

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-866-2011
vs. :
:
SHACCOOR TRAPP, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant's Motion in Limine filed on April 2, 2012. The relevant facts follow.

On May 31, 2011, Defendant was charged with attempted homicide, aggravated assault by causing or attempting to cause serious bodily injury, aggravated assault by causing bodily injury with a deadly weapon, burglary, criminal trespass, person not to possess a firearm, possession of an instrument of crime, recklessly endangering another person, and simple assault, arising out of his alleged entry into 606 Maple Street and shooting, stabbing, and choking a 23 year old African American female in an upstairs bedroom.

On March 28, 2011, the Commonwealth filed a notice of its intent to offer testimony of Defendant's uncharged prior bad acts pursuant to Rule 404(b) of the Pennsylvania Rules of Evidence. The prior bad acts consisted of Defendant allegedly assaulting his sister-in-law, who was sleeping on the couch in Defendant's wife's residence located at 610 Maple Street, at approximately 6:00 a.m. on March 15, 2011. Defendant allegedly pulled his sister-in-law, Ieysha McQueen, off of the couch, pulled her hair, dragged her into the kitchen and started choking her, while he was wearing a ski mask. Ms. McQueen was able to escape. At some point, Defendant pulled off the ski mask and claimed

the incident was just a joke.

At the argument held on Defendant's motion, which was held on April 3, 2012, the Commonwealth orally amended its notice to include an alleged incident between Defendant and his wife on November 7, 2010. The purported details relating to this incident are that Defendant, who resides in a separate residence on High Street, was hiding in his wife's residence at 610 Maple Street. Defendant and his wife, Chrissandra McQueen, got into an argument and Defendant began choking her. She ran to the neighbors and called 911. According to the police report that was submitted by the Commonwealth, the police did not observe any injuries on Defendant's wife, so they advised her to file charges privately, if she wished to do so.

The Commonwealth indicated that it intended to introduce these "prior bad acts" under Rule 404(b) to show the following: (1) history of the case; (2) identity; and/or (3) modus operandi. Defense counsel argued that the prior bad acts were not relevant or did not support any of the Commonwealth's theories of admissibility or, in the alternative, the prejudice outweighed any probative value.

DISCUSSION

Rule 404(b) of the Pennsylvania Rules of Evidence provides that evidence of "other crimes, wrongs or acts is not admissible to prove the character of a person in order to show conformity therewith." Pa.R.E. 404(b)(1). Such evidence may be admissible for other purposes such as proof of motive, intent, or identity, but may only be admissible in a criminal case for such other purposes if the probative value of the evidence outweighs its potential for

prejudice. Pa.R.E. 404(b)(2) and (3).

The Court finds the evidence would not be admissible to show the history of the case. There is nothing in the record to show that the current case arose out of or was connected to the alleged prior incidents.

The Court also finds the evidence would not be admissible to show identity or common plan or scheme/modus operandi. While all the incidents occurred in the 600 block of Maple Street and involved victims who were young adult African American females, the Court finds that there are significant differences. All of the prior incidents involved a relative or family member of the alleged perpetrator. In the instant case, the victim and the alleged perpetrator are not related to one another. In one of the prior incidents, the perpetrator wore a ski mask, but he did not in any of the other incidents. Finally, in the prior incidents no weapons were used and the alleged victims did not suffer any significant injuries. In the current case, the perpetrator used both a gun and a knife and the victim suffered multiple gunshot and stab wounds.

Even if the evidence of the prior incidents were relevant for the purposes claimed by the Commonwealth, the Court does not believe such relevance would outweigh the potential for prejudicial. The Court can think of nothing as potentially prejudicial as other crimes evidence. The prejudice in this case is heightened by the fact that Defendant was never charged with these crimes; therefore, the introduction of this evidence likely would result in a mini-trial regarding whether these incidents, in fact, occurred. Furthermore, the Commonwealth could not represent with any certainty that the alleged victims were

willing to testify. Instead, the Commonwealth indicated it might simply call the police officers to whom the victims reported the alleged incidents. This scenario could implicate other legal obstacles, such as the hearsay rule and Defendant's confrontation rights.

Finally, when assuring that the probative value of common plan or scheme evidence is not outweighed by its potential prejudicial impact, the Court must balance the potential prejudicial impact with such factors as the degree of similarity established between the incidents of criminal conduct, the Commonwealth's need to present the evidence under the common plan exception, and the ability of the trial court to caution the jury concerning the proper use of such evidence by them in their deliberations. Commonwealth v. G. D.M., 926 A.2d 984, 987 (Pa. Super. 2007); Commonwealth v. Smith, 431 Pa. Super. 91, 635 A.2d 1086, 1089 (1993); Commonwealth v. Frank, 395 Pa. Super. 412, 577 A.2d 609, 614 (1990).

In this case, the Commonwealth does not appear to have a great need for this evidence. The victim identified the perpetrator from a photo array and at the preliminary hearing. The day before the incident, a neighbor saw Defendant wearing a white hooded sweatshirt and in possession of a small gun, firing it. Moreover, the Commonwealth acknowledged that a sock was found in Defendant's residence that had the alleged victim's blood on it and the Defendant admitted that the sock was probably his.

Accordingly, the following Order is entered:

ORDER

AND NOW, this ____ day of April 2012, the Court GRANTS Defendant's motion in limine and precludes the Commonwealth from introducing evidence regarding Defendant's alleged prior incidents of assault against his wife and his sister-in-law.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalaus, Esquire (ADA)
Nicole Ippolito, Esquire (APD)
Work File
Gary Weber, Esquire