

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	CR-1805-2019
	:	
JESSICA NICOLE LANE,	:	CRIMINAL DIVISION
Defendant	:	

OPINION

I. Factual and Procedural History

On November 28, 2019, Defendant was charged with four (4) counts including simple assault, endangering the welfare of a child, harassment, and disorderly conduct relating to Defendant’s alleged criminal conduct toward her minor child, M.L. A jury trial is scheduled for September 9, 2020. On September 4, 2020, the Commonwealth filed a Notice of Intent to Offer Testimony of Defendant’s Prior Bad Acts. The two acts it intends to introduce include the following:

1. May 19, 2015: Defendant was involved in a verbal and physical altercation with Charles Johnson which led to Defendant breaking Mr. Johnson’s vehicle window and physically injuring Defendant and Mr. Johnson’s minor child, M.L. Defendant plead *nolo contendere* to endangering the welfare of a child for these actions.
2. October 28, 2015: Defendant abandoned her minor child, M.L., at Mr. Johnson’s home while it was cold and raining. Defendant plead *nolo contendere* to reckless endangerment of another person for these actions.

Defendant filed a Motion *in Limine* to Preclude Crimes, Wrongs, and Other Acts

pursuant to Pa.R.E. 404(b) and the *nolo contendere* plea pursuant to Pa.R.E. 410(a)(2) to which the Commonwealth responded. Argument was held on this date.

II. Discussion

Defendant argues that evidence of Defendant's prior bad acts is inadmissible pursuant to Pa.R.E. 410(a)(2) because Defendant plead *nolo contendere* to the charges and pursuant to Pa.R.E. 404(b) because Defendant's prior bad acts are not relevant to any permissible purpose under the rule.

A. Rule 410

Pa.R.E. 410 states that, in a criminal case, evidence of a *nolo contendere* plea is not admissible against the defendant who made the plea. Pa.R.E. 410(a)(2). The Commonwealth concedes that this rule precludes it from introducing any evidence or making any comment during trial regarding the Defendant's above-referenced pleas. However, the Commonwealth contends the facts related to the incidents may be testified to by any witness as long as the plea is not mentioned.

B. Rule 404

Pennsylvania Rule of Evidence 404 states that "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." However, the evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice." Pa.R.E. 404(b)(1) and (2). Specifically regarding absence of mistake or

lack of accident, the Commonwealth need not wait for the Defendant to formally introduce a defense of accident or mistake before it can introduce evidence to exclude this theory. *Com. v. Boczkowski*, 846 A.2d 75, 88 (Pa. 2004).

“The admissibility of evidence is a matter for the discretion of the trial court and a ruling thereon will be reversed on appeal only upon a showing that the trial court committed an abuse of discretion.” *Com. v. Sherwood*, 982 A.2d 483, 495 (Pa. 2009). The trial court must balance the probative value of the evidence of prior bad acts against its prejudicial impact on the Defendant. *Id.* at 497. When a bad act was part of a chain or sequence of events, courts will allow evidence of the bad act. *Com. v. Walker*, 656 A.2d 90, 98 (Pa. 1995), *cert. denied*, 516 U.S. 854. In *Sherwood*, the Court held that evidence of prior bad acts was properly admitted where the bad acts are critical to understanding the history of events relating to the crimes. *Sherwood*, 982 A.2d at 497. If a trial court does allow evidence of prior bad acts which cause undue prejudice to the Defendant, the Supreme Court of Pennsylvania has held that advising the jury of the limited purpose for which the evidence was introduced is sufficient to ameliorate any prejudice. *Id.*

The May 2015 incident has similar facts to the instant allegations: Defendant was intoxicated, an altercation occurred between the Defendant and Mr. Johnson during a custody exchange, Defendant broke a window of Mr. Johnson’s vehicle, and the Defendant ultimately caused bodily injury to her minor child, M.L. The Court finds that these facts are similar enough to the facts in this case that the Commonwealth could use the evidence to exclude any theory of mistake or accident, or to prove any other permissible use. Therefore, since this incident falls within the Rule 404(b)(2) permitted uses, the Commonwealth may introduce evidence regarding this incident.

On the other hand, the facts of the October 2015 incident are not so similar that it will assist the jury in understanding the history of events. During the October incident, there were no allegations that an altercation occurred, that Mr. Johnson was even at the scene of the incident, or that the Defendant caused bodily injury to the minor child, M.L. Therefore, because the probative value of these facts will not outweigh the prejudice to the Defendant, the Court will exclude any evidence regarding the October 2015 incident.

In sum, the Commonwealth may introduce facts related to the May 2015 incident to establish intent, absence of mistake or lack of accident by the Defendant. However, the Commonwealth is prohibited from mentioning the associated *nolo contendere* plea or anything related to the October 2015 incident unless the Defendant first offers evidence on these subjects or makes an assertion that these subjects would contradict the assertions.

ORDER

AND NOW, this 8th day of September, 2020, upon consideration of Defendant's Motion *in Limine* and the Commonwealth's response thereto, Defendant's Motion is **GRANTED** in part and **DENIED** in part. Defendant's Motion is granted to the extent that the Commonwealth is precluded from introducing evidence or making statements during trial regarding the October 29, 2015 incident identified in its Notice of Intent unless evidence of such incident is introduced first by the Defendant. Defendant's Motion is denied to the extent that the Commonwealth may introduce evidence regarding the May 15, 2019 incident identified in its Notice of Intent. The Commonwealth is also precluded from introducing evidence or making statements regarding the Defendant's *nolo contendere* pleas as identified above unless evidence of such pleas are introducing first by the Defendant. The jury will be instructed on the limited purpose of any evidence of prior bad acts.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (LF)
PD (HG)
Gary Weber, Esq. – Mitchell Gallgher