

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No.: CR-1454-2014**
: **JOSEPH MARTIN JENNINGS, II** :
Defendant : **Motion in Limine**

OPINION AND ORDER

Defendant is charged by Information filed on September 19, 2014 with one count of failure to comply with registration requirements, one count of habitual offenders and two traffic summaries including driving under suspension. In an order dated March 20, 2015, the court granted Defendant's motion to sever. Specifically, Count 1, failure to comply with registration requirements was severed from the remaining offenses for trial purposes.

Defendant subsequently filed a motion in limine on March 18, 2015. On April 6, 2015, the court heard argument on the motion.

The motion requests that the Commonwealth be precluded from presenting "any evidence of the Defendant's prior criminal record, including any of the driving offenses." Defendant argues that presenting evidence of Defendant's past driving offenses would be unduly prejudicial. Specifically, Defendant claims that if the jury hears evidence that he previously drove under suspension, they would be more inclined to find him guilty of the present offenses; thus, not deciding the case as required only upon the basis of the evidence, or lack thereof, presented during the trial.

The Commonwealth argues that, as part of its burden of proof with respect to the habitual offender charge, it is required and has every right to present evidence of Defendant's prior driving offenses. The Commonwealth concedes that it may not present the

underlying facts of the driving offenses, but only the fact of a conviction and the type of offense for which Defendant was convicted.

The Commonwealth filed a notice pursuant to Pa.R.E. 404 (b) (3) on February 2, 2015. In that notice, the Commonwealth indicated that it intended to produce other crimes, wrongs or bad acts evidence at Defendant's trial. Among other things, the proffered evidence included the underlying facts with respect to the stops of Defendant's vehicle by law enforcement on March 12, 2014 and July 27, 2014. The Commonwealth stipulated during the argument in connection with the motion in limine that this notice applied only to the trial with respect to the failure to comply with registration requirements count and not the remaining counts.

“Any analysis of the admissibility of a particular type of evidence must start with a threshold inquiry as to its relevance and probative value.” *Commonwealth v. Robinson*, 554 Pa. 293, 771 A.2d 344, 350 (1998). 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; *Robinson*, supra. Specifically, it must “be determined first if the inference sought to be raised by the evidence bears upon a matter in issue in the case and second, whether the evidence renders the desired inferences more probable than it would be without evidence.” *Commonwealth v. Seiders*, 531 Pa. 592, 614 A.2d 689, 691 (1992); see also *Commonwealth v. Kichline*, 468 Pa. 265, 284, 361 A.2d 282, 292 (1976).

Clearly, and as the parties conceded, evidence tending to prove or disprove an element of the offense is relevant.

Defendant is charged with violating 75 Pa. C.S.A. § 6503.1, entitled “Habitual Offenders.” Pursuant to the statute, “a habitual offender under section 1542 [of the Vehicle Code] who drives a motor vehicle on any highway in the Commonwealth while the habitual offender’s operating privilege is suspended, revoked or canceled commits a misdemeanor of the second degree.” 75 Pa.C.S.A. §6503.1.

It is evident that there are several elements to this offense. First, the Commonwealth must prove that Defendant is a habitual offender under section 1542. Next, the Commonwealth must prove that Defendant was driving a motor vehicle on a highway or traffic-way in the Commonwealth. Finally, the Commonwealth must prove that while Defendant was driving, his operating privilege was suspended, revoked or cancelled.

Under 75 Pa. C.S.A. § 1542, a “habitual offender” is “any person whose driving record, as maintained in the department, shows that such person has accumulated the requisite number of convictions for the separate and distinct offenses described and enumerated in subsection (b) committed after the effective date of Title 75 and within any period of five (5) years thereafter.” 75 Pa. C.S.A. § 1542 (a).

Further, the enumerated offenses include but are not limited to violations of Subchapter B of Chapter 37 (relating to serious traffic offenses) and driving while operating privilege is suspended or revoked for a violation of 75 Pa.C.S.A. §1543(b)(1.1). 75 Pa. C.S.A. § 1542 (b).

Clearly, in order to prove the elements of the offense in this case, the Commonwealth would need to prove that Defendant is a habitual offender. In order to prove such, the Commonwealth must prove that Defendant accumulated the requisite number of enumerated offenses over a certain period of time.

Defendant does not argue that the Commonwealth would not need to prove such. Instead, Defendant argues that the probative value is outweighed by the potential for prejudice.

The court may exclude relevant evidence if its probative value is outweighed by a danger of unfair prejudice. Pa. R. E. 403. However, this does not mean that the evidence is detrimental to the adverse party's case. *Sprague v. Walter*, 441 Pa. Super. 1, 39, 656 A.2d 890, 909 (1995), appeal denied, 543 Pa. 695, 670 A.2d 142 (1996). Unfair prejudice is defined as “an undue tendency to suggest a decision on an improper basis.” *Id.*

Once evidence is found to be relevant, it is inadmissible only if its probative value is substantially outweighed by the danger of unfair prejudice. *Commonwealth v. Lillock*, 740 A.2d 237, 244 (Pa. Super. 1999), appeal denied, 568 Pa. 657, 795 A.2d 972 (2000).

This court cannot conclude that Defendant suffers unfair prejudice by the admission into evidence of his certified conviction for predicate offenses required to prove his habitual offender status.

In a remarkably similar case, the Pennsylvania Supreme Court reached the same conclusion. In *Commonwealth v. Jemison*, 98 A.3d 1254 (Pa. 2014), the Court concluded that in a person not to possess firearms case, where a prior conviction was necessary and relevant

to prove the requisite predicate offense, the defendant did not suffer unfair prejudice “merely by the admission into evidence of his or her certified conviction of a specific, identified, predicate offense, which [had] been offered by the Commonwealth to prove the prior conviction element of [the offense].” *Id.* at 1262.

As the Court further noted, “Any possibility of unfair prejudice is greatly mitigated by the use of proper cautionary instructions to the jury, directing them to consider the Defendant’s prior offense only as evidence to establish the prior conviction element of the...charge, not as evidence of the Defendant’s bad character or propensity to commit crime[s].” *Id.* at 1262.

ORDER

AND NOW, this ____ day of April, 2015, following an argument on Defendant’s motion in limine, said motion is DENIED. The Commonwealth is permitted to present evidence of Defendant’s prior convictions for the predicate offenses to prove Defendant is a habitual offender. If requested by Defendant, the court will issue a cautionary instruction.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: DA (MW)
Lori Rexroth, Esquire
E.J. Rymysza, Esquire
Gary Weber, Esquire (Lycoming Reporter)