

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

COMMONWEALTH	:	No's. CR-1199-2015; CR-1907-2015
v.	:	
	:	Motion to Consolidate
GEORGE REEDER,	:	
Defendant	:	

OPINION AND ORDER

Under Information No. 1907-2015, Defendant is charged with failure to comply with registration of sexual offender's requirements, a felony of the second degree. It is alleged that he failed to register his address within three days after being released from prison on August 18, 2015.

Under Information No. 1199-2015, Defendant is charged with three counts of failure to comply with registration requirements, all of which are felonies of the second degree. It is alleged that Defendant failed to register his residence within three business days of moving into 653 Hepburn St., Apartment 14 and/or failing to register his transient status within three days of establishing such a status in Pennsylvania.

Under Information No. 1907-2015, Defendant is alleged to have committed the offense between August 22, 2015 and October 9, 2015. Under Information No. 1199-2015, Defendant is alleged to have committed the offenses between January 28, 2015 and June 25, 2015.

On December 1, 2015, the Commonwealth filed a motion to consolidate the cases for trial. Argument was held before the court on December 14, 2015. Defendant argues against consolidation claiming that his alleged failure to register in one instance is not relevant to his alleged failure to register in another instance. He further argues that consolidation would

result in unfair prejudice by claiming that the jury would automatically find him guilty of both offenses even if they believed he was only guilty of one.

Separate indictments or informations may be joined and 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. CRIM. 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. CRIM. P. 583.

The Supreme Court has established a three-part test for addressing consolidation 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 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, or identity. PA. R. CRIM. 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)).

Moreover, the exception language of 404 (b) (2) is not exclusive. See PA. R. EVID. 404 (b), comment; *Commonwealth v. Dillon*, 592 Pa. 351, 925 A.2d 131, 137 (2007).

Numerous cases, for example, admit bad acts evidence to explain a course of conduct, to complete the story or to evidence the natural development of the case. *Commonwealth v. Williams*, 586 Pa. 553, 896 A.2d 523, 539 (2006), *cert. denied*, 549 U.S. 1213 (2007).

The court finds that the first prong of the *Collins* test has been met. Specifically, the evidence of each of the offenses would be admissible in a separate trial for the other.

To be convicted of a failure to register, the Commonwealth must show that the Defendant did so knowingly. Once Defendant was arrested, charged and jailed on the offenses under Information 1199-2015, he obviously became aware of his registration requirements. The second set of charges alleges that once he was released from jail, he nonetheless failed to register yet again. Clearly, the first set of charges is admissible in a separate for the second set of charges to show Defendant's knowledge or awareness of his obligation to register in Pennsylvania.

As well, the second set of charges is admissible in the trial of the first set of charges to show intent or lack of mistake. It would not be unexpected for Defendant to argue that with respect to his failure to register between January and June of 2015 it was a mistake or lack of knowledge. Certainly, the Commonwealth could argue that it was not a mistake or lack of knowledge based upon the fact that Defendant again failed to register once he was released from jail.

With respect to the second prong, the court finds that the evidence would be capable of separation by the jury and that there would be no danger of confusion. The facts are relatively simple and straightforward. There are different timeframes and different addresses. The court would not expect the facts to be so complex, intricate, convoluted, or elaborate as to confuse the jury.

The third prong requires the court to determine if the consolidation of the offenses will unduly prejudice the Defendant. *Collins*, supra at 422. “Prejudice...is not simply prejudice in a sense that [the defendant] will be linked to the crimes for which he is being prosecuted.... The prejudice...is rather that which would occur if the evidence tended to convict [the defendant] only by showing his propensity to commit crimes, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence.” *Commonwealth v. Boyle*, 733 A.2d 633, 637 (Pa. Super. 1999). Unfair prejudice means “a tendency to suggest a decision on an improper basis or to divert the jury’s attention from its duty of weighing the evidence impartially.” PA. R. EVID. 403, comment.

Obviously, 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 or propensity. The jury will be instructed as well that even if Defendant is found to be guilty in connection with one set of charges, that does not suggest that he is guilty on the other set of charges nor does it relieve the Commonwealth of its duty of proving the charges beyond a reasonable doubt.

Given these instructions, the court concludes that Defendant will not be unduly prejudiced by consolidation. Further, consolidation would better serve the interests of judicial economy. In fact, the court can even conceive of some circumstances in which consolidation may in fact benefit Defendant.

ORDER

AND NOW, this ____ day of December 2015, following a hearing and argument, the court **GRANTS** the Commonwealth's motion to consolidate. The above-captioned Informations are consolidated for trial purposes.

By the Court,

Marc F. Lovecchio, Judge

cc: CA
Nicole Ippolito, Esquire (ADA)
Greta Davis, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file