

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1509-2018
:
vs. :
:
:
EDWARD HECK, :
Defendant : Motion in Limine

OPINION AND ORDER

On August 16, 2018, Sonja Heck was killed in her residence at 2501 Linn Street, Williamsport, PA. She had resided there with her husband, Defendant, Edward Heck. Co-defendant Kenneth Smith previously pled guilty to and admitted to killing Mrs. Heck at the request of Defendant Heck.

While the victim’s daughter, Emily Rowe, was speaking with police at the crime scene, she told them that she suspected that Defendant was cheating on her mother.

Defendant is awaiting trial on homicide charges. On April 8, 2020, the Commonwealth filed a Notice of Intent to Introduce Evidence that Ms. Rowe and another individual, identified as M.F., will present testimony on the Commonwealth’s behalf. Specifically, the Commonwealth indicated that it would present evidence that Defendant was “cheating” on his wife a few weeks prior to the murder.

Ms. Rowe will testify that she caught Defendant meeting with another woman without his wife’s knowledge. M.F. will testify that she posed as a single woman on a website and met up with Defendant in person. M.F. will testify that Defendant told her during her encounter with him that he was trying to meet another woman so that he could leave his wife.

In the Commonwealth's Notice, it indicated that the evidence would be presented as proof of motive for the murder; namely, Defendant's desire to be free from the bonds of matrimony, and as proof of Defendant's resentment toward the victim.

On November 2, 2020, Defendant filed a Motion in Limine to preclude this evidence claiming that: the evidence was not relevant; there was no logical connection between the purported motive relative to the specific charged offense; the evidence would not tend to prove motive to commit a homicide; if the evidence was relevant, its probative value was substantially outweighed by the danger of unfair prejudice; and the evidence would cause the jury to infer that as a result of simply meeting with another woman, at best an attempt of infidelity, Defendant must be the kind of person who would commit a murder. Accordingly, Defendant argued that the introduction of such evidence would deny him his 5th, 6th and 14th Amendment rights to a fair trial.

Argument was held before the court on December 23, 2020. The Commonwealth clarified its Notice indicating that approximately days or a few weeks prior to the murder, Ms. Rowe's friend and Ms. Rowe "essentially conducted a private sting operation" to catch Defendant attempting to cheat. They responded as interested to Defendant's "advertisement" on a website. Ms. Rowe's friend met with Defendant, and Ms. Rowe took pictures of and confronted Defendant.

The Commonwealth argued that it was relevant to motive in that by having his wife murdered, Defendant could pursue a satisfying sexual relationship with someone else. It was submitted that shortly after they married, Mrs. Heck became increasingly reluctant to have intimate relations with Defendant causing him to become increasingly

angry and resentful and to explore other avenues. Eventually, the Commonwealth argued, he reached a breaking point. It was, as the Commonwealth argued, a manifestation of his dissatisfaction and resentment with his wife.

Defendant argued that this one encounter “proved nothing.” Defendant argued that there was no sexual conduct nor statements. Defendant argued that it amounted to nothing sexual or intimate. Defendant claimed that he apologized to his stepdaughter and that she forgave him. Defendant argued that this was simply character assassination.

The Commonwealth retorted that the trial would include abundant other evidence of Defendant seeking and pursuing sexual fantasies because of the rejections by his wife and that it showed that he was willing to act on his intentions.

The threshold inquiry with respect to the admission of evidence is whether the evidence is relevant. *Commonwealth v. Sami*, 243 A.3d 991, 998 (Pa. Super. 2020), citing *Commonwealth v. Cook*, 597 Pa. 572, 602, 952 A.2d 594, 612 (2008) (citations omitted). All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible. *Sami*, supra; *Cook*, supra; Pa. R.E. 402.

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. Pa. R.E. 401.

Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact. *Sami*, supra, citing *Commonwealth v. Akhmedov*, 216 A.3d 307, 316 (Pa. Super. 2019).

However, the court may exclude relevant evidence if its probative value is outweighed by 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. *Sami*, supra., citing Pa. R.E. 403.

With respect to the admission of prior bad acts evidence, such as that proffered by the Commonwealth in this case, evidence of prior bad acts is inadmissible to show that a defendant acted in conformity with those past acts or to show criminal propensity. *Commonwealth v. Sherwood*, 603 Pa. 92, 982 A.2d 483, 497 (2009), citing Pa. R.E. 404(b)(1). However, evidence of prior bad acts may be admissible when offered to prove some other relevant fact, such as motive. *Sherwood*, supra, citing Pa. R.E. 404(b)(2).

In determining whether evidence of other prior bad acts is admissible, the trial court is obligated to balance the probative value of such evidence against its prejudicial impact. *Sherwood*, supra. “The Commonwealth must prove beyond a reasonable doubt that a defendant has committed the particular crime of which he is accused, and it may not strip him of the presumption of innocence by proving that he has committed other [bad acts].” *Commonwealth v. Ross*, 57 A.3d 85, 98-99 (Pa. Super. 2012) (en banc) (citations omitted).

In addition to motive, the Commonwealth argues that the evidence is admissible to explain a course of conduct or the history of the case. The exception language of 404(b)(2) is not exclusive or exhaustive. *Commonwealth v. Dillon*, 925 A.2d 131, 137 (Pa. 2007).

The Commonwealth submitted that the Supreme Court Opinion in *Commonwealth v. Seiders*, 531 Pa. 592, 614 A.2d 689 (1992) supported the admission of the

evidence as it seeks in this case. Indeed, *Seiders* recognized that legitimate bases for admitting evidence of a defendant's prior bad acts included motive, as well as situations where the prior acts were part of a chain or sequence of events that formed the history of the case and were part of its natural development. 614 A.2d at 691.

With respect to motive, such evidence must logically relate to the defendant's reason or purpose in committing the crime charged. *Id.* at 692. Indeed, the Opinion cited with approval a prior Opinion of the Pennsylvania Supreme Court admitting evidence of an accused planning to leave the defendant to show the defendant's motive in later killing her. *Id.*, citing *Commonwealth v. Banks*, 513 Pa. 318, 521 A.2d 1 (1987), *cert. denied*, 484 U.S. 873, 108 S. Ct. 211, (1987).

The Commonwealth posited a straightforward argument. Specifically, because the victim was not sexually intimate with Defendant for years, Defendant became interested in and took action to meet at least one other woman to potentially satisfy his sexual fantasies and sexual urges.

His motives in arranging for his wife's death included his resentment towards, frustration with, and ill will toward his wife and general marital discord as well as his desire to be freed from his marriage. The Commonwealth also argued that the victim's refusal to engage in any sexual relations with Defendant led to a heightened anger and a desire to punish her.

The court agrees with the Commonwealth that this evidence is probative to motive. "To be admissible to show motive, the evidence must provide a sufficient ground to believe that the crime currently being considered grew out of, or was in some way caused by,

the prior set of circumstances.” *Commonwealth v. Spatz*, 756 A.2d 1139, 1153 (Pa. 2000).

While Defendant argues that the incident at issue did not result in any intimacy and could be viewed as benign, the incident at issue has a tendency to make motive more probable given the other evidence in this case. Further, motive is of consequence in determining the case. It provides a plausible reason for the murder. Motive is relevant in all criminal cases. *Commonwealth v. Gwaltney*, 442 A.2d 236, 241 (Pa. 1982); *Commonwealth v. Tedford*, 960 A.2d 1, 40-42 (Pa. 2008). Motive answers the question “why” and allows for the Commonwealth to establish its theory of the case.

There are many reasons why someone may murder or seek the murder of another. There are many reasons for uxoricide (the killing of one’s wife). In this Court’s experience, they include among others, anger, resentment, jealousy, fear of loss, estrangement, dependence and even replacing one with another. In this case, the proffered evidence is relevant to the defendant’s motives to allegedly have his wife killed.

However, and except for the defendant’s history of seeking sexual satisfaction elsewhere, the court does not agree that this evidence establishes the history of the case with respect to assaultive behavior. It does not establish the inevitable or natural continuation of domestic violence of which there appears to be no evidence. It was not an unintended result of violence that went too far.

Having decided that the evidence is relevant and probative to establish motive and a limited history of the case, the court may still preclude the evidence if the prejudice outweighs its probative value. Pa. R.E. 404 (b)(2). Prejudice does not mean detrimental to a party’s case; but rather, an undue tendency to suggest a decision on an

improper basis. Pa. R. E. 403, cmt; *Commonwealth v. Hairston*, 84 A.3d 657, 666 (Pa. 2014); *Commonwealth v. Flamer*, 53 A.3d 82, 89-90 (Pa. Super. 2012).

While the court agrees with defense counsel that a much higher percentage of married couples are unfaithful than actually murder their spouse, society's and accordingly juror's attitudes toward infidelity are entrenched. As Esther Perel, noted in her book *In Defense of Adulterers*, "Americans deplore adultery and it is illegal in more than a dozen states and considered a crime of moral turpitude." As she further notes, infidelity has a tenacity that marriage can only envy.

Despite such prejudice concerns, the court cannot conclude that said prejudice outweighs any probative value under the circumstances in this case. The proffered evidence will be brief and straightforward. The proffered evidence is not graphic evidence of a sexual relationship. Instead, the proffered evidence provides some evidence of motive without any lurid conduct or details that could inflame the passions of the jury against Defendant. The evidence is important to show that Defendant was not merely fantasizing about other women online but he was willing to take action to meet other women to develop a relationship with them. Moreover, the bad act is far less disturbing than the alleged murder. *Commonwealth v. Hacker*, 959 A.2d 380, 394 (Pa. Super. 2008), *reversed on other grounds*, 15 A.3d 333 (Pa. 2011); *Commonwealth v. Williams*, 660 A.2d 1316, 1320 (Pa. 1995), *cert denied*, 516 U.S. 1051 (1996). As well, the other act at issue in this case is far less disturbing than Defendant's other conduct involving his sexual fantasies, desires and deviancies. *Commonwealth v. Richter*, 711 A.2d 464, 467 (Pa. 1998). This court cannot conclude that any jury hearing the proffered evidence would have a tendency to convict Defendant solely

because of said evidence.

While there remain a few questions that might need to be addressed, these questions go to the impact or weight of said testimony to be decided by the jury and not to its admissibility. For example, what constitutes being unfaithful or cheating? Certainly reasonable people might disagree. Was Defendant's conduct "cheating"? Again, reasonable people might disagree. Was Defendant's conduct simply a symptom of marital dysfunction or discord or did it arise to some pathology on Defendant's part that could lead to murder? Again, reasonable people might disagree.

ORDER

AND NOW, this ____ day of May 2021, following a hearing, argument and the submission of briefs, the court DENIES Defendant's Motion in Limine. The court, however, reserves the right to provide to the jury a limiting instruction if requested by Defendant during the trial in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Michael J. Rudinski, Esquire
Edward J. Rymysza, Esquire
Martin Wade, Esquire, ADA
Work file
Gary Weber, Esquire (Lycoming Reporter)