##### STATE’S MOTION TO CONSOLIDATE CASES FOR TRIAL

##### Commonwealth of Pennsylvania

TO THE HONORABLE JUDGE OF THIS COURT:

1. Defendant was arrested on December 1, 1998 and charged with Rape, Statutory Rape, Indecent Assault, Indecent Exposure, Involuntary Deviate Sexual Intercourse, Simple Assault, and Corrupting the Morals of a Minor as to T.R. and C.J., his girlfriend’s daughters. On the same date, the defendant was arrested and charged with Indecent Exposure, Indecent Assault, Endangering the Welfare of a Child, Corrupting the Morals of a Minor, Simple Assault, Statutory Rape, Rape, and Recklessly Endangering Another Person as to N.C., the daughter of another girlfriend of the defendant.
2. On December 7, 1998, preliminary hearings were held as to all three cases and the defendant was held for court by the Honorable Judge \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Separate informations were issued for each case. (Commonwealth v. J.S., C.P. #\_\_\_\_\_\_\_ as to T.R.’s case, Commonwealth v. J.S., C.P. #\_\_\_\_\_\_\_\_ as to N.C.’s case and Commonwealth v. J.S., C.P.#\_\_\_\_\_\_\_\_\_\_\_\_ as to C.J.’s case.)
3. On December 28, 1998, a pre-trial conference was held with regard to all three matters and discovery was provided. Trial is scheduled for August 9, 1999.
4. On April 24, 1999, the Commonwealth contacted the defendant’s counsel by letter and indicated that a consolidation of these cases is being sought. Counsel opposes the consolidation.
5. The Commonwealth seeks to consolidate for trial the offenses charged in the three separate informations outlined above.
6. Rule of Criminal Procedure 1127, Joinder-Trial of Separate Indictments or Informations, provides as follows:

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.

In the instant case, the following facts are alleged:

1. The defendant was the paramour of R.J., the mother of the complainants C.J. and T.R. He lived with them at various addresses in Philadelphia throughout the childhoods of C.J. and T.R. The defendant and R.J. had a son together, J.S., Jr.
2. The defendant began to fondle the breasts and vagina of T.R., now aged 17, when she was approximately five or six years old. This occurred at their home on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ while her mother was out of the home or asleep.
3. The family then moved to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ when T.R. was in the 7th or 8th grade. At that time, the sexual encounters escalated, leading to anal and vaginal sex. These acts were accomplished both at home and at various hotels on Baltimore Pike. As T.R. grew older, the defendant gave T.R. clothes, money, and jewelry to continue to ensure her compliance. T.R. told no one; the defendant told her not to tell, explaining that the activity was normal but secret. The family moved to \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the assaults continued. Finally, in the late summer or early fall of 1997, T.R. told her mother about the sexual abuse.
4. C.J., T.R.’s younger sister, is now 13 years old. While living with the defendant, her mother, T.R. and her other siblings, C.J. was sexually assaulted by the defendant. The defendant began to fondle C.J.’s vagina with his hands when she was approximately six years old; the child did not tell anyone. After a time, when the family lived at \_\_\_\_\_\_\_\_\_\_\_\_\_, the sexual assaults escalated, resulting in anal and vaginal intercourse. The assaults occurred at their various homes when her mother was absent or asleep. The defendant also took her to hotels on Baltimore Pike. Before taking C.J. to the hotel, the defendant would take her toy shopping and would give her money to buy sneakers and clothes.
5. C.J. did not tell anyone due to her fear, the defendant’s admonitions not to tell, and the defendant’s reassurance that the activity was normal.
6. C.J. finally told her mother when confronted in the late summer or early fall of 1997 when she was 11 years old.
7. The defendant then left the household. The police were unable to locate him.
8. The defendant went to stay with his other girlfriend, D.C. He stayed with her at D.C.’s mother’s house. From the fall of 1997 through October of 1998, the defendant stayed with D.C. and her daughter N.C., age six. The defendant sometimes took N.C. and her brother L.C. to stay at the defendant’s address on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, where defendant’s adult natural daughters lived with their mother. The defendant touched N.C.’s vagina with his hands and put his penis in her vagina at both D.C.’s mother’s home and at his address.
9. In October 1998, N.C.’s grandmother noticed the child had a vaginal discharge.
10. On October 4, 1998, N.C. was taken to the hospital and found to have gonorrhea.
11. After numerous attempts to locate the defendant, the police finally arrested him on December 1, 1998.

In assessing whether cases may be consolidated for trial, a determination must be made as to whether evidence of the commission of one offense would be admissible in the separate trial of the other offense or if the offenses charged are based on the same act or transaction. The Commonwealth asserts that the instant cases may be consolidated under the former standard. The facts involved in the cases of T.R., C.J. and N.C. are admissible at separate trials because evidence of other crimes is admissible to prove a common scheme, plan or design embracing commission of two or more crimes so related to each other that proof of one trends to prove the others. *See* rule 1127(A)(1)(a) and *Commonwealth v. Zigler*, 509 A.2d 389 (Pa. Super. Ct. 1986).

There are striking similarities in the acts perpetrated on the two sisters, T.R. and C.R. The defendant began to sexually assault both of them at approximately six years of age. The sexual assaults were typified by the escalation of the seriousness of the sexual acts. Both girls were initially fondled; the acts then progressed for both girls to involve anal and vaginal sex. The defendant perpetrated the acts on both girls in similar locations—in the home when their mother was absent or in hotels on Baltimore Pike. He gave gifts of money and material items to both girls to secure their compliance. These assaults continued on both girls until the defendant left their home in late summer or early fall of 1987. The defendant told both girls not to tell and that the activities were normal.

The facts involved in N.C.’s case are also similar to those of T.R. and C.J. The defendant, in the household of D.C., N.C.’s mother, takes on a position of the “father figure,” living with N.C. in her home and taking her on visits overnight to his family’s home at \_\_\_\_\_\_\_\_\_\_\_\_\_. Using his access to N.C., available to him as she is often left in his care, he fondles her vagina and performs vaginal sex on the six-year-old—acts similar to those perpetrated on T.R. and C.J. He begins to sexually assault N.C. at the same age he began to assault the other two victims. The defendant perpetrates the sexual acts on N.C. in the home environment—as he did with T.R. and C.J.

These similarities dictate that the evidence of the crimes involving the three complainants would be admissible in a separate trial for each complainant under the common scheme, plan or design exception to the bar against evidence of other crimes.

WHEREFORE, the Commonwealth respectfully requests that the separate informations as to the three complainants be consolidated for trial under Rule 1127.

Respectfully submitted,

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Assistant District Attorney