IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA	:	NO: CR-1997-2008; 2072-2008
vs.	:	
LEON BODLE	:	CIVIL ACTION
Defendant	:	

O R D E R

On November 23, 2010 the Commonwealth filed a Motion to Preclude Evidence. On November 24, 2010 the Commonwealth filed a Notice pursuant to Pa.R.E. 404(b). On November 30, 2010 the Commonwealth filed a Motion to Admit Bad Acts. Argument was held on all outstanding issues raised on December 3, 2010. Following argument, this Court finds as follows:

The Commonwealth's Motion to Admit Bad Acts seeking introduction of "persuasion" books and literature, including books about Neuro-Linguistic Programming (NLP) is DENIED. On April 23, 2010 Judge Lovecchio issued an Opinion and Order which determined that such evidence was not relevant. Judge Lovecchio's holding on this issue was as follows:

> The next item is the 'persuasion' evidence. The testimony as to the items cannot be relevant absent some admission by the Defendant that the persuasion items were intended to be utilized for purposes similar to the alleged circumstances of this case. This nexus is too remote, even given the Defendant's admissions during is July 18, 2008 interview, and accordingly, the Court determines that the evidence is not relevant.

This is the law of the case. The Commonwealth asserts that admissions made by the Defendant in prison letters to his mother, Karen Boldle, provide an additional nexus, citing portions of the one letter in which the Defendant tells his mother that he is "upset and worried" about a box containing CDs marked "NLP" and another letter in which he states that he uses NLP to become "more confident with women" and uses NLP to "read their minds and their body language."

Following a review of the letters, this Court does not believe that the letters add any facts that would make the "persuasion" evidence any more relevant to the present proceedings. In the present actions, the alleged victims are three boys and one girl between the ages of six and nine. Admissions made by the Defendant relate to his use of NLP literature to make him more confident with women, a purpose not relevant to the alleged circumstances of the present actions.

The Commonwealth's Motion to Preclude Evidence is GRANTED. The Commonwealth seeks to preclude school records to impugn the character of 7-year-old L.B. In Commonwealth v. Minich, 4 A.3d 1063 (Pa.Super. 2010), the Pennsylvania Superior Court held that the admission of evidence challenging a child rape victim's credibility, by either cross-examination or extrinsic evidence showing that he was caught lying in school, is not proper. Accordingly, such evidence is not admissible at trial. This is not meant, however, to be a final ruling on any particular presentation of evidence should the Commonwealth open up issues in their case-in-chief.[1]

[1] During argument, Defense counsel argued that should the Commonwealth attempt to prove their case-in-chief by stating that L.B. "acted out" or exhibited behavioral problems following the alleged abuse which tended to prove the abuse, the Defendant should be permitted to provide evidence that behavioral issues existed prior to the alleged sexual abuse. This Court agrees.

During argument the Defendant objected to the Commonwealth's Notice pursuant to Pa.R.E. 404(b). Defense counsel argued that they were not provided with sufficient notice and that all four (4) of the items listed are not relevant to the present proceedings and are highly prejudicial to the Defendant. Specifically, the Commonwealth seeks to introduce statements made to inmates while incarcerated in the Lycoming County Prison.

The Commonwealth contends that information regarding these statements was provided during discovery in June or July of 2010. Evidence intended to be produced includes the following:

> 1. The Defendant asked inmate 1 if the inmate's 11-year-old daughter had pubic hair, developed breasts, and whether she liked sex.
>
> 2. The Defendant informed inmate 1 that he knew a person that made films about juvenile girls his daughter's age having sex, and suggested that he hook his daughter up.
>
> 3. The Defendant told inmate 2 that he used to take walks with a neighbor girl when he was her teacher. The Defendant indicated that he would get aroused when he talked to her, would "undress her with his eyes" and had sexual thoughts about her.
>
> 4. The Defendant told inmate 3 that he had a "sex club" when he lived on New Lawn. The Defendant indicated that the kids in the neighborhood were at his house all of the time.

Statements made regarding unrelated children, i.e., questions involving an inmate's eleven-year-old daughter and the neighbor girl he had walks with are not admissible. Similarly statements made by the Defendant that he knows someone who makes films about juvenile girls having sex will not be admitted at trial. This Court finds that as the specific facts do not directly relate to the present action, and this evidence is highly prejudicial, the evidence is inadmissible pursuant to Pa.R.E. 403.

Statements made by the Defendant to inmate 3, however, that he had a "sex club" when he lived on New Lawn and that the kids in the neighborhood were always at his house, will be admitted at trial. As one or more of the alleged victims in the present action have indicated that the Defendant asked them to join his "sex club" the probative value of such evidence outweighs any prejudicial effect. These admissions clearly reflect Defendant's state of mind, plan or intent. Accordingly, the evidence set forth in Number 4 of the Commonwealth's Notice will be admitted at trial.[2]

BY THE COURT,

_____ _____

Date Richard A. Gray, J.

cc: James Protastio, Esquire
District Attorney (MK)
Gary Weber, Esquire

[2] Although the issue of reasonable notice was raised and considered by this Court, the information regarding the "sex club" was clearly in the case and short pretrial notice does not create a prejudice issue under these unique facts.