

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-721-2024 & CR-906-2024
:
V. :
:
: CRIMINAL DIVISION
:
TROY VITTORIO MATTY, :
Defendant. :
: Motion to Sever

OPINION AND ORDER ON MOTION TO SEVER

I. BACKGROUND

This matter came before the Court on November 26, 2024, for oral argument on Defendant’s Motion to Sever. Based upon documents filed of record, the Court makes the following Findings of Fact:

1. The complaint and affidavit filed to docket number 721-2024 allege that, on May 7, 2024, Defendant assaulted and choked the alleged victim, with whom he was residing. The information filed in that matter charges Strangulation and Simple Assault.
2. The complaint and affidavit filed to docket number 906-2024 allege that the alleged victim returned to the residence on June 7, 2024, in order to retrieve belongings. At that time, the Defendant inquired whether the alleged victim would agree to drop the charges filed to docket number 721-2024. When the alleged victim stated “no”, the Defendant struck her in the head and demanded that she drop the charges. The information filed in that matter charges Witness Intimidation and Simple Assault.
3. Both prosecutions involve allegations of domestic violence between the same parties.
4. Both prosecutions involve allegations of assault, at the same location, only one month apart.
5. The Commonwealth filed a Motion to Consolidate on September 25, 2024. At a hearing on that Motion conducted on September 30, 2024, the parties stipulated to the entry of the Order of September 30, 2024, consolidating the matter.

6. After the entry of the Order of September 30, 2024, and after receipt of some photographic evidence, counsel for the Defendant decided to file a Motion to Sever, based upon his conclusion that consolidation was not appropriate.
7. During oral argument conducted on November 26, 2024, counsel for Defendant claimed that consolidation was prejudicial to the Defendant, but did not point to any basis for the claim that consolidation was not permitted by applicable law.

II. ISSUE PRESENTED

Whether Defendant's Motion to Sever the matters should be granted.

III. ANSWER TO ISSUE PRESENTED

Defendant's Motion to Sever the matters should NOT be granted, because the Commonwealth's Motion to Consolidate was meritorious.

IV. DISCUSSION

Rule 582(A)(1)(a) of the Pennsylvania Rules of Criminal Procedure provides that offenses charged in separate informations may be tried together if "[t]he 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...." Our Superior Court, in *Commonwealth v. Thomas*, restated the following:

Our Supreme Court has established a three part test, incorporating these two rules, for deciding the issue of joinder versus severance of offenses from different informations. The court must determine whether the evidence of each of the offenses would be admissible in a separate trial for the other; whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and, if the answers to these inquiries are in the affirmative, whether the defendant will be unduly prejudiced by the consolidation of offenses. *Commonwealth v. Lark*, 518 Pa. 290, 302, 543 A.2d 491, 497 (1988) (quoted in *Collins*, *supra* at 55, 703 A.2d at 422).

In the present case we can find no abuse of discretion by the trial court in consolidating the charges, as all of the elements of the *Lark* test are met. Appellant was charged with assaulting his girlfriend on two separate days. The second assault occurred the day that appellant was released from jail, after the victim refused to testify against him at a hearing on the first assault. Evidence of each of the assaults would be admissible in a prosecution for the other, as the evidence constitutes a "chain or sequence of events that formed the history of the case, [and] is part of the natural

development of the case.” *Commonwealth v. Drumheller*, 570 Pa. 117, 138, 808 A.2d 893, 905 (2002), *cert. denied*, 539 U.S. 919, 123 S.Ct. 2284, 156 L.Ed.2d 137 (2003). *See also Lark*, 518 Pa. at 303, 543 A.2d at 497 (discussing “*res gestae*” or “complete story” evidence, including evidence of other crimes, as admissible to show context of the crime and thus complete the story of the crime). Furthermore, evidence of appellant's relationship with the victim is admissible to prove ill will, motive, or malice. *Commonwealth v. Chandler*, 554 Pa. 401, 409, 721 A.2d 1040, 1044 (1998) (quoting *Commonwealth v. Ulatoski*, 472 Pa. 53, 60–61, 371 A.2d 186, 190 (1977)).

Commonwealth v. Thomas, 879 A.2d 246, 260-61 (Pa. Super. Ct. 2005), *appeal denied*, 989 A.2d 917 (Pa. 2010); *see Commonwealth v. Ritter*, 615 A.2d 442, 445 (Pa. Super. Ct. 1992) (“[E]vidence of the drug deliveries would be admissible in a separate trial on the charges of terroristic threats and intimidation of witnesses to show motivation for those threats. Likewise, evidence of appellant's threats would be admissible in a trial on the charges of drug delivery, despite the fact that the threats occurred after the drug deliveries.”).

Conclusions of Law:

1. The alleged assaults which are the subject of the two informations involve the same victim, at the same location, only one month apart, and are both claims of domestic violence.
2. If the Commonwealth conducted a single trial of the charges filed to docket number 721-2024, the Commonwealth would almost certainly be permitted to introduce evidence of the events of June 7, 2024, in order to establish the Defendant’s consciousness of guilt for the assault which allegedly occurred on May 7, 2024.
3. If the Commonwealth conducted a single trial of the charges filed to docket number 906-2024, the Commonwealth would be required to introduce evidence of the events of May 7, 2024, in order to establish the elements of the charge of Witness Intimidation.
4. The Court is confident that the Commonwealth’s evidence and the Court’s charge to the jury regarding the events which occurred on the two (2) separate days alleged in the two (2) separate informations can be presented to the jury in such a manner that there will be no danger of confusion and that the consolidation will not unduly prejudice the Defendant.

5. The Commonwealth's Motion to Consolidate the two (2) informations was clearly meritorious. Thus, Defendant's Motion to Sever will be denied.

ORDER

AND NOW, this 4th day of December 2024, for the reasons stated above, Defendant's Motion to Sever filed November 5, 2024, which seeks to sever the two (2) matters captioned above, which were consolidated by the Order of September 30, 2024, is **DENIED**.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

CC: Court Administrator
District Attorney's Office (PY)
Michael J. Rudinski, Esquire