

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR-337-2005
	:
vs.	: CRIMINAL DIVISION
	:
MELISSA SNYDER,	:
Defendant	: Motion in Limine

OPINION AND ORDER

Before the Court is Defendant's Motion in Limine, filed November 21, 2005. Argument on the motion was heard January 6, 2006.

Defendant has been charged with two counts of endangering the welfare of a child, in connection with the accidental drowning deaths of her two young children on August 7, 2004. In the instant motion in limine, Defendant seeks to exclude evidence of "alleged incidents of failing to supervise her children prior to August 7, 2004." Defendant contends such incidents are irrelevant and prejudicial. The Court does not agree.

Having charged Defendant with endangering the welfare of a child, the Commonwealth must prove that Defendant "knowingly endanger[ed] the welfare of the child by violating a duty of care, protection or support." 18 Pa.C.S. Section 4304(a). Further, the crime here is charged as a felony of the third degree, which requires a showing of a "course of conduct". Section 4304(b). Instances of previously failing to properly supervise her children would thus be relevant to show such a course of conduct. Moreover, while evidence of prior bad acts is not admissible solely to show the defendant's bad character or his or her propensity for committing bad acts, Commonwealth v. Reid, 811 A.2d 530 (Pa. 2002), such evidence may be admissible to show intent. Id.

The intent element of the crime of endangering the welfare of a child was addressed in Commonwealth v. Cardwell, 515 A.2d 311 (Pa. Super. 1986). There the Court held that evidence is sufficient to prove the intent element of the offense of endangering the welfare of a child when it is shown that the accused is aware of his or her duty to protect the child, is aware that the child is in circumstances that threaten the child's physical or psychological welfare, and

has failed to act to protect the child's physical or psychological welfare. Id. See also Commonwealth v. Retkofsky, 860 A.2d 1098 (Pa. Super. 2004). Thus, evidence of prior incidents of failure to supervise would be relevant to show Defendant was aware of “circumstances which threaten [her] child[ren]’s physical ... welfare.”

Finally, with respect to the issue of prejudice, the Court believes the probative value of the evidence far exceeds any possible prejudice. Therefore, the motion will be denied.

ORDER

AND NOW, this 9th day of January 2006, for the foregoing reasons, the motion in limine is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson