

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-791-2024
v.	:	CR-792-2024
	:	
ANTHONY J. KANCEVICIUS,	:	
Defendant	:	

OPINION

This matter was before the Court on October 22, 2024, on a Motion to Sever filed by and through counsel for the Defendant on July 9, 2024. Attorney Taylor Paulhamus appeared on behalf of the Defendant and Attorney Lindsay Sweeley appeared on behalf of the Commonwealth. In his Motion, the Defendant seeks to sever the above-listed dockets from one another after Notice of Joinder was filed pursuant to Pa.R.Crim.P. 582(B)(1) by the Commonwealth on June 14, 2024.

Background

The Defendant is charged under Docket No. CR-791-2024 with one count each of Interference with Custody of Children, a Felony of the Second Degree, and Unlawful Contact with a Minor, a Felony of the Third Degree for incidents alleged to have occurred on or around May 22, 2023. The Defendant is charged under Docket No. CR-792-2024 with one count each of Unlawful Contact with a Minor-Sexual Offenses, a Felony of the Third Degree, Indecent Assault of a Person Less than 13 Years of Age, a Misdemeanor one, and Harassment-subjecting another to physical contact, a summary offense for incidents alleged to have occurred on or around February 9, 2023.

The Defendant filed his Motion to Sever asserting that the alleged offense involved two separate events, facts, and victims and should be severed so as to avoid undue prejudice of the cumulative weight of the allegations being tried together in front of a Jury. During

argument, the Defendant asserted that exceptions under Pa.R.E. Rule 404(B)(2) do not apply. Specifically, the Commonwealth cannot prove that the Defendant acted with a common scheme, motive, plan, or intent in either of the alleged events resulting in the charges. The Defendant averred that because the alleged offenses involve two separate victims of different ages and different locations, the evidence for each case would not be admissible in a trial for the other. Although both cases charge the Defendant with sexual allegations against minors, the Defendant claims that the cases are fundamentally different factually, and that for a joinder of the matters to be justified the facts for each case need to exhibit more commonalities to be lawfully joined for trial.

The Commonwealth opposes the Defendant's Motion to Sever on the basis that the Defendant bears the burden of showing prejudice and establishing that the cases are sufficiently separate to succeed on this motion. The Commonwealth further argued that the alleged victims are not significantly different in age, and that both of the alleged victims are minors. The Commonwealth concedes that an exception to Pa.R.E. Rule 404(B)(2) will be necessary to support the joinder of the cases, but that there is no danger or risk of trying the cases together before a Jury because the incidents are separate and involve similar conduct or narrative of the alleged conduct by the Defendant.

Analysis

Under Rule 582(A)(1)(a) of the Pennsylvania Rules of Criminal Procedure, offenses charged in separate indictments or information may be tried together if, "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." The general policy is to encourage joinder of offenses and consolidation of indictments when judicial economy can thereby be affected, especially when the result will be to avoid the expensive and time-

consuming duplication of evidence. *Commonwealth v. Johnson*, 236 A.3d 1141, 1150 (Pa. Super. 2020) quoting *Commonwealth v. Patterson*, 519 Pa. 190, 546 A.2d 596, 600 (1988). Evidence of one crime is inadmissible against a defendant being tried for another crime due to the fact that the commission of one offense is not proof of the commission of another. *Commonwealth v. Peterson*, 453 Pa. 187, 197 (1973). “Evidence of [a] any other 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.” Pa.R.E. Rule (404)(B)(1). Under Rule 404(B)(2) several exceptions exist to the general rule and bring a cause under the established principle that evidence of other crimes is “admissible when it tends to prove: (1) motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme, plan or design embracing commission of two or more crimes so related to each other that proof of one tends to prove the others; or (5) to establish the identity of the person charged with the commission of the crime on trial.” *Commonwealth v. Peterson*, 453 Pa. 187, 197 (1973). When the evidence is relevant and important to one of these five issues, it is generally conceded that the prejudicial effect may be outweighed by the probative value. *Id.* In certain instances of similar offenses joinder when the admissibility test is not met, but the evidence is capable of separation by the jury, the danger of confusion is not present and joinder is permissible. *Commonwealth v. Peterson*, 453 Pa. 187, 200 (1973).

The Pennsylvania Supreme Court has consistently held that whether severance is granted or denied is matter for the trial court’s determination. *Commonwealth v. Peterson*, 45 Pa. 187, 197 (1973). The trial court may order severance of offenses or provide other appropriate relief if it seems as though any party may be prejudiced by offenses being tried together. Pa.R.Crim.P. Rule 583. In instances where a defendant moves to sever offenses not based on the same act or transaction, as here, “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, 543 A.2d 491, 497 (1988). This prejudice is the type that would occur if the evidence tends to convict a 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. *Id* at 499. Moreover, the court must ensure that evidence of such circumstances have some relevance to the case and are not offered solely to inflame the jury or arouse prejudice against the defendant. *Id* at 501.

Here, the Defendant averred that the alleged offenses are two separate matters that do not tend to show any commonalities between the alleged victims’ ages, locations, or the Defendant’s alleged conduct. Moreover, the Defendant asserted that the alleged offenses occurred in different periods of time. Thus, the evidence does not fall under an exception as provided under Pa.R.E.Rule 404(b)(2). The Defendant further argued that he will be prejudiced by the evidence of each offense being presented to a jury in one trial as it will cause confusion or the jury will cumulate the evidence to convict the Defendant.

However, the Commonwealth disagrees, asserting that the alleged victims are similar enough in age as they are both minor children and the alleged offenses occurred within the same neighborhood. Moreover, the Commonwealth argued that the Defendant was out on bail for the first charges at the time the second alleged offense occurred. The Commonwealth argued that joinder of the matters is appropriate because the evidence of one of the alleged offenses is admissible at a trial for the other as an exception under PA.R.E. Rule 404(b)(2) as

a tending to show a common scheme or plan. The Commonwealth further argues that a jury will not become confused by the evidence for each matter being presented at one trial.

The Court agrees with the Commonwealth in finding the evidence for both matters would be admissible in a trial for the other, and that a common scheme exists as to the Defendant's conduct in both matters satisfying the exception outlined under Pa.R.E. Rule 404(B)(2). Further, the evidence would be relevant to the Defendant's intent and motive of his actions resulting in the alleged offenses. The Defendant's conduct exhibited that his actions on two different occasions were not a misunderstanding, but his conscious objective to touch minor females. Additionally, the exhibited conduct helps identify the Defendant considering both of the alleged events under each matter occurred in the Defendant's neighborhood. The Court further finds there is no likelihood that confusion of the two cases will occur at trial if the cases remain joined. Moreover, the Jury will be capable of weighing the evidence for each matter separately without causing unfair prejudice against the Defendant. The Court is satisfied that joinder of these matters is appropriate, and that the Defendant will not be unfairly prejudiced by the presentation of evidence for both matters at a trial.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 25th day of February, 2025, based on the argument from counsel and for the aforementioned reasons, the Court hereby **DENIES** the Defendant's Motion to Sever the above-named matters.

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA(LS)

PD(TP)

Gary Weber, Esquire-Lycoming Reporter

File Docket No. CR-792-2024