

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR-887-2020
 :
 TODD LAPE, :
 :
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant was charged by Information filed on July 31, 2020 of sexual assault, indecent assault and harassment. By stipulation of the parties and Order of the Court dated January 19, 2021, the Information was amended to withdraw sexual assault and add aggravated indecent assault.

On December 21, 2020, Defendant filed an Omnibus Motion. Argument was held on March 17, 2021. This opinion and order shall address said motion.

Defendant’s Petition for Writ of Habeas Corpus with respect to Count 1, sexual assault is deemed MOOT in light of the amended Information.

Defendant next requests that the court preclude or bar the Commonwealth and its witnesses in referring to the complainant as the “victim.” Defendant asserts that the use of the term is highly prejudicial and likely will create a bias against Defendant. Defendant further argues that using the term would prevent him from obtaining a fair trial.

Defendant has not cited any Pennsylvania case law in support his request. Indeed, Pennsylvania case law supports the opposite conclusion.

In *Commonwealth v. Williams*, 439 A.2d 765 (Pa. Super. 1982), Williams was

on trial for rape and his defense was consent. The trial court referred to the alleged victim as a “victim” several times during jury instructions. On appeal, the defendant argued that the trial court’s use of the term “victim” was reversible error. The Superior Court rejected this claim noting: We do not agree. Reference to the prosecutrix in a rape case as “the victim” is not an expression of the judge’s opinion as to the guilt of the defendant.” *Id.* at 768.

The court noted as well that the trial court instructed that it was the jury’s recollection of the facts that controlled and that it had to find the defendant guilty beyond a reasonable doubt. *Id.* at 769

In *Commonwealth v. Parente*, 440 A.2d 549 (Pa. Super. 1982), Parente was on trial for rape, involuntary deviate sexual intercourse, simple assault and possession of an instrument of a crime. During jury selection, the court used the word “victim” noting that the prosecutor would advise the panel when the incident occurred and the names of, among others, the “victim.” The Superior Court held that the reference by the court to the “victim” was not so prejudicial to Parente that a new trial was required, especially in light of the thorough instructions of the court on the presumption of innocence, the Commonwealth’s burden of proof, and the position of the court of neutrality. Accordingly, trial counsel was not ineffective during the voir dire examination of the prospective jurors by not objecting to the trial court’s use of the word “victim.” *Id.* at 457-458.

The court also finds the non-precedential decision in *Commonwealth v. Raschid*, 2019 WL 2645443 (Pa. Super. 2019) to be instructive. Raschid was on trial for criminal attempt-rape of a substantially impaired person; rape of a substantially impaired

person; sexual assault; involuntary deviate sexual intercourse-substantially impaired person and numerous other counts. Following a lengthy jury trial, he was found guilty of numerous counts.

On appeal, Raschid argued that the court abused its discretion in allowing the District Attorney and the one Commonwealth witness to refer to the complainants as “victims.” Raschid argued that it created an improper inference to the jury that the District Attorney, the police, and scientific experts, and possibly even the court, believed the “victims.”

While the court concluded that the claim was waived, it noted that even if not waived, Raschid failed to establish how the use of the word “victim” at trial was inherently prejudicial. Moreover, the court noted that any potential prejudice was cured by an appropriate cautionary instruction. *Raschid, Id.* at *6, fn. 6.

Finally, and as the court noted during the argument in this matter, precluding the Commonwealth from using the word “victim” in its opening or closing arguments would be improper. A prosecutor’s opening statements may refer to the facts that the prosecutor reasonably believes will be established at trial. *Commonwealth v. Begley*, 780 A.2d 605, 626 (Pa. 2001). As well, a prosecutor during closing arguments is entitled to argue all reasonable inferences from the evidence presented at trial. *Commonwealth v. Chamberlain*, 30 A.3d 381, 408 (Pa. 2011).

Accordingly, Defendant’s Motion to Preclude Reference to the Complainant as a “Victim” is DENIED.

Defendant next requests that the court disclose to him any evidence which may be admissible at trial pursuant to Rule 404(b) of the Pennsylvania Rules of Evidence. If the Commonwealth intends on introducing 404(b) evidence at trial, it must file a written notice pursuant to Rule 404(b)(3) no later than May 28, 2021. If the defendant wishes to preclude some or all of said evidence, Defendant must file a motion in limine no later than June 11, 2021.

Defendant next requests that the Commonwealth disclose the existence of and substance of promises of immunity, leniency or preferential treatment as well as a complete criminal history from the NCIC and/or JNET databases of all Commonwealth witnesses. The Commonwealth is DIRECTED to provide such information to defense counsel in writing no later than May 28, 2021.

Defendant next requests specific notice and disclosure of each expert witness consulted in “the instant matter.” Among other things, Defendant requests biographical information, professional information and prior court testimony information. Defendant modified his request during the oral argument in this matter limiting it to experts the Commonwealth intends to introduce at trial and to only Rule 573(B)(1)(e) of the Pennsylvania Rules of Criminal Procedure information. Defendant indicated that he would subpoena the additional information.

Nonetheless, the Commonwealth indicated that it did not intend on calling any expert witnesses. Accordingly, if the Commonwealth changes its position and intends to call any expert, it must notify defense counsel no later than May 28, 2021 and provide to defense

counsel the mandatory discovery set forth in Rule 573(B)(1)(e).

Finally, Defendant requests leave to file additional pretrial motions. Such leave will be GRANTED. To the extent Defendant has received any additional discovery from the Commonwealth on or after March 15, 2021, Defendant has 30 days from the date of this decision to file any pretrial motions related to said discovery.

ORDER

AND NOW, this ____ day of April 2021 following consideration of an argument related to Defendant’s Omnibus Motion and as specified above, Defendant’s Petition for Habeas Corpus is denied as MOOT, Defendant’s Motion to Preclude Reference to the Complainant as a “Victim” is **DENIED**, Defendant’s Motion for a Disclosure of other Crimes, Wrongs or Acts pursuant to Pa. R. Evid. 404 (b) is **GRANTED**, Defendant’s Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency or Preferential Treatment and Complete Criminal History from the National Crime Information Center and/or the Pennsylvania Justice Network is **GRANTED**, Defendant’s Motion for Request of Notice of any Expert Testimony **GRANTED** part and Defendant’s Motion to Reserve Right is **GRANTED** in part.

By The Court,

Marc F. Lovecchio, Judge

cc: Eric Williams, Esquire (ADA)
Edward J. Rymza, Esquire
Judge Marc F. Lovecchio
Gary Weber, Esquire

