

**IN THE COURT OF COMMON PLEAS, MONTGOMERY COUNTY,
PENNSYLVANIA – CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA : CP-46-CR-0003932-2018
v. :
WILLIAM H. COSBY, JR. :

2018 SEP -4 PM 1:57

CLERK OF COURTS
OFFICE
MONTGOMERY COUNTY
PENNA.

**MOTION TO ADMIT EVIDENCE OF UNCHARGED CRIMINAL ACTS
COMMITTED BY DEFENDANT**

TO THE HONORABLE STEVEN T. O'NEILL, JUDGE:

The District Attorney of Montgomery County, Kevin R. Steele, hereby moves the Court to admit evidence at sentencing of uncharged criminal acts committed by defendant in the above-captioned case and, in support, thereof, submits the following:

1. A jury trial was held before this Court on April 9, 2018, through April 26, 2018. The jury convicted William H. Cosby, Jr. ("defendant") of three counts of aggravated indecent assault in connection with the drug-induced sexual assault he committed on Andrea Constand.

2. This Court deferred sentencing pending the completion of a pre-sentence investigation ("PSI"), a probation and parole intervention ("PPI"), and a sexually violent predator ("SVP") assessment.

3. Sentencing is scheduled for September 24, 2018. The Commonwealth intends to present numerous witnesses who will testify that defendant sexually abused them. As discussed below, they will provide

testimony relevant to the proper assessment of defendant's character, background, dangerousness to the community, and rehabilitative needs.

4. "[A] proceeding held to determine sentence is not a trial, and the court is not bound by the restrictive rules of evidence properly applicable to trials." *Commonwealth v. Medley*, 725 A.2d 1225, 1229 (Pa. Super.1999) (citations omitted). "Rather, the court may receive any relevant information for the purposes of determining the proper penalty." *Id.* (citations omitted); see also *Commonwealth v. DuPont*, 730 A.2d 970, 986 (Pa. Super.1999) ("in sentencing, a court is not limited only to consideration of information which would be admissible evidence at trial").

5. This relevant information may include uncharged criminal conduct, even if it involved a different victim and did not result in conviction. Indeed, the Pennsylvania Supreme Court has rejected the notion that the term "victim" must be narrowly construed for sentencing purposes. *Commonwealth v. Ali*, 149 A.3d 29, 37-38 (Pa. 2016).

6. The maxim that uncharged conduct may be considered to assess a defendant's dangerousness to the community, character, background, and rehabilitative needs has been repeatedly applied over the past 35 years. See *Commonwealth v. Shugars*, 895 A.2d 1270, 1278 (Pa. Super. 2006); *Commonwealth v. P.L.S.*, 894 A.2d 120, 131 (Pa. Super. 2006); *Commonwealth v. Frank*, 577 A.2d 609 (Pa. Super. 1990), *Commonwealth v. Palmer*, 462 A.2d 755 (Pa. Super. 1983), *Commonwealth v. Vernille*, 418 A.2d 713 (Pa. Super. 1980).

7. For example, *in P.L.S.*, the Superior Court held that the sentencing court properly considered uncharged allegations of sexual abuse. At the sexually violent predator hearing in that case, there was hearsay testimony that the appellant had admitted to sexually abusing two other children, but those crimes could not currently be prosecuted because the statute of limitations had expired. At sentencing, the court imposed a sentence above the guidelines. One of the reasons it cited was the appellant's prior uncharged conduct relating to the other two children. On appeal, the appellant argued that the uncharged criminal conduct was an improper sentencing consideration. The Superior Court rejected it, relying on the long-established line of cases cited above.

8. In *P.L.S.*, the panel also observed as follows: "Not only does the caselaw authorize a sentencing court to consider unprosecuted criminal conduct, the sentencing guidelines essentially mandate such consideration when a prior record score inadequately reflects a defendant's criminal background." *Id.*, 894 A.2d at 131. Specifically, the court explained, the sentencing guidelines provide that, when determining the adequacy of the prior record score, "the court may consider at sentencing prior convictions, juvenile adjudications or dispositions not counted in the calculation of the Prior Record Score, ***in addition to other factors deemed appropriate by the court.***" *Id.* at 131, quoting 204 Pa. Code § 303.5(d).

9. Finally, the *P.L.S.* court noted that such uncharged criminal conduct may be considered at sentencing if there is a "necessary evidentiary

link between the defendant and the uncharged prior conduct.” *Id.*

10. The uncharged crimes the Commonwealth intends to prove at sentencing with victim testimony are relevant to accurately assessing defendant’s prior record score, dangerousness to the community, character, background, and rehabilitative needs. The victims’ in-court, live testimony will provide the “necessary evidentiary link between the defendant and the uncharged prior conduct.” *Id.*¹

WHEREFORE, the Commonwealth respectfully requests that this Court grant the Commonwealth’s *Motion to Admit Evidence of Uncharged Criminal Acts Committed by Defendant*.

RESPECTFULLY SUBMITTED:



KEVIN R. STEELE
DISTRICT ATTORNEY

¹ This Court may consider the prior bad act victims who testified at the first and second trials without the need for additional evidence. They testified under oath and were subject to cross-examination. The record thus already provides the “necessary evidentiary link between the defendant and the uncharged prior conduct.” *P.L.S.*, 894 A.2d at 131.

PUBLIC ACCESS POLICY CERTIFICATON

I, Kevin R. Steele, District Attorney of Montgomery County, certify that this filing complies with the provisions of the *Public Access Policy of the Uniform Judicial Systems of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



KEVIN R. STEELE
DISTRICT ATTORNEY

Deadline

VERIFICATION

I, Kevin R. Steele, District Attorney of Montgomery County, declare under penalty of perjury that the statements herein are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



KEVIN R. STEELE
DISTRICT ATTORNEY

Deadline

CERTIFICATE OF SERVICE

I, Kevin R. Steele, District Attorney of Montgomery County, being duly sworn according to law, depose and say that a true and correct copy of the *Motion To Admit Evidence Of Uncharged Criminal Acts Committed By Defendant* will be delivered to the following:

VIA EMAIL AND FIRST-CLASS MAIL:

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PERSONAL SERVICE:

The Honorable Steven T. O'Neill
Judicial Chambers
Montgomery County Courthouse
Norristown, PA 19404



KEVIN R. STEELE
DISTRICT ATTORNEY

Date: 9/4/18