

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-470-2024
v.	:	
	:	
BRADLEY RINKER,	:	Pre-Trial Motions
Defendant	:	

OPINION

This matter was before the Court on March 4, 2025, on the Defendant’s Motion in Limine filed on December 23, 2024, by and through his counsel of record, Attorney Kyle Rude, Esquire. Assistant District Attorney Jessica Feese, Esquire, appeared on behalf of the Commonwealth.

In his Motion, Defendant challenged the Commonwealth’s Notice of Intent to Introduce 404(b) Evidence in this case that relates back to the Defendant’s conviction after a no contest plea in a matter from 2022. The parties provided brief argument, but ultimately agreed to and requested the Court’s permission to file written arguments in support of their respective positions. The Court Ordered that briefs be submitted on or before March 21, 2025. Both parties timely filed.

Argument

a. The Parties Arguments Regarding the Commonwealth’s 404(b) Notice

The Commonwealth filed a Notice of Intent to Introduce Rule 404(b) evidence based upon Defendant’s prior conviction from when Defendant entered a no contest plea under Docket No. CR-482-2022. The Commonwealth alleges that the allegations in the present matter are so similar in facts of the previous case that the evidence exhibits a common plan and goes to the identity of the perpetrator in supporting the commission of both crimes.

Under Docket No. CR-482-2022, Defendant entered a no contest plea to two counts of indecent assault. The Commonwealth states in its brief that the evidence of Defendant's plea is not admissible under the Pennsylvania Rules of Evidence to establish a prior bad act. (Commonwealth's Brief at 1). However, the Commonwealth asserts that a prior conviction is not necessary to introduce prior bad act evidence under Pa.R.E. Rule 404(b) citing to *Commonwealth v. Ardinger*, 839 A.2d 1143 (Pa. Super. 2003), *Commonwealth v. Crosby*, 224 A.3d 372 (Pa. Super. 2019)¹. (Commonwealth's Brief at 1).

Here, the Commonwealth argued that the proposed prior acts testimony is permissible without mention of the plea and without broaching the topic of Defendant's criminal charges and incarceration. (Commonwealth's Brief at 1). The testimony proposed by the Commonwealth is from two young women, J.B. and K.B., whose disclosures led to the filing of the case preceding this matter. (Commonwealth's Brief at 2). The Commonwealth further argues that the incidents disclosed by the proposed witnesses are sufficiently similar to the current allegations. (Id). The Commonwealth intends to present the testimony to show a common, scheme, plan, or design. (Id). The Commonwealth restated its burden that the acts sought to be introduced by similar to the current allegations so as not to be too far removed, and that the probative value of the evidence outweigh the potential for unfair prejudice, citing to *Commonwealth v. O'Brien*, 836 A.2d 966 (Pa. Super. 2003). (Commonwealth's Brief at 2).

The Commonwealth further dissected its argument in support of introducing the evidence by analyzing the similarity of the acts and current allegations, the timeline for the prior acts and current allegations, and the probative value of the evidence.

¹ *Commonwealth v. Cosby*, 224 A.3d 372 (Pa. Super. 2019) affirmed the trial court's admission of testimony from other women who had similar experiences with Cosby and *reversed on other grounds*, 252 A.3d 1092 (Pa. 2021).

First, the Commonwealth argued that the past acts are so similar to the current allegations and not too far removed. More specifically, alleged victim, K.B., reported under docket no. CR-482-2022 that “Defendant placed his hand on her breasts over her shirt and groped her as she pretended to sleep” at about the age of ten (10) or eleven (11) years. (Commonwealth’s Brief at 2). Under the same case, alleged victim J.B., K.B.’s sister, reported that “Defendant twice put his hand down her pants and touched her genitals, rubbing her with his hand.” (Id). J.B. also reported that “on one occasion she woke to the Defendant’s hand down her pants and on the other occasion she had crawled into the bed share by her mother and the Defendant.” (Id). J.B. reported that she approximates the events occurred around when she was seven (7) years old. (Id). J.B. reported that she remembers these events occurring after her sister, her mother, and herself moved in to the Defendant’s house. (Id). The ages of the alleged victims place these incidents between 2014 and 2017.

Here, the Commonwealth explained that the alleged victim, Z.M. reported the Defendant put his hand down her pajama pants, touched her genitals inside her underwear, and moved his hand. (Id). Z.M. reported this event occurred when she was around eleven (11) or twelve (12) years of age. (Commonwealth’s Brief at 3). Similarly, Z.M.’s mother had moved in with the Defendant². According to the Commonwealth, the age and other details reported by Z.M. places the incidents between December of 2019 and March of 2021. (Id).

Accordingly, the Commonwealth argues that, in both matters, the Defendant had access to the alleged child victims because he was in a live-in relationship with their mothers. (Id). Moreover, the incidents occurred at the Defendant’s home, (id), all three children were females, (id), their ages range from 7-years-old to 12-years-old, (id), and in each incident the Defendant is reported to have placed his hand on their bodies while they were in his home.

² The Commonwealth’s brief states that for both sets of allegations the events occurred at the Defendant’s residence at 79 Loudenslager Rd. See: Commonwealth’s Brief at 2 and 3.

(Id). In two of the cases, J.B. and Z.M., each child reported that the Defendant reached down her pants to touch her genital area; and, neither alleged that the Defendant touched them elsewhere, induced them to touch him, or removed any clothing. (Id).

Next, the Commonwealth argues that the time between the first two victims' reports and the case at bar is somewhere between two and six years, arguing that the Pennsylvania Superior Court has previously upheld the admission of sexual molestation testimony six years prior to the charged offense. (Commonwealth's Brief at 3, citing *Commonwealth v. Luktisch*, 680 A.2d 877, (Pa. Super. 1996)).

Finally, the Commonwealth argues the testimony of J.B. and K.B. from the prior matter is relevant and admissible to bolster the credibility of Z.M., which the Commonwealth suspects Defendant will attack in this matter. (Commonwealth's Brief at 3). The Commonwealth further argues that the introduction of the testimony from prior victims is a permissible use of prior acts testimony to demonstrate a common scheme or plan, citing to *Commonwealth v. O'Brien*, 836 A.2d 966 at 970 (Pa. Super. 2003). The Commonwealth submits that in the present matter, its case relies on the testimony of one victim and that the victim's credibility will be at issue, so the probative value of the prior similar acts outweighs the potential for unfair prejudice to the Defendant. (Commonwealth's Brief at 4, relying on the Pennsylvania Superior Court's decision in *Commonwealth v. Luktish*, 680 A.2d 877 (Pa. Super. 1996), to uphold the trial's court's admission of a defendant's daughter's testimony that he had sexually abused her; therein, the trial court initially barred the admission of the daughter's testimony as cumulative to the victim's, but reversed its own decision when the victim's credibility was so attacked as to be "severely undermined" at trial, and the trial court determine the probative value outweighed the prejudicial effect).

The Defendant argues that the evidence the Commonwealth seeks to introduce is so prejudicial to the Defendant that he will not receive a fair trial. (Defendant's Brief at 1). More specifically, Defendant argues that the introduction of the facts of the prior conviction will substantially confuse the jury and cause reasonable jurors to draw conclusions based on a propensity argument instead of the evidence available in the instant matter. (Id).

Defendant cited to Pennsylvania Rules of Evidence, Rule 404(b)(1) that prohibits evidence of prior bad acts or unrelated criminal activity to demonstrate that a defendant acted in conformity with the past acts or possess of criminal propensity to commit such acts. (Defendant's Brief at 1). Also, Defendant relies on Pennsylvania Rules of Evidence, Rule 404(b)(2) which provides that, evidence of prior bad acts may be admissible only when offered to prove some other relevant facts, such as motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident. Moreover, when a court is determining whether evidence of prior bad acts is admissible, the trial court is compelled to evaluate the probative value against the prejudicial impact. (Defendant's Brief at 2, citing to *Commonwealth v. Powell*, 598 Pa. 224, 956 A.2d 406, 419 (2008)).

Defendant further argues that because he pled no contest under docket no. CR-482-2022, which in turn indicates that he never admitted to the facts sought to be introduced in the instant matter. (Defendant's Brief at 2). Therefore, it is Defendant's contention that the jury will require instructions on the limited nature of the prior conviction and the definition and legal ramifications of a no contest plea should the testimony from the alleged victims in the prior matter. (Defendant's Brief at 2).

Defendant rebuts the Commonwealth's argument that the 404(b) evidence will go to show a common plan or scheme. Defendant asserts that the allegations at bar are a copycat

alleged victim reciting the same allegations that she specifically denied at the sentencing of the Defendant for docket no. CR-482-2022. (Defendant's Brief at 2).

Finally, Defendant submits that the prejudicial impact here is that the jury will unfairly decide the case because of the propensity for such actions. Moreover, the prejudicial effect substantially outweighs any probative value because the jury might be diverted from its duty of impartiality by weighing the evidence relating to the present case. (Defendant's Brief at 2).

Here, the Commonwealth argued that the evidence surrounding the Defendant's no contest plea can be admitted without making actual reference to the plea itself. Essentially, the Commonwealth's request to proffer the context of the underlying case to establish a common plan or scheme by the Defendant is appropriate. The Commonwealth sufficiently established that the underlying case and the reports made by the alleged victim in the present matter are similar in facts, time, and relevancy to establish an alleged course of conduct or common plan. The Court agrees with the Commonwealth that the proposed Rule 404(b) evidence is admissible. There is no doubt that the evidence is prejudicial to the Defendant, but the Court agrees with the Commonwealth that the probative value of the evidence outweighs the potential prejudice. The Defendant's argument that the jury will unfairly decide the present matter on the facts of the previous matter is warranted, but the Court will provide a clear explanation about the purpose of the evidence and a limiting instruction to the Jury so as to limit the potential prejudice of the evidence on the Defendant.

b. Defendant's Motion in Limine to Include Z.M.'s Statement from the Sentencing Hearing in Docket No. CR-482-2022

Defendant seeks to submit the substance of a statement made by the Alleged victim and

submitted to the sentencing court that hearing without making any reference to the previous prosecution. (Defendant's Brief at 2). The statement Defendant seeks to have admitted was provided to the court from Alleged victim's cell phone to her mother's cell phone via text message. (Defendant's Brief at 3).

Defendant further submits that the contents reveal the Alleged victim was feeling abandoned by her mother, and that this can be admitted without raising questions for a jury about Defendant's prior conviction and subsequent incarceration. (Defendant's Brief at 3). Moreover, testimony can be elicited that Alleged victim's mother became depressed and withdrawn when Defendant "went away." (Id). The Defendant seeks to have Alleged victim's mother testify that she allowed Alleged victim and her brother to live with their biological father without exposing Defendant's prior incarceration. (Id). Defendant further argues that admitting testimony beyond the scope of Alleged victim's prior statement regarding Defendant's prior incarceration would be unduly prejudicial and irrelevant to the allegations at issue. (Id). The admission of Alleged victim's prior statement does not require context for the jury to comprehend the written statement and how it contradicts the present allegations and the Alleged victim's testimony. (Id). Accordingly, the Defendant seeks to admit the prior inconsistent statement by the Alleged victim and bar the Commonwealth from introducing testimony of the prior criminal act or the background supporting Alleged victim's prior inconsistent statement. (Id).

The Commonwealth avers that the statement prepared by Z.M. for Defendant's sentencing cannot be introduced in whole or in part by the Defendant without providing the underlying context. (Commonwealth's Brief at 4).

The statement at issue here was prepared with a purpose. (Id). More specifically, the Defendant entered an open plea and several letters were submitted to the sentencing court by

the Defendant's friends and family members. (Id). The Commonwealth anticipates that the Defendant's purpose to have the statement introduced is as a prior inconsistent statement because it contains statements that the allegations against the Defendant are not of the kind consistent with his person. (Id). In such an instance, Pennsylvania Rules of Evidence, Rule 613(b) provides Z.M. the opportunity to explain the statement and provide context. (Commonwealth's Brief at 5). The Commonwealth asserts that Z.M. must be provided the opportunity to expand on the underlying purpose of the statement. That is, the statement was written in anticipation of being read to the court to encourage the court to sentence the Defendant lightly. (Id). The Commonwealth proffers the statement can be introduced and context provided without any reference to the prior allegations and the no contest plea, should the Court so determine. (Id).

The Commonwealth does not object to a proper introduction of the statement so long as Z.M. is granted the opportunity to explain why she wrote the statement. (Id).

Here, the Court agrees with the Defendant that the prior statement by the alleged victim is relevant. The Court also agrees with the Commonwealth that the context of the statement is necessary for the Jury to adequately consider the contents and nature of the statement made in support of the Defendant at the sentencing hearing for the preceding matter. Moreover, the Commonwealth does not object to the admission of the statement so long as the alleged victim is provided the necessary opportunity to explain her statement. Accordingly, the Court concludes that the prior statement by the alleged victim may be admitted at trial.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this ____ day of _____, 2025, based on the parties' arguments and for the aforementioned reasons, Defendant's Motion in Limine is granted in part and denied in part:

1. Defendant's Motion to Preclude the Commonwealth's proposed evidence pursuant to Pennsylvania Rules of Evidence, Rule 404(b) is **DENIED;**
2. Defendant's Motion in Limine to submit the prior statement by the alleged victim in this matter is **GRANTED.**

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA(JF); CA
Kyle Rude, Esq.
Gary Weber, Esq.-Lycoming Reporter