

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. 2012-1160

COMMONWEALTH

vs.

BRANDON WINSTON

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION *IN LIMINE* TO ADMIT DNA EVIDENCE AND  
COMMONWEALTH'S MOTION *IN LIMINE* TO EXCLUDE REFERENCE TO  
CONDOM FOUND IN WITNESS'S RESIDENCE AND DNA RESULTS

Brandon Winston ("the defendant") is charged with two counts of Indecent Assault and Battery on a person over fourteen, arising from an incident which occurred during the morning of January 15, 2011. Presently before the court are the defendant's Motion *in Limine* to Admit DNA Evidence and the Commonwealth's Motion *in Limine* to Exclude Reference to a Condom Found in the Residence of a Witness and to Exclude DNA Results from the Testing of that Condom.

The court has considered the written motions and memoranda submitted by the parties, and heard argument from the parties at a motion hearing on February 11, 2015. For the reasons stated below, the defendant's motion is ALLOWED, and the Commonwealth's motion is DENIED.

ANALYSIS

"It is long and well established that evidence tending to show a witness's bias, prejudice, or motive to lie is so significant that it is not considered a mere collateral matter but is deemed exculpatory evidence . . . ." Commonwealth v. O'Neil, 51 Mass. App. Ct. 170, 178 (2001); see Commonwealth v. LaVelle, 414 Mass. 146, 153 (1993) ("evidence of bias is almost never a collateral matter"). "Cross-examination of a prosecution witness to show the witness's bias or

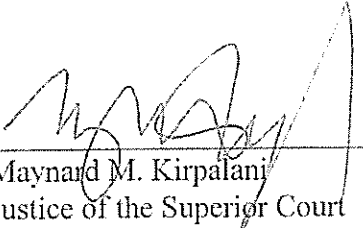
prejudice is a matter of right under the Sixth Amendment to the Constitution of the United States and art. 12 of the Declaration of Rights of the Commonwealth.” Commonwealth v. Avalos, 454 Mass. 1, 6-7 (2009), quoting Commonwealth v. Allison, 434 Mass. 670, 681 (2001). A defendant has the right to show that a material witness is biased through cross-examination or extrinsic evidence. See Commonwealth v. Aguiar, 400 Mass. 508, 513-514 (1987). However, it is within the judge’s discretion to determine whether the evidence demonstrates bias. See LaVelle, 414 Mass. at 153. A judge may limit such inquiries when they become redundant or when the defendant’s theory of bias is too tenuous or speculative. Commonwealth v. Tam Bui, 419 Mass. 392, 400-401, cert. denied 516 U.S. 861 (1995).

In the present case, the defendant argues that the condom and the DNA evidence should be admitted for the purposes of showing the bias of Kamilah Willingham (“Willingham”), the Commonwealth’s primary witness, against the defendant. This court agrees. On the night of January 18, 2011, Willingham and the defendant met at Cambridge Commons to discuss the incident at issue in this case. During that meeting, Willingham informed the defendant that she found the condom in her bathroom, and proceeded to ask him a number of questions regarding whether he had used the condom on the night of the alleged incident. The DNA evidence, however, later showed that the DNA found on the condom matched Willingham and an unidentified male, but did not match the defendant. This evidence is relevant, at a minimum, to demonstrate Willingham’s bias against the defendant, as the jury could infer that Willingham knew, at the time that she questioned the defendant about the condom, that the condom was not his. The jury could further infer that her questioning of the defendant was disingenuous. A theory of bias based upon such circumstances would not be so speculative as to prevent the introduction of the condom and the DNA evidence.

The Commonwealth's arguments to exclude the condom, the DNA evidence, and any reference thereto, are not persuasive. First, the Commonwealth argues that this evidence is not relevant to the crimes for which the defendant has been indicted. Second, the Commonwealth asks this court to extend the principle underlying the rape shield statute, G. L. c. 233 § 21B, to prevent an attack on Willingham's credibility by suggesting promiscuity, and that the probative value of such an attack on her credibility is far outweighed by the unfair prejudice to Willingham. Neither argument is availing. Relevance is not limited to the elements of a crime, but undoubtedly extends to the potential bias of the Commonwealth's key witness. See O'Neil, 51 Mass. App. Ct. at 178. Furthermore, the statutory protections of the rape shield law are not applicable to Willingham, as she is not a victim of the charged crimes. Nor are the principles underlying the statute's protections implicated, as the probative value of the condom and the DNA evidence to explore Willingham's potential bias outweigh the potential prejudice of implying promiscuity or otherwise to Willingham.<sup>1</sup>

**ORDER**

For the foregoing reasons, the defendant's Motion *In Limine* to Admit DNA Evidence is **ALLOWED**, and the Commonwealth's Motion *in Limine* to Exclude Reference to a Condom Found in the Residence of a Witness and to Exclude DNA Results from the Testing of that Condom is **DENIED**. SO ORDERED.

  
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Maynard M. Kirpalani  
Justice of the Superior Court

Dated: February 20, 2015

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<sup>1</sup> The court notes that defense counsel, at the motion hearing, assured the court and the Commonwealth that the defendant would not reference the condom or the DNA evidence in a manner to implicate Willingham's promiscuity.