

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-2027-2014
 :
 JASON VINSON, : Commonwealth's
 Defendant : Motion in Limine to Introduce 404 (b) Evidence

OPINION AND ORDER

By Information filed on December 24, 2014, Defendant is charged with two counts of burglary, one count of criminal conspiracy to commit burglary and several related offenses.

On or about November 28, 2014, Defendant allegedly burglarized a residence at 2428 Four Mile Drive in Loyalsock Township, Lycoming County. The interior of the residence was ransacked and numerous items of value were taken including, but not limited to, a shotgun, a PlayStation, jewelry, an I-phone, and rare coins.

On or about November 30, 2014, Defendant allegedly burglarized a residence located at 385 Madden Road in Loyalsock Township, Lycoming County. The residence was forcibly entered and ransacked. Among the items stolen were a Cadillac Sedan, four rifles, coins, fur coats and jewelry. According to Forensic Service Unit Trooper Christine Fye of the Pennsylvania State Police (PSP), she processed both burglary scenes and “the method of ransacking of the residences was strikingly similar.”

Defendant was initially questioned regarding the burglaries and incriminated “his friend” Christopher Walters. Eventually Mr. Walters was taken into custody and told

police that he and Defendant burglarized the residence at 385 Madden Road on November 30, 2014, and that Defendant admitted to burglarizing the home at 2428 Four Mile Drive on November 28, 2014. Further, many of the items that were stolen were being stored at Defendant's house at 340 South Fairview Street in Lock Haven, Clinton County.

Defendant was subsequently taken into custody. He eventually admitted that he burglarized 2428 Four Mile Drive but denied burglarizing 385 Madden Road. Defendant's residence at 340 South Fairview Street in Lock Haven was eventually searched and items taken from 2428 Four Mile Drive were recovered in different rooms. Defendant subsequently informed law enforcement that the guns taken from 385 Madden Road were in the ceiling tiles in Room No. 11 at the Lindsey Place Hotel in Lock Haven. A subsequent search of said room uncovered the firearms.

Between November 25, 2014 and December 4, 2014, Defendant is alleged, as well, to have burglarized numerous residences located in Clinton County including the following: 305 South Jones Street, Lock Haven, Clinton County; 43 North Highland Street, Lock Haven, Clinton County; 51 North Highland Street, Lock Haven, Clinton County; 344 West Church Street, Apt. 2, Lock Haven, Clinton County; and 344 West Church Street, Apt. 1, Lock Haven, Clinton County.

With respect to the Jones Street Burglary, it allegedly occurred between November 25, 2014 and November 28, 2014. Defendant allegedly entered through a rear sliding glass door and took numerous items of value including, but not limited to, an I-pod, Xbox controllers, game systems, jewelry, TV and cash.

With respect to 43 North Highland Street, Defendant allegedly burglarized this residence between November 25, 2014 and November 30, 2014. It is unknown how the Defendant gained entry into the residence. Numerous items of value were stolen including, but not limited to, clothing, jewelry and prescription medication.

With respect to the West Church Street Apt. 2 residence, Defendant allegedly burglarized such between November 25, 2014 and November 30, 2014. He gained entry through the front door of the apartment. Numerous items of value were stolen including a TV, jewelry, coins and clothing.

With respect to 344 West Church Street, Apt. 1, Defendant is alleged to have burglarized such between November 25, 2014 and November 30, 2014 by forcing open the front door. Numerous items were stolen including, but not limited to, a TV, change, jewelry, clothing, a passport, a PlayStation and prescription medication.

With respect to 51 North Highland Street, Defendant allegedly burglarized such between November 25, 2014 and November 30, 2014 by forcing open the back door. Numerous items were taken including a TV, a Galaxy cellphone, video games and clothing.

Defendant was suspected of committing the burglaries. Search warrants were executed at his residence at 340 South Fairview Street and on Defendant's green Explorer vehicle. Numerous items that were reported stolen were recovered in the residence and the vehicle. Items were recovered from each of the above-listed residences that were burglarized. Defendant was eventually taken into custody and admitted to burglarizing the residences in Clinton County. Defendant indicated that he targeted "college student houses." He would

walk around the residences during the day to make sure no one was home and then he would gain entry “at whatever point was easiest to enter.” Defendant admitted that he went into residences looking for electronics and “things he could sell.” Defendant admitted that he had a drug problem, was high during the burglaries and didn’t remember “a lot of what he did.”

Before the Court is the Commonwealth’s motion in limine to introduce evidence pursuant to Pa.R.E. 404(b). The Commonwealth seeks to introduce evidence of the Clinton County burglaries, Defendant’s admission to committing said burglaries, Defendant’s admission that he “had a drug problem”, and Defendant’s admission that he “was high during the burglaries and doesn’t remember a lot of what he did.”

Pursuant to Pa. R. E. 404 (b) (1), “evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” However, such evidence may be admissible for other purposes such as proving the existence of a common scheme, establishing an individual’s motive, intent, or plan or identifying a criminal defendant as the perpetrator of the offense charged. Pa. R. E. 404 (b) (2); *Commonwealth v. Semenza*, 127 A.3d 1(Pa. Super. 2015).

Regarding the Clinton County burglaries, the Commonwealth argues that the evidence of such should be admissible under the common scheme exception. Under this exception,

the trial court must first examine the details and surrounding circumstance of each criminal incident to assure that the evidence reveals criminal conduct which is distinctive and so nearly identical as to become the signature of the same perpetrator. Relevant to such a finding will be the habits or patterns of action or conduct undertaken by the perpetrator to commit crime, as well as the time, place, and types of victims typically

chosen by the perpetrator. Given this initial determination, the Court is bound to engage in a careful balancing test to assure that the common plan evidence is not too remote in time to be probative. If the evidence reveals that the details of each criminal incident are nearly identical, the fact that the incidents are separated by a lapse of time will not likely prevent the offer of the evidence unless the time lapse is excessive. Finally, the trial court must assure that the probative value of the evidence is not outweighed by its potential prejudicial impact upon the trier of fact. To do so, the Court must balance the potential prejudicial impact of the evidence with such factors as the degree of similarity established between the incidents of criminal conduct, the Commonwealth's need to present 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.

Id. at 7-8 (citing *Commonwealth v. Tyson*, 119 A.3d 353, 358-359 (Pa. Super. 2015) (en banc)).

By way of further clarification, evidence of other crimes is admissible as “signature” evidence when the crimes are “so nearly identical in method as to earmark them as the handiwork of the accused. Here, much more is demanded than the mere repeated commission of crimes of the same class, such as repeated burglaries or theft. The device used must be so unusual and distinctive as to be like a signature.” *Id.* at 8 (citing *Commonwealth v. Roney*, 79 A.3d 595, 606 (Pa. 2013)).

In this case, the Court cannot agree with the Commonwealth. While all of the crimes involved burglaries as well as some similarities, those similarities relate to insignificant details that would likely be common elements regardless of who had committed the crimes. It is entirely common in a residential burglary for the perpetrator to gain entry by force through a window or door, to ransack to the residence and to take any and all items of

value. It is also entirely common for the perpetrator to then keep those items in the perpetrator's residence and/or car until it is possible to dispose of said items.

As well, there are a number of differences between the two sets of crimes. The Clinton County crimes occurred in Lock Haven. The Lycoming County crimes occurred in Loyalsock. The Court takes judicial notice that these two separate municipalities are approximately 25 miles away from each other. With respect to the Clinton County offenses, Defendant previously cased the residences and targeted student housing knowing that the students would not be present. There is absolutely no evidence whatsoever regarding Defendant casing the Lycoming County residences or there being similarly situated victims. With respect to the Clinton County burglaries, numerous items were stolen which included clothing, electronic devices and miscellaneous items of value. In Lycoming County, not only were firearms stolen but a vehicle was stolen as well. Finally, the Clinton County burglaries occurred over a period of time, anywhere from November 25, 2014 to November 30, 2014. The Lycoming County burglaries occurred on two specific separate occasions, November 28, 2014 and November 30, 2014.

The Court cannot conclude that the factual predicates for the Clinton County crimes are so distinctly similar to those of the Lycoming County crimes that one would naturally conclude that both crimes were perpetrated by the same individual. Accordingly, the Court will not permit the proffered evidence to prove such. See *Semenza*, supra.; *Roney*, supra.; *Commonwealth v. Bryant*, 530 A.2d 83 (Pa. 1987); *Commonwealth v. Bryant*, 611 A.2d 703 (Pa. 1992).

Alternatively, the Court is of the opinion that even if the proffered evidence was probative, said probative value would be extremely limited and certainly be outweighed by its potential prejudicial impact upon the jury. The Court is convinced that should it permit the evidence of the Clinton County burglaries and Defendant's convictions for such, the jury would automatically find Defendant guilty despite any cautionary instructions. The Court is of the strong opinion that any cautionary instruction concerning the proper use of such evidence would be futile. Finally, given the evidence proffered by the Commonwealth solely in connection with the Lycoming County cases, it does not appear that the Commonwealth needs to present the Clinton County evidence under the common plan exception.

The Commonwealth next argued that Defendant was "admittedly high on heroin" when he committed the Clinton County burglaries and was "unable to remember a lot of his actions during his burglary spree that week." (Commonwealth Motion in Limine, para. 23). As well, the Commonwealth argues that Defendant admitted "a drug addiction." (Commonwealth Motion in Limine, para. 22).

While of course being zealous in its advocacy on behalf of the Commonwealth, the Commonwealth engages in hyperbole. Defendant admitted to Officer Sager that he "had a drug problem" when he was interviewed on December 12, 2014. Defendant also stated at that time that he "was high during the burglaries and doesn't remember a lot of what he did." Nothing at all in the documentation provided to the Court verifies that Defendant was suffering from a drug addiction, that he was high on heroin or that he was engaged in a burglary spree that week.

The Commonwealth argues that its version of what Defendant said provides evidence of motive and may refute Defendant's claim that he only committed one of the Lycoming County burglaries. The Court cannot agree. The proffered evidence is not relevant. It does not logically tend to establish a material fact at issue in this case more or less probable, nor does it support a reasonable inference or presumption regarding a material fact. *Commonwealth v. Drumheller*, 808 A.2d 893, 904 (Pa. 2002).

Defendant's statements related solely to the Clinton County case and not the Lycoming County cases. If admitted, the statements' probative value would certainly be outweighed by a danger of unfair prejudice to the Defendant. Pa. R. E. 403.

Accordingly, the Court will not permit the Commonwealth to introduce the testimony regarding Defendant's statements. Nonetheless, Defendant is cautioned. Should the Defendant take the stand and testify, said statements may become relevant as proper cross-examination.

ORDER

AND NOW, this ___ day of December 2016, following a hearing and argument, the Commonwealth's Motion in Limine to Introduce 404 (b) evidence is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)

George Lepley, Esquire
Gary Weber, Lycoming Reporter
Work file