

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
OSCAR LEE SCHAFER JR.,	:	
	:	
Appellant	:	No. 808 MDA 2012

Appeal from the Judgment entered March 23, 2012, in the Court of Common Pleas of York County, Criminal Division, at No. CP-67-CR-0000607-2011.

BEFORE: PANELLA, OTT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: Filed: January 14, 2013

Oscar Lee Schafer Jr. (Appellant) appeals from the judgment of sentence entered following his convictions for involuntary deviate sexual intercourse (IDSI) with a person less than 16 years of age, statutory sexual assault, unlawful contact with a minor, corruption of minors, and indecent assault on a person less than 16 years of age.¹ We affirm.

The relevant facts and procedural history, as set forth in the trial court opinion, are as follows:

Appellant lived with his girlfriend, Cheri Martin, on a farm next to the victim's home when she was a teenager. When the victim was 14, she began visiting the farm with her mother and sister.

In 2002, Ms. Martin purchased a home next to the farm and the victim visited several times per week. A sexual relationship developed between Appellant and the victim and she

¹ 18 Pa.C.S. §§ 3123(a)(7), 3122.1, 6318(a)(1), 6301, and 3125 (a)(8), respectively.

* Retired Senior Judge assigned to the Superior Court.

performed oral sex on Appellant many times over a two-year period while they were alone together. She described several occasions in detail. One evening when Ms. Martin went out with a friend, the victim stayed at the house with Appellant. Appellant had expected Ms. Martin to be gone longer. While the victim was performing oral sex on Appellant, they saw headlights from her car pulling into the driveway. The victim [laid] down on the couch and pretended like she was sleeping. When Ms. Martin came into the house, she heard her and Appellant whispering in the kitchen. The victim acted like she was groggy, said hi to Ms. Martin, and then went home. Ms. Martin questioned her about it later when they were alone together horseback riding. The victim told her that they had fallen asleep while watching television.

The victim testified that Appellant encouraged her to masturbate and look at pornographic magazines, and told her where Ms. Martin kept a thin silver vibrator.

The abuse occurred when the victim was ages 15 through 17, and ended when she stopped going to the farm. She explained that it just stopped happening as she was going there less and less. Appellant was age 42 years old when they stopped seeing each other and he eventually moved away.

The victim did not disclose the abuse until after she was out of the house. She rode the bus to work and discussed what happened with Robert Burton, who was a deacon at his church. She was married and pregnant with her second child at the time. Mr. Burton encouraged her to report [the] abuse to the police, which she did.

[Thereafter Appellant was arrested and charged, *inter alia*, with the aforementioned crimes.]

* * *

Appellant filed a pretrial motion to introduce the testimony of David Taylor. David's brother, Terry Taylor, was the victim's husband and entered a guilty plea to indecent assault in 2011 against the victim. According to Appellant's motion, David Taylor would testify that the victim admitted to him that the allegations against her husband were false. Appellant claimed

that she fabricated the allegations against Terry Taylor because she wanted him out of her life and wanted custody of their children. Specifically, the proffer was as follows:

I would like to put David Taylor on the stand after – this would, of course, be after the complaining witness was cross-examined and establish the dates of her complaint against her husband, the impact of it on her, that exactly 30 days later she made this first complaint against [Appellant].

[N.T., 12/5/2011, at 8-9.] At the time of trial the victim and her husband were separated.

Appellant also sought to present from Terry Taylor that he did not commit indecent assault against the victim and that she offered to drop the charges against him if he would waive his right to custody of their children.

[The trial court] ruled this testimony was inadmissible at trial[.] [A jury trial was held December 5 and 6, 2011. At trial the following witnesses testified for the Commonwealth: 1) the victim; 2) Cheri Martin (Appellant's girlfriend at the time of the incidents); 3) Mary Rakestraw (victim's sister); 4) Lacey Cutler (victim's childhood friend who lived on same street as Appellant and the victim); Robert Burton (friend of the victim and deacon from her church); Trooper Michael Mitchell (criminal investigator with the Pennsylvania State Police, who investigated the sexual abuse claims at issue). Appellant testified on behalf of the defense.]

* * *

On cross-examination [of the Commonwealth witnesses] the defense strategy was to establish that none of the sexual abuse occurred and that the victim made the allegations because she was in love with Appellant and felt abandoned when he moved out of Ms. Martin's home on the farm. Appellant also attempted to prove that the victim's other or additional motivation for fabricating the charges was because she asked Appellant for money and he would not give it to her. On cross-examination the victim denied having ever asked Appellant for a

loan; however, she did acknowledge Appellant gave her and her husband money for a trip and they paid him back.

Ms. Martin testified at trial ... [that s]he recalled the victim visiting the farm frequently to help in the barn and ride the horses. Ms. Martin testified that there was a time in 2003 when she walked into the kitchen in her home and saw Appellant and the victim standing very close to each other; she said it looked like he was removing his hand from her breast. Ms. Martin confronted them separately and told them that she thought there was something going on and to stop whatever it was. Ms. Martin also testified that she kept a small silver sex toy in her bedroom by her bed.

Appellant attempted to show that the victim came from an abusive home and lived in a rural area with little social interaction. He tried to establish that the victim's relationship with Appellant was the only positive one she had due to her mother's death and the tumultuous relationship that her parents had. He introduced a letter that the victim wrote to him as evidence of her feelings and to demonstrate a motive for fabricating the allegations. In the letter the victim wrote, "And no matter if you're near or far, I love you and you love me." It was Appellant's position, that as a result of these factors in the victim's life, she felt abandoned when he moved away.

Trial Court Opinion, 5/22/2012, at 2-3, 4, 3-4 (references to record omitted). At the conclusion of trial, the jury found Appellant guilty on all charges. On March 23, 2012, Appellant was sentenced to an aggregate term of 5 ½ to 11 years' imprisonment. On April 2, 2012, Appellant filed a "Motion for New Trial," arguing that the trial court erred in not permitting Appellant to call David Taylor and Terry Taylor as witnesses, whose testimony would have established that the victim admitted that she had made a false criminal accusation of forcible rape against her husband Terry Taylor. A hearing on the motion was held April 25, 2012. The trial court, by

order dated May 1, 2012, denied the motion. This timely appeal followed. Both Appellant and the trial court have complied with the directives of Pa.R.A.P. 1925.

On appeal, Appellant raises the sole issue of whether “the trial court erred when it ruled evidence of recent false accusation of rape by the complainant irrelevant and inadmissible when such evidence was relevant to Appellant’s case and admissible under Pennsylvania law.” Appellant’s Brief at 4 (capitalization omitted). Our standard of review for considering whether a ruling on the admissibility of evidence was proper is well-settled:

The admissibility of evidence is at the discretion of the trial court and only a showing of an abuse of that discretion, and resulting prejudice, constitutes reversible error. An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record. Furthermore, if in reaching a conclusion the trial court overrides or misapplies the law, discretion is then abused and it is the duty of the appellate court to correct the error.

Commonwealth v. Glass, 50 A.3d 720, 724-25 (Pa. Super. 2012) (citations and quotations omitted). Moreover, in reviewing the trial court determination, we are mindful that “[t]he admissibility of evidence ‘depends on relevance and probative value.’” ***Commonwealth v. Bryant***, 2012 WL 58907735, at *3 (Pa. Super. November 26, 2012) (quoting ***Commonwealth v. Stallworth***, 781 A.2d 110, 117 (Pa. 2001)). “Evidence is only considered relevant if it ‘logically tends to establish a material fact in

the case, tends to make a fact at issue more or less probable[,] or supports a reasonable inference or presumption regarding a material fact.” *Id.*

In support of his issue, Appellant argues that the testimony of David Taylor, the victim’s brother-in-law, and Terry Taylor, the victim’s estranged husband, regarding a previous false sexual allegation made by the victim against Terry Taylor, was wrongly excluded because it was appropriate impeachment evidence. “Appellant challenges that the excluded proffered evidence was relevant and admissible and that the trial court erroneously excluded such evidence and inappropriately limited Appellant’s cross-examination of the prosecution’s chief witness against him thereby violating his confrontation rights.” Appellant’s Brief at 9.

The trial court disposed of Appellant’s argument, reasoning as follows:

Our exclusion of the proffered testimony from David and Terry Taylor was predicated on a finding of relevance, or lack thereof, as opposed to a finding that the Rape Shield law applied. We find the issue presented in this case similar to that in *Commonwealth v. Johnson*, 638 A.2d 940, 941 (Pa. 1994). In *Johnson*, the Pennsylvania Supreme Court held that the Rape Shield law does not prohibit the admission of evidence regarding a prior sexual assault suffered by the victim; however, such evidence was still inadmissible on other grounds.

In *Johnson*, the Court determined that the victim’s prior assault was a collateral matter with no bearing on the issues at trial. The evidence of the prior assault was deemed inadmissible. Evidence is relevant when 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 inference more probable than it would be without the evidence.” *Id.* at 943, citing *Commonwealth v. Stewart*, 336 A.2d 282 (Pa. 1975).

In the instance case, Appellant argues that evidence of a previous fabricated sexual assault against the victim's husband, motivated by problems in her marriage and her pursuit of custody is relevant in the present case to show what would essentially be knowledge of the effect and usefulness of reporting rape to further her interests. Appellant also contends that evidence of the victim's admission to David Taylor that she made a false accusation is particularly relevant in a case where the victim's testimony against Appellant is the only evidence in the case. N.T. Trial, 12/6/11, at 8.

We disagree with those arguments for several reasons. One, we felt the two situations were dramatically different. In the prior matter, the victim had an alleged false allegation against her estranged husband with stakes that were extremely high, versus an alleged false allegation against Appellant for failure to make a loan and for moving away.

We also disagree that the sole evidence in the case was the victim's testimony. The Commonwealth presented the independent evidence of Cheri Martin's observations, which bolstered the testimony of the victim. The jury also heard evidence of the letter written by the victim[,] which supported the existence of a romantic relationship between her and Appellant.

Accordingly, we find that the circumstances of the victim's prior sexual assault have no relevance upon the issues in the present case.

Trial Court Opinion, 5/22/2012, at 5-7.

We agree with the trial court's rationale and find that its decision conforms to the applicable law. Further substantiation for the exclusion of the challenged evidence is found in the case of *Commonwealth v. Holder*, 815 A.2d 1115 (Pa. Super. 2003). The *Holder* case is factually similar to the within case, and follows the rationale of *Johnson, supra*. In *Holder*,

this Court held that the victim's accusation against a male friend, that he had raped her approximately one week prior to the rape allegation against appellant, was inadmissible as a collateral matter on which the victim could not be impeached. *Id.* at 1120. We further determined that the testimony that the victim thought that her friend might have raped her was irrelevant, and did not make the victim's allegation that appellant raped her more or less likely. *Id.* at n.2 (citing Pa.R.E. 402). Thus, similar to ***Johnson*** and ***Holder***, we find not only that the allegation of Terry Taylor's sexual assault of the victim is a collateral matter, but that such evidence is irrelevant, and does not render the inference to be drawn from it more probable than not. Consequently, the trial court did not abuse its discretion in determining the challenged evidence inadmissible. Accordingly, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.