

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA	:
vs.	: No.: CR-1454-2014
	:
JOSEPH MARTIN JENNINGS, II	: Motion to Compel Discovery
Defendant	: Motion in Limine

OPINION AND ORDER

Before the court are two motions filed by Defendant on May 6, 2015.

The first is a motion to compel discovery. Defendant has requested all emails from the Pennsylvania Board of Probation and Parole to law enforcement officials regarding the arrest and alleged illegal activity of Defendant “leading to the charges in the Information.” (Motion to Compel Discovery, paragraph 9).

The second is a motion in limine. The Commonwealth submitted a 404 (b) notice on February 2, 2015. Said notice specifies in detail testimony that the Commonwealth intends on introducing. Defendant contends that none of the proposed testimony is properly admissible. Alternatively, Defendant argues that if the testimony is admissible, its probative value is substantially outweighed by the danger of unfair prejudice. Accordingly, Defendant submits that all of the proposed testimony should be precluded at trial.

The court held an argument on Defendant’s motions on June 11, 2015. During the argument, the Commonwealth conceded that because the requested emails may be material to guilt or punishment, that the Commonwealth would produce such. The Commonwealth recently provided to the court and defense counsel written verification that an appropriate search was made, and all of the emails related to Defendant’s request have been provided to Defendant. Accordingly, Defendant’s motion to compel shall be deemed moot.

In connection with Defendant's motion in limine, the Commonwealth first detailed what evidence was covered by its notice in connection with Count 1, failure to comply with registration requirements. Count 1 was previously severed from the remaining counts.

The Commonwealth indicated that with respect to Count 1, the 404 (b) evidence consisted of the following:

"Caryn Hamm, Hearing Examiner for the Pennsylvania Board of Probation and Parole, will testify that she discussed with the Defendant, a citation he received on March 12, 2014 to which he pled guilty on June 11, 2014 for driving under suspension." Ms. Hamm will testify that "she discussed the above citation with the Defendant during a parole hearing." She "will further testify that she told the Defendant at the hearing that he would be lucky if PSP didn't press charges against him." Further, she "will testify that she made sure the Defendant understood that driving a vehicle not registered with the State Police was against the law for him as a registered sex offender."

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). Generally speaking, a defendant should not be forced to defend against other alleged crimes as well as the ones for which he stands charged. Commonwealth v. Wright, 259 Pa. Super. 293, 393 A.2d 833, 837 (1973).

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).

Defendant argues that the bad act in question is driving under suspension and the unnamed offense for which Defendant was initially placed on Board supervision and/or caused him to come before the Board for a hearing. The Commonwealth contends that the 404 (b) notice was filed in an abundance of caution and that any alleged “bad act” references could be sterilized in the testimony. The Commonwealth further contends that the evidence is directly probative to the element of intent. More specifically, the Commonwealth must prove beyond a reasonable doubt that the Defendant knowingly failed to provide accurate information when registering regarding a motor vehicle owned or operated by him. 18 Pa. C.S.A. § 4915 .1 (a) (3); 42 Pa. C.S.A. §§ 9799.15 (g) (6), 9799.19, and 9799.25.

Contrary to what Defendant claims, the fact that Defendant may have been told prior to the date in which he is accused of driving an unregistered vehicle that he could not drive a vehicle without it being registered is probative to the Commonwealth’s proof that the Defendant knowingly failed to register the vehicle. Thus, it is directly probative.

A finding of probativeness, however, does not end the inquiry. In the context of bad acts evidence, the evidence is only admissible where the probative value of the evidence outweighs its potential for unfair or undue prejudice. Pa.R.E. 404(b)(2); Commonwealth v. Treiber, 582 Pa. 246, 874 A.2d 26, 32 (2005), cert denied, 547 U.S. 1076 (2006). Unfair prejudice means a tendency to suggest a decision on an improper basis or to divert the jury’s attention away from its duty of weighing the evidence impartially. Pa.R. E. 403, comment.

“Whether evidence is unduly prejudicial is a function in part of the degree to which it is necessary to prove the case of the opposing party.” Commonwealth v. Gordon, 543 Pa. 513, 673 A.2d 866, 870 (1976). The court should balance the relevancy and evidentiary need for the evidence against the potential for undue prejudice. Id. (citing Commonwealth v. Billa, 521 Pa. 168, 178, 555 A.2d 835, 840 (1989)). The greater the need for evidence of other acts, the more prejudice the judicial process will tolerate. See Commonwealth v. O’Brien, 836 A.2d 966, 972 (Pa. Super. 2003) appeal denied, 845 A.2d 817 (Pa. 2004); Commonwealth v. Potts, 566 A.2d 287, 294-95 (Pa. Super. 1989).

The court cannot agree with Defendant’s position for several reasons. First, the court cannot conclude that the jury will in fact hear “bad acts” evidence. Secondly, regardless of how the evidence is characterized, it clearly goes to intent. While the defense is free to argue otherwise, an official with purported knowledge of the registration requirements advised Defendant that he could not operate a vehicle without it first being registered. Subsequent to that advice, Defendant still drove a vehicle. Lastly, the court sees no undue prejudice at all. The jury will be called upon to determine whether Defendant **knowingly** failed to provide accurate information as part of his registration requirements under 42 Pa.C.S.A. §9799.15(g)(6) regarding vehicles he owned or operated and the evidence at issue goes directly to that element.

Accordingly, Defendant’s motion in limine will be denied in part. The court will sanitize the testimony as follows:

The agent will be permitted to testify that she met with Defendant on a certain date and among other things advised him that as a Megan's Law Offender, his registration requirements included that he register any and all vehicles that he operates.

ORDER

AND NOW, this ____ day of July, 2015, following a hearing and argument the Court DENIES in part and GRANTS in part Defendant's motion in limine. The Commonwealth will be permitted to present the disputed evidence in a manner consistent with this opinion.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: DA (MW)
Lori Rexroth, Esquire
E.J. Rymza, Esquire
Gary Weber, Esquire (Lycoming Reporter)