

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-375-2010  
vs. :  
: CRIMINAL DIVISION  
:  
:  
:  
:  
: 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's judgment of sentence entered on October 31, 2011 and its Order dated January 5, 2012 denying Appellant's post sentence motions. The relevant facts follow.

On January 15, 2010, D.W. was visiting her friend at her friend's residence in Williamsport. While there, she was drinking brandy provided by Appellant and became intoxicated. Several other individuals were also at the residence, including Appellant, who also was drinking that night. According to D.W., she remembers being in the bedroom, but she did not remember how she got there. She was in and out of awareness. She realized that Appellant was on top of her having sex with her. She could not breathe, could not push him off of her and was getting scared. D.W. became very upset and began yelling and crying. Someone entered the room and turned on the light. Appellant and other boys quickly left the residence.

Appellant was arrested and charged with rape by forcible compulsion, rape of a person who was unconscious or unaware, sexual assault, aggravated indecent assault by

forcible compulsion, aggravated indecent assault without the complainant's consent, conspiracy to commit rape, and conspiracy to commit involuntary deviate sexual intercourse.

A jury trial was held on January 27-28, 2011. At trial, the Commonwealth dropped the aggravated indecent assault charges, and the Court granted a motion for judgment of acquittal with respect to both conspiracy charges. The jury acquitted Appellant of rape by forcible compulsion and sexual assault, but found him guilty of rape of a person who was unconscious or unaware that sexual intercourse was occurring.

On April 25, 2011, Appellant filed a motion for a new trial based on after-discovered evidence, which consisted of letters the alleged victim wrote recanting her trial testimony. The Court held a hearing on this motion and initially granted it. The Commonwealth, however, filed a motion for reconsideration. The Court granted the Commonwealth's motion, which resulted in the reinstatement of Appellant's conviction.

On October 31, 2011, the Court sentenced Appellant to incarceration in a state correctional institution for 3 to 6 years. Appellant filed post sentence motions on November 3, 2011 and November 7, 2011, which were denied in an Opinion and Order dated January 5, 2012.

Appellant filed a timely appeal, in which he raises three issues.

Appellant first asserts the trial court erred in denying his motion for a new trial based on after-discovered evidence. The Court previously addressed this issue in its Opinion and Order dated September 8, 2011, which granted the Commonwealth's motion for reconsideration. The Court would rely on that Opinion and Order and incorporate it by reference.

Appellant next avers the trial court erred in denying Appellant's request at

trial to present witnesses who would have testified that the victim had previously made similar, false accusations of rape against at least one other individual. This issue was raised and argued at pages 247-262 of the trial transcript. Appellant made an offer of proof that an individual named Raymar Alford would testify that about a year earlier the victim accused him and two other individuals of raping her, the victim indicated that she reported this alleged rape to the police, he was not charged, and the accusations went nowhere. Mr. Alford also would testify that he had sexual contact with the victim, but it was consensual.

“The admissibility of evidence is at the discretion of the trial court and only a showing of an abuse of that discretion, and resulting prejudice, constitutes reversible error.” Commonwealth v. Sanchez, \_\_\_ Pa. \_\_\_, 36 A.3d 24, 48 (2011)(citations omitted). “An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by evidence of record, discretion is abused.” Commonwealth v. Holder, 815 A.2d 1115, 1118 (Pa. Super. 2003)(citations omitted).

The Court denied Appellant’s request to present this testimony based on the following cases: Commonwealth v. Johnson, 536 Pa. 153, 638 A.2d 940, 942-43 (1994)(evidence that victim had been previously sexually assaulted was not barred by the Rape Shield Law, but was nonetheless inadmissible, because a victim or witness may not be contradicted on collateral matters, and the proffered testimony was classic hearsay); Commonwealth v. Gaddis, 432 Pa. Super. 523, 639 A.2d 462, 465-67 (1993)(evidence that the victim had falsely accused third parties of sexual assault is barred by Rape Shield Law, unless the proffered evidence shows a bias or hostility against the defendant or that the victim had a motive to seek retribution); and Commonwealth v. Boyles, 407 Pa. Super. 343,

595 A.2d 1180, 1185-87 (1991)(allegedly false assertions of prior sexual assaults irrelevant and barred by Rape Shield Law).

Appellant wanted to introduce evidence of an allegedly false prior accusation of rape to impeach the victim, but, as in Johnson, the proffered evidence is hearsay about a collateral matter, which is not admissible. Similarly, the proffered testimony does not render the inference to be drawn from it more probable than not. Even assuming that the victim made the alleged statements and they were false, such does not mean she is lying in this case, because the alleged lie does not pertain to facts and circumstances of this case, but an entirely separate incident. Furthermore, the introduction of such evidence would have resulted in a mini-trial in this case to establish whether, in fact, the alleged incident was true or false.

The Court also finds this evidence would be barred by the Rape Shield Law.

The Rape Shield Law states:

Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the victim's past sexual conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

18 Pa.C.S. §3104(a).

Unlike the appellant in Johnson, Appellant in the case at bar is not trying to show that the victim was actually sexually assaulted in the past, but that she engaged in consensual sexual intercourse with Alford and two other boys and falsely claimed she was sexually assaulted. Boiled down to its essence, Appellant's thinly veiled argument is that the evidence should have been admissible and the jury should have not have found the victim

credible because she is a “lying slut.” While counsel certainly would not convey Appellant’s argument in these terms, that is the message that the introduction of such evidence and Appellant’s credibility arguments would send to the jury. It is also precisely the type of evidence and argument that the Rape Shield Law was designed to preclude.

Finally, Appellant contends the trial court erred by denying Appellant’s motion for judgment of acquittal on the grounds that jury’s verdict was inconsistent and, in conjunction with said inconsistency, the Commonwealth failed to offer sufficient evidence to support a conviction under 18 Pa.C.S. §3121(a)(3). The Court addressed this issue on pages 8 through 10 of its Opinion and Order dated January 5, 2012, which denied Appellant’s post trial motions. The Court would rely on that Opinion and Order and incorporate it by reference.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire (ADA)  
Donald Martino, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)