

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

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| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | |
| v. | : | CR-1659-2023 |
| | : | |
| MUBARIK ABDUL MUQTAIDIR GRAVES, | : | |
| Defendant | : | |

OPINION

On August 30, 2024, a hearing was held on the Defendant’s Omnibus Pretrial Motion. At the outset of the hearing, the Commonwealth made a Motion to Amend the Information against the Defendant. The Motion to Amend the Information requested to Amend Count 2 from Sexual Assault (F2) to Criminal Attempt of Sexual Assault (F2), to Amend Count 4 Possession with Intent to Deliver a Controlled Substance-Gabapentin (F) to Delivery of a Controlled Substance-Gabapentin (F), and to Amend Count 5 Possession with Intent to Deliver a Controlled Substance-Methamphetamine (F) to Delivery of a Controlled Substance-Methamphetamine (F). The Court orally **granted** the Motion to Amend the Information at the hearing. The Court hereby memorializes the granting of the Amendment of the Information and directs the Commonwealth to file an Amended Information sheet.

The Defendant’s Omnibus Motion contained a Petition for Habeas Corpus to the original Count 2 for Sexual Assault, Motion to Sever Counts 4 and 5, and a Motion to Reserve Right. As the Court had granted the Amendment to the Information, the Court shall consider the Defendant’s Omnibus Motion in light of and applied to the Amended charges.

The Defendant’s Petition for Habeas Corpus to Count 2 Sexual Assault was premised on the argument that the Preliminary Hearing testimony did not include any alleged act by the Defendant that would meet the definition of Sexual Assault. Specifically, the Defendant was arguing that Sexual Assault under the criminal code only includes sexual intercourse or

deviate sexual intercourse. The Defendant, for purposes of the Habeas Corpus, conceded that there was testimony provided at the preliminary hearing that the Defendant placed his fingers on or in the vagina of the alleged victim. The Defendant cited the case of *Commonwealth v. Kelly*, 569 Pa. 179, 186-189 (2002) to support his argument that digital penetration does not fall into the category of sexual intercourse or deviate sexual intercourse. Due to the Amendment of the Information, the Court does not need to evaluate the Defendant's argument to determine whether or not digital penetration falls into the category of sexual intercourse or deviate sexual intercourse. Instead, the Court must evaluate whether or not the Commonwealth presented sufficient testimony and evidence to support a *prima facie* case for Criminal Attempt-Sexual Assault.

Criminal Attempt of a crime requires that a Defendant takes a substantial step toward the commission of the underlying crime with the intent to commit said crime. *18 Pa. C.S.A. §901(a)*. As stated above, the Defendant did not contest that there was testimony at the preliminary hearing that the Defendant did digitally penetrate the alleged victim. (P.H. Tr. at 14). Further, the alleged victim testified that she did not want or invite sexual contact with the Defendant (Tr. 7). The alleged victim testified she told the Defendant to stop but he proceeded to digitally penetrate her. (Tr. 7). The alleged victim testified the Defendant's contact with her was unwanted. (Tr. 7). The testimony at the preliminary hearing provides a *prima facie* case of Criminal Attempt of Sexual Assault pursuant to 18 Pa.C.S.A. §901(a). Therefore, the Defendant's Petition for Habeas Corpus to Count 2 is **DENIED**.

The Defendant's Omnibus Motion also contained a Motion to Sever Counts 4 and 5 related to the Delivery of a Controlled Substance, Gabapentin and Methamphetamine, respectively. "The argument against joinder or consolidation is that where a defendant is tried at one trial for several offenses, several kinds of prejudice may occur[.]" *Commonwealth v.*

Morris, 493 Pa. 164, 425 A.2d 715, 718 (1981), including, the jury using evidence of one of the offenses to deduce a criminal disposition, and thus, convict the defendant on the other offenses. *Id.* Moreover, there must be more than a high correlation of the details of the crimes that evidence a defendant committed one of the criminal acts makes it very unlikely that anyone else except that defendant committed the other related crimes. *Id.* at 721. The Defendant argued that if all of the charges are tried together, the Defendant will be unfairly prejudiced because Counts 4 and 5 may lead the jury to infer the Defendant has a criminal disposition. The Commonwealth opposed severing the charges on the basis that the acts alleged under the charges of Counts 4 and 5 arise out of the same course of events within the span of one evening.

The Court agrees with the Defendant that trying Counts 4 and 5 with the remaining Counts may lead the jury to infer the Defendant has a criminal disposition. However, the Court finds that the alleged drug use of that night is interwoven with the other events of that night including those covered by the other charges. Therefore, while Counts 4 and 5 will be severed for trial, the Commonwealth is permitted to present testimony regarding the drug use, including who provided the drugs, during the trial on Counts 1, 2 and 3. The Defendant's Motion to Sever Counts 4 and 5 for trial is **GRANTED** with the caveat that the Commonwealth is not precluded from introducing evidence regarding drug use that occurred the night of the alleged incident that is the basis for Counts 1, 2 and 3.

Finally, the Defendant filed a Motion to Reserve Right to supplement or file additional pretrial motions if new information was learned through discovery. The Commonwealth did not oppose this Motion. The Court **GRANTS** the Defendant's Motion to Reserve Right, and the Defendant shall have 30 days from the receipt of any discovery materials to file additional pretrial motions based upon newly disclosed information.

Accordingly, the Court enters the following Order

ORDER

AND NOW, this 20th day of **December, 2024**, upon consideration of the Defendant's Omnibus Motion, the argument of counsel on August 30, 2024, and the reasons set forth above, the Court Orders the following:

1. The Commonwealth's Motion to Amend the Criminal Information is **GRANTED**;
2. The Defendant's Petition for Habeas Corpus is **DENIED**;
3. The Defendant's Motion to Sever Count 4 and Count 5 is **GRANTED**;
4. The Commonwealth is permitted introduce testimony regarding the drug use and the supplier at trial;
5. The Defendant's Motion to Reserve Right is **GRANTED**;
6. And, the Defendant shall have thirty (30) days from the receipt of discovery to file additional pretrial motions.

By the Court,

Ryan M. Tira, Judge

RMT/asw
CC: PD
DA
Gary Weber-Lycoming Reporter