

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1408-2009
:
vs. :
:
JERMAINE WEEKS, :
Defendant :

OPINION AND ORDER

This matter came before the court on the Commonwealth’s motion in limine to admit bad acts. The relevant facts follow.

On August 16, 2009 at approximately 2:19 a.m., the Williamsport police responded to the 700 block of West Edwin Street for a report of shots fired. Police arrived and found shell casings in that block and around the corner in the 300 block of Mifflin Place. One of the reporting parties was Shakeema Shuler. The police spoke to Ms. Shuler, who stated that she and Jermaine Weeks had been arguing at her residence. As Weeks was leaving, he pulled up his shirt and grabbed a pistol that was in his waistband. Weeks pulled the gun up a little then pushed it back down into his waistband. Shuler closed her door and about three seconds later she heard three or four shots and observed flashes through her window. A few moments later she heard three or four more shots and observed flashes through a window that faced Mifflin Place. Another witness told the police he heard shots, then he saw a black male matching Weeks’ description walk from Mifflin Place, get into a burgundy sedan and leave the area.

Weeks has a conviction that renders him a person not to possess a firearm under section 6105 of the Crimes Code.

The police obtained a search warrant for Weeks' apartment and executed it around 6:00 a.m. The police did not find a pistol, but they discovered a .22 caliber Winchester rifle. The police located Weeks in Ms. Cenimo-Warner's nearby apartment. Ms. Cenimo-Warner gave a statement to the police that she had seen Weeks with firearms in the past. When Weeks was arrested, he asked the officer whether he had shot anyone.

The police charged Weeks with two counts of person not to possess a firearm, one for the pistol Ms. Shuler observed in his waistband when he was in the 700 block of West Edwin Street and one for the Winchester rifle found during the search of Weeks' apartment.

When Ms. Shuler either failed to appear or refused to testify at the preliminary hearing, the charge related to the pistol was withdrawn or dismissed by the Commonwealth.

The Commonwealth filed a motion in limine to admit bad acts seeking to introduce evidence regarding the incident in the 700 block of West Edwin Street, Ms. Cenimo-Warner's statement, and Weeks' query whether he had shot anyone. The Commonwealth asserts in its motion that this information forms the history of the case and is relevant to the issue of intent; thus, it should be admitted in the trial concerning the rifle. For the most part, the Court cannot agree.

The admissibility of bad acts evidence is governed by Rule 404(b) of the Pennsylvania Rules of Evidence, which states:

(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 may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(3) Evidence of other crimes, wrongs, or acts proffered under subsection (b)(2) of this rule may be admitted in a criminal case only upon a showing that the probative value of the evidence outweighs its potential for prejudice.

(4) In criminal cases, the prosecution shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Pa.R.E. 404(b).

The Court finds that the evidence regarding the Edwin Street incident is essentially propensity evidence that is inadmissible under Rule 404(b)(1), and has little or no bearing on whether Weeks intended to possess the rifle found disassembled in his apartment. While it is true that the incident in the 700 block of West Edwin Street provided the basis for the search warrant of Weeks' apartment, the search warrant is not at issue and the Commonwealth is not required to prove how or why they obtained the warrant to prove the charges in this case. Weeks' query whether he had shot anyone relates to the withdrawn charge arising from the Edwin Street incident. Therefore, the Court finds the relevance of this evidence is marginal at best.

This proposed evidence also is highly prejudicial. To this Court's knowledge, there is no evidence that Weeks fired the rifle. In fact, during oral argument, the attorneys indicated the rifle was found disassembled in Weeks' bathroom. Evidence that Weeks fired a pistol multiple times in a residential area and that he asked whether he shot anybody is likely

to enflame the passions of the jury and lead to a conviction based on evidence of a charge that was dismissed or withdrawn. The Court finds that any relevance of the proposed evidence is far outweighed by its potential for prejudice. Therefore, the evidence is inadmissible under Rule 404(b)(3).

Ms. Cenimo-Warner's statement, however, is more problematic for the defense. If Ms. Cenimo-Warner can testify that in the recent past she saw Weeks in possession of a rifle similar to the one found in Weeks' apartment, this evidence would be relevant to show Weeks' possession and control of the rifle found in his apartment.

ORDER

AND NOW, this ___ day of July 2010, the Court grants the Commonwealth's motion to admit bad acts to the extent it seeks to introduce Ms. Cenimo-Warner's statement, **provided Ms. Cenimo-Warner can testify that she saw Weeks with the same or a similar rifle in the recent past.** In all other respects, the court denies the Commonwealth's motion to admit bad acts. This ruling is without prejudice to the Commonwealth re-raising this issue at trial if it believes the evidence, argument or cross-examination presented at trial somehow opens the door for the admissibility of this evidence.

By The Court,

Marc F. Lovecchio, Judge

cc: Mary Kilgus, Esquire (ADA)

Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)