

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-10,221
: 00-10,223
:
vs. : CRIMINAL DIVISION
: Motion to Consolidate
GWENDOLYN PRESSLEY, :
Defendant :

OPINION AND ORDER

Before the Court is the Commonwealth's Motion to Consolidate the above-captioned informations, said motion having been filed February 21, 2001. Argument on the motion was heard March 5, 2001.

In each of the above-captioned informations, Defendant has been charged with assault by a prisoner, 18 Pa. C.S. Section 2703, assault by a life prisoner, 18 Pa. C.S. Section 2704, aggravated harassment by a prisoner, 18 Pa. C.S. Section 2703.1, and disorderly conduct, 18 Pa. C.S. Section 5503(a)(4). The charges brought to No. 00-10,221 are based on allegations that on October 7, 1999 Defendant threw urine and menstrual blood on a guard at SCI Muncy where she is imprisoned. The charges to No. 00-10,223 are based on allegations that on October 9, 1999 Defendant threw urine on two (2) guards at SCI Muncy. On February 11, 2000 the Commonwealth filed a Notice of Joinder under Pa.R.Crim.P. 1127(B)(1). The Commonwealth then filed the instant Motion to Consolidate¹ seeking to consolidate the charges in both informations, under Pa.R.Crim.P.

¹Since the Commonwealth filed a Notice of Joinder, it appears the Defendant should have filed a Request for Severance under Pa.R.Crim.P. 306, but inasmuch as the Commonwealth has since filed the Motion to Consolidate, the issue will be addressed therein.

1127.A.(1)(a).

Rule 1127 provides in pertinent part:

- (1) Offenses charged in separate indictments or informations may be tried together if:
 - (a) 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
 - (b)

In order to determine whether the evidence of one would be admissible in a separate trial for the other, the Court looks to the general rule that evidence of one crime is inadmissible against the defendant being tried for another crime because the fact of the commission of one offense is not proof of the commission of another. Commonwealth v Robinson, 521 A.2d 940 (Pa. Super. 1987). There are exceptions to the rule, of course, and 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 other; or (5) to establish the identity of the person charged with the commission of the crime on trial. Id.

The Commonwealth argues in the instant matter that evidence of each crime would be admissible in the trial for the other to show intent. It does not appear that Defendant's mental state has been placed at issue, however. Evidence of the other crime would therefore not be admissible to prove it. See Commonwealth v Kasko, 469 A.2d 181 (Pa. Super. 1983). It also does not appear that evidence of each crime would be admissible in a trial for the other for any of the other reasons which allow an exception to the general rule. Thus, the Court feels that consolidation in the instant matter would be improper.

ORDER

AND NOW, this 19th day of March 2001, for the foregoing reasons, the Commonwealth's Motion to Consolidate the above-captioned informations is hereby denied. The matters shall be tried separately.

By the Court,

Dudley N. Anderson, Judge

cc: DA
E.J. Rymza, Esq.
Deputy Court Administrator
Gary Weber, Esq.
Hon. Dudley N. Anderson