

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : **No. CR-547-2009**

vs. :

MELISSA SEGRAVES, :

Defendant :

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COMMONWEALTH : **No. CR-548-2009**

vs. :

GARY SEGRAVES, :

Defendant :

OPINION AND ORDER

Before the Court is the Commonwealth's Motion to Preclude Evidence filed on November 22, 2010. Hearing and argument was held on January 4, 2011.

The Commonwealth argues that during the previous jury trial in this matter in September of 2010, the Defendants cross-examined the victim on specific prior acts of theft, disorderly conduct and other bad acts, over the Commonwealth's objections. The Commonwealth contends that the Court erred in overruling the objections and should preclude such cross-examination at the future trial. The Commonwealth relies on the Superior Court decision in Commonwealth v. Minich, 4 A.3d 1063 (Pa. Super. 2010) for the proposition that the specific acts of conduct of the victim may not be used to attack credibility.

Defendants counter that the cross-examination was permissible to impeach the credibility of the victim by demonstrating a motive to fabricate.

The Commonwealth's Motion is both factually and legally misplaced. The Court reviewed the transcript of the testimony of the alleged victim. On only two occasions were topics raised with the alleged victim wherein the Commonwealth objected and was overruled.

On cross-examination, the alleged victim was asked if in seventh grade she “got in trouble” for an incident involving a pencil in Math class. The Commonwealth objected and after argument, the objection was overruled. The Defendant was also asked whether she stole things from her parents. Again, the Commonwealth objected and after argument the objection was overruled.

With respect to both issues, Defendants argued that the alleged incidents were not being introduced as evidence of the alleged victim’s bad character but rather as being relevant to the alleged victim’s desire to do “bad things” in order to “get out of” the house. Thus, demonstrating a motive to fabricate the claims against the Defendants. In fact, with respect to both incidents, the alleged victim specifically admitted that she committed the acts as part of her plan to get out of the house. She explained, however, that she did these things because she no longer wanted to reside in the house in light of “what Gary did” to her.

The Court agrees with the position of Defendants and will not preclude cross-examination of the alleged victim with respect to specific bad acts that are relevant to her credibility and in particular whether she is fabricating her claims against the Defendants. Bias or motive to fabricate is relative to credibility, and a successful showing of either or both tends to make the facts to which the witness testifies less probable in the eyes of the jury than it would be without such evidence. Commonwealth v. Ruggiano, 2010 Pa. Super. 230 (December 13, 2010).

The evidence to be elicited by the Defendants is not character evidence for the purpose of attacking or supporting the credibility of the alleged victim but rather evidence of specific acts designed to impeach credibility by showing a motive to fabricate.

ORDER

AND NOW, this ____ day of January 2011 following a hearing and argument, the Commonwealth's Motion to Preclude Evidence is **DENIED**. Defendants are instructed, however, to avoid any questions on cross-examination regarding bad acts that are designed to elicit a pertinent character trait of the alleged victim designed to attack her credibility. As per Pa. R. Evid. 608 (b) (1), the character of a witness for truthfulness may not be attacked by cross-examination or extrinsic evidence concerning specific instances of the witness's conduct.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: DA (MK)
Kyle Rude, Esquire
Scott Gardner, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File