

**IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE**

STATE OF TENNESSEE	:	
	:	
v.	:	No. 302476
	:	Division III
JOHNTHONY K. WALKER	:	

**ORDER**

Before the Court are the motions *in limine* of the defendant, by and through counsel, to exclude victims' autopsy and other photographs and his text messages and prior conduct. At a hearing on 8 February 2018, the parties agreed the admissible photographs and text messages and three witnesses, Mr. Carlos Shackelford, Ms. Brenda Cauthern, Ms. Jasmin Mateen, testified regarding the defendant's prior conduct.

Mr. Shackelford testified that he is a school administrator with a focus on behavior inside and outside the classroom. He was at Woodmore, where he reported to the principal and knew the defendant as a bus driver, and is now at East Lake Academy. In 2016, while he was still at Woodmore, a student complained about the defendant, who had gone to the back of the bus. In response, he stopped the bus from leaving school grounds and asked the defendant about it, which upset the defendant. About a week later, on 2 November 2016, there was another incident that he reported to the assistant principal. On the date of the accident, he observed the children enter the bus. One of them said that the defendant was putting children off the bus. The defendant complained about the children's behavior on the bus.

Ms. Cauthern testified that she is an administrator for Hamilton County Schools and was the principal at Woodmore last year, the only year. The defendant is familiar to her. His interaction with the students was a concern. He seemed to be immature and sometimes cursed the students. Typically, she documented incidents and sent a report to his employer. On a

couple of occasions, she observed him start “way too fast” and, on 11 November 2016, she requested video of one such incident the day before. She notified the county. In October or November, she rode the bus once, which she does occasionally. His interaction with the students was a concern. On 9 November 2016, he reported problems with students to staff members. The next day, he reported safety concerns about students standing.

Ms. Mateen says that she has four children, some of whom attend Woodmore and ride the bus. She has observed the defendant speed to and from bus stops and slam on the brakes for no apparent reason. She made over twenty complaints and wrote a letter to the defendant’s employer, the school, the principal, and the board of education. She also spoke to the defendant because he had cursed her children. She did not observe the whole route.

The state argues that the defendant’s cursing and driving were concerns of all three witnesses, all of whom observed and documented their concerns, and are admissible on the issue of absence of mistake. The defendant argues that his interactions with students have no probative value and are inadmissible under Tenn. R. Crim. P. 401, 403, and 404(b).

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401. “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait.” Tenn. R. Evid. 404(b). It may be admissible on another material issue if the danger of unfair prejudice does not outweigh its probative value. Tenn. R. Evid. 404(b)(2), (4).

As the state seems to recognize, that the defendant cursed students or accelerated or decelerated abruptly on one or more prior occasions is not admissible to prove his propensity to

speed at the time of the accident under Rule 404(b). The only other candidate for material issue that the state proposes is absence of mistake. Nothing suggesting that the theory of the defense is mistake, however, the Court respectfully disagrees with the state that the conduct in issue is relevant to rebut mistake. Even if the conduct in issue were admissible on that issue, however, the danger of unfair prejudice would outweigh the probative value of the evidence. If the defendant was struggling to maintain order on the bus, as his cursing at them on one or more occasions suggests, it is possible that the students' conduct was a distraction to him at the time of the accident. It is also possible that the defendant's driving prior to the date of the accident may become relevant and probative at trial based on evidence presented at that time.

The Court therefore ORDERS:

- (1) that the motions to exclude photographs and text messages be granted in part and denied in part in accordance with the parties' agreement;
- (2) that the motion to exclude evidence of the defendant's prior conduct be granted for now;
- (3) that, if the state comes to believe that developments at trial make evidence of the defendant's prior conduct relevant and probative, it may request another hearing outside the presence of the jury; and
- (4) that counsel, Amanda Dunn, Esq., and Neal Pinkston, Esq., be promptly provided with a copy of this order.

SO ENTER on this 13 day of February, 2018



Don W. Poole  
Criminal Court Judge

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