

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIELLE DiSALVIO : CIVIL ACTION  
 :  
 v. :  
 :  
 LOWER MERION HIGH SCHOOL :  
 DISTRICT, :  
 et al. : No. 00-5463

MEMORANDUM ORDER

J.M. KELLY, J.

APRIL , 2002

The question of whether the term "Chester the Molester" (referred hereinafter as the "term") may be introduced in this trial has been extensively argued and briefed by both sides. Upon consideration of its probative value versus the danger of unfair prejudice, the Court concludes that the term should be precluded.

Federal Rule of Evidence 403 states, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." The Advisory Committee Notes to Rule 403 state:

The case law recognizes that certain circumstances call for the exclusion of evidence which is of unquestioned relevance. These circumstances entail risks which range all the way from inducing decision on a purely emotional basis, at one extreme, to nothing more harmful than merely wasting time, at the other extreme. Situations in this area call for balancing the probative value of and need for the evidence against the harm likely to result from its admission.

District courts have broad discretion to determine the admissibility of relevant evidence in response to an objection under Rule 403. Hurley v. Atlantic City Police Dep't, 174 F.3d 95, 110 (3d Cir. 1999).

The Advisory Committee Notes define "unfair prejudice" to mean "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." The Third Circuit further stated, it is unfairly prejudicial if it "appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish," or otherwise "may cause a jury to base its decision on something other than the established propositions in the case." Carter v. Hewitt, 617 F.2d 961, 972 (3d Cir. 1980). Courts should also consider the probable effectiveness or lack of effectiveness of a limiting instruction and the availability of other means of proof. See Advisory Committee Notes to Rule 403.

Plaintiff argues the Court should allow the introduction of the term for the following reasons: (1) the term is highly probative as to the issue of notice and damages; (2) the term is necessary for the impeachment of certain defense witnesses who will deny notice; and (3) the testimony regarding the use of the term will bolster evidence already introduced into the record by Plaintiff witnesses. The Court recognizes the probative value of the offered evidence to the Plaintiff's claims. However, Rule

403 is specifically designed for instances such as this where although the evidence may be probative, the danger of unfair prejudice substantially outweighs the probative value.

Here, the Court is satisfied that the reference of Russell as "Chester the Molester" will result in substantial unfair prejudice to the Defendants. The word "Molester" suggests an individual of sexual perversity and deviance, particularly of an individual who engages in indecent behavior towards young children, which is particularly abhorrent. Considering the feelings of disgust and outrage this word is likely to cause, a curative instruction to the jury is unlikely to be effective. Once the jury hears this phrase in connection with Russell, regardless of the purpose for which it is offered, Russell and the School Defendants will be unfairly prejudiced. Exclusion of this evidence will not unfairly disadvantage the Plaintiff, who has presented enough evidence by other means to support her claims and has other ways of impeaching defense witnesses and bolstering the credibility of her own witnesses. Accordingly, Plaintiff is precluded from introducing the term "Chester the Molester" at trial.

BY THE COURT:

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James McGirr Kelly, J.