | <b>Motion to Consolidate</b>      |
| <b>Defendant</b>        | : |                                   |

**OPINION AND ORDER**

Before the Court is a Motion to Consolidate the above four Informations. By way of background, the original Motion to Consolidate included only three Informations, those being 17-2013, 35-2013 and 63-2013. On October 11, 2013, the Court granted the Commonwealth's Motion to Amend its Motion to Consolidate to add the counts alleged in Information CR-1382-2013. The hearing and argument on the Commonwealth's Motion to Consolidate was held on December 11, 2013.

Information 17-2013 filed on January 31, 2013 charges Defendant with Assault, Burglary, Robbery, Criminal Trespass, Stalking, Theft, Receiving Stolen Property, Simple Assault, Recklessly Endangering Another Person and Harassment. The crimes were alleged to have occurred on December 12, 2012.

Information 35-2013 filed on February 8, 2013 charges Defendant with Forgery, Identity Theft, Theft from a Motor Vehicle, Access Device Fraud and Theft By Unlawful Taking. The crimes were alleged to have occurred as well on December 12, 2012.

Information 63-2013 filed on February 15, 2013 charges Defendant with Robbery, Theft By Unlawful Taking, Receiving Stolen Property, Recklessly Endangering Another Person, Simple Assault and Theft from a Motor Vehicle. These crimes were alleged to have occurred on December 7, 2012.

Finally, Information 1382-2013 filed on September 13, 2013 charges Defendant with Robbery, Stalking, Theft By Unlawful Taking or Disposition, Receiving Stolen Property, Harassment, Burglary, Criminal Trespass, Access Device Fraud and Theft from a Motor Vehicle. These crimes were alleged to have occurred between December 9, 2012 and December 16, 2012.

At the hearing in this matter, the parties stipulated that in deciding the Motion to Consolidate, the Court could consider not only the respective affidavits of probable cause but also the preliminary hearing transcripts. The transcripts were subsequently submitted and the Court has reviewed them. This matter is now ripe for a decision.

Under Information No. 17-2013, the charges relate to an incident involving Jean Heller, an 86 year old female. On December 12, 2012, she went to the Giant Shopping Center in Loyalsock to buy groceries. She returned to her house at approximately 1:00 p.m. While in the process of bringing her groceries into the house from her car, she noticed the handle on the front door being moved. Thinking it was the mailman, she went to open the door, but was pushed back and fell on the floor.

The intruder kicked the victim several times, located her purse, took her wallet and an envelope containing cash, and then left the home. The victim identified Defendant both at a line-up and during the preliminary hearing as her assailant.

Under Information 35-2013, Peggy Econumou, an 86 year old female, was grocery shopping at Aldi's in Loyalsock Township on December 13, 2012. While returning the shopping cart, Defendant allegedly stole her purse from her vehicle. Among the items taken from the purse was a credit card, which was subsequently used at Weis Markets. The

surveillance video from Weis Markets showed an African American individual with sunglasses, a black hat and black coat. Similar clothing was eventually seized from a vehicle Defendant was operating. Furthermore, a subsequent search of Defendant's residence pursuant to a warrant yielded items that were purchased on December 13 with the victim's credit card. Moreover, when Defendant was taken into custody, he admitted to the crimes. Specifically, he told police officers that while the victim was returning her cart, he saw an opportunity to take the purse. He removed it from the car and ultimately used the credit card at various locations.

Under 63-2013, on December 7, 2012, while returning from grocery shopping, eighty-two year old Mary Mulauski stopped to check the movie times at the Williamsport Cinema Center. She came in contact with an individual as she was getting into her car. She had thrown her purse on the other seat and a struggle ensued while her assailant was attempting to take the purse. The assailant eventually obtained the purse after pressing a pressure point on the victim's hand.

While subsequently in custody, Defendant admitted that he saw the victim in the parking lot area and acknowledged that she was older. He thought that he could take her purse without having to confront her but was surprised when she fought.

Under Information 1382-2013, there were four alleged victims. The first was Alice Frel. In December of 2012 after returning to her home from the library and while trying to get into her apartment an individual grabbed her purse, stole it, ran to his car and drove away. Ms. Frel was 85 years old and resided in Williamsport. She had previously been shopping at the Wegman's grocery store in Williamsport.

On December 11, 2012 at approximately noon, Margaret Campbell, then 83

years old was unloading groceries. She had been previously shopping at the Giant in Loyalsock. While putting away her groceries, she placed her purse on a chair inside the door. After she had put all of the groceries on the table, she started looking for her purse but it was gone. It was eventually returned to her a few hours later by a third party who indicated that it was found on the road not too far. The cash in the purse had been taken.

A few hours later, at approximately 4:30 in the afternoon, an assailant entered the residence of Marthena Edkin, an 84 year old female who also resided in the Loyalsock area, shortly after she returned home from the Giant food store. The assailant stole money from Ms. Edkin's purse, which was on the kitchen counter.

On December 16, 2012 at approximately 4:00 in the afternoon Delores Montgomery, an 82 year old female, had her purse stolen from out of her vehicle at the Aldi's parking lot. She was returning her cart to the designated cart collection area. She observed the actor removing her purse and fleeing in a vehicle. Her purse was found nearby her residence and returned to her. Her credit cards had been used.

The Commonwealth contends that consolidation is appropriate in that the evidence of the different crimes would be admissible in separate trials, that the evidence is capable of being separated by the jury, that the evidence would not confuse the jury and that consolidation is appropriate in the interests of judicial economy. Defendant submits not only should the Commonwealth's Motion to Consolidate be denied but that the charges should be severed under Information 1382-2013 to include only those charges relating to an individual victim. Defendant submits that the similarities between the crimes are minimal, that the Commonwealth intends to use the evidence for propensity only, and that the jury would clearly

be confused.

Separate 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 charged are based on the same act or transaction.” Pa. R.Cr. P. 582. Conversely, 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.

The Supreme Court has established a three-part test for 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).

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)(citations omitted).

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 (citations omitted).

As well, evidence of other crimes may be introduced to establish the identity of the person charged with commission of the crime on trial. Commonwealth v. Armstrong, 74 A.3d 228, 233 (Pa. Super. 2013). The evidence may be introduced

where there is such a logical connection between the crimes that proof of one will naturally tend to show that the accused is the person who committed the other...

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The Commonwealth must show more than the other crimes were of the same class for which the defendant is be tried, rather, there must be such a high correlation in the details of the crime that proof that the defendant committed one makes it very unlikely that anyone else but the defendant committed the others.”

Id., quoting Commonwealth v. Morris, 493 Pa. 164, 425 A.2d 715, 720-21 (1981).

Upon reviewing all of the evidence, the Court concludes that not only are the offenses so similar that they tend to show a common scheme or plan but they also demonstrate that is very unlikely that anyone else but Defendant committed the other crimes. The crimes are not only of a similar class but they also took place in close temporal and geographic proximity.

The actor would apparently target an elderly woman by positioning himself in the area of grocery stores where elderly woman frequent. He would then wait for the appropriate opportunity -- either in a parking lot, at the victim’s vehicle or at her home -- to

take what he wanted. In each of the incidents he took the victim's purse, removed items that he deemed valuable, and then discarded the rest. The force used if any was negligible as the actor intended solely to obtain what he wanted and then leave.

The incidents occurred within a ten-day span, well within "acceptable remoteness standards" for consolidation purposes. Commonwealth v. Robinson, 581 Pa. 154, 192, 864 A.2d 460, 482 (2004). Geographically, all of the burglaries took place in Williamsport within, at most, a few miles of each other.<sup>1</sup> Different groups of them were at the same location. They all occurred in either the center city or the Loyalsock area of Williamsport.

The manner in which the crimes were committed is sufficiently similar to warrant consolidation. See Commonwealth v. O'Brien, 836 A.2d 966, 970-71 (Pa. Super. 2003). All of the charges stem from Defendant preying on a vulnerable elderly female. Each crime was committed in a similar manner. Defendant would lie in wait and then take advantage of the opportunity at hand. The item stolen in all of the cases was the victim's purse. The purse was looted through, the actor took what he wanted, and then discarded the purse.

The shared similarities in the perpetration of the crimes, the similar locations, and their temporal proximity show a common scheme or plan. See Commonwealth v. Newman, 528 Pa. 393, 598 A.2d 275, 278 (1991).

Moreover, the similarities tend to establish the identity of the perpetrator. This is especially true in light of Defendant's admission that he committed some of the offenses. There is such a logical connection between the crimes that proof of one naturally tends to show

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<sup>1</sup> The Aldi and Giant stores are within two blocks of each other. Wegmans and the Cinema Center are within two

that the accused is the person who committed the other. Indeed, it is very unlikely that anyone else but Defendant committed these offenses.

Accordingly, the Court finds that the first prong of Collins is met because the evidence of one crime would be 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 clearly identifiable victims and essentially the same conduct, making them not at all complicated. Commonwealth v. Boyle, 733 A.2d 633, 637 (Pa. Super. 1999). The Court sees no danger whatsoever of the jury not being able to distinguish each of the incidents. See Commonwealth v. Janda, 14 A.3d 147 (Pa. Super. 2011). Therefore, the Court finds that the second prong of Collins is met.

Third, the Court must determine if the consolidation of the offenses will unduly prejudice the 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, 14 A.3d 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 637. 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.

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blocks of each other. The distance between these two groups of establishments is, at most, a few miles.



Accordingly, the Defendant will not be unduly prejudiced and the third prong of Collins is met.

Whether to join or sever Informations for trial is within the trial court's discretion. Commonwealth v. Armstrong, 74 A.3d 228, 233 (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 \_\_\_\_ day of January 2014, the Commonwealth's Motion to Consolidate is GRANTED. The Defendant's oral Motion to Sever is DENIED. The Informations at docketed under No's.: CR-35-2013; CR-17-2013; CR-63-2013; CR-1382-2013 shall be tried together.

By the Court,

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Judge Marc F. Lovecchio

cc: CA  
DA (MK)  
PD (RC)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file