

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0000688-2023
	:
vs.	: <b>Opinion and Order Denying</b>
	: <b>Commonwealth's Motion to Amend</b>
KEIRA (KEVIN) BLUNT,	: <b>Information</b>
Defendant	:

**OPINION AND ORDER**

This matter came before the court on November 6, 2023. At the time scheduled for jury selection, the Commonwealth wanted to make an oral motion to amend the Information to add the charges that were dismissed or withdrawn at the preliminary hearing. The court instructed the parties to only discuss the current charges during jury selection and it would hear the Commonwealth's motion immediately following jury selection. This case is scheduled for trial on November 17, 2023.

At the argument, the Commonwealth argued that the alleged victim was not present at the preliminary hearing. The Commonwealth has had contact with the alleged victim since then and the alleged victim would like to participate and move forward with the dismissed charges. The Commonwealth also noted that it believes that there will be charges of intimidation of a witness/victim brought against Defendant. The Commonwealth also noted that Defendant was aware of the accusations, as they were contained in the criminal complaint. Upon questioning from the court, the Commonwealth acknowledged that the proposed amended charges have different elements than the current charges and that the Commonwealth did not have a good reason for the delay.

Counsel for Defendant argued that the victim was never subpoenaed for the preliminary hearing. The Magisterial District Judge (MDJ) found that the Commonwealth

failed to present sufficient evidence and the charges were dismissed. Counsel also argued that Defendant is prejudiced because they have only been preparing to defend against the current charges and the amendment request was made at the last minute. It has been approximately six months since the preliminary hearing; therefore, the Commonwealth has had months to seek to amend the charges. Defense counsel also asserted that any alleged “intimidation” would have occurred subsequent to the preliminary hearing, so it could not be the reason that the alleged victim failed to appear.

The court notes that neither counsel represented the parties at the preliminary hearing.

### **DISCUSSION**

Rule 544 of the Pennsylvania Rules of Criminal Procedure governs the reinstatement of charges withdrawn or dismissed at the preliminary hearing. Paragraph (A) of that Rule states:

When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, or when a grand jury declines to indict and the complaint is dismissed, the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the re-filing of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

Pa. R. Crim. P. 544(A); see also *Commonwealth v. Williams*, 166 A.3d 460 (Pa. Super. 2017).

Rule 564, which governs amendment of the Information, states:

The court may allow an information to be amended, provided that the information as amended does not charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge that the defendant would be unfairly prejudiced. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

Here, the Commonwealth is attempting to reinstate dismissed or withdrawn charges through an eleventh-hour oral motion to amend the Information at the time of jury selection.

The criminal complaint charged Defendant with persons not to possess a firearm, a felony of the second degree; terroristic threats, a misdemeanor of the first degree; simple assault, a misdemeanor of the second degree; recklessly endangering another person, a misdemeanor of the second degree; tampering with physical evidence, a misdemeanor of the second degree; and disorderly conduct a misdemeanor of the third degree. Following a preliminary hearing held on May 25, 2023, the MDJ dismissed the charges of terroristic threats, simple assault and recklessly endangering another person.

In the nearly six months since the preliminary hearing, the Commonwealth has not attempted to utilize the proper procedure for reinstating the dismissed charges. Instead, to the prejudice of Defendant, the Commonwealth waited until the time of jury selection to make an oral motion to amend the Information.

The court considers numerous factors in determining whether an amendment prejudices a defendant including:

(1) whether the amendment changes the factual scenario supporting the charges; (2) whether the amendment adds new facts previously unknown to the defendant; (3) whether the entire factual scenario was developed during a preliminary hearing; (4) whether the description of the charges changed with the amendment; (5) whether a change in defense strategy was necessitated by the amendment; and (6) whether the timing of the Commonwealth's request for amendment allowed for ample notice and preparation.

*Williams*, 166 A.3d at 464 (citing *Commonwealth v. Mentzer*, 18 A.3d 1200, 1203 (Pa. Super. 2011)).

The court finds that Defendant is prejudiced because the entire factual scenario was not developed during the preliminary hearing, the elements of the charges are different than

the current charges, Defendant has not been preparing to defend these charges, and the Commonwealth's request has not allowed for ample notice and preparation.<sup>1</sup>

**ORDER**

**AND NOW**, this 6<sup>th</sup> day of November 2023, the Court DENIES the Commonwealth's oral motion to amend the Information to add the charges which were dismissed by the MDJ at the preliminary hearing.

By The Court,

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Nancy L. Butts, President Judge

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<sup>1</sup>The Commonwealth's eleventh-hour motions (and deliveries during trial of discovery materials that have been in existence for months) need to stop. It has become too commonplace in the last several months. This comment is not directed at current counsel. It is directed toward the District Attorney's Office as a whole.