

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CP-41-CR-21-2021**
 : **CP-41-CR-67-2021**
 v. :
 :
 NIGEL STATEN-CHAMBERS, : **MOTION TO CONSOLIDATE**
 Defendant :

OPINION AND ORDER

Nigel Staten-Chambers (Defendant) was charged on December 30, 2020 with Criminal Attempt to Commit Homicide¹, Aggravated Assault by Attempting to Cause Serious Bodily Injury², Robbery—Threat of Immediate Serious Injury³, Criminal Attempt Robbery⁴, Aggravated Assault with a Deadly Weapon⁵, Possession of a Firearm by a Minor⁶, Receiving Stolen Property⁷, Firearms not to be Carried without a License⁸, Possession of an Instrument of Crime⁹, Recklessly Endangering Another Person¹⁰, Criminal Mischief¹¹, and Propelling Missiles onto Occupied Vehicles¹² filed under docket CR-21-2021. The charges arise from the shooting of a pizza delivery person on November 21, 2020, in the 900 block of Market Street in the city of Williamsport, Pennsylvania. On January 6, 2021, Defendant was charged under docket CR-67-2021 with the following: Criminal Attempt to Commit Homicide¹³, two (2)

¹ 18 Pa.C.S.A. § 901(a).

² 18 Pa.C.S.A. § 2702(a)(1).

³ 18 Pa.C.S.A. § 3701(a)(1)(ii).

⁴ 18 Pa.C.S.A. § 901(a).

⁵ 18 Pa.C.S.A. § 2702(a)(4).

⁶ 18 Pa.C.S.A. § 6110.1(A).

⁷ 18 Pa.C.S.A. § 3925(a).

⁸ 18 Pa.C.S.A. § 6106(A)(1).

⁹ 18 Pa.C.S.A. § 907(b).

¹⁰ 18 Pa.C.S.A. § 2705.

¹¹ 18 Pa.C.S.A. § 3304(a)(1).

¹² 18 Pa.C.S.A. § 2707(A).

¹³ 18 Pa.C.S.A. § 901(a).

counts of Aggravated Assault by Attempting to Cause Serious Bodily Injury¹⁴, two (2) counts of Aggravated Assault with a Deadly Weapon¹⁵, three (3) counts of Simple Assault¹⁶, seven (7) counts of Recklessly Endangering Another Person¹⁷, four (4) counts of Discharge of a Firearm into an Occupied Structure¹⁸, Criminal Mischief¹⁹, Possession of a Firearm by a Minor²⁰, Firearms not to be Carried without a License²¹, and Possession of a Weapon²². These charges arise from a shooting that occurred on November 23, 2020 at 941 Penn Street, Williamsport, Pennsylvania. After a preliminary hearing before MDJ Biichle, all of the charges were held over for court except for two (2) counts of Recklessly Endangering Another Person, one (1) count of Firearms not to be Carried without a License, and one (1) count of Possession of a Firearm by a Prohibited Person. The Commonwealth filed this Motion to Consolidate the two above listed cases on March 17, 2022. A hearing on the motion was held by this Court on March 28, 2022. Expedited consideration was requested by the Commonwealth as the case may be called for trial in April 2022. The case was not called and is currently awaiting trial on the July trial list.

Background

No testimony was provided at the time of the hearing because the Commonwealth relied on its argument and supporting case law as set forth in the motion. Under CR-21-2021, the Williamsport Bureau of Police responded to the area of 966 Market Street for the report of shots fired. Justin Peterson of Old School Pizza had reported that he was sent to a location on

¹⁴18 Pa.C.S.A. § 2702(a)(1).

¹⁵ 18 Pa.C.S. § 2702(a)(4).

¹⁶ 18 Pa.C.S. § 2701(a)(1); 18 Pa.C.S. § 2701(a)(2).

¹⁷ 18 Pa.C.S. § 2705.

¹⁸ 18 Pa.C.S. § 2707.1(a).

¹⁹ 18 Pa.C.S. § 3304(a)(5).

²⁰ 18 Pa.C.S. § 6110.1(a).

²¹ 18 Pa.C.S. § 6106(a)(1).

²² 18 Pa.C.S. § 6105(a)(1).

Market Street for a delivery. Once on the scene, he realized that the address did not exist. Based upon the fact that two males nearby were acting strangely, Peterson left the scene, and while doing, so heard five (5) gunshots ring out. When he returned to the pizza shop, he discovered three (3) bullet holes in the rear driver's side of his vehicle.

Under CR-67-2021, the Pennsylvania State Police responded to an incident which occurred in the 900 block of Penn Street in the City of Williamsport. The adult resident of 941 Penn Street called 911 to report that four (4) or five (5) rounds had just been shot into her house and that one of the juveniles who was present had been shot. After further investigation, it was determined that there were several juveniles, including Defendant, standing on the front porch or on the front lawn talking when the Defendant began to shoot towards one of them. As they ran, another juvenile who was running from outside back into the house was shot. This juvenile was not Defendant's intended target. Since the projectile had to be surgically removed from the youth's pelvic bone, he was transferred from UPMC to Geisinger Medical Center in Danville. The juvenile victim was expected to recover.

Discussion

Pursuant to Pennsylvania Rule of Criminal Procedure 582, charges may be consolidated and tried together when, "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 . . . the offenses charged are based on the same act or transaction." Pa. R. Crim. P. 582(A)(1). Additionally, a defendant may oppose consolidation "if it appears that any party may be prejudiced by offenses . . . being tried together." Pa. R. Crim. P. 583; *see also* Pa. R. Crim. P. 582 cmt. ("A party may oppose such a motion either on the ground that the standards in paragraph (A) are not met, or pursuant to Rule 583."). Evidence of one offense is admissible

at trial for another offense when the evidence is “admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.” Pa. R. Evid. 404(b)(2). “The general policy of the laws is to encourage joinder of offenses and consolidation of indictments when judicial economy can thereby be effected, especially when the result will be to avoid the expensive and time consuming duplication of evidence.” *Commonwealth v. Patterson*, 546 A.2d 596, 600 (Pa. 1988).

The Commonwealth argues that there are several bases upon which the Court could grant its request to consolidate and relies on several cases to support its position. See *Commonwealth v. O’Brien*, 836 A.2d 966 (Pa. Super. 2003); *Commonwealth v. Stiles*, 143 A3d 968 (Pa. Super. 2016); *Commonwealth v. Reid*, 626 A.2d 118 (Pa. 1993). In *O’Brien*, the Pennsylvania Superior Court found that crimes were admissible at trial of the defendant’s prior assaults were to consolidate were so similar as to establish a “common scheme, plan or design.” *O’Brien* 836 A.2d at 970. The Commonwealth argues that because these cases are offenses committed by the Defendant with a gun and so many of the same witnesses would be called that the interest of judicial economy supports consolidation of the charges for trial. See *Commonwealth v. Janda*, 14 A.3d 147, 155-57 (Pa. Super. 2011).

This Court denies the Commonwealth’s Motion to Consolidate for a number of reasons. First, procedurally, a motion of this nature may be raised by “any party, [who] may move to consolidate for trial separate indictments or informations, which motion must ordinarily be included in the omnibus pretrial motion.” Pa. R. Crim. P. 582(B)(2). Any such “omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless

opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion.” *Id.* Defendant’s cases were scheduled for arraignment on January 25, 2021 for docket 21 of 2021 and on February 8, 2021 for docket 67 of 2021. Therefore, the Commonwealth’s delay in filing of such a joinder motion until now prejudices Defendant who has been in a position to defend his cases separately for more than a year.

Secondly, the Commonwealth asserts judicial economy as an additional justification for consolidation. In *Commonwealth v. Janda*, the majority of the burglaries were raised in a singular information and one of the other burglaries was charged in a separate indictment. *Janda*, 14 A.3d at 155. Therefore, it made sense that judicial economy would be effectuated by trying the one stand-alone burglary with the indictment that included the defendant’s other eight (8) burglaries. Here, the Court finds that the same judicial economy argument does not exist. Defendant has been charged with two (2) different types of offenses, one a robbery and the other an assault. Although the Court concedes that many of the same witnesses may be called in both trials, but that in and of itself does not justify allowing the cases to be tried together.

Finally, these cases do not appear to be part of the same series or transaction and they do not satisfy Pennsylvania Rule of Evidence 404(b)(2), which would allow evidence from each case to be presented at trial for the other. The purpose of Rule 404(b)(1) is to prohibit the admission of evidence of prior bad acts to prove “the character of a person in order to show action in conformity therewith.” Pa.R.E. 404(b)(1). *Commonwealth v. Ross*, 57 A.3d 85, 104 (Pa. Super. 2012). Under Pennsylvania law, evidence of prior bad acts is admissible to prove “a common scheme, plan or design where the crimes are so related that proof of one tends to

prove the others.” *Commonwealth v. Elliott*, 700 A.2d 1243, 1249 (Pa. 1997). In *Elliott*, for example, the appellant was accused of sexually assaulting and subsequently killing a young woman he approached outside a particular club (Purgatory) at 4:30 a.m. The Supreme Court affirmed the trial court's decision to permit three (3) other young women to testify that the appellant had similarly preyed upon each of them as they were leaving the Purgatory club in the early morning hours, and that he had then physically and/or sexually assaulted them. *Id.* at 1250-51. In its decision, the Supreme Court concluded that the “close similarity between these assaults” was admissible to establish a common scheme, plan or design. *Id.* Based upon the facts alleged against Defendant, the Court does not find sufficient similarities to allow the evidence of both crimes to be admitted in a singular trial of Defendant.

In CR-21-2021, Agent Brittany Alexander of the Williamsport Bureau of Police is the affiant. For CR-67-2021, Trooper Brian Siebert of the Pennsylvania State Police is the affiant. Although the two incidents happened within the City of Williamsport, one was located in Center City and the other in East End. In both cases, the Defendant is alleged to have used the same weapon, a stolen Smith and Wesson 9mm. In 21-2021 the lead offense is Attempted Robbery and in the other case, 67-2021, the lead charge is Attempted Homicide. The Court finds that the potential for prejudice is too high to allow the introduction of one case at the trial of the other. A jury that finds Defendant guilty of one of the sets of charges certainly could be tempted to find the Defendant is a violent person and had the intent to commit the offense in the other case. This propensity for violence is specifically the potential bias that Rule 404 was designed to curb. *See Pa. R. Evid. 404(b)(1)* (“Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.”).

Conclusion

The Commonwealth's Motion to Consolidate the cases is untimely, would not advance judicial economy, and evidence from either case would not be permitted at the trial for the other under the Rule 404(b). Therefore, the Commonwealth's Motion is denied.

ORDER

AND NOW, this 2nd day of May, 2022, based upon the foregoing Opinion, the Commonwealth's Motion to Consolidate is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (RG)
Donald F. Martino, Esq.

NLB/