NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. DANIEL SETH LEPPIEN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1034 MDA 2013

Appeal from the Judgment of Sentence March 19, 2013
In the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0000408-2012
CP-36-CR-0000409-2012
CP-36-CR-0000416-2012
CP-36-CR-0005623-2011

BEFORE: DONOHUE, J., ALLEN, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.: **FILED APRIL 11, 2014**

Appellant, Daniel Seth Leppien, appeals from the March 19, 2013 aggregate judgment of sentence of 28 to 65 years' imprisonment imposed, after a jury found him guilty of rape, criminal attempt to commit aggravated indecent assault, indecent assault, selling or furnishing liquor or malt or brewed beverages to minors, two counts each of involuntary deviate sexual intercourse (IDSI) and sexual assault, three counts of statutory sexual assault, and four counts each of unlawful contact with a minor and

corruption of minors.[1] After careful review, we affirm the judgment of sentence.

The trial court accurately summarized the lengthy facts of this case in its August 5, 2013 opinion, and we need not reiterate them here. ***See*** Trial Court Opinion, 8/5/13, at 3-8. In sum, the pertinent procedural history of this case is as follows.

> The charges on docket number [CP-36-CR-0005623-2011] involve sexual offenses committed on two female victims, while the charges on docket numbers [CP-36-CR-0000408-2012], [CP-36-CR-0000409-2012], and [CP-36-CR-0000416-2012] each involve sexual offenses committed on separate female victims. All five victims were 15 or 16 years of age at the time of the offenses.
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> These offenses occurred between July and October, 2011. [On May 18, 2012, the Commonwealth filed a notice of intent to consolidate these cases for trial.] On June 25, 2012, [Appellant] filed several pretrial motions which included a motion to sever the cases, and a motion to admit evidence of the victims' sexual conduct with third parties and a motion for a pretrial hearing to determine whether the minor victims were competent to testify at trial. The [trial c]ourt denied [Appellant's] motions on August 14, 2012, but granted [Appellant] leave to file a properly supported motion to admit evidence of the victims' sexual conduct with third parties.
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> Trial commenced on November 5, 2012. Following [Appellant's] conviction, the [trial c]ourt scheduled sentencing and directed the Adult

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[1] 18 Pa.C.S.A. §§ 3121, 901, 3126, 6310.1, 3123, 3124.1, 3122.1, 6318, and 6301, respectively.

> Probation and Parole Department to conduct a pre-sentence report [(PSI)].
>
> On March 18, 2013, Appellant was sentenced to an aggregate term of 28 to 65 years[’] incarceration.
>
> On April 17, 2013, [Appellant] filed a post sentence motion seeking a new trial in which he challenged the weight of the evidence, sought reconsideration of his sentence[,] and presented a claim of ineffective assistance of trial counsel.[13] The [trial c]ourt denied [Appellant’s] motion on May 23, 2013.
>
> Pursuant to statute, an evaluation was conducted to determine whether [Appellant] should be classified as a sexually violent predator [(SVP)]. The hearing was held on May 22, 2013, and based on the evidence presented, the [trial c]ourt concluded that the Commonwealth had established that [Appellant] was a [SVP].
>
> On June 5, 2013, [Appellant] filed a timely notice of appeal to [this] Court. [Appellant filed his concise statement of errors complained of on appeal on July 5, 2013. [Thereafter, on August 5, 2013, the trial court filed its Rule 1925(a) opinion.]

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[13] [Appellant] retained new counsel on March 11, 2013, and the [trial c]ourt permitted [Appellant’s] trial counsel to withdraw on March 15, 2013.

Id. at 2-3 (citation and some footnotes omitted).

On appeal, Appellant raises the following issue for our review.

> A. Did the trial court err in allowing the charges of each victim to be consolidated into one trial, where some of the charges at each docket could not have been admitted at separate trials because they were more prejudicial than probative?

Appellant's Brief at 6.

Our standard of review of a trial court's decision to consolidate cases involving sexual offenses for trial is well settled.

> Whether or not separate indictments should be consolidated for trial is within the sole discretion of the trial court and such discretion will be reversed only for a manifest abuse of discretion or prejudice and clear injustice to the defendant. Consolidation of separate offenses in a single trial is proper if the evidence of each of them would be admissible in a separate trial for the others and is capable of separation by the jury so that there is no danger of confusion. Evidence of distinct crimes is inadmissible solely to demonstrate a defendant's criminal tendencies. Such evidence is admissible, however, to show a common plan, scheme or design embracing commission of multiple crimes, or to establish the identity of the perpetrator, so long as proof of one crime tends to prove the others. This will be true when there are shared similarities in the details of each crime.

Commonwealth v. Andrulewicz, 911 A.2d 162, 168 (Pa. Super. 2006) (citations omitted), *appeal denied*, 926 A.2d 972 (Pa. 2007).

The Pennsylvania Rules of Criminal Procedure govern the joinder of offenses as follows.

> **Rule 582. Joinder -- Trial of Separate Indictments or Informations**
>
> **(A) Standards**
>
> (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) the offenses charged are based on the same act or transaction.

Pa.R.Crim.P. 582(A)(1). Additionally, our Supreme Court has held that, "[u]nder Rule 583, the prejudice the defendant suffers due to the joinder must be greater than the general prejudice any defendant suffers when the Commonwealth's evidence links him to a crime." ***Commonwealth v. Dozzo***, 991 A.2d 898, 902 (Pa. Super. 2010) (citations omitted), *appeal denied*, 5 A.3d 818 (Pa. 2010); ***accord*** Pa.R.Crim.P. 583.

Instantly, the trial court concluded that docket numbers CP-36-CR-0005623-2011, CP-36-CR-0000408-2012, CP-36-CR-0000409-2012, and CP-36-CR-0000416-2012 were properly consolidated for trial. In support of this decision, the trial court reasoned as follows.

> Evidence of prior or contemporaneous instances of sexual misconduct may be admissible to show a common plan or scheme.
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> …
>
> In this instance, the evidence at trial showed a common plan or scheme. [Appellant] hired underage female employees to work in his arcade. He would then ingratiate himself with them by providing them with food, marijuana and alcohol and taking them to the movies and to get their nails done. [Appellant] would make sexually charged comments about them and convince them to engage in sexual activity with him or engage in such activity without their consent. He maintained relationships with three of the victims and would allow them to stay overnight in his residence. Therefore, evidence

> of each of the offenses would be admissible in a separate trial for the others.
>
> The specific actions described by each of the victims were different. Two victims testified to ongoing consensual sexual relationships with [Appellant], one of which was initially non-consensual, while the other was provided with beer and marijuana. One victim asserted that [Appellant] used force to engage in sexual activity with her, one victim stated that [Appellant] pressured her to have sex with him while the fifth victim testified that [Appellant] touched her inappropriately while she was sleeping. Therefore, the conduct with respect to each docket number was sufficiently distinct that the jury would have no difficulty keeping them separate.
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> Further, [Appellant] has failed to show that he was prejudiced by trying the cases together. On the contrary, his defense, that the victims fabricated their stories and engaged in a conspiracy against him, was better served by trying the cases together so that the jury had the opportunity to hear [Appellant] cross-examine each of the victims about her contact with the others before trial.

Trial Court Opinion, 8/5/13, at 12-13.

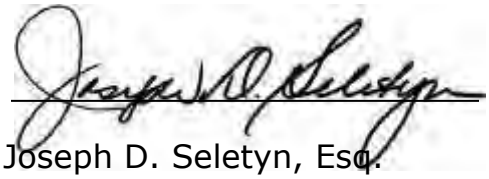
Upon careful review of the evidentiary record, we discern no abuse of discretion on the part of the trial court in consolidating these cases for trial. This Court has long recognized that evidence of a crime, wrong, or other act may be admissible to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Pa.R.E. 404(b)(2). In ***Andrulewicz***, this Court held that the trial court did not abuse its discretion in granting the Commonwealth's motion to consolidate three cases charging the defendant with various sexual offenses on separate

minor victims, as the similarities involved in said cases were probative of a common scheme, each offense would have been admissible in a separate trial, and the defendant failed to establish any prejudice as a result of the consolidation. ***Andrulewicz***, ***supra*** at 168-169. Similarly, in the instant matter, consolidation of Appellant's four sexual offense cases was entirely proper under Rule 582. Thus, we adopt the aforementioned rationale of the trial court as our own for purposes of this appellate review.

Accordingly, we conclude that Appellant is not entitled to relief in the instant appeal, and affirm his March 19, 2013 judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/11/2014