

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No. 1405023295
)	
COURTNEY F. GOODE,)	
)	
Defendant.)	

ORDER

UPON DEFENDANT'S MOTION *IN LIMINE*

GRANTED

This 18th day of August 2015, upon consideration of the Defendant's Motion *in Limine* filed on May 18, 2015, the State's response thereto, and the two scheduled motion hearings for this matter on August 5, 2015 and August 13, 2015, it appears to the Court that:

1. Defendant is charged with one count of Drug Dealing and one count of Possession of Drug Paraphernalia stemming from an alleged incident occurring on or about May 27, 2014.
2. The State has represented that it will seek to admit evidence at trial of two alleged prior sales of crack cocaine and one subsequent sale of crack cocaine by the Defendant to a confidential informant working with the Delaware State Police. The Defendant filed the instant motion to preclude admission of evidence of these transactions. The three alleged transactions at issue occurred on May 16, 2014, May 20, 2014 and May

29, 2014.¹ The State argued in its response that admission of evidence regarding these transactions would be appropriate pursuant to D.R.E. 404(b) because they would be relevant regarding intent, plan, identity, and motive.

3. The matter is set for trial beginning on August 25, 2015. Defense counsel requested an evidentiary hearing on the motion and that the Court provide a decision prior to trial. The motion was originally set for a hearing on August 5, 2015. At the hearing, the State did not have witnesses available. The Court, upon agreement of both parties, rescheduled the motion for a August 13, 2015 at 1:00 p.m. evidentiary hearing regarding the three transactions and their admissibility pursuant to Rule 404(b).
4. At the August 13, 2015 hearing, the State indicated it would not be able to proceed with the hearing or after evidence relevant to the analysis required by *Getz v. State*.² As the proponent of this evidence, the burden would be on the State to meet the various requirements for admissibility of such evidence.
5. Among the several factors in a D.R.E. 404(b) analysis is the requirement that the proponent (in this case the State) prove the uncharged conduct

¹ The State's response to the motion identifies the third alleged transaction as occurring on May 29, 2014, though the police report attached as an exhibit identifies the date as May 29, 2013.

² 538 A.2d 726 (Del. 1988).

with evidence that is “plain, clear, and conclusive.”³ Here, the State made no such proffer. Namely, it chose to not provide testimony or evidence at the scheduled hearing.

6. Accordingly, the State, having failed to meet its burden, is precluded from either referencing or offering evidence regarding the three alleged uncharged drug transactions.

NOW, THEREFORE, IT IS ORDERED, that Defendant’s motion *in limine* is ***Granted*** and that the State shall neither reference or offer evidence regarding the three uncharged incidents of May 16, 2014, May 20, 2014 and May 29, 2014.

/s/ Jeffrey J Clark

J.

JJC/dmd

oc: Prothonotary

cc: Gregory R. Babowal, Esq.

J’Aime L. Walker, Esq.

³ *Getz*, 538 A.2d at 734.