

VIRGINIA: IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

COMMONWEALTH OF VIRGINIA

V.

Case No: CR16003807-00, CR16003808-00,
CR16003960-00 thru CR16003964-00

JORDAN DAVID BAIRD

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2017 APR 21 AM 11:24
CIRCUIT COURT CLERK'S OFFICE
PRINCE WILLIAM COUNTY, VA
DEPUTY

MOTION IN LIMINE:

To Permit the Commonwealth to Introduce 404(b) Evidence at Trial

COMES NOW THE COMMONWEALTH OF VIRGINIA and moves this Court in limine to permit the Commonwealth to introduce 404(b) evidence at trial. In support of its motion, the Commonwealth states as follows:

1. The defendant stands indicted on seven felony counts of indecent liberties with a minor. This matter is set for a three-day jury trial beginning on May 8, 2017.
2. The defendant was a youth and worship leader at The Life Church.
3. The evidence in the case, as it relates to the victim, M.H., will include that:
 - a. The defendant sent sexual messages to her on an app called Trivia Crack and may have sent flirtatious messages by text and also sent messages on Instagram after she deleted the Trivia Crack app;
 - b. The defendant discussed scenarios with her, including about what he would like to do if they were alone in a dark room, and he would ask her to make up scenarios;
 - c. The defendant instructed her to delete the texts;
 - d. The defendant told the victim that he would deny any allegation and take it to the grave;
 - e. The defendant gave M.H. extended and physically inappropriate hugs;
 - f. The defendant would whisper in her ear;

- g. The defendant engaged in touching in a vehicle;
- h. Sexual touching occurred at the church;
- i. The defendant stated that he should have waited for her and not gotten married and "if you were only 18!";
- j. The defendant engaged in escalating activity; and
- k. All of this occurred while the defendant was in a leadership role at the church and the victim attended the church.

4. M.M. would testify that:

- a. The defendant communicated with her via text message;
- b. The texts were sexually suggestive and included a request that she come over to his house and that his wife would not be there;
- c. The defendant told her not to tell anyone and to delete the messages;
- d. The defendant told her that no one would believe her because of who he was;
- e. The defendant gave M.M. extended uncomfortable hugs;
- f. The defendant would whisper things in her ear;
- g. The defendant touched her in a vehicle;
- h. The defendant would ask her to have sex;
- i. The defendant would ask girls to stay after church; and
- j. All of this occurred while the defendant was in a leadership role at the church and M.M. attended the church.

5. J.H. would testify that:

- a. The defendant communicated with her via text message. That the texts seemed innocent at first, but then became sexually suggestive;
- b. The defendant communicated a sexual scenario to J.H.; and
- c. This occurred while the defendant was on the worship team and leading each week and J.H. attended the church.

6. R.H. would testify that:

- a. The defendant escalated his electronic communications with her, communicating with her sexually on the Trivia Crack app and Twitter direct message. He requested nude photos and she sent a topless photo to him. He also messaged her and asked if she wanted to come over to his house. She drove to his house and gave him oral sex on the side of the house;
- b. The defendant would hug her each time she attended a church group and touch her arm and back sexually;
- c. The defendant instructed her not to tell anyone and that this had to stay between them;
- d. He would whisper in her ear;
- e. Sexual activity occurred at the church. He asked her to stay after a church group. They went into a janitor's closet, made out, and R.H. performed oral sex on the defendant;
- f. On a church trip, at an amusement park, on a dark ride, the defendant told her to touch it, grabbed her hand and put it on his penis;
- g. The defendant stated that if they were the same age in high school, he would have dated her; and
- h. All of this occurred while the defendant was in a leadership role at the church.

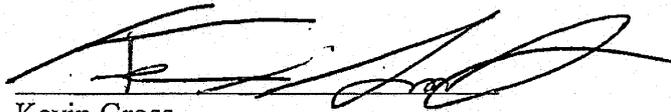
7. A summary:

- a. The defendant sent the victim electronic messages using the Trivia Crack app. The defendant used the same app to send messages to R.H. The defendant also communicated electronically with J.H. and M.M.
- b. The defendant engaged in scenarios with the victim. The defendant also engaged in a scenario with J.H.
- c. The defendant instructed the victim to delete the texts. The defendant did the same with M.M. The defendant told R.H. not to tell anyone.
- d. The defendant told the victim that he would deny any allegation and take it to the grave. The defendant told M.M. that no one would believe her because of who he was.
- e. The defendant told the victim that he should have waited for her and not gotten married and "if you were only 18!" The defendant told R.H. that if they were the same age in high school, he would have dated her.
- f. The defendant engaged in acts of sexual abuse with the victim at the church. The defendant and R.H. engaged in oral sex at the church.
- g. The defendant gave the victim extended and physically inappropriate hugs. The defendant did the same to M.M.
- h. The defendant would whisper in the victim's ear. The defendant did the same to M.M. The defendant did the same to R.H.
- i. The defendant engaged in discreet touching in a vehicle with the victim. The defendant touched M.M. in a vehicle. On a dark amusement park ride, the defendant placed R.H.'s hand on his penis.
- j. The defendant engaged or attempted to engage in escalating activity with the victim and with J.H., M.M., and R.H.
- k. The defendant engaged in acts with the victim and with J.H., M.M. and R.H. while he was in a leadership role at the church and while they attended the church.

8. Under Virginia Rule of Evidence 2:404(b), "evidence of other crimes, wrongs, or acts is generally not admissible to prove the character trait of a person in order to show that the person acted in conformity therewith." Nevertheless, if the legitimate probative outweighs its incidental prejudice, such evidence is admissible if it tends to prove any *relevant fact* pertaining to the offense charged, such as where it is relevant to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, accident, or if they are part of a common scheme or plan." *Id.* (emphasis added).
9. "Evidence of others offenses is [also] admitted if it shows the conduct and feeling of the accused toward his victim, if it establishes their prior relations, or if it tends to prove any relevant element of the offense charged." *Kirkpatrick v. Commonwealth*, 211 Va. 269, 272 (1970).
10. "The defendant has no right to have the evidence sanitized so as to deny the jury knowledge of all but the immediate crime for which he is on trial. The trial court has broad discretion to admit prior bad acts evidence for permissible purposes if its probative value outweighs the prejudice to the accused." *Gregory v. Commonwealth*, 46 Va. App. 683, 696-97 (2005) (quotations, citations, and ellipsis omitted).
11. Here, the testimony of the three other women is relevant to show the (1) defendant's leadership position at the church; (2) his motive, opportunity, intent, preparation, and plan in using his position to target females who attended the church and groom them for escalating interactions with him; (3) the absence of mistake as it relates to the touching and messages; and (4) why the victim waited several months before reporting the defendant's actions.

WHEREFORE, the Commonwealth respectfully moves this Court in limine to permit the Commonwealth to introduce 404(b) evidence at trial.

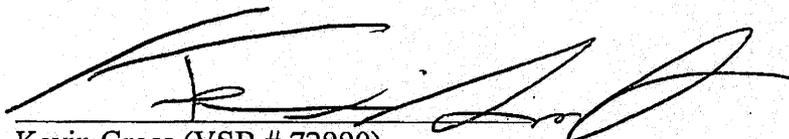
Respectfully Submitted:



Kevin Gross
Special Prosecutor
Deputy Commonwealth's Attorney
City of Fredericksburg

CERTIFICATE

I, Kevin Gross, Special Prosecutor and Deputy Commonwealth's Attorney for the City of Fredericksburg, do hereby certify that, on April 19, 2017, a true and correct copy of the foregoing Motion to Permit the Commonwealth to Introduce 404(b) Evidence at Trial was e-mailed, mailed, faxed, and/or delivered to WILLIAM B. MANN, VI and CALEB A. KERSHNER, Simms Showers LLP, counsel for Defendant.



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