

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1125-2019
	:	
vs.	:	
	:	CRIMINAL DIVISION
MICHAEL G. HARRIS, JR.,	:	
Defendant	:	

OPINION

AND NOW, this 2nd day of **June, 2021**, this matter is before the Court on Defendant’s Motion *in Limine* filed May 27, 2021 wherein he asks the Court to preclude the Commonwealth from introducing at trial testimony or evidence relating to Defendant’s prior criminal convictions as well as electronic messages sent by Defendant, as described in detail in the Commonwealth’s Notice of Intent to Introduce Evidence Pursuant to Rule 404(b) filed April 17, 2020. Argument was held on June 1, 2021 and a jury trial is scheduled for June 3, 2021.

Defendant is charged with the rape of a child as well as several other related charges. In its Notice, the Commonwealth indicated it sought to introduce evidence of Defendant’s prior conviction in Bradford County for sexual assault and corruption of a minor, NS. Additionally, the Commonwealth will seek to introduce several pages of excerpts of social media conversations between the Defendant and a prior minor victim, AW, and an adult individual, RW, wherein Defendant discusses sexual intercourse with AW as well as sexual intercourse with PC, the victim in this case.¹

¹The transcript of messages was admitted at argument as Commonwealth’s Exhibit 3. Pages 1-3 contain information that are not part of the conversations. Pages 4-17 contain excerpts between Defendant and AW. Pages 17-20 contain excerpts between Defendant and RW. The remaining pages are not part of the

At the time of argument, the Commonwealth indicated that it would no longer seek to introduce evidence of Defendant's prior conviction and conceded that certain pages of the messages were unnecessary.² Additionally, Defense Counsel conceded that any portion of the messages directly mentioning PC would be permitted to be introduced as evidence but that the context of the references to PC be limited simply to the fact that the conversation was sexual in nature. The Commonwealth also agreed that, what could be considered "banter," can be redacted but argued that at least some contextual evidence is necessary.

As a general rule, Rule 404(b) prohibits the admission of evidence of a crime, wrong, or other act in order to "prove a person's character or show that on a particular occasion the person acted in accordance with the character." Pa.R.E. 404(b)(1). As an exception, such evidence is permitted for other purposes including proving the following: motive; intent; a common scheme, plan or design embracing commission of two or more crimes so related to each other that proof of one naturally tends to prove the others; and situations where the distinct crimes were part of a chain or sequence of events which formed the history of the case and were part of its natural development. Pa.R.E. 404(b)(1); *Com. v. Brown*, 52 A.3d 320, 326 (Pa. Super. 2012) (internal citations omitted). Additionally, and perhaps most importantly to this case, the evidence will only be admissible if the "probative value of the evidence outweighs its potential for unfair prejudice." Pa.R.E. 404(b)(1). In conducting this balancing test, the Court "must consider factors such as the strength of the 'other crimes' evidence, the similarities between the crimes, the time lapse between crimes, the need for the other crimes evidence, the efficacy of alternative proof of the charged crime, and 'the

conversations.

² Pages 7 and 11-16. However, he specifically stated he would seek to introduce pages 9-10.

degree to which the evidence probably will rouse the jury to overmastering hostility.’’

Brown, 52 A.3d at 326–27.

The Commonwealth asserts that the evidence of Defendant’s sexual contact with the minor victims “is part of a common scheme, plan or design to have sex with underage girls” and “are part of a chain or sequence of events that form the history of this case and are part of its natural development.” *See April 17, 2020 Notice of Intent at unnumbered pages 3 and 4*. Defendant argues that the evidence does not show a common scheme or plan, does not show a history of the case, and has a prejudicial effect such that it would significantly outweigh the probative value.

Both the Commonwealth and the Defendant direct the Court’s attention to several different cases that discuss the exceptions to Rule 404(b) and the balancing test that must be conducted by the Court. The Court will not discuss in detail the facts of each case but will instead summarize a select few in order to demonstrate the similarities and contrasts to this case. *Com. v. Elliott*, 700 A.2d 1243, 1249 (Pa. 1997) (holding that attacks were sufficiently similar to show common scheme when the women were white, in their twenties, and the attacks occurred in the early morning hours); *Com. v. Gordon*, 673 A.2d 866, 869 (Pa. 1996) (holding that evidence of prior facts were so related to one another and were not unduly prejudicial to Defendant when (1) appellee strategically placed his female victims in a standing position for the ostensible purpose of reviewing court-related documents or matters; (2) while the victims were thus occupied and focused on the materials, appellee positioned himself behind the women and began rubbing his penis against their buttocks/thigh/legs; (3) despite their efforts to move away from appellee, appellee continued his conduct and followed the women about the table or desk until the victims were either

able to sit down or leave, or a third-party interrupted; (4) the conduct occurred during the course of an attorney-client relationship with the victims, at a time when the victims were emotionally vulnerable and dependent upon appellee for advice and assistance with their legal problems; (5) the incidents occurred while the women were alone with the appellee; (6) the victims were fearful of resisting or advising anyone of this behavior because they did not want to jeopardize either their own case or appellee's representation of their husband or boyfriend and (7) the offenses here occurred less than one year before the Columbia County incidents); *Com. v. Callen*, 198 A.3d 1149, 1164-65 (Pa. Super. 2018) (holding that prior sexual abuse crimes were too dissimilar when the victims were ten years apart in age, one was done in secret and the other with permission from a stepfather, one abuse occurred in the home and other in public places, and the manner of the abuse was extremely different); *Brown*, 52 A.3d at 332 (finding that prior bad acts of illegally obtaining a medical license almost twenty years prior to illegally dealing prescription drugs were so far removed from another “that it strains credulity to consider them as a natural part of the history, chain, or sequence of events . . .”).

The Commonwealth points to several facts in this case that are similar to those in the cases of NS and AW: all of the victims were girls between 10 and 14 years old at the time of the acts, all are white, all have the same body type,³ all were in the same class in school, Defendant either resided with the victim or lived in close proximity, Defendant was either in a relationship with or friends with the victims' parent or guardian, all acts involved digital penetration, oral penetration, breast fondling, and attempted or actual vaginal penetration; Defendant attempted to dissuade them from reporting what was happening; Defendant never

³ While the Commonwealth did not specifically state that body type, he described it as “not petite.”

used protection; and all three victims were initially unwilling to disclose the information to the police. Despite Defendant's argument that these facts are generalized, generic, and common in these types of cases, the Court finds that there are overwhelming similarities between Defendant's sexual assaults of NS and AW and the alleged sexual assault of PC. In reaching this conclusion, the Court must consider whether the evidence will be unduly prejudicial to Defendant if introduced at trial.

The Commonwealth argues that it needs the evidence of the conversations between Defendant and AW and RW because Defendant's defense, as reported during his interview, is that he does not have sex with minor girls and that the conversations he was having with them were fantasy and that he never followed through. The content of the conversations will rebut this defense. Defendant argues that the evidence is inflammatory because these crimes are arguably the most "abhorred" offenses in society. Additionally, he argues that the Commonwealth does not need the context of the conversations in addition to those portions of the conversations that specifically refer to PC because those portions alone is sufficient. The additional content, he states, will only further prejudice the Defendant. Defense Counsel asserts that the conversations can be put in context with a simple line of questioning where the witness testifies that the conversation was sexual in nature.

As stated above, the similarity between this crime and Defendant's past crimes are strikingly similar. Further, the Defendant's messages with AW intertwined Defendant's alleged criminal conduct with AW and that with PC. This arguably connects all of the messages into one interconnected chain of events that are part of the natural development of the case. Therefore, the entirety of the transcript between Defendant and AW has probative value. However, as conceded by the Commonwealth, the entire transcript is unnecessary for

the Commonwealth's case. In reviewing the transcript in its entirety to balance the probative value versus the potential undue prejudice, the Court finds that only the portion of the conversation between AW and Defendant specifically referencing PC is necessary. The remainder falls into the category of "banter," which the Commonwealth conceded it did not need for its case.

However, the entirety of Defendant's conversation with RW will be permitted to be introduced at trial. The entirety of the conversation is necessary to give context to the conversation regarding what Defendant has done with PC and why.⁴ The Court finds that the evidence's probative value outweighs any potential prejudice because it is necessary to the Commonwealth to rebut the defense, is in no way speculative, and is entirely relevant as it relates directly to PC. The evidence does not unduly prejudice the Defendant. Therefore, page 9 of Defendant's conversation with AW and all of his conversation with RW, from page 17 through page 20, will be permitted to be introduced as evidence at the trial of this matter.⁵

ORDER

AND NOW, this 2nd day of **June, 2021**, upon consideration of Defendant's Motion in Limine and the Commonwealth's responses thereto, as well as both Counsel's

⁴ Defendant's very first message is regarding his purported desire to have sexual intercourse with a mother and young daughter together and then leads into discussion about Defendant "stepdaughter was 10 my ex didn't know but the daughter loved it" and proceeds from there. See Commonwealth Exhibit 3 at page 17, 04/11/2019 7:41:00 p.m. and page 19, 04/11/2019 8:25:12 p.m.

⁵ At argument, the Commonwealth stated its intent to limit the questioning of AW and RW to background information and general questions regarding the nature of the conversations with the Defendant and the reading and authentication of the messages.

concessions at the time of argument, the Motion in Limine is hereby **GRANTED** in part and **DENIED** in part, as set forth below. The following portions of the transcript produced at argument as Commonwealth's Exhibit 3 are permitted to be introduced as evidence as the trial of this matter:

- Page 9 in its entirety; and
- Page 17 beginning on April 11, 2019 at 7:41 p.m. through page 20 in its entirety.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (MW)
PD (MW)

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Defendant	:	

AMENDED ORDER

AND NOW, this 2nd day of June, 2021, the Court’s Order docketed on June 2, 2021 at 2:42 p.m. is hereby amended as follows:

The following portions of the transcript produced at argument as Commonwealth’s Exhibit 3 are permitted to be introduced as evidence as the trial of this matter:

- Page 9 in its entirety;
- The first line of text on page 10; and
- Page 17 beginning on April 11, 2019 at 7:41 p.m. through page 20 in its entirety.

By the Court,

Ryan M. Tira, Judge

RMT/ads
CC: DA (MW)
PD (MW)