

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

COMMONWEALTH	: No. CR-200-2021; 238-2021; 240-2021
	:
vs.	: Motion in Limine
	:
JESSE DERICK GIDDINGS,	:
Defendant	:

OPINION AND ORDER

This matter came before the court on the motion in limine filed on behalf of Defendant, Jesse Giddings (“Giddings”). In his motion, Giddings asserted two issues: (1) whether the Commonwealth should be precluded from introducing evidence of other bad acts or wrongs (404(b) evidence); and (2) whether the Commonwealth should be precluded from presenting expert testimony regarding GPS data on the grounds of qualifications and the sufficiency of the report.

By way of background, Giddings was on parole and was required to wear an electronic tracking monitor attached to his ankle.

On November 12, 2020, the Boost Mobile store located at 620 Hepburn Street in the city of Williamsport was robbed. The Boost Mobile employee described that the suspect entered the store and began asking about different merchandise. When the employee walked back to the register to check pricing on the equipment, the suspect displayed a handgun and asked about the money in the cash register. The suspect had the employee empty the register and then demanded iPhones. Before leaving the store with \$587 from the register and 14 iPhones in a black Boost Mobile bag, the suspect ordered the employee to lay on the ground and not move for 20 minutes. When the city police reviewed the video footage, they observed a black male wearing a black hat, a black zippered hoodie, a black face mask, neon

yellow gloves, a brown belt, dark colored jeans, and black and red Nike sneakers. The handgun used during this incident was described as having a silver slide with a black frame.

On November 16, 2020, the Family Dollar store located at 1221 W 4th Street in the city of Williamsport was robbed. One of the employees at the Family Dollar store indicated that the suspect displayed a handgun and demanded money from the cash register. When the employee said the register could not be opened without a transaction, the suspect demanded cartons of cigarettes be rung up to open the register. The employee placed 4 cartons of Newport cigarettes and \$220 from the register into a Family Dollar bag. The suspect told the employee to lay on the ground before the suspect exited the store. The video footage of the Family Dollar store revealed the perpetrator of the robbery as a black male wearing a black hat, a black zippered hoodie, a black face mask, jeans, and white sneakers.

Further investigation by the city police revealed that Giddings purportedly provided a number of his family members with cell phones along with telling a family member named Nigel Staten-Chambers (Staten-Chambers) about his activities. Another family member told police that Staten-Chambers acknowledged that he received the cell phones from Defendant as well as admitted to sharing a silver and black handgun between the two of them. Staten-Chambers also told a witness that Giddings had robbed the Family Dollar store as well as the Boost Mobile store. Since Giddings was still wearing a GPS monitor, city police confirmed that Giddings had been present at both the Boost Mobile and Family Dollar stores at the time of the robberies by the data from the GPS monitor worn on Giddings' ankle. Giddings was charged with the robberies of the Boost Mobile store and the Family Dollar store in case 240-2021.

On November 25, 2020, an armed robbery occurred at the Your Choice Discount store at 653 Washington Boulevard. The clerk indicated that the robbery was committed by a

black male wearing a white mask. She indicated that the individual came into the store, asked if the skills machines were working, and asked the clerk for help in the back with one of the machines. When she determined she could not assist him, she indicated that she needed to call her supervisor. The man then grabbed the clerk by her shirt. When she turned around, the man had pulled out a gun. The clerk did not give a description of the handgun used. The suspect told the clerk that if she made a scene, he would shoot her and a guy that had just walked into the store. At that point, the suspect moved the clerk to the front of the store and the clerk removed cash out of the cash register. The suspect demanded a carton of Newport cigarettes before he left the store. The suspect left with \$431 from the register and a carton of Newport cigarettes valued at \$98.60. Giddings' GPS ankle monitor placed him at the Your Choice Discount store at the time of the robbery. Giddings was charged with this robbery and related offenses in case 238-2021.

On December 3, 2020, a Subway store located at 1733 E 3rd Street in Loyalsock Township was robbed. The Pennsylvania State Police (PSP) responded and investigated this robbery. The suspect entered the store for a brief period of time and then left. The suspect returned within the hour. He spoke to the employee and ordered food. As the employee was making the food, the suspect pulled out a gun and demanded money. He told the employee that if she pressed anything, he would shoot her. The employee gave him \$285 from the register. The suspect demanded more money and the employee gave him a change bag with an additional \$100 from under the counter. PSP reviewed the surveillance video, which showed that the suspect was a black male wearing white sneakers, dark colored jeans, a black hoodie, blue face mask, and a black beanie.

Williamsport police notified PSP that Giddings was a suspect in one of their investigations and that Giddings was on parole with the Pennsylvania Parole Board with an

electronic tracking device. The Williamsport police recommended that the PSP look at Giddings' whereabouts at the time of this incident. The PSP conferred with the Pennsylvania Parole Board and obtained information from Giddings' electronic monitoring tracking device. This information confirmed that Giddings was located in the area of the Subway at the time the robbery was committed. The PSP charged Giddings with this robbery and related offenses in case 200-2021.

The Commonwealth filed a motion to consolidate these cases for trial. The court initially granted the Commonwealth's motion. Giddings filed a motion for reconsideration because the court did not address his timeliness issue. The court granted Giddings reconsideration and denied consolidation on the basis that the Commonwealth's motion was untimely.

A. 404(b) evidence

On July 28, 2023, the Commonwealth filed a notice of intent to introduce Giddings' other crimes, wrongs, or acts. In the notice, the Commonwealth sought to introduce evidence from each of the cases in the trial of the others. The Commonwealth contended that the facts show a logical connection to the underlying facts and are part of its natural development. The Commonwealth also asserted that the evidence was admissible under Rule 404(b)(2) to show motive, opportunity, identity, plan, knowledge, absence of mistake, and lack of accident as well as common plan or scheme.

On August 23, 2023, Giddings filed a motion in limine. With respect to the 404(b) evidence, Giddings asserted that to allow the Commonwealth to introduce this evidence would circumvent the court's ruling denying consolidation. Furthermore, Giddings asserted that the probative value of the evidence was not outweighed by its potential for unfair prejudice. Giddings also noted the following: (1) none of the witnesses identified Giddings

as the perpetrator when they testified at the preliminary hearings in these matters, and in one of the cases, the witness indicated that Giddings was not the perpetrator; (2) no weapons were recovered; and (3) although the perpetrator allegedly touched gaming machines, there were no interpretable DNA results.

Initially, the court rejects the part of Defendant's argument that the Commonwealth's notice is merely an attempt to circumvent the court's ruling on consolidation. Regardless of what, if any, evidence regarding the other crimes or bad acts may be admissible in a trial for the other, there will be separate trials in these matters. Although some of the issues may be similar, they are not identical, particularly since the court's denial of the consolidation was based on timeliness.

The admissibility of evidence is within the sound discretion of the trial court, which will be reversed only if the trial court abused its discretion. *Commonwealth v. Nypaver*, 69 A.3d 708, 716 (Pa. Super. 2013). An abuse of discretion is the overriding or misapplication of the law, the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, partiality or ill-will, as shown by the evidence of record. *Id.*

Evidence is relevant if it tends to make a fact that is of consequence in determining the action more or less probable than it would be without the evidence. Pa. R. E. 401. "All relevant evidence is admissible except as provided by law." Pa. R. E. 402. Evidence is not admissible if "its probative value is outweighed by danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Pa. R. E. 403. "Unfair prejudice" means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially. Pa. R. E. 403, cmt.

The admissibility of “bad acts” evidence is governed by Rule 404(b) of the Pennsylvania Rules of Evidence. Rule 404(b) states:

(b) Other Crimes, Wrongs, or Acts.

(1) Prohibited Uses. Evidence of any other crime, wrong, or 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.

(2) Permitted Uses. This 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.

(3) Notice in a Criminal Case. In a criminal case the prosecutor must provide reasonable written notice in advance of trial so that the defendant has a fair opportunity to meet it, or during trial if the court excuses pretrial notice on good cause shown, of the specific nature, permitted use, and reasoning for the use of any such evidence the prosecutor intends to introduce at trial.

Pa. R. E. 404(b) (emphasis added).

With the exception of common plan or scheme for which the Commonwealth relied on the court’s initial decision granting consolidation that was reconsidered by the court, the Commonwealth did not explain how the evidence would show any of the purposes under Rule 404(b)(2) or how the Commonwealth intended to use the evidence at trial to show such a purpose. Nevertheless, the court will endeavor to address each of the Commonwealth’s proposed purposes for the evidence.

Motive, Intent, Knowledge, Absence of Mistake, Lack of Accident

The Commonwealth has not explained, and the court fails to see, how evidence of the robberies in the other cases would show the motive, intent, knowledge, absence of mistake or lack of accident for the robbery for the particular case for which Giddings will be on trial. These incidents were armed robberies. These are not situations where there will be a claim that these incidents occurred due to a mistake or an accident. The actor’s intent is evident from his demand for money from the employees while armed with a handgun. His motive, the acquisition of money and items of value, is also readily apparent. The court also notes

that for motive, “there must be a specific ‘logical connection’ between the other act and the crime at issue which establishes that “the crime currently being considered grew out of or was in any way caused by the prior set of facts and circumstances.” *Commonwealth v. Ross*, 57 A.3d 85, 100 (Pa. Super. Ct. 2012). The Commonwealth has not established any robbery grew out of another. The mere identification of similarities between the crimes does not establish motive. *Id.* at 101.

The court notes that merely listing every exception in Rule 404(b) does not fully comply with the notice requirements Rule 404(b)(3). Doing so is boilerplate and could result in waiver. Therefore, the court will not permit the Commonwealth to use the evidence for any of these purposes.

Preparation/Plan, Opportunity, Identity, and Common Plan or Scheme

When considering the admissibility of evidence based on a common plan or scheme,

the trial court must first examine the details and surrounding circumstances 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.

Commonwealth v. Semenza, 127 A.3d 1, 7-8 (Pa. Super. 2015)(quoting *Commonwealth v. Tyson*, 119 A.3d 353, 359 (Pa. Super. Ct. 2015) (en banc) (emphasis added)). Much more is

required that the mere repeated commission of crimes of the same class, such as robberies or burglaries. *See Semenza*, 127 A.3d at 8 (citing *Commonwealth v. Roney*, 79 A.3d 595, 606 (Pa. 2013)). Rather, the other crimes must be so “**nearly identical in method** as to earmark them as the handiwork of the accused” or “**the device used must be so unusual and distinctive** as to be like a signature.” *See id.* (emphasis added).

The same can be said with respect to identity.

Evidence of other crimes may be admissible to establish the identity of the perpetrator when the crimes are so similar that logically the same person has committed both acts. [M]uch more is demanded than the mere repeated commission of crimes of the same class, such as repeated burglaries or thefts. The device used must be so unusual and distinctive as to be like a signature.

Commonwealth v. Miles, 846 A.2d 132, 136 (Pa. Super. Ct. 2004)(en banc)(citations and quotation marks omitted). “In comparing the methods and circumstances of separate crimes, a court must necessarily look for similarities in a number of factors, including: (1) the manner in which the crimes were committed; (2) weapons used; (3) ostensible purpose of the crime; (4) location; and (5) type of victims.” *Commonwealth v. Weakley*, 972 A.2d 1182, 1189 (Pa. Super. Ct. 2009).

The court will only touch on preparation/plan and opportunity for two reasons – there is not a lot of case law specific to these two purposes like there is for identity and common plan or scheme and the Commonwealth intends to use the evidence regarding the other robberies to establish Defendant’s identity as the perpetrator.

Gun evidence

Provided the Commonwealth presents competent evidence at trial (for example, evidence that either is not hearsay or is subject to a hearsay exception), evidence that Defendant was sharing a silver and black firearm with Staten-Chambers would be admissible

to show preparation/plan, and opportunity. It would tend to show that Defendant prepared or planned to commit the robberies and that he had access to (or the opportunity to possess) a firearm that met the description or was similar to the one used in the robberies. The fact that the firearm was being shared with Staten-Chambers could also explain why the firearm was not recovered from Defendant. This evidence is relevant and probative. Evidence is relevant if it tends 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. *See* Pa. R. E. 401. In every robbery, the perpetrator used a firearm. In at least one of the robberies, the victim described the firearm as black and silver. The fact that Defendant was sharing a silver and black firearm with Staten-Chambers tends to make it more probable that Defendant was the perpetrator of the robbery.

Although this evidence is prejudicial as all relevant evidence is prejudicial in the sense that it tends to prove a defendant's guilt, it is not unduly or unfairly prejudicial. It does not suggest a decision on an improper basis or divert the jury's attention away from its duty to weigh the evidence impartially. Therefore, in each case, the Commonwealth may present evidence to show that Defendant had access to a handgun. This evidence standing alone, however, is not sufficient to allow evidence of the other robberies at trial.

1. Description of the perpetrator and items taken

In case 240-2021, there are two different robberies charged – the Boost Mobile store and the Family Dollar Store. The Boost Mobile store, located at 620 Hepburn Street in the city of Williamsport, was robbed at approximately 6:55 p.m. (1855 hours) on November 12, 2020. The perpetrator of the Boost Mobile robbery was a black male wearing a black hat, black zippered hoodie, a black mask, yellow gloves, a brown belt, dark colored jeans, and

black and red Nike sneakers. He used a black handgun with a silver slide and took cellphones and money.

The Family Dollar Store located at 1221 West Fourth Street in the city of Williamsport was robbed on November 16, 2020 at approximately 8:10 p.m. (2010 hours). The perpetrator of the Family Dollar Store robbery was a black male wearing a black hat, a black zippered hoodie, a black mask, and white sneakers. He used a handgun and took money and Newport cigarettes.

Case 200-2021 involved the robbery of a Subway store located at 1733 East Third Street in Loyalsock Township on December 3, 2020 at approximately 6:32 p.m. (1832 hours). The perpetrator was a black male wearing white sneakers, dark colored jeans, a black hoodie, a blue mask, and a black beanie (hat). He used a black handgun with a black suppressor and took money.

Case 238-2021 involved the robbery of an adult female employee at the Your Choice Discount store, located at 653 Washington Boulevard in the city of Williamsport, at approximately 7:19 a.m. on November 25, 2020. The perpetrator was a black male wearing a white mask. He used a handgun and took money and Newport cigarettes.

The robberies all occurred in a relatively short period of time. The Boost Mobile robbery occurred on November 12, 2020. The Family Dollar robbery occurred on November 16, 2020. The Your Choice Discount store robbery occurred on November 25, 2020. The robbery of the Subway occurred on December 3, 2020.

There was little or no information in the affidavits of probable cause describing the employees who were robbed. The Subway employee was a 17-year-old female and the Your Choice employee was an adult female. The court does not have any information regarding the Boost Mobile or Family Dollar employees but based on the first names of the victims

listed in the criminal complaint, it is likely that they were adult females. Therefore, it appears that all of the employees that were robbed were females. It is unclear whether they were all young females or if there was a variety of different ages.

In case 240-2021 and 200-2021, the victims and/or surveillance videos provided a detailed description of the clothing worn by the perpetrator that was very similar. The robberies occurred within two to three weeks of each other. A handgun was used in both cases – a black handgun with a silver slide in the Boost Mobile robbery in case 240-2021 and a black handgun with a black suppressor in the Subway robbery in case 200-2021.¹ Defendant had access to a black and silver handgun. Defendant's monitoring device showed that Defendant was present at the scene of these robberies.

Unfortunately, the description of the perpetrator in case 238-2021 was very vague. The only description was of a black male wearing a white mask. None of the other robberies involved a perpetrator who wore a white mask. This robbery occurred in the morning whereas all the other robberies occurred in the evening.

2. *GPS evidence*

It is easy to rule that the GPS evidence related to the particular crime on trial is admissible in that trial. The difficult issue is what, if any, GPS evidence of the other robberies can the Commonwealth use. The GPS evidence shows presence at or near the scene of the robbery, which shows Defendant had the opportunity to commit each of the robberies. Mere presence, however, is insufficient; evidence indicating participation in the crime is required. *Commonwealth v. Keblitis*, 500 Pa. 321, 324, 456 A.2d 149, 151 (1983); *see also Commonwealth v. Hall*, 199 A.3d 954, 961 (Pa. Super. 2018); *Commonwealth v. Wagaman*, 627 A.2d 735, 737 (Pa. Super. 1993). Furthermore, the evidence cannot be used

merely to show that Defendant had a propensity to commit robberies. *See Commonwealth v. Watkins*, 577 Pa. 194, 215, 843 A.2d 1203, 1215 (2003)(“Evidence of a defendant’s prior criminal activity may not be admitted to establish his bad character or criminal propensity.”); *Commonwealth v. Kinard*, 95 A.3d 279, 284 (Pa. Super. Ct. 2014)(“It is well settled law in this Commonwealth that other bad acts evidence is inadmissible to prove a defendant’s propensity to commit crime.”).

With respect to the GPS evidence, the arguments regarding identity and common plan and scheme go hand in hand and must be considered in conjunction with the evidence regarding the description of the perpetrator and the items taken.

The court finds that in 240-2021 and 200-2021 the evidence is sufficiently similar to show identity and/or common plan or scheme. In these cases, the description of the perpetrator is very similar and Defendant’s electronic monitoring device places him at the scene of the crime. With respect to the Boost Mobile robbery, cell phones that were stolen were turned in for cash by relatives of Defendant. These relatives and Staten-Chambers girlfriend told police that the cell phones came from Defendant robbing the Boost Mobile store, showing Defendant’s involvement in the crime. Although there is not a unique manner in committing the crimes, the court finds that the GPS evidence in conjunction with the similarities in the description of the perpetrator are sufficient for the GPS evidence and the descriptions of the perpetrators to be relevant to establish identity and/or common plan or scheme in these robberies.

This, however, does not end the inquiry. The court must also determine whether the probative value of the evidence is outweighed by the potential for unfair prejudice. In determining whether the probative value of the evidence outweighs its potential for undue

¹ Whether these were different guns or whether they were the same gun but the color of the slide was obscured

prejudice, the court considers 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 degree to which the evidence probably will rouse the jury to overmastering hostility.’ *Weakley*, 972 A.2d at 1191.

The strength of the other crimes evidence is much greater in these two cases than in case 238-2001. The descriptions of the perpetrators are more detailed and more similar to each other. The crimes were armed robberies of retail establishments staffed by female employees. All of these crimes occurred in the early evening over a three- or four-week period of time.

The Commonwealth has failed to provide the court with much information regarding the need for this evidence or the efficacy of alternate proof the charged crime. At first blush, it would appear that the Commonwealth’s need for the evidence is less in case 240-2021, due to the potential testimony from relatives of Defendant regarding how they came into possession of the cell phones. However, the relatives of Defendant are also the relatives of Staten-Chambers and most of their information regarding the source of the cell phones appears to have come from Staten-Chambers and his girlfriend. Therefore, this evidence could be susceptible to claims from the defense that testimony from Staten-Chambers, his girlfriend and the relatives that turned in the phones for cash should not be believed because they are only trying to get themselves out of trouble for possessing the phones knowing or believing that they were stolen because most, if not all, of them were aware that Defendant did not have the funds to lawfully purchase that many new cell phones.

In these two cases, the court does not believe that the admission of the other crimes evidence will rouse the jury to overmaster hostility to Defendant. The court believes that a

by the suppressor used in the Subway robbery is a question of fact for the jury to determine.

jury instruction could be crafted to explain the proper use of this evidence. The court invites the parties to submit suggested jury instructions for this purpose. Therefore, the court will permit the Commonwealth to present evidence regarding these two cases in the trials for the other.

On the other hand, the court will not permit the Commonwealth to introduce the evidence related to cases 240-2021 and 200-2021 in the trial for case 238-2021. Case 238-2021 is not sufficiently similar to prove identity or common plan or scheme. In 238-2021, the description of the perpetrator is very vague and there does not seem to be much evidence to show Defendant's actual participation in the crime other than the GPS evidence to show his presence at the scene of the crime. This crime occurred in the morning whereas the other crimes occurred in the early evening. Since mere presence is not enough, there is a real danger in this case that the jury will improperly aggregate the crimes and find Defendant guilty solely due to his propensity to commit robberies. Therefore, the court will not permit the Commonwealth to introduce specific evidence of the other cases in case 238-2021.

However, since the PSP obtained information regarding Defendant's GPS monitoring device through contacts with the Williamsport police, the court will permit the Commonwealth to present very limited evidence that because both entities were investigating robberies from a similar time frame, the PSP received information from the Williamsport police that Defendant was wearing an electronic monitoring device and to check to see if that device showed Defendant in the area of the PSP robbery. The court finds that this limited evidence is admissible as part of the history and development of the case. The court will give a limiting instruction to the jury regarding the use of this information to the effect that the jury can only consider this information to show how the PSP came to inquire about Defendant's electronic monitoring device. The court invites the parties to submit proposed

jury instructions regarding the proper use of this evidence by the jury or suggestions on how Pa.SSJI (Crim) §3.08 should be tailored to fit the circumstances of these cases.

Similarly, the court will permit the Commonwealth to call Defendant's probation/parole officer as a witness to testify about Defendant's electronic monitoring device and the information generated by the device. In case 238-2021, this evidence will be limited to the GPS information related solely to the robbery of the Your Choice Discount store. This information is relevant to the history and development of the case and Defendant's identity as the perpetrator of these robberies. However, the court will not permit the introduction of any evidence regarding the offense or offenses for which Defendant was on probation or parole. As with the other evidence, the court intends to give a limiting instruction to the jury regarding the proper use of this evidence. The court invites the parties to submit proposed jury instructions regarding the proper use of this evidence by the jury or suggestions on how Pa.SSJI (Crim) §3.08 should be tailored to fit the circumstances of these cases.

B. Expert testimony regarding GPS data

The second portion of Defendant's motion in limine seeks to preclude Lynn Miller and John Inzinna from testifying as witnesses for the Commonwealth regarding the GPS data and its accuracy/reliability. Lynn Miller is the Pennsylvania Probation and Parole Agent who provided data from Defendant's electronic monitor to the police, and John Inzinna is an account manager for Attenti US, Inc., the provider of the electronic monitoring device. The Commonwealth produced a one-page letter from Mr. Inzinna generally describing how the monitoring device works and his one-page CV. Defense counsel asserted that Agent Miller and Mr. Inzinna are not qualified to testify as expert witnesses in the case and that Mr.

Inzinna's report is deficient. The Commonwealth disagreed with defense counsel's assertions and arguments and asserted that the witnesses should be permitted to testify.

The court does not believe that Agent Miller would be testifying as an expert witness in this case. The Commonwealth has not indicated that it intends to have Agent Miller testify about the accuracy or reliability of the GPS data. Instead, the court believes that the Commonwealth intends to call Agent Miller as a fact witness regarding Defendant wearing an electronic monitoring device and the information or data that was retrieved via computer from that device and provided to the police. The court agrees with the defense that Agent Miller does not have the training or experience to testify regarding the accuracy or reliability of the GPS data and the court would preclude Agent Miller from rendering any opinion testimony on that subject. The court also questions whether Agent Miller could authenticate the documents or data generated by the monitor. The court finds that custodian of the GPS records would be someone from Attenti like Mr. Inzinna. *See Commonwealth v. Wallace*, 289 A.3d 894, 913-914 (Pa. 2023)(Wecht, J. concurring)(stating that Dethleson, a sales representative of Attenti, qualified as a custodian of Attenti's records because he had access to them and could provide information about their preparation and maintenance, and that his testimony established that the records were properly admitted pursuant to the business records exception of the hearsay rule).

With respect to Mr. Inzinna, the court finds that he would likely be called both as a fact witness and as an expert witness. Mr. Inzinna would likely be a fact witness as the records custodian to authenticate the records by providing information about their preparation and maintenance. He would be called as an expert witness to testify regarding how the GPS monitor or electronic device generally works as outlined in his report.

The defense contends that Mr. Inzinna does not have the training or experience to qualify as an expert witness. In *Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 480-81, 664 A.2d 525, 528 (1995), the Supreme Court stated:

The test to be applied when qualifying a witness to testify as an expert witness is whether the witness has **any** reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine (emphasis original).

In *Brass Rail*, the trial court precluded the Commonwealth from calling the coroner as an expert witness on time of death, because the coroner did not have a medical degree. Instead, he was a mortician for 27 years who served in the dual capacity as coroner for 15 years. The Court found that due to the coroner's background and experience in these roles, he may have specialized knowledge regarding time of death beyond that of a lay person. See 664 A.2d at 529. Therefore, it was error for the trial court to refuse to qualify the coroner as an expert based solely on his lack of formal medical training.

Mr. Inzinna's CV provides in relevant part: (1) John Inzinna is an energetic, results-oriented professional with extensive experience in both law enforcement and the electronic monitoring industry; (2) he strives to understand the customer and provides relevant solutions as they seek to enhance their electronic monitoring programs; (3) he is responsible for customer training, agency-specified reports, and related documentation and he assists customers in setting up policies and procedures for electronic monitoring programs; and (4) prior to his role as an Account Manager at Attenti, he served as a Corrections Officer in Hudson County, NJ. and while serving with Hudson County Corrections, John was instrumental in assisting with the development of the electronic monitoring policies and procedures for the agency. Based on Mr. Inzinna's CV, the court finds that Mr. Inzinna has specialized knowledge regarding electronic monitoring beyond that possessed by the average

layperson. *See* Pa. R. E. 702(a). Therefore, the court rejects the defense argument and it will permit Mr. Inzinna to provide testimony as an expert witness but limited to the matters contained within the scope of his report. Notably, Mr. Inzinna's report does not discuss the actual data retrieved from Defendant's monitor, how the address is calculated or the accuracy or reliability of that data. It only addresses how the device collects the raw data; it does not address how that data is converted into an address. The defense is free to cross-examine Mr. Inzinna regarding the lack of information regarding the speed heading in the report or how the address is calculated to try to show that Mr. Inzinna's lack of depth of knowledge in this area or he may choose to call his own expert to expose the flaws in Mr. Inzinna's expected testimony. The Commonwealth is also free to obtain a supplemental report if it wants Mr. Inzinna to provide more information or information on other topics such as how the address is generated or the reliability and accuracy of the address generated. Based on the liberal standard for qualifying as an expert set forth in *Brass Rail* and its progeny, the court finds that the defense allegations and concerns go to the weight of Mr. Inzinna's testimony and not its admissibility.

ORDER

AND NOW, this 11th day of July 2024, the court GRANTS IN PART and DENIES IN PART Defendant's motion in limine.

1. With respect to the 404(b) "bad acts" evidence, the court DENIES the motion in limine with respect to cases 240-2021 and 200-2021. The court will permit the Commonwealth to present evidence regarding the robberies in case 240-2021 in the trial of case 200-2021 and vice versa. The court GRANTS in part the motion in limine with respect to case 238-2021. As explained in more detail in the Opinion accompanying this Order, the

court will preclude the Commonwealth from presenting specific evidence such as GPS evidence and the description of the perpetrator regarding cases 240-2021 and 200-2021 in the trial of case 238-2021. The court will only permit the Commonwealth to present evidence from Agent Miller regarding the GPS evidence with respect to the robbery in case 238-2021 and a general explanation of how the PSP became aware that Defendant was wearing an electronic monitoring device and obtained evidence regarding Defendant's location on the date and time of the robbery in case 238-2021. The court will not permit the Commonwealth to present any evidence regarding the crime(s) for which Defendant was under the supervision of Agent Miller or the crime(s) which prompted Agent Miller to put Defendant on an electronic monitoring device.

The court invites the parties to submit proposed limiting instructions for the jury's use of the "bad acts" evidence. Such submission should be provided to the court prior to the start of trial.

The court would suggest that case 240-2021 be tried first based on the perceived strength of that case.

2. With respect to expert testimony, the court finds that Agent Miller will not be called as an expert witness but as a fact witness regarding the fact that Defendant was wearing an electronic device and the information that he retrieved from his computer regarding the data from the device. Agent Miller cannot testify as an expert regarding the accuracy or reliability of that data.

The court finds that Mr. Inzinna qualifies as an expert under the liberal standard of *Miller v. Brass Rail Tavern*. The defense concerns go to the weight of Mr. Inzinna's testimony, not its admissibility. However, Mr. Inzinna will be limited to the scope of his report unless the Commonwealth submits a supplemental report.

By The Court,

Nancy L. Butts, President Judge

cc: Matthew Welickovitch, Esquire (ADA)
Robert Hoffa, Esquire
Gary Weber, Esquire
Jerri Rook