2010 WL 3907133 (Conn.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Connecticut,
Judicial District of Tolland At Rockville Part A G.A. 19.
Tolland County

State of Connecticut,
v.
Frank KANIA.

Nos. TTD-CR05-0085168-T, TTD-CR0600-86134-T.
April 11, 2010.

State's Motion to Consolidate

The State of Connecticut, Brenda Hans, Special Deputy Assistant State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, (860) 258-5970.

March 27, 2006

Pursuant to Section 41-19 of the Connecticut Practice Book and Section 54-57 of the Connecticut General Statutes, the State of Connecticut hereby moves the above captioned informations presently pending against the defendant, Frank Kania, be consolidated and jointly tried. Under Connecticut General Statutes § 54-57, the trial judge has discretion to join cases under the following circumstances:

> [w]henever two or more cases are pending at the same time against the same party in the same court for offenses of the same character, counts for such offenses may be joined in one information unless the court orders otherwise. C.G.S. § 54-57

In support of the motion, the State asserts that the offenses charged in the two cases are similar in nature. Case # CR05-0085168-T involves seventeen counts alleging two first degree larcenies, two second degree larcenies (victim over age 60), seven prohibited activities regarding the offer or sale of securities, and six counts of issuing bad checks. All of these charges stem from promissory notes that the defendant issued to two 78 year old women. The notes involved investments in the defendant's antique furniture corporation. These promissory notes were issued from 2001 through 2004.

Case # CR0600-86134-T involves one count of first degree larceny and four counts of prohibited activities regarding the offer or sale of securities. Like the other case, these charges stem from promissory notes that the defendant issued for investments in the defendant's antique furniture corporation. The promissory notes were issued to victim, William Grant, who is the son of one of the two **elderly** victims in the other case, Doris Grant. These promissory notes were issued in the same time frame as the first case (2001-2004).

The same lay witnesses and expert witnesses will be called by the State for both cases. The State also anticipates that the same legal and evidentiary issues will exists for both cases.

The State contends that judicial economy warrants joinder of these two cases since they contain the same offenses, the offenses occurred at about the same time, the same witnesses will be called by the State for both cases, and the same legal issues are likely to recur in the prosecution of each case. Additionally, there is a substantial likelihood that the evidence of each of the offenses in the two cases will be admissible in proof of the other. As noted in *State v. Pollitt,* 205 Conn. 61,68 (1987), a case

involving sexual assault, burglary, and robbery charges, "[w]here evidence of one incident *can* be admitted at the trial of the other, separate trials would provide the defendant no significant benefit."

The trial court is authorized by statute and rule to join cases. Further, "there is a presumption in favor of consolidation of appropriate cases." *State v. David P.*, 70 Conn. App. 462, 467 (2002) (emphasis added). Under *State v. Walsh*, 52 Conn. App. 708, 711-712 (1999) "[t]he trial court has discretion to determine whether separate cases involving the same defendant should be consolidated....and the exercise of that discretion may not be disturbed on appeal unless it has been manifestly **abused**...To demonstrate that the trial court **abused** its discretion, the defendant bears the heavy burden of convincing this court that the joinder resulted in substantial injustice."

The three factors the courts should consider in deciding whether or not to consolidate multiple cases against the same defendant are outlined in *State v.Chance*, 236 Conn. 31, 34 (1996), which involved arson and assault charges.

> [S]everance may be necessary to prevent undue prejudice resulting from the consolidation of two or more charges for trial when: (1) the cases do not involve discrete, easily distinguishable factual scenarios; (2) one or more of the counts alleges brutal or shocking conduct by the accused; or (3) the trial is one of long duration or very complex. *Id* at 42

In applying these three factors to the Kania cases, it is readily apparent that severance of the two matters is not necessary to prevent undue prejudice. First, each of the two cases involve discrete, easily distinguishable fact scenarios. The larceny and securities violations are each based upon individual promissory notes for each victim. The facts surrounding these notes are easily distinguishable. Second, neither case involves brutal or shocking conduct by the accused given the fact that nonviolent theft and security violations are charged. Third, the trial is not expected to be of lengthy duration or exceedingly complex. The State believes it can present its evidence for both cases in six days or less.

Based upon the factors outlined above, the State asserts that joinder is appropriate in Mr. Kania's two pending criminal matters. Under C.G.S. 54-57, the State respectfully requests that case # CR05-0085168 and case #CR0600-86134 be joined for trial.

THE STATE OF CONNECTICUT

By: <<signature>>

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