

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-197-2023
	: CR-228-2023
vs.	: CR-231-2023
	:
MARK ROBINSON,	: Opinion and Order Re 404(b) Evidence
Defendant	:

OPINON AND ORDER

This matter came before the Court on January 27, 2025 for a hearing and argument on the Commonwealth’s Motion for Consolidation and 404(b) Notice. At the time of the hearing and argument, the Commonwealth indicated that it was withdrawing its request for consolidation¹ and merely seeking to introduce evidence from the delivery case (231-2023) in the PWID case (197-2023) and evidence from the PWID case in the delivery case to show identity and intent.

The relevant allegations, as gleaned from the affidavits of probable cause in all three cases are as follows:

On February 1, 2023, Defendant sold methamphetamine to an undercover Narcotics Enforcement Unit (NEU) detective at an apartment on Northway Road and he was surveilled back to 836 High Street, Apartment #1. The next day, law enforcement officers (LEOs) obtained a search warrant and executed it at 836 High Street, Apartment #1. Defendant was not present during the execution of the search warrant. Ada Wells (possibly Defendant’s girlfriend), her 16-year old son, and her son’s girlfriend were present on the premises. While the LEOs were making entry into Apartment #1, someone discarded a woman’s purse out a window. The purse contained approximately 90 grams crystal methamphetamine, a digital

¹The Court previously denied a Commonwealth motion to consolidate and that denial was affirmed by the

scale, and packaging material. Controlled buy money from the delivery the day before was found in the master bedroom. Inside a safe in the master bedroom, the LEOs found additional digital scales and packaging material and “distribution” marijuana. The LEOs obtained a warrant for Defendant’s arrest. When Defendant arrived at the apartment and the LEOs tried to arrest him, Defendant resisted them for three minutes before they could get him handcuffed.

In case 197-2023, Defendant is charged with Possession With Intent to Deliver (PWID)- methamphetamine and PWID-marijuana. In case 228-2023, Defendant is charged with Resisting Arrest. In case 231-2023, Defendant is charged with Delivery of methamphetamine.

The Commonwealth seeks to introduce evidence of the delivery to the undercover officer in the PWID case to show identity and intent. Specifically, the Commonwealth argues that the delivery the day before shows that the large quantity of methamphetamine found in the purse belonged to Defendant and that he intended to deliver it as he had the day before. The Commonwealth seeks to introduce evidence of the large amount of methamphetamine and the buy money found in the apartment in the delivery case to corroborate that Defendant was the individual who delivered methamphetamine to the CI and that he intended to deliver the methamphetamine. The Commonwealth argued that the delivery and the PWID occurred at the same premises. The Commonwealth relies on *Commonwealth v. Knupp*, 290 A.3d 759, 770-71 (Pa. Super. 2023).

Defendant objects to the Commonwealth’s 404(b) evidence on several grounds. First, he has not been convicted of any of these offenses; therefore, the introduction of evidence of

any other case will result in a trial within a trial. Second, this is purely propensity evidence. Third, there is insufficient trademark or uniqueness for the evidence to be admissible to establish identity. Fourth, the delivery occurred at a different location. Finally, the evidence is unduly prejudicial.

DISCUSSION

The general rule is that other crimes, wrongs or bad acts evidence is not admissible to show a person's propensity to commit crimes. *See* Pa.R.E. 404(b)(1) (“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.”). In criminal cases, such evidence may be admissible for other purposes, though, such as intent and identity, provided that the probative value of the evidence outweighs its potential for unfair prejudice. *See* Pa.R.E. 404(b)(2) (“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.”). “‘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. Furthermore, “[t]he court may exclude relevant evidence if its probative value is outweighed by a 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.” Pa.R.E. 403.

In the delivery case (231-2023), the court will permit the Commonwealth to introduce evidence that the controlled buy money was found during the search of 836 High Street,

Apartment #1. The court will not permit the Commonwealth to introduce any other evidence regarding the controlled substances and other items found in the search of 836 High Street, Apartment #1. The court finds that the only issue for the delivery case is whether Defendant transferred methamphetamine to the undercover officer on February 1, 2023. The only evidence found in the search of the apartment that is relevant to that issue is the fact that money used to buy the methamphetamine the day before was found in the apartment when it was searched the next day.

The court rejects the Commonwealth's argument that the approximately 90 grams of methamphetamine found in the discarded woman's purse shows that Defendant intended to deliver methamphetamine to the CI. Contrary to the Commonwealth's arguments, the delivery did not occur at 836 High Street; it occurred at an apartment on Northway Road and after the delivery, the individual was followed to the apartment on High Street. Defendant was not present at the apartment when it was searched. The 90 grams of methamphetamine were not found on Defendant's person. They were found when the police attempted to enter the apartment to conduct the search and the purse was discarded out of a window. The purse belonged to Ms. Wells and was discarded by her son. Although Ms. Wells and her son may have told the police that the 90 grams of methamphetamine belonged to Defendant, to whom those drugs belonged is not relevant to the delivery case. The only issue for the delivery case is who transferred methamphetamine to the undercover officer. Furthermore, to permit that evidence to be introduced would create a trial within a trial on who possessed those drugs and what, if anything, they intended to do with them. Those issues are for the trial in the PWID case (197-2023) and would only confuse the issues for the jury in the delivery case (231-2023). Therefore, the court finds that the probative value of this evidence is

outweighed by the potential for undue prejudice.

In the PWID case (197-2023) the Commonwealth may present witness testimony and evidence that Defendant delivered methamphetamine to an undercover officer on February 1, 2023 and that the buy money from that delivery was found during the search of the apartment on February 2, 2023. At the time of the introduction of this evidence and in final jury instructions, a limiting instruction should be given that the evidence is to be used only to determine whether Defendant jointly or constructively possessed² the methamphetamine that was in the woman's purse and discarded from a window of the residence and whether he intended to deliver any controlled substances that the jury finds that he possessed.

To the extent that the Commonwealth asserts that *Knupp* compels the court to grant its motion in limine in its entirety, the court cannot agree. First, the discussion of the admissibility of 404(b) evidence in *Knupp* is technically dicta. The appellant in *Knupp* challenged the trial court's admission of the evidence, but the Superior Court found that the issue was waived, because the appellant failed to identify in the record where he asserted or preserved this issue in the trial court. 290 A.3d at 770-771. Second, the issue in *Knupp* solely related to what evidence of prior deliveries to confidential informants could be introduced in Knupp's PWID case. There was no discussion of evidence found during the searches being admissible in the trial for the deliveries to the confidential informants. Third, the trial court only partially granted the Commonwealth's motion in limine. *See id.* at 770 ("In his second issue, Appellant challenges the trial court's *partial* grant of the

² Defendant did not actually possess the methamphetamine found at the time of the search of the premises as those substances were not on his person and he was not present at the premises at that time. This, however, does not mean that he did not have the intent or ability to control the substances found in the discarded woman's purse because they could have been jointly and/or constructively possessed by Defendant.

Commonwealth's motion in limine that allowed the admission of evidence concerning the controlled drug sales which involved the use of prerecorded buy money that was later recovered by the police” (emphasis added)).

ORDER

AND NOW, this 12th day of February 2025, the Commonwealth’s motion to consolidate shall be marked withdrawn. The Commonwealth’s request to introduce 404(b) evidence in the resisting arrest case shall be marked withdrawn as the Commonwealth expressly limited its request and its argument to the “felony cases” which would be the delivery and PWID cases.

The Court **GRANTS IN PART** the Commonwealth request to admit 404(b) evidence. In the delivery case (231-2023), the Court will permit the Commonwealth to introduce evidence that the controlled buy money was found during the search of 836 High Street, Apartment #1. The court **DENIES** the Commonwealth’s motion with respect to the admission in the delivery case of methamphetamine found in the woman’s purse (or any other controlled substances and items found during or as a result of the search of 836 High Street, Apartment #1).

In the PWID case (197-2023), the Commonwealth may present evidence that Defendant delivered methamphetamine to the CI on February 1, 2023 and that the controlled buy money from that delivery was found in the master bedroom of 836 High Street, Apartment #1. At the time of the introduction of this evidence and in final jury instructions, a limiting instruction should be given that the evidence is to be used only to determine whether Defendant jointly and/or constructively possessed the methamphetamine that was

discarded from the residence and whether he intended to deliver any controlled substances that the jury finds that he possessed.

By The Court,

Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)
Taylor Paulhamus, Esquire (APD)
April McDonald, Deputy Court Administrator
Jerri Rook
Gary Weber, Esquire
228-2023
231-2023