

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>:</b>	<b>CR-735-2012</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	<b>CRIMINAL DIVISION</b>
<b>ROBERT I. GOFF,</b>	<b>:</b>	
<b>Defendant</b>	<b>:</b>	<b>1925(a) Opinion</b>

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

**I. The Court did not Err in Denying the Defendant’s Motion to Dismiss.**

In addressing the argument that the Court erred in denying the Defendant’s motion to dismiss, the Court will rely on its Opinion filed September 22, 2014.

**II. The Court did not Err in Disallowing Defense Counsel from Questioning a Witness about the Circumstances Surrounding her Prior Theft Conviction Because the Circumstances were not Relevant. Even if the Circumstances were Relevant, Their Probative Value was Outweighed by the Danger of Misleading the Jury.**

Stevannah Helminiak (Helminiak) testified that she was staying at Steven Timlin’s (Timlin) house on March 15, 2012. Helminiak called the Defendant after she received money from a confidential informant (CI) to purchase crack cocaine. The Defendant drove to Timlin’s house, and Helminiak entered the Defendant’s vehicle. There was a piece of tissue in between the vehicle’s seats; the tissue had crack cocaine in it. Helminiak grabbed the tissue, put money in between the seats, and exited the vehicle. She returned to the CI, took one bag of heroin, and gave the rest of the bags to the CI.

Defense Counsel made the following argument in attempting to introduce the circumstances of Helminiak's prior theft conviction:

Here's the situation, Your Honor, and I don't even have to get into what was taken, but the facts are she steals the stuff from this guy, she gets a ride, she's out of town, she's going out and gets stopped and arrested. Our Defense in this situation is that she was trying to get a ride away from this place. I think this goes to the same fact pattern that we had in the past.

N.T., 10/14/14, at 70.

"Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence." Pa.R.E. 401(a). "All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible." Pa.R.E. 402. "The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Pa. R.E. 403.

"Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Pa.R.E. 404(b)(1). "This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Pa.R.E. 404(b)(2).

Essentially, Defense Counsel argued that the circumstances surrounding Helminiak's theft conviction show that Helminiak entered the Defendant's vehicle not with the intent to purchase cocaine, but with the intent to get a ride away from Timlin's house. Helminiak entering a vehicle is the only similarity between the facts of Helminiak's theft conviction and the facts surrounding the present case. There was no testimony that Helminiak stole from the CI or Timlin before entering the Defendant's vehicle. Helminiak received money from the CI, and after Helminiak exited the Defendant's vehicle, she gave the CI bags of cocaine. The facts of

Helminiak's theft conviction are too different from the facts of the present case to support the inference that Helminiak entered the Defendant's vehicle to get a ride away from Timlin's house.

Even if the circumstances surrounding Helminiak's theft conviction are relevant, their probative value was outweighed by the danger of misleading the jury. As mentioned above, there was no evidence that Helminiak stole from the CI or Timlin before entering the Defendant's vehicle. If the Court permitted the introduction of the circumstances surrounding Helminiak's theft conviction, the jury could have been misled into believing that Helminiak had stolen from the CI or Timlin before entering the Defendant's vehicle.

**III. The Court did not Err in Disallowing Defense Counsel from Introducing a Witness's Prior Bad Act Because Prior Bad Acts are not Admissible to Prove a Witness's Character in Order to Show that the Witness Acted in Accordance with the Character.**

Defense Counsel made the following argument in attempting to introduce evidence that Helminiak absconded while she was on supervision:

**Defense Counsel:** While we're here, you're going to object to this as well. Can we get into the fact that [Helminiak] absconded while she was on supervision under those cases? Under that case?

**Prosecutor:** Same objection. How is it relevant that she absconded? It's relevant that she's convicted of a crime, *crimen falsi*. How is it relevant that she's avoiding her probation officer?

**Defense Counsel:** Judge, it goes to the lack of respect for authority. It goes to her character as an individual. There is a bench warrant issued for her. She's on the run. This is all prior to the current case. They want to make it sound like all of a sudden she's doing this wonderful thing by coming in and testifying of her own free will. I want to show her character is not that at all.

**Prosecutor:** That's exactly why it's not relevant. It's character evidence.

N.T., 10/14/14, at 70-71.

“Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.”

Pa.R.E. 404(b)(1). Because Defense Counsel wanted to introduce the prior bad act in order to show that Helminiak was not “doing this wonderful thing by coming in and testifying of her own free will,” the prior bad act was not admissible under Pa.R.E. 404(b)(1).

**IV. The Court did not Err in Permitting the Commonwealth to Play a Recorded Phone Call Because the Call was Relevant, and the Call’s Probative Value was not Outweighed by the Danger of Unfair Prejudice.**

The Commonwealth introduced a phone conversation that the Defendant had while in the Lycoming County Prison. The Defendant argued that the call was not probative, and even if it was probative, its probative value was outweighed by the danger of unfair prejudice. The discussion about the call can be found on pages 3 to 6 of the Notes of Testimony on October 14, 2014. After the discussion and a review of the call’s transcript, the Court found that the call was relevant and its probative value was not outweighed by the danger of unfair prejudice. N.T., 10/14/14, at 6.

For the forgoing reasons, the Court respectfully requests that its Order dated December 9, 2014 be affirmed.

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

By the Court,

Nancy L. Butts, President Judge