

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-1630-2021
	:	CR-490-2023
v.	:	
	:	
TYREE HOLLY,	:	MOTION TO CONSOLIDATE
Defendant	:	

OPINION AND ORDER

Tyree Holly (Defendant) was charged with eighty three (83) counts of sexual assault and other related offenses, under CR 1630-2021. These charges stem from photographs and videos found on the victim’s cell phone of the Defendant and the victim engaged in various sexual activities in the City of Williamsport from October 2020 until December 2020. The Defendant is charged under CR 490-2023 with an additional ninety-four (94) counts of sexual abuse of children for images discovered on the Defendant’s cell phone of the Defendant and the victim from the time period of September 1, 2020 until January 14, 2021. The allegations all arose as part of the same investigation by Lycoming County Detectives, but charges were filed separately due to varying times of discovery.

The Commonwealth filed a Motion to Consolidate these two matters on May 10, 2023, and argument was held on May 22, 2023, at which time Jessica Feese was present on behalf of the Commonwealth and Howard Gold, Esquire, was present on behalf of the Defendant. Attorney Gold objected to the Motion to Consolidate on behalf of the Defendant. The crux of the Defendant’s argument is that the Motion is untimely.

Discussion

The Court will first address the Defendant’s argument that the Motion is untimely. 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.” Defendant argues that he waived his arraignment in CR-1630-2021, on January 3, 2021, and therefore the Motion to Consolidate is well beyond the 30 day limit imposed by Pa.R.Crim.P. 582.¹ However, at that time the Commonwealth was not in possession of the additional evidence which was later obtained as a result of the execution of a search warrant on the Defendant’s cell phone and therefore there was not an additional case with which to request consolidation. The Court must examine the timeline of the second case to determine whether the Motion to Consolidate was timely filed. The criminal complaint was filed in CR-490-2023 on March 28, 2023. The Defendant waived his formal arraignment which was scheduled for May 1, 2023. The Motion to Consolidate was filed on May 10, 2023, well within the 30 day time limit imposed by Pa. R. Crim. P. 582.

Charges may be consolidated and tried together, under the Pennsylvania Rules of Criminal Procedure 582, 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

¹ The Court notes that there was a Stipulated Order Extending Omnibus Due Date on February 22, 2022, extending the deadline for thirty (30) days, and another Stipulated Order Extending Omnibus Due Date on March 16, 2022, extending the due date an additional ten (10) days.

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 cases are part of the same series or transaction and they satisfy Pennsylvania Rules of Evidence 404(b)(2), which would allow evidence from each case to be presented at trial for the other. The Defendant is accused of the same behaviors during the same time period with the same victim. In both cases the affiant is the same. There is no risk of confusing a jury, nor would there be the possibility of introducing evidence that would be admissible in one case but not the other. The Commonwealth’s Motion to Consolidate the cases is timely, would advance judicial economy, and evidence from either case would be permitted at the trial for the other under the rules of evidence. Accordingly, the Court will enter the following Order.

ORDER

AND NOW, this 24th day of May, 2023, based upon the foregoing Opinion, the Commonwealth’s Motion to Consolidate is **GRANTED**.

By the Court,

Ryan M. Tira, Judge

RMT/jel
cc: DA (JF); PD (HG)