

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA	:
vs.	: No's. CR-1997-2008
	: CR-2072-2008
LEON DALE BODLE,	:
Defendant	:

OPINION AND ORDER

Before the Court is the Commonwealth's Motion to Admit Bad Acts, which was filed on March 11, 2010. On the two separate Informations referenced above, Defendant stands charged with, among other things, Soliciting Involuntary Deviate Sexual Intercourse, Unlawful Contact with minors, Obscene Materials, Indecent Assault, Corruption of the Morals of Minors, Solicitation to Commit Indecent Assault, Child Sexual Abuse, and Indecent Exposure. The cases are consolidated for trial.

The pretrial in this matter is scheduled for May of 2010 with the trial date to be determined. At trial, the Commonwealth is requesting that it be permitted to introduce evidence of bad acts of the Defendant. Specifically, the Commonwealth is requesting that it be permitted to introduce the following evidence: (1) the testimony of Detective Christopher Kriner of the Old Lycoming Township Police Department that in July of 2008 he lawfully seized Defendant's computer and through a forensic investigation discovered numerous images of child pornography which included males and females of the same approximate age as the alleged victims in these matters; (2) additional testimony of Detective Kriner that in July of 2008 during a search of Defendant's bedroom he located related items including CD's, tapes and books that could be utilized not only for legitimate purposes but for the illegitimate purposes of persuading minors to act in accordance with Defendant's wishes; and (3) the testimony of Jessica Peluso, Brittany Ruby and Angela Snook. Jessica Peluso will testify that

the Defendant homeschooled her from eighth grade to February 2008. When she was age 16 (2006-2007), Defendant allegedly sent to her links to websites via instant messaging, and indicated to her that she “had” to view them. The websites contained images of naked children, adult individuals performing sexual acts, and violent videos. One of the violent videos depicted a man getting his head blown off. Ms. Peluso will also testify that the Defendant showed her these websites while he was at her home in the role of a teacher.

Brittany Ruby will testify that she was present on a few occasions when the Defendant allegedly sent Ms. Peluso the links to the websites referenced above. She and Ms. Peluso, her sister, opened the links and viewed the websites which contained images of sexual and extremely violent content. Ms. Ruby will testify that she specifically remembers a man getting his head blown off on one of the videos.

Angela Snook will testify that the Defendant was her teacher during the 2007-2008 school year when she was in the eighth grade. She will testify that the Defendant showed to her on the computer images containing pornography and graphic violence. She remembered images of a man getting his head cut off with a chainsaw, lots of blood and guts that made her feel sick as well as images of lesbian, gay and heterosexual sex.

The Commonwealth contends that this proffered evidence is relevant to establishing matters in issue other than the Defendant’s propensity to commit the charged crimes. Specifically, the Commonwealth argues that the evidence in question should be admissible to prove the Defendant’s intent, plan and/or common scheme with respect to the present charges. The Commonwealth also argues that the evidence is relevant to create a

context within which the jury may derive an understanding of the Defendant's motives and intent in connection with the present charges.

Generally, evidence of prior bad acts or unrelated criminal activity is inadmissible to show that a Defendant acted in conformity with those past acts or to show criminal propensity. Pa. R.E. 404 (d) (1). Commonwealth v. Aikens, 2010 Pa. Super. 29 (March 4, 2010).

However, evidence of prior bad acts may be admissible and offered to prove some other relevant fact, such as motive, intent or plan if the probative value outweighs the potential prejudice. Pa. R.E. 404 (b) (2), (b) (3); Aikens, supra.; Commonwealth v. Page, 965 A.2d 1212 (Pa. Super. 2009).

The Court must first determine if the proposed evidence is relevant to the issues of intent, plan, common scheme or completing the story. The Commonwealth summarizes the issues by arguing that the evidence is relevant to the issue of "grooming." Specifically, the Commonwealth argues that the past conduct of the Defendant tends to prove that with respect to the instant charges, the Defendant intended to solicit the alleged victims and have unlawful contact with them.

With respect to the relevancy inquiry, the Court will address each separate item of proposed evidence. The first item is Defendant's possession of child pornography. The Commonwealth argues that the age range of the children depicted in the child pornography seized from Defendant's computer is similar to the age range of the victims in the instant case. There is no allegation, however, that the present cases involve the showing of any child pornography to the alleged victims. The Court cannot conclude that there is any relevancy to

Defendant's possession of child pornography and any issues in the present case. While it may show that the Defendant has an interest in children of a particular age, this is propensity evidence which is clearly prohibited.

On the other hand, the Court finds as relevant the fact that pornography was discovered on the Defendant's computer. This evidence is indeed relevant to the issues in the instant case and in particular whether the Defendant possessed and actually showed pornography to the minors.

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 his July 18, 2008 interview, and accordingly, the Court determines that the evidence is not relevant.

The last item concerns the testimony of the three teenage girls as to the Defendant showing them graphic violence and graphic sexual activities on the computer. The Court must determine if the past and present incidents are sufficiently similar so as to demonstrate a plan, intent or common scheme. Aikens, supra. Commonwealth v. G.D.M., Sr., 926 A.2d 984 (Pa. Super. 2007).

More specifically, are there a sufficient amount of matching characteristics that elevate the incident into a unique pattern that distinguishes them from a typical or routine child abuse factual pattern? Aikens, supra.

In the present cases, the alleged victims are three boys and one girl between the ages of six and nine. The incidents allegedly occurred at the Defendant's residence, and with

respect to three of the alleged victims, they knew the Defendant through being neighbors. The one alleged victim was a nephew of the Defendant. The incidents occurred over an approximate three-month timeframe. With respect to all of the alleged victims in this case, as an integral part of Defendant's alleged soliciting of the children, he utilized the computer to show to the children nudity and/or pornography. With respect to one of the alleged victims, he also showed a "movie" with people running naked.

While Defendant argues the dissimilarity between the proffered evidence and the facts of the instant case, the Court is of the opinion that there is a major and unique similarity which elevates the incidents into a unique pattern that distinguishes them from a routine child abuse factual pattern. Specifically, the Defendant allegedly utilized a computer to show the children pornography with a plan toward soliciting improper future conduct. Additionally, the Defendant had a close relationship with all the alleged victims and prompted the interest of the children through the computer medium. The Court finds the proposed evidence, to the extent it is limited to the showing of sexual websites or websites depicting sexual activities and not graphic violence, to be relevant to the issues of common scheme, plan and intent.

The Court must next determine if the probative value of the relevant evidence might be outweighed by the danger of unfair prejudice. Pa. R.E. 403. Unfair prejudice means the tendency to suggest a decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially. Pa. R.E. 403 Comment; Page, supra.

Evidence will not be prohibited merely because it is harmful to the Defendant. Exclusion is limited to evidence so prejudicial that it would inflame the jury to make a decision

based upon something other than the legal propositions relevant to the case. Page, supra., citing Commonwealth v. Owens, 926 A.2d 1187, 1191 (Pa. Super. 2007).

In deciding whether the danger of unfair prejudice and the like, substantially outweigh the incremental prohibitive value, a variety of matters must be considered, including the strength of the evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of alternate proof and the degree to which the evidence probably will rouse the jury to overmastering hostility.

Page, supra, quoting McCormick, Evidence, § 190 (6th ed. 2006).

Considering all of the circumstances, the Court concludes that the evidence is not sufficient to rouse a jury to overmastering hostility and, accordingly, concludes that the prohibitive value of the evidence is not outweighed by the danger of unfair prejudice. The timeframes and contexts of the probating value is substantial, the evidence is necessary, the past conduct evidence is extremely strong and alternate proof is lacking. The Court acknowledges, however, that there may be some prejudice and as required, will provide to the jury, at the time the evidence is to be admitted, a cautionary instruction which fully and carefully explains to the jury the limited purpose for which that evidence will be admitted. Commonwealth v. Claypool, 508 Pa. 198, 206, 495 A.2d 176, 179 (Pa. 1985).

ORDER

AND NOW, this ____ day of April, 2010, the Court denies in part and grants in part the Commonwealth's Motion to Admit Bad Acts. The Commonwealth is permitted to introduce evidence that the Defendant had on his computer pornographic images at the time and date his computer was seized. The Commonwealth also may present the testimony of Jessica Peluso, Brittany Ruby and Angela Snook that the Defendant showed or forwarded to

them links to websites or actual websites which depicted sexual activities. In all other respects, the Commonwealth's Motion is denied.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: James Protasio, Esquire
DA (Mary C. Kilgus, Esq.)
Gary Weber, Esquire (Lycoming Reporter)
Work File