

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-43-2011
vs. :
 :
ADAM WYLAND, : Defendant's Motion in Limine
Defendant :

OPINION AND ORDER

This matter came before the Court on June 22, 2011 for an argument on Defendant's motion in limine, which was filed on June 8, 2011. In the motion in limine, Defendant seeks to preclude the Commonwealth from introducing into evidence in its case-in-chief that the victim reported the alleged sex crimes in this case to the police after she read that Defendant had been arrested for sex crimes against another individual. Defendant, relying on Rule 404(b) of the Pennsylvania Rules of Evidence, contends such evidence has no probative value and is unfairly prejudicial.

The Commonwealth countered that the evidence was relevant to explain why the victim reported the incident when she did and for the victim to give the whole story surrounding her initial failure to report the incident and why she subsequently went to the police over a year later. The Commonwealth further argued that any prejudice could be cured by a limiting instruction.

The Court questioned the attorneys on the applicability of cases like Commonwealth v. Dillon, 592 Pa. 351, 925 A.2d 131 (Pa. 2007), and Commonwealth v. Richter, 551 Pa. 507, 711 A.2d 464 (Pa. 1998). The Court noted the issue was a difficult one, because it appeared that the evidence was relevant, but also prejudicial. Although the Court initially indicated the Dillon case may be "on point," upon further review the Court

finds the evidence in this case is less relevant and more prejudicial than the other crimes evidence in Dillon.

In Dillon, the defendant was charged with sexually abusing L.P. nearly continuously from 1995 to 1998, while simultaneously subjecting her mother and brother to regular physical abuse. During an incident in 1998, the defendant broke the brother's leg. Although brother told L.P. that the defendant intentionally injured him, he did not reveal this information to his mother until the family was no longer living with the defendant. The defendant was convicted of aggravated assault related to breaking L.P.'s brother's leg. In May 2001 while the defendant was incarcerated on the assault conviction, L.P. first reported that the defendant sexually abused her. The Commonwealth filed a motion in limine seeking to introduce evidence of the defendant's abuse of L.P.'s family in its case-in-chief to explain L.P.'s failure to promptly report the sexual abuse as well as to show that the sexual abuse was committed through forcible compulsion or threat thereof. The trial court ruled that the Commonwealth could present evidence of the defendant's physical assaults against L.P. in its case-in-chief, but could not introduce evidence of the physical abuse of L.P.'s mother and brother unless and until the defense argued the lack of prompt complaint. The Pennsylvania Supreme Court found all of the evidence was relevant and admissible in the Commonwealth's case-in-chief to show the reasons for L.P.'s significant delay in reporting the alleged sexual assaults as well as for res gestae purposes, i.e. to explain the events surrounding the sexual assaults.

In the case at bar, Defendant allegedly sexually assaulted the complainant on

May 30, 2009. The complainant did not report the assault to the authorities until September 15, 2010, after allegedly being told about or reading a news account that Defendant was arrested for sexually assaulting another teenage girl.

The Court finds this evidence is less relevant than the evidence of physical assault in Dillon. The evidence in Dillon provided a potential explanation for why L.P. waited several years after the sexual abuse ended to report it. Here, the evidence does not explain why the complainant failed to report the incident to law enforcement authorities when it occurred; it only explains why she eventually reported it in September 2010.

The Court also finds the evidence is more prejudicial than the evidence of physical assault in Dillon. Evidence that the defendant was physically assaultive to L.P and her family was less disturbing than the crime for which defendant was on trial, i.e. sex crimes against a girl who was between the ages of nine and twelve at the time of the alleged assaults. Here, the other crimes evidence is for the same type of crime.¹ There is a substantial risk that the jury would think it was more likely that Defendant committed a sexual assault against the victim in this case if it heard evidence that Defendant was arrested for a sexual assault against another teenage girl. In fact, in Commonwealth v. Bryant, 515 Pa. 473, 530 A.2d 83, 85 (Pa. 1987), the Pennsylvania Supreme Court indicated that evidence of other criminal activity on the part of the accused “is so highly prejudicial in its effect upon the jury as to be equaled only by an actual confession on the deliberative process.” Furthermore, Rule 404(b) was drafted to protect against the dangers this type of

¹ In this case, Defendant is charged with rape, sexual assault, aggravated indecent assault and indecent assault. The arrest that resulted in the news report in September 2010 was for the charges of statutory sexual assault,

evidence presents.

It also would be very difficult to craft a limiting instruction that would prevent the jury from utilizing this evidence improperly. The Court could not simply tell the jury that it could only use this evidence to assess the credibility of the victim, because there still would be the risk that upon hearing that the defendant was charged with similar crimes against another girl that they would be more likely to believe the victim in this case if they thought the defendant may have done the same thing in another case.

ORDER

AND NOW, this ___ day of June 2011, the Court GRANTS the Defendant's motion in limine and precludes the Commonwealth from introducing in its case-in-chief any evidence that the complainant saw or heard about a news report that Defendant was charged with sex offenses pertaining to another teenage girl, unless Defendant opens the door to the admission of such evidence. The Court does not believe merely noting the delay in reporting would open the door. Rather, Defendant must question the reason why the complainant reported the alleged incident to the authorities in September 2010 for the Court to consider the door opened to this type of evidence.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalaus, Esquire (ADA)
Jeana Longo, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)