IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	**No. 99-10,917**
	:	**99-10,940**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
ROBERT WELLS,	**:**	
Defendant	**:**	**1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's Judgement of Sentence dated July 25, 2000 and docketed July 27, 2000. The relevant facts are as follows:

No. 99-10,917

On March 5, 1999 at approximately 12:30 a.m., Jessie Sylvanio went to the Uni-Mart on the corner of Railway Street and Washington Boulevard in the City of Williamsport to get a soda and see a friend who worked at the store. Across the street, Robert Wells was lurking around the phone booth outside the Turkey Hill mini-market and eating chips from a 99¢ bag of Middlesworth barbeque potato chips. The police officers on routine patrol in the area observed Mr. Wells at the Turkey Hill mini-market when Ms. Sylvanio left the Uni-Mart.

As Ms. Sylvanio was walking home, she saw the individual at the Turkey Hill cross the street and begin to follow her. She glanced back at the individual a couple of times and noticed the individual was a male who kept getting closer and closer. The third

time she turned to look at the individual, she saw he was now carrying an object that appeared to be a snow shovel. When Ms. Sylvanio began to turn around a fourth time, the individual struck her in the side of the face with the shovel and she fell against a bush or shrub. As a result of the blow to the face, Ms. Sylvanio's mouth was bleeding and her teeth were broken.[1]

The individual grabbed Ms. Sylvanio by the neck and hair and told her if she screamed or didn't do as he said he would kill her. He then dragged and pulled her between two houses and pushed her to the ground. He got down on his knees in between her legs and told her not to look at him. He told her to perform oral sex on him. She told him she couldn't because her mouth was hurt. He claimed he hit her in the back of the head, not in the face, but he eventually realized her mouth was hurt and didn't ask her to perform oral sex again.

He then started to pull her pants down. She asked if she could spit out the blood in her mouth. He let her sit up enough to spit, but reminded her if she screamed, got up or tried anything funny, he was going to kill her. He pulled her pants the rest of the way down to her ankles and pulled his pants down to his knees. He began kissing her and wanted her to kiss him, but she couldn't because it hurt too badly. Although it was not completely erect, he inserted his penis into her vagina. The more he moved, however, the more it kept slipping out. He then stuck his fingers in her vagina like a guide point to help keep his penis inside her. His penis still kept slipping out and he was getting frustrated.

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[1]Ms. Sylvanio had to have two teeth surgically removed. She has permanent lumps on top and bottom of her mouth and scars on both sides of her lips. N.T., 4/12/00 at 35.

He ordered Ms. Sylvanio to keep putting it in and keep it in or he was going to hurt her. She tried, but was unsuccessful.

The defendant then got up and pulled his pants back up. He grabbed a hold of Ms. Sylvanio and pulled her up. Her pants were still down. She asked if she could pull them up and he stopped for a second or two so she could. He covered her eyes, grabbed her coat and began walking towards the alley. When he got in the alley he checked the garage, but it was locked. He also checked a vehicle that was in the area, but it too was locked. They walked further up the alley and came across a pick-up truck with an unlocked driver's door. The defendant told Ms. Sylvanio to get in the truck and slide over to the passenger's side. She hesitated. He gave her a weird, angry look, and she complied. He got in the vehicle and told her to disrobe. He also said he wanted all her money. She asked if she could spit again, which he allowed her to do. She unlocked the passenger door and opened it. He grabbed her coat so she leaned out and spit, but some of it got on the door. She closed the door and he again asked about the money. She began rooting through her pockets for money. When she came across her keys, he asked her where she lived. She said a few blocks away, even though her house was just down the street.

The defendant was reaching at the steering column or the radio and Ms. Sylvania was afraid he was going to try to start the vehicle. She took all the money out of her pockets which was only $9.00, but she gave it to him, told him to f*** himself and ran home.

When she reached her residence, she called 911. The police and an ambulance were dispatched to her residence, 816 Chestnut Street. Her husband, Bill

Sylvanio, arrived home from work as the police and paramedics arrived. Ms. Sylvanio gave a brief statement to the police, informing them that she was attacked and sexually assaulted on her way home from the Uni-Mart on Washington Boulevard. She was attended by the paramedics and taken to the hospital so her injuries could be treated and a rape kit performed.

When the police officers got a description of the perpetrator, it was like a light bulb went off. They recalled seeing Ms. Sylvanio walking away from the Uni-Mart and remembered the individual hanging around the Turkey Hill phone booth eating chips. The police got the videotape from the surveillance camera at the Turkey Hill and found the individual they had seen earlier. They showed Ms. Sylvanio approximately two hours of the videotape to see if she would recognize her attacker on it, which she did. Ms. Sylvanio also picked the defendant out of a photo array.

The police officers also went to the scene of the crime in the 800 block of Chestnut Street and retraced Ms. Sylvanio's path. They found a snow shovel and an area where the snow was packed down. They also found blood droplets in the snow between two houses. They followed the footprints in the area. They saw footprints to the garage and a full-size pick-up truck. Then they came across the Nissan pick-up that Ms. Sylvanio and the defendant were in. They found blood on the passenger side door. They took a sample of it and compared it to Ms. Sylvanio's blood; the two samples matched. The police also took photographs of the footprints at the scene and at the Turkey Hill. Both sets of footprints were consistent with a pair of Nike sneakers possessed by the defendant.

Other police officers discovered chips thrown in the bushes caddy corner

across the street from the Turkey Hill market. They also retrieved a Middlesworth chip bag. Latent fingerprints were found on the chip bag. The police compared a fingerprint card of Robert Wells to the latent prints lifted from the chip bag. The fingerprint on the bag was made by Wells' left middle number eight finger.

Case no. 99-10,940

Shortly before 1:00 a.m. on April 25, 1999, Amanda Shadduck left the Faxon bowling lanes and got into her car. She saw a male face at her window. She thought it was a friend playing a joke. The defendant opened the door to her vehicle and she realized it was not one of her friends. He grabbed Ms. Shadduck's neck, and she screamed. The defendant told her to shut up and said if she screamed again he would kill her. Ms. Shadduck stopped screaming. The defendant then crawled over Ms. Shadduck and into the passenger seat. He kept his hand on her neck and told her to drive. He had something in his other hand. Ms. Shadduck thought it was some kind of weapon. At the end of the encounter, she realized it was a beer bottle.

The defendant told Ms. Shadduck where to make turns. He kept pushing her head to look straight ahead and told her not to look at him. In the 800 block of Chestnut Street, the defendant told Ms. Shadduck to pull over and turn off the car. He said, "I'm going to f*ck you." Ms. Shadduck begged him not to. She made excuses why she couldn't have sex with him such as she had her period, she was a virgin, and she didn't want to get pregnant. The defendant ignored her protestations. He pulled his pants down and began ripping at her clothes. He ordered her to take her clothes off and pulled her legs over toward the passenger side of the vehicle. Ms. Shadduck began removing her clothing

because the defendant said he would kill her if she didn't do as he said. She was not removing her clothes fast enough to suit the defendant, so he ripped off her shoes and pulled down her pants.

Next, the defendant began kissing Ms. Shadduck's face and neck. He inserted his fingers into her vagina. He performed oral sex on her. Then he put his penis in her vagina; it wouldn't go in right, though, because it was not fully erect. He ordered Ms. Shadduck to the back seat. She laid down on her back behind the driver's seat. He followed her into the back seat. Again, he tried to put his penis in her vagina. There weren't as many problems as the last time, but he still could not get it completely inside her so he forced her to perform oral sex on him.

Next, the defendant made Ms. Shadduck lie down on her back again. He tied her wrists with her shirt and covered her eyes with her bra. He told her to get on her hands and knees and said, "We're going to do anal sex." He got behind her and put his penis in her rectum. It was very painful for Ms. Shadduck. She cried, asked him to stop and tried to push him away but it seemed like he just did it harder than before.

Finally, he stopped and made her lie on her back again. He put his penis in her vagina without much difficulty this time. Eventually, he ejaculated on the back seat. Then he pulled his pants up and got into the driver's seat. He told Ms. Shadduck to lie down in the back seat. She asked him if she could get dressed, and he allowed her to do so.

As he was driving the vehicle back toward the Faxon bowling facility, the defendant was stopped by the police. The windows were all fogged up so the police could not see the occupants of the vehicle. The defendant jumped into the passenger seat and

pulled Ms. Shadduck into the driver's seat. The defendant told Ms. Shadduck he would kill her if she said anything to the police about their sexual encounter. A police officer came to the window. Ms. Shadduck gave him her license and registration. The officer asked her if she ran a stop sign. Ms. Shadduck looked at the defendant. He gave a mean look, so she answered yes to the officer's question. Although Ms. Shadduck at one point was alone with the police officers when the defendant went over toward his mother's car, she testified that she was still fearful of the defendant's threat to kill her if she told the officer's anything. She did ask if she could speak with the officer when he asked her for her license and registration, but the officer, thinking she wanted to talk about the ticket told her not at this time.

At about that time, the defendant's mother pulled up. Although Ms. Shadduck wanted to drive herself home, she was under age eighteen (18) at the time, so it was illegal for her to drive after midnight. Ms. Shadduck wanted the police to take her home or call her parents to pick her up, but the police told Ms. Shadduck that the defendant's mother would take her home. When she arrived home, she ran upstairs screaming that she had been raped. Her parents immediately got out of bed and took Ms. Shadduck to the hospital.

At the hospital, a nurse specially trained to deal with sexually assault victims examined Ms. Shadduck and performed a rape test kit on her.

In both cases, the defendant was charged with rape and related charges. Over the defendant's objection, the Court joined the cases for trial. A jury trial was held on or about April 12-14, 2000. In case number 99-10,917 involving Jesse Sylvanio, the jury

found the defendant guilty of: rape, sexual assault, aggravated indecent assault, aggravated assault causing serious bodily injury, simple assault, robbery, theft, terroristic threats and unlawful restraint. In case number 99-10,940 involving Amanda Shadduck, the jury found the defendant guilty of rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, terroristic threats and unlawful restraint.

On July 25, 2000, the Court sentenced the defendant. In case number 99-10,917, the Court imposed a nine (9) to eighteen (18) year sentence for rape, a consecutive eight (8) to sixteen (16) year sentence for aggravated assault, and a consecutive one (1) to two (2) year sentence for terroristic threats for an aggregate sentence of eighteen (18) to thirty-six (36) years. In case number 99-10,940, the Court imposed a nine (9) to eighteen (18) year sentence for rape and a consecutive one (1) to two (2) year sentence for terroristic threats for an aggregate sentence of ten (10) to twenty (20) years incarceration in a state correctional institution. The Court ran the sentences in 99-10917 and 99-10940 consecutive to each other for a total sentence of incarceration of twenty-eight (28) to fifty-six (56) years.

On August 21, 2000, the defendant filed a timely notice of appeal.

The defendant first asserts that the Court erred in prohibiting the defendant from asking victim Sylvanio the name of her boyfriend, where the boyfriend had been in her company immediately prior to the alleged incident and was a possible source of semen found in her jeans. The Court cannot agree. Evidence of past sexual conduct is classic Rape Shield material. The Rape Shield Law states:

Evidence of specific instances of the alleged victim's past sexual

> conduct, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence of the victim's past sexual conduct shall not be admissible in prosecutions under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

18 Pa.C.S.A. § 3104(a). Here, the conduct at issue was not with the defendant and consent was not an issue. Therefore, the evidence the defense sought to introduce was not within the exception to the Rape Shield Law. Although the defense made arguments to the contrary (see discussion supra.), it appears that the real reason the defense wanted to introduce this evidence was to show the victim was cheating on her husband with the Uni-Mart clerk, thereby denigrating her virtue and chastity and prejudicing the jury against her. This is specifically what the Rape Shield Law was designed to prevent. Commonwealth v. Killen, 545 Pa. 127, 680 A.2d 851 (1996).

The defense made two different arguments for admitting the name of the alleged boyfriend: to show that there was a possibility that some third stranger contributed to the semen stain mixture or that the victim's husband was the one who assaulted her after discovering her relationship with Mr. Koons, the clerk at the Uni-Mart. N.T., April 12, 2000, at 9, 76. The name of the individual with whom Ms. Sylvanio was allegedly having an affair is not relevant to either of these theories, and there is no evidence in the record to support either theory. In fact, the Commonwealth indicated it could prove Mr. Sylvanio was at work at the time of the assault. N.T., April 12, 2000, at 77. Moreover, the defense assertion is factually incorrect. Although Mr. Koons was not labeled as Ms. Sylvanio's boyfriend, evidence was introduced that the DNA from a sample of his blood was compared to the

stain found on Ms. Sylvanio's jeans. The DNA results excluded Mr. Koons as a source of the semen found in Ms. Sylvanio's jeans. N.T., April 13-14, at 145.[2] Instead, the test results indicated Ms. Sylvanio's husband was a possible contributor to the stain and it could not be determined if Ms. Sylvanio was the other contributor to the stain mixture found in her jeans. N.T., April 13-14, at 143-146. Ms. Sylvanio explained that she picked up a pair of jeans she had worn earlier in the week to wear on her short trip to the Uni-Mart. N.T., April 12, 2000, at 72.

The defendant next contends that the Court erred in granting a continuance to the Commonwealth to perform additional tests on Ms. Sylvanio's husband and boyfriend for DNA comparison. The Court cannot agree. Rule 301 of the Pennsylvania Rules of Criminal Procedure states, "The court may, in the interests of justice, grant a continuance, of its own motion, or on the motion of either party." Pa.R.Cr.P 301(a). The Pennsylvania Supreme Court has described the court's authority regarding continuances as follows:

> The grant or denial of a motion for a continuance is within the sound discretion of the trial court and will be reversed only upon a showing of an abuse of discretion. ...an abuse of discretions is not merely an error of judgment. Rather, discretion is abused when 'the law is overridden or misapplied, or the judgment exercised in manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record....'

Commonwealth v. McAleer, 561 Pa. 129, 748 A.2d 670, 673 (2000). The Commonwealth performed DNA testing comparing the stain found on the victim's jeans with a blood

[2]The Court notes that the defendant also was not a possible contributor to the stain. This evidence, however, is consistent with the victim's testimony that the perpetrator did not ejaculate. N.T., April 12, 2000, at 35.

sample from the defendant. The DNA results excluded the defendant as a contributor to the stain. The Commonwealth then requested a continuance to conduct further DNA testing to determine if the victim's husband, Bill Sylvanio, or Dennis Koons were possible contributors to the stain. The Court found the interests of justice supported granting a continuance. First, further DNA testing would address the issue that Koons was a possible contributor to the stain. The defendant theorized that Koons was the contributor to the stain, giving the victim's husband a motive to assault his wife. The additional DNA test results showed Koons could not be a contributor to the stain in question. Second, the additional DNA tests could show that the contributor of the stain was one of the individuals with whom the victim had consensual sexual relations and not some third party who could have been the perpetrator instead of the defendant. If both Bill Sylvanio and Dennis Koons had been excluded, the DNA test results would have lent credence to the defendant's assertion that an unknown third party committed the offenses in question. For these reasons, the Court believed the interests of justice justified the continuance granted to the Commonwealth.

The defendant next contends the Court erred in allowing the jury to see color photographs of the injuries to Jesse Sylvanio. It is well-settled that decisions regarding the admissibility of photographs are committed to the sound discretion of the trial judge and will not be reversed absent a showing that the trial court abused its discretion. Commonwealth v. Liddick, 471 Pa. 523, 370 A.2d 729 (1977). In determining the admissibility of photographs, the trial court first must determine whether the pictures are inflammatory. Commonwealth v. Young, 524 Pa. 373, 572 A.2d 1217 (1990). If the

photographs are not inflammatory, they are admissible if they are relevant and can assist the jury in understanding the facts. Commonwealth v. Garcia, 505 Pa. 304, 479 A.2d 473 (1984). Even if the pictures are inflammatory, they are admissible if their evidentiary value clearly outweighs the likelihood that they will inflame the passions of the jurors. Commonwealth v. Liddick, 471 Pa. 523, 526, 370 A.2d 729 (1977). The Court does not believe the photographs depicting the injuries to Jesse Sylvanio's face which resulted from the perpetrator hitting her with a shovel were inflammatory. They were definitely relevant to the show that the perpetrator attempted to cause or did in fact cause serious bodily injury, an element of the aggravated assault charge. Even if the photographs were inflammatory, the Court believes their evidentiary value clearly outweighed the potential of inflaming the passions of the jurors. Commonwealth v. McClain, 325 Pa.Super. 29, 37-38, 472 A.2d 630, 634 (1984)(trial court did not abuse discretion in admitting color photographs of victim's face where photographs were introduced for the purpose of proving the essential elements of the aggravated assault charge).

The defendant contends the Court erred in consolidating the two criminal informations charging rape and related offenses. This Court cannot agree. "Whether or not separate indictments should be consolidated for trial is within the sole discretion of the trial judge and such discretion will be reversed only for a manifest abuse of discretion or prejudice and clear injustice to the defendant." Commonwealth v. Newman, 528 Pa. 393, 598 A.2d 275, 277 (1991); see also Commonwealth v. Taylor, 671 A.2d 235, 239 (Pa.Super. 1996). Consolidation is proper 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." Pa.R.Cr.P. 1127A(1)(a), 42 Pa.C.S.A.; see also Newman, supra; Commonwealth v. Galloway, 302 Pa.Super. 145, 154, 448 A.2d 568, 573 (1982); Commonwealth v. Terrell, 234 Pa.Super. 325, 328, 339 A.2d 112, 114 (1975). Although evidence of a defendant's other crimes is generally inadmissible to show a defendant's bad character or propensity for criminal acts, it is admissible to prove motive, intent, absence of mistake or accident, identity or common plan or scheme. Commonwealth v. Spotz, 552 Pa. 499, 512, 716 A.2d 580, 586 (1998).

The Commonwealth argued that the two rape cases should be consolidated as well as a burglary case where the defendant followed a woman, Carol Steffan, from a bar or pool hall and broke into her home. The Court found each rape case was admissible in the other as part of a common plan or scheme, but found that the burglary case did not have sufficient similarities to be consolidated with the rape cases.[3]

For consolidation to be proper based on a common scheme, the Commonwealth must show more than just the other crimes are of the same class. Instead, there must be shared similarities in the details of each crime. Newman, 598 A.2d at 278; Commonwealth v. Morris, 493 Pa. 164, 425 A.2d 715, 721 (1981). The following similarities justified consolidation in this case: (1) the time of the incident - the rape of

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[3]The burglary occurred in May 1999. The defendant had been playing pool at a local establishment and saw Ms. Steffon leave by herself. He followed her to her home and forced his way inside. When Ms. Steffon yelled for help, however, the defendant fled.

Ultimately the defendant pled guilty to the burglary after he was convicted of the two rape cases. The plea agreement provided that the sentence imposed on the burglary case would be concurrent to any sentences imposed in the rape cases.

Jesse Sylvanio occurred at approximately 1:00 a.m. on March 5, 1999 and the rape of Amanda Shadduck occurred at approximately 1:30 a.m. on April 17, 1999; (2) the location of the incidents - the rapes occurred approximately one half block from each other in the vicinity of the 800 block of Chestnut Street and the places where the defendant initially came in contact with the victims are approximately five or six blocks from each other; (3) both victims were young women - Ms. Sylvanio was 23 years old and Ms. Shadduck was seventeen; (4) both victims stated the defendant smelled of alcohol or had been drinking on the night in question; (5) the defendant followed both unaccompanied victims from public places - the defendant followed Ms. Sylvanio from the Uni-Mart on Washington Boulevard and he followed Ms. Shadduck to her car in the Faxon Bowling parking lot; (6) when the victims screamed, the defendant told both of them, "Shut up or I'll kill you."; (7) the defendant covered both victims eyes during the rapes; (8) the defendant grabbed both women by the neck; (9) the defendant pulled his pants down first and then the victim's in both cases; (10) the defendant had difficulty obtaining and maintaining an erection in both incidents; (11) the defendant inserted his fingers into the victims' vaginas before he raped them; the defendant told both victims to "suck his dick"; (12) on both occasions the defendant called his mother from a pay phone for a ride home;[4] (13) the defendant apologized to both women. Given all these similarities, evidence regarding each case was admissible in the other to show the defendant's common plan or scheme. See,

[4]The defendant telephone his mother to get a ride home prior to the incident with Ms. Shadduck. The defendant's mother was driving around looking for him when the police pulled over Ms. Shadduck's vehicle for the stop sign violation.

Newman, supra; Commonwealth v. Taylor, 671 A.2d 235 (Pa.Super. 1996).

The evidence also was readily separable by the jury. Although the defendant was charged with some of the same offense in both cases, the incidents occurred on separate dates and involved separate victims.

The defendant contends consolidation was unduly prejudicial. Again, this Court cannot agree. The court may order separate trials if it appears to the court that the defendant would be prejudiced by offenses being tried simultaneously. Pa.R.Cr.P. 1128, 42 Pa.C.S.A.

> The "prejudice" of which Rule 1128 speak is not simply prejudice in the sense that appellant wil lbe linked to the crimes for which he is being prosecuted, for that sort of prejudice is ostensibly the purpose of **all** Commonwealth evidence. The prejudice of which Rule 1128 speaks is, rather, that which would occur if the evidence tended to convict appellant 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.

Commonwealth v. Lark, 518 Pa. 290, 307-308, 543 A.2d 491, 499 (1988); Commonwealth v. Taylor, 671 A.2d 235, 239 (Pa.Super. 1996). As previously discussed, the evidence was admitted to show a common plan or scheme. It did not simply tend to convict the defendant by showing his propensity to commit crimes and it was easily separable by the jury. Furthermore, the jury was carefully instructed that they should consider each case separately and that in each case they could only find the defendant guilty if they were convinced beyond a reasonable doubt. N.T., April 12, 2000, at 4. Therefore, the type of prejudice contemplated by Rule 1128 was not present in this case.

In his fifth and sixth assertions of error, the defendant challenges the

sentence imposed, claiming the Court did not properly consider the rehabilitative needs of the defendant and the facts did not warrant the sentence imposed. The Court cannot agree. Although the injuries and terror inflicted on the victims played a significant role in the sentence imposed, the Court did consider the prospects of rehabilitation of the defendant. Unfortunately for the defendant, the Court found these prospects to be slim, at best. The Court noted the defendant had been in the juvenile system, which is geared toward rehabilitation, for a number of years. The defendant had opportunities in the juvenile system to rehabilitate, but did not take advantage of them. He also had been in the adult criminal system prior to committing these offenses, but his criminal conduct continued both in violating his parole and through new offenses. Rather than showing any prospect of rehabilitation, the defendant's prior contacts with the juvenile and adult criminal system show a strong criminal propensity. N.T., July 25, 2000, at 41-42. This propensity is only heightened by the violence of the current convictions and the fact the defendant committed these crimes within days or weeks of being released from prison. N.T., July 25, 2000, at 37, 43. Therefore, the Court did consider the rehabilitative needs of the defendant, but found that they were vastly outweighed by the need to protect society. N.T., July 25, 2000, at 41-46.

Similarly, the Court finds the facts and circumstances of these cases warranted the aggregate sentence of 28 to 56 years incarceration. The offense gravity scores for many of these offense were high. The offense gravity scores in Ms. Sylvanio's

case were 12 for the rape, 11 for the aggravated assault, and 3 for terroristic threats.[5] The offense gravity scores in Ms. Shadduck's case were 12 for the rape and 3 for terroristic threats. The defendant's prior record score was RFEL. Therefore, the standard range of the sentencing guidelines for the offenses were as follows: rape - 96 to 114 months or 8 to 9 ½ years; aggravated assault - 84 to 102 months or 7 to 8 ½ years; and terroristic threats - 12 to 18 months or 1 to 1 ½ years. In Ms. Sylvanio's case (99-10,917), the Court imposed a 9 to 18 year sentence for rape, a consecutive 8 to 16 year sentence for aggravated assault, and a consecutive 1 to 2 year sentence for terroristic threats. In Ms. Shadduck's case (99-10940), the Court imposed a 9 to 18 year sentence for rape and a consecutive 1 to 2 year sentence for terroristic threats. Pursuant to a plea agreement, the Court imposed a concurrent sentence in case number 99-10,731 for the burglary of Carol Steffon's house. Although the Court imposed several consecutive sentences, each sentence imposed was within the standard range of the sentencing guidelines. The decision to impose consecutive or concurrent sentences is within the discretion of the sentencing judge. Commonwealth v. Wellor, 731 A.2d 152, 155 (Pa.Super. 1999); see also Commonwealth v. Brown, 741 A.2d 726, 735-36 (Pa.Super. 1999). The Court believes the following factors warranted exercising this discretion to impose consecutive sentences: (1) the cases involved separate incidents and victims; (2) the physical injuries to Jesse Sylvanio warranted a separate sentence for aggravated assault; (3) the emotional

[5]These are the offenses upon which the Court imposed consecutive sentences. Although there were other offenses with high offense gravity scores such as robbery and aggravated indecent assault, theses offenses either merged for sentencing purposes or the Court imposed a concurrent sentence.

trauma to all the victims; (4) the first offense was committed within days of the defendant's release from prison; (5) the defendant committed three very violent crimes within a short time span; (6) the defendant's failure to take advantage of previous opportunities for rehabilitation in the juvenile system and the county prison; and (7) the likelihood the defendant would re-offend. N.T., July 25, 2000, at 41-46. For these reasons, the Court found a lengthy state sentence appropriate as it was the only way to protect society from this dangerous criminal.

The defendant next contends that the Court erred in allowing the written statement of victim Steffon to be used at sentencing when the defense did not receive it until the date of the sentencing hearing. The Court cannot agree. First, Ms. Steffon was present at the sentencing hearing and available for cross-examination regarding her written victim impact statement. N.T., July 25, 2000, at 23-24. Second, Ms. Steffon's statement was similar to that of the other victims. Ms. Steffon expressed the same fear of being alone and concern for her personal safety as did the other victims. Finally, pursuant to the plea agreement, the Court imposed a concurrent sentence on the burglary involving Ms. Steffon; therefore, the defendant was not prejudiced by the admission of this statement.

The defendant also asserts that the Court erred in allowing the former prosecutor to speak at the defendant's sentencing hearing. Again, the Court cannot agree. Lori Rexroth was the prosecutor who tried these cases. She left the District Attorney's office and went into private practice before the defendant was sentenced. She wished to speak at the sentencing hearing. The defense objected. Although the Court did

not believe she should make argument as the prosecutor, it did feel she should be given the right to speak at the sentencing hearing as a interested member of the public. N.T., July 25, 2000, at 33-34. Ms. Rexroth's comments were short and did not contain any information that was not provided to the Court through other means, such as the pre-sentence investigation, the victims' oral and written statements, and the arguments of the prosecutor. N.T., July 25, 2000 at 34-35.

The defendant's final contention is that the Court erred in denying his request for a sixty (60) day evaluation. In essence, the defense was requesting a continuance of the sentencing hearing to obtain a psychological evaluation of the defendant. The grant or denial is within the discretion of the trial judge. McAleer, supra. A continuance was not appropriate in this case. The defendant's sentencing had been scheduled for approximately two (2) months. The defendant waited until the date and time of the sentencing hearing to request an evaluation. Furthermore, given the defendant's lengthy prior criminal history, the Court did not believe an evaluation would be helpful in this case. N.T., July 25, 2000 at 22-23.

DATE: _____ By The Court,

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Kenneth D. Brown, J.