

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	NO: 10-00494
	:	
vs.	:	
	:	
\$3,660.00 U.S. CURRENCY	:	CIVIL ACTION

OPINION

The Commonwealth of Pennsylvania filed a Petition for Forfeiture and Condemnation on March 12, 2010 requesting forfeiture of \$3,660.00. Trial is scheduled to take place on October 18, 2010. The action arises out of a traffic stop which took place on January 5, 2010 in Williamsport, Pennsylvania.

On January 5, 2010, Marvin Turner was a passenger in a vehicle stopped by the Pennsylvania State Police for having tinted windows. The operator was found not to possess a driver's license. The officers found \$3,660.00 in the vehicle. The money found was subjected to an ION scan and found to have 2.869 times the casual contact level for cocaine. Marvin Turner was not arrested or cited as a result of this incident.

On August 12, 2010 the Commonwealth of Pennsylvania filed a Notice of Intent to Introduce Evidence of Prior Bad Acts. The Commonwealth seeks to introduce evidence of two (2) incidents involving Marvin Turner at the trial scheduled in the above-captioned matter.¹ The Commonwealth seeks to admit evidence that Marvin Turner was arrested on December 23, 2009 on one (1) count of Delivery of a

¹ Although the Commonwealth initially sought to introduce evidence of a third incident which took place on February 2, 2005, the Commonwealth conceded during argument that this incident was not admissible pursuant to Pa.R.E. 404(b).

Controlled Substance and Possession with Intent to Deliver a Controlled Substance.

The Commonwealth additionally seeks to introduce evidence that Marvin Turner was arrested on April 27, 2010 on one (1) count of Delivery of a Controlled Substance and Possession with Intent to Deliver a Controlled Substance. Charges as to both of these incidents have not yet been resolved.

Pa.R.E. 404(b)(1) codifies the general rule in Pennsylvania that evidence of other crimes, wrongs or acts is **not** admissible to prove the actor's propensity or character for such conduct. Commonwealth v. Mayhue, 639 A.2d 421 (Pa. 1994).

Pa.R.E. 404 (b) provides as follows:

Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(b) Other crimes, wrongs, or acts.

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.

(2) Evidence of other crimes, wrongs, or acts proffered under subsection (b)(2) of this rule may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

The Commonwealth does not rely upon any of the enumerated exceptions to the rule prohibiting introduction of evidence of other crimes or wrongs, but rather, relies upon Commonwealth v. Lark, 543 A.2d 491 (Pa. 1988).

In Lark, a criminal defendant that robbed a man at gun point on December 28, 1978, told people prior to his preliminary hearing that he was going to "take care of" the robbery victim before the trial. Id. at 493. On February 22, 1979 the day before the preliminary hearing on the robbery charge, the defendant shot the man he robbed in the head. The Pennsylvania Supreme Court found that this was a "series of crimes

committed by the appellant which were all related.” Id. at 294-5. In addressing the admission of other crimes, the Pennsylvania Supreme Court noted:

Another “special circumstance” where evidence of other crimes may be relevant and admissible is where such evidence was part of the chain or sequence of events which became part of the history of the case and formed part of the natural development of the facts....This special circumstance, sometimes referred to as the “res gestae” exception to the general proscription against evidence of other crimes, is also known as the “complete story” rationale, i.e., evidence of other criminal acts is admissible “to complete the story of the crime on trial by proving its immediate context of happenings near in time and place.” Id. at 497.

The Commonwealth submits that the Lark decision establishes support for its request to “complete the story of the currency.”

The facts of the present action, however, are as follows: On December 15, 2009 Marvin Turner was stopped by the Pennsylvania State Police due to the location of his vehicle in a high crime area at 1:19 a.m. The vehicle contained 150 bags of heroin and Marvin Turner had \$795.00 on this person. Mr. Turner is claiming that the money seized on January 5, 2010 was to be used to pay his bail for the stop on December 15, 2009. No drugs were found at the January 5, 2010 stop.

On April 27, 2010 Mr. Turner was arrested following a dispute he had with a cabdriver who transported Mr. Turner from Philadelphia to Williamsport. Mr. Turner did not want to pay the fare and Mr. Turner and the cabdriver argued. As it was reported that a knife was involved, the police searched Mr. Turner and the cabdriver and a search of Mr. Turner revealed 10 grams of cocaine and \$2,100.00 in his wallet, that Mr. Turner indicated was for his attorney.

The Commonwealth asserts following a review of these facts that these three (3) incidents, all less than four months apart, establish a “clear pattern of criminal

conduct” in that “Claimant [t]urner is in the drug vending business” and on each of these occasions, he “possessed money which is subject to a clear nexus linking that money with drug activity.” (Commonwealth’s Notice, p. 5). Notably, Mr. Turner was not arrested or cited for the incident of January 5, 2010.

The Superior Court has additionally held that “much more is demanded that the mere repeated commission of crimes of the same class....” Commonwealth v. Miles, 846 A.2d 132, 136 (Pa.Super. 2004) *citing* Commonwealth v. Rush, 646 A.2d 557, 561 (Pa. 1994). The issue before the court in Commonwealth v. Miles, was whether the trial court erred by admitting the testimony of James Siebert who testified about a second robbery allegedly committed by the appellant after the robberies for which he was on trial. In reaching its holding that the admission of such testimony constituted error, the court held:

Contrary to the Commonwealth’s argument, Siebert’s testimony would not be admissible as part of the history of the case. That exception is not included in Rule 404(b)(2) of the Rules of Evidence. Further, the robbery involving Siebert is more properly characterized as a separate incident, rather than an extension of, or part of, the Jones and Phillip robberies...” Id. at 137.

Mr. Turner’s December 15, 2009 arrest and his April 27, 2010 arrest similarly do not weave together a story of events. They are merely separate incidents or separate events that in no relevant way relate to each other. These separate incidents are clearly distinguishable from the “complete story” rationale in Lark, *supra*. The purpose for the admission of such evidence would be merely to demonstrate that Mr. Turner’s actions show a propensity to commit a class of crime, the distribution of drugs, which is strictly prohibited by Pa.R.E. 404(b). Moreover, the admission of such evidence would result in unfair prejudice to Mr. Turner.

ORDER

AND NOW, this 15th day of September, 2010, following a hearing on the Commonwealth's Notice of Intent to Introduce Evidence of Prior Bad Acts filed on August 12, 2010 the Commonwealth is prohibited from introducing evidence of Mr. Turner's prior conviction in 2005 and is prohibited from introducing evidence regarding incidents which occurred on December 15, 2009 and April 27, 2010.

BY THE COURT,

Richard A. Gray, J.

cc: Robert B. Stewart III
Office of Attorney General
2515 Green Tech Drive
State College, PA 15803

Donald F. Martino, Esquire

Gary Weber, Esquire