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BARBARA A. WIEDENBEIN
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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff	:	**CASE NO. 2015 CR 000439**
vs.	:	**Judge McBride**
DAVID WILLIAM NEAL	:	**DECISION/ENTRY**
Defendant	:	

Scott C. O'Reilly, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103

Robert A. Herking, attorney for the defendant David William Neal, Rapp Law Office, One East Main Street, Amelia, Ohio 45102

This cause is before the court for consideration of two motions in limine filed on the 19th and 29th of October 2015. The court heard argument on the motions in limine on the 4th and 10th of November 2015. The court took the issues raised by the motions under advisement.

Upon consideration of the motions, the record of the proceeding, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE

The state of Ohio indicted the defendant David William Neal on two counts, which are (1) gross sexual imposition under R.C. 2907.05(A)(1), a felony of the fourth degree, and (2) sexual imposition under R.C. 2907.06(A)(4), a misdemeanor of the third degree.

The state alleges that on June 13, 2015, the defendant's 14-year-old biological daughter, K.C., was visiting the defendant at his home. Late that evening, the defendant and K.C. watched a movie together on his couch. The state alleges that the defendant rubbed K.C.'s feet, legs, and inner thighs, and then began to rub her vagina. When allegedly rubbing K.C.'s vagina, the defendant's hand was underneath K.C.'s shorts but over her underwear.

K.C. has revealed that, before the alleged sexual abuse by her father, when she was 12-13 years old, her cousin also sexually abused her. K.C.'s cousin entered her bedroom while she was sleeping at a relative's house and placed his fingers inside of her vagina. She awoke and told him to stop, which he did. After the incident of abuse, he continued to text K.C. to ask if he could touch her vagina again.

The crimes charged in the case at bar are not the defendant's first alleged sex offenses. In 1996, the defendant sexually abused his 14 year old babysitter, Devin Renner. The babysitter was preparing to leave after the defendant returned home to his five-year-old son. She was accompanied by a teenaged boy. The defendant gave the two teenagers alcohol and marijuana. He also instructed the teenaged boy to play a pornographic video while the babysitter, the teenaged boy, and his son were present.

During the course of the evening, the defendant kissed the babysitter's neck and breasts and rubbed her buttocks and legs. The defendant ultimately ejaculated on the couch. The defendant was convicted of two counts of sexual battery in relation to the 1996 sexual abuse incident.

STANDARD OF REVIEW

A motion in limine is a "precautionary request, directed to the inherent discretion of the trial judge," to limit the examination of witnesses or admission of certain evidence.[1] If the motion in limine is granted, it remains "a tentative, interlocutory, precautionary ruling by the trial court reflecting its anticipatory treatment of the evidentiary issue."[2] A motion in limine functions to "avoid error, prejudice, and possibly a mistrial."[3] The trial court retains broad the discretion to "change its ruling on the disputed evidence in its actual context at trial."[4] The admission or exclusion of evidence rests in the sound discretion of the trial court.[5]

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[1] *State v. Grubb* 28 Ohio St.3d 199, 201, 503 N.E.2d 142, (1986) quoting *State v. Spahr*, 47 Ohio App.2d 221, 353 N.E.2d 624 (2nd Dist. 1976).
[2] Id. at 201-202.
[3] Id. at 201.
[4] *State v. French*, 72 Ohio St.3d 446, 450, 650 N.E.2d 887 (1995).
[5] *State v. Sage*, 31 Ohio St.3d 173, 180, 510 N.E.2d 343, 31 O.B.R. 375 (1987).

LEGAL ANALYSIS

The defendant has been indicted on two counts, those being gross sexual imposition and sexual imposition. Ohio law criminalizes gross sexual imposition as such

> "(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies: (1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force."[6]

Gross sexual imposition is a fourth degree felony.[7]

As to the second count, the prohibition against sexual imposition provides:

> "(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies: * * * (4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person."[8]

Sexual imposition is a third degree misdemeanor.[9]

R.C. 2907.01(B) defines "sexual contact" as "any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person."

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[6] R.C. 2907.05(A)(1).
[7] R.C. 2907.05(C)(1).
[8] R.C. 2907.06(A)(4).
[9] R.C. 2907.06(C).

(A) DEFENDANT'S MOTION IN LIMINE TO EXCLUDE "OTHER ACTS"

The defendant has moved to exclude evidence surrounding his 1996 convictions for sexual battery on the basis that the incident constitutes an inadmissible bad act.

The trial court has broad discretion to decide whether to admit or exclude "other acts" evidence.[10] As a general rule, evidence that a defendant "committed a crime other than the one for which he is on trial is not admissible when its sole purpose is to show the accused's propensity or inclination to commit crime or that he acted in conformity with bad character."[11]

Admissibility of such evidence is "carefully limited because of the substantial danger that the jury will convict the defendant solely because it assumes that the defendant has a propensity to commit criminal acts, or deserves punishment regardless of whether he or she committed the crime charged in the indictment."[12] Because of these risks, exceptions established by rule or statute must be "strictly construed against admissibility."[13]

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[10] *State v. Ward*, 12th Dist. Clermont No. CA2013-07-059, 2014-Ohio-990, at ¶ 16. *See*, also, *State v. Powers*, 12th Dist. Clinton No. CA2006-01-002, 2006-Ohio-6547, ¶ 7, citing *State v. Craig*, 110 Ohio St.3d 306, 2006-Ohio-4571, ¶ 43 ("The admission or exclusion of relevant evidence rests within the sound discretio990n of the trial court.").
[11] *State v. Williams*, 134 Ohio St.3d 521, 2012-Ohio-5695, 983 N.E.2d 1278, ¶ 15. *See State v. Crotts*, 104 Ohio St.33d 432, 2004-Ohio-6550, 820 N.E.2d 302, ¶ 18, citing Evid.R. 404(B) ("Generally, extrinsic acts may not be used to suggest that the accused has the propensity to act in a certain manner."); *Ward*, 2014-Ohio-990 at ¶ 19 (holding same).
[12] *State v. Schaim*, 65 Ohio St.3d 51, 59, 1992-Ohio-31, 600 N.E.2d 661. *See State v. Dove*, 8th Dist. Cuyahoga No. 101809, 2015-Ohio-2761, ¶ 21 (Citation omitted.) ("A hallmark of the American criminal justice system is the principle that proof that the accused committed a crime other than the one for which he is on trial is not admissible when its sole purpose is to show the accused's propensity or inclination to commit crime.").
[13] *State v. Clemens*, 94 Ohio App.3d 701, 707, 641 N.E.2d 778 (12th Dist. 1994); R.C. 2907.05(E).

Under R.C. 2907.05(E), when the defendant's prior sexual activity does not involve "the origin of semen, pregnancy, or disease, [or] the defendant's past sexual activity with the victim," such evidence may only be admitted if it is admissible under R.C. 2945.59, which provides:[14]

> "In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant."

Evid.R. 404(B) similarly provides, in pertinent part:

> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

The Ohio Supreme Court recognizes that Evid.R. 404(B) is in accord with R.C. 2945.59, and both represent codifications of the common law prohibiting evidence of "other acts of evidence to prove a character trait in order to demonstrate that the defendant acted in conformity with that trait."[15] Both the statute and the rule provide exceptions to the general prohibition against "other acts."[16] Neither the rule nor the

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[14] *Clemens*, 94 Ohio App.3d at 707.
[15] *Williams*, 2012-Ohio-5695, at ¶ 16, citing *State v. Brown*, 40 Ohio St.3d 277, 281, 533 N.E.2d 682 (1988).
[16] *Williams* at ¶ 16.

statute require the "other act to be 'like' or 'similar' to the crime charged, as long as the prior act tends to show one of the enumerated factors."[17]

Notwithstanding their similarities, the rule and statute contain subtle but significant differences.[18] For the trial court to exercise its discretion under the statute, the other acts evidence must be "material," whereas the acts need not be under Evid.R. 404(B).[19] Notably, evidence of "motive, intent, scheme, or plan * * * is always material."[20]

A second distinction is that Evid.R. 404(B) affords the trial court the discretion to admit evidence of "other acts" that are used for "other purposes" that are not specifically delineated in the rule.[21] The Ohio Supreme Court has explained that the "standard for admitting other-acts evidence is not whether the evidence is necessary to prove an element of the offense."[22] Rather, the standard is whether the evidence pertains to one of the excepted reasons for using other-acts evidence.[23]

In the seminal case *State v. Williams*, 134 Ohio St.3d 521, 2012-Ohio-5695, 983 N.E.2d 1278, the Ohio Supreme Court enunciated a three part analysis to determine admissibility of "other acts" evidence.[24] Since then, the *Williams* test is "routinely applied in addressing challenges to the admissibility of 'other acts' evidence."[25]

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[17] *Ward*, 2014-Ohio-990, at ¶ 20.
[18] *Williams* at ¶ 16.
[19] Id. R.C. 2945.59.
[20] *Crotts*, 2004-Ohio-6550, at ¶ 18. The term "motive" means "a mental state which may induce an act." *State v. Craycraft*, 12th Dist. Clermont No. CA2009-02-013, CA2009-02-014, 2010-Ohio-596, ¶ 27, quoting *State v. Young*, 7 Ohio App.2d 194, 196, 220 N.E.2d 146 (1966).
[21] *Williams*, 2012-Ohio-5695, at ¶ 17.
[22] *Crotts*, 2004-Ohio-6550, at ¶ 18.
[23] Id.
[24] *Williams* at ¶ 19.
[25] *Ward*, 2014-Ohio-990, at ¶ 17, citing *State v. Freeze*, 12th Dist. Butler No. CA2011-11-209, 2012-Ohio-5840, ¶ 33.

First, the court considers "whether the other acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence" under Evid.R. 401.[26] Second, the court determines "whether evidence of the other crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other acts evidence is presented for a legitimate purpose, such as those stated in Evid.R. 404(B)."[27] Finally, the court considers "whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice" under Evid.R 403.[28]

In *Williams*, the defendant was convicted of rape, gross sexual imposition, and unlawful sexual conduct with a minor.[29] The victim was a 14-year-old boy that the defendant mentored at his church.[30] The trial court admitted evidence that the defendant had a similar relationship with a 16-year-old boy 11 years prior to that.[31] With respect to the 16-year-old, the defendant had coached him on the swim team.[32]

Regarding the first prong of the analysis, which is relevancy, the Court found the testimony relevant because it tended to show the defendant's motive, as well as his preparation and plan to target and groom teenage boys so that he could sexually abuse them.[33] The evidence showed that the defendant targeted teenage males who had no

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[26] *Williams* at ¶ 19.
[27] *Williams*, 2012-Ohio-5695, at ¶ 19.
[28] Id.
[29] Id. at ¶ 9.
[30] Id.
[31] Id. at ¶ 5.
[32] Id.
[33] Id. at ¶ 22.

father figure in order to gain the boys' trust and confidence.[34] The Court specifically noted that the testimony was additionally relevant because it spoke to whether the defendant's intent was sexual gratification, and it rebutted the defendant's suggestion that the victim had made false accusations with the hope of escaping trouble at school.[35]

As to the second step, without much additional explanation, the Court found that the evidence served a purpose other than showing the defendant acted in conformity with his character. [36] In so finding, the Court noted that the jury received a limiting instruction not to use the evidence to conclude the defendant acted in conformity with his character.[37] When a limiting instruction is given, the court presumes that "the jury has followed the instructions given to it by the trial court."[38]

The final inquiry is whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice.[39] Without much analysis, the Court determined that the trial court's instruction to the jury lessened the effect of the "other acts testimony," and it corroborated the victim's testimony about sexual abuse.[40]

The *Williams* framework governs this court's inquiry into determining whether evidence and testimony regarding the defendant's 1996 sexual abuse of a 14-year-old

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[34] Id. at ¶ 25.
[35] Id. at ¶ 22.
[36] *Williams*, 2012-Ohio-5695, at ¶ 23.
[37] Id.
[38] *Ward*, 2014-Ohio-990 at ¶ 36, quoting *State v. Jones*, 135 Ohio St.3d 10, 2012-Ohio-5677, 984 N.E.2d 948, ¶ 194.
[39] *Williams* at ¶ 24. The term "prejudice" means "simply to '[d]amage or detriment one's legal rights or claims." *Crotts*, 2004-Ohio-6550, at ¶ 23 quoting Black's Law Dictionary (8th Ed. 1999) 1218. "Unfair prejudice" is prejudice that is more than merely "adverse to a litigant's case." *Crotts* at ¶ 24.
[40] *Williams* at ¶ 24.

child is admissible. In reviewing the case law that has proliferated since *Williams*, the court has observed that the outcome of Evid.R. 404(B) inquiries are heavily fact specific. As the following cases illustrate, in some circumstances a fact may be the linchpin for concluding that one of the Evid.R. 404(B) exceptions is satisfied. Yet in other cases, similar facts may be insufficient to show that the evidence is proffered for a relevant and proper purpose.

In order to survive the first and second prongs of *Williams*, which are often reviewed in tandem, the 1996 sexual abuse must be relevant in one or more of the exceptions enumerated in Evid.R. 404(B), namely "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident," or another purpose other than to show that the defendant acted in conformity to his supposedly pedophilic, perverted character.

The state argued in its briefing that the 1996 incident is probative of the "defendant's motive, preparation, intent, lack of accident, and plan in targeting teenage girls for gratification."[41] In oral argument, the defense stated that the defendant will not be arguing that he accidentally touched K.C.'s vagina, and thus that cannot serve as the basis for admission.[42] The defendant instead contends he never touched her vagina.

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[41] Pl's. Resp. at pg. 3.

[42] In *State v. Pawlak*, 8th Dist. Cuyahoga No. 99555, 2014-Ohio-2014, the Eighth District held that evidence of prior sexual conduct was inadmissible to show lack of accident. The defendant was charged with sexually abusing multiple girls ages 8-12 years old. Id. at ¶ 76. The state sought to introduce evidence that the defendant had previously had sex with a 15-year-old girl to prove that his contact with the victims was intentional and not accidental. Id. at ¶ 78. However, the court would not admit the evidence because the defense was that he never touched the victims at all, as opposed to arguing he accidentally touched them. Id. Thus, the court determined that the only use for such evidence could be to show that the defendant liked to have sex with much younger women, and he acted in conformity with that character trait when molesting five minor girls. Id. at ¶ 79. *See State v. Smith*, 84 Ohio App.3d 647, 664, 617 N.E.2d 1160 (1992) (excluding evidence of other acts submitted for the purpose of showing lack

Moreover, there are no controversies regarding the identity of the defendant or his opportunity to sexually abuse his daughter, and therefore the identity and opportunity exceptions of R.C. 2945.59 and Evid.R. 404(B) cannot serve as bases for admittance either.

At oral argument, in discussing the defendant's motive and intent, the state argued that the 1996 incident is probative of whether the defendant receives sexual gratification or arousal from touching 14 year old girls. Notably, sexual gratification may be inferred when there is no innocent explanation for the touching, and direct evidence of sexual gratification is not required.[43] At oral argument defense counsel submitted that the defendant's theory is that he never touched K.C.'s vagina. However, he may argue the state has not met its burden to show sexual gratification.

In cases where the defendant disputes that touching the victim was for sexual gratification, courts have admitted other acts evidence to show the defendant's purpose, motive, or intent.[44] Moreover, evidence of motive and intent is "always material."[45]

Sexual gratification was at issue in *State v. Schaim*, 65 Ohio St.3d 51, 59, 1992-Ohio-31, 600 N.E.2d 661, in which the Ohio Supreme Court affirmed a conviction for gross sexual imposition involving the defendant's daughter.[46] The defendant regularly gave the victim backrubs, and on a single occasion he touched her buttock underneath

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of accident or mistake when the defense was that defendant never had sexual contact with the victims).

[43] *State v. Luxe*, 2nd Dist. Miami No. 2010 CA 30, 2012-Ohio-112, ¶¶ 20-21. *See State v. Goldblum*, 2nd Dist. Montgomery No. 25841, 2014-Ohio-5068, ¶ 17, quoting *State v. Wilson*, 192 Ohio App.3d 189, 2011-Ohio-155, 948 N.E.2d 515, ¶ 45 (11th Dist.) (holding same).

[44] *Williams*, 2012-Ohio-5695, at ¶ 22 (finding other acts evidence relevant to whether the defendant received sexual gratification, which is a necessary element for proving gross sexual imposition).

[45] *Crotts*, 2004-Ohio-6550, at ¶ 18.

[46] *State v. Schaim*, 65 Ohio St.3d 51, 56, 1992-Ohio-31, 600 N.E.2d 661.

her underwear.[47] The "other acts" evidence was testimony from the victim's older sister that she had also suffered sexual abuse by her father for years, which began with sexual fondling and escalated to vaginal intercourse.[48] Similar to the victim, the defendant's fondling of his older daughter began when she was a preteen, and he regularly gave her back rubs, which became a prelude to the sexual abuse.[49]

With regard to the victim, the defendant claimed that the touching of her buttock was not for his sexual arousal or gratification.[50] The Ohio Supreme Court found the older sister's testimony admissible for the limited purpose of showing the defendant had a "purpose of sexual gratification" when he touched the victim's buttock.[51]

Schaim is similar to this case in that the alleged abuse occurred in the context of a massage that led to an isolated incident of sexual contact. In *Schaim*, the older sister's testimony was relevant because it tended to prove that, for that particular defendant, a massage was a precursor to more sex acts, the likes of which were undeniably for his sexual gratification. The major distinction from this case is that the 1996 sexual abuse incident does not tend to show that the defendant uses massages as a tool to escalate sexual contact for the purpose of his sexual gratification or arousal.

A recent case from the Eighth District Court of Appeals dealt with "other acts" that were significantly different from the underlying crime, which is more akin to the situation in the case at bar. In fact, the court characterized the admissibility of "other acts" evidence to show the defendant's sexual motivation as an "extremely close case".

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[47] Id. at 53.
[48] Id. at 52.
[49] Id.
[50] Id. at 57.
[51] *Schaim* at 61. The Court ultimately found the evidence was sufficient to support the defendant's conviction for gross sexual imposition, although "barely so." Id. at 57.

In *State v. Dove*, 8th Dist. Cuyahoga No. 101809, 2015-Ohio-2761, the defendant was on trial for sexually abusing a 15-year-old babysitter by forcing her to have vaginal intercourse.[52] The "other act" at issue was the defendant's conviction from nine years before for unlawful sexual contact with a minor.[53] During the earlier sexual abuse incident, the defendant broke into a neighbor's home and was caught by the victim's mother performing oral sex on a sleeping 12-year-old.[54]

In applying the *Williams* test, the *Dove* court observed that the "other acts" evidence was only "marginally" relevant to the defendant's "sexual motivation."[55] As in the case at bar, in *Dove* the "essential question was whether the incident that [the victim] described occurred."[56] The court found the "other acts" evidence was not offered to show the defendant acted in conformity with his character, but rather for his motive, intent, or purpose.[57]

The trial court gave a limiting instruction on how to properly use the "other acts" evidence, which was adequate to protect against undue prejudice.[58] In summary, the court concluded that "although we find this to be an extremely close case, in light of the limiting instruction, the probative value of this evidence was not outweighed by the danger of unfair prejudice," and thus the "other acts" were admissible.[59]

Dove is similar to the instant case in that it involves two incidents of sexual abuse that are largely dissimilar and occurred under different circumstances. For example, the

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[52] *Dove* at ¶¶ 3-4.
[53] *Dove* at ¶ 27.
[54] Id. at ¶ 13.
[55] *State v. Dove*, 8th Dist. Cuyahoga No. 101809, 2015-Ohio-2761, ¶ 27.
[56] Id. at ¶ 27.
[57] Id. at ¶ 28.
[58] Id. at ¶ 29.
[59] Id.

Dove victims were different ages, they involved two different sex acts, they were nine years apart, and one event occurred via a break-in through a window while the victim slept while the other occurred with a baby sitter in the defendant's house.

In the instant case, the two sexual abuse incidents also have marked differences. For example, the 1996 incident involved drugs, alcohol, and pornography; the acts occurred in the presence of others; and the defendant ejaculated on the couch. By contrast, the alleged incident in 2015 did not occur in the hypersexualized context of drugs and pornography.[60] Rather, the 2015 incident was initiated by massaging, it involved different erogenous zones, and the victim was the defendant's blood relative.[61]

Evid.R. 404(B) and R.C. 2945.59 do not require "other acts" to be similar to the acts in the charged crime. However, cases with more similarities are noticeably more often cases where courts consider "other acts" to be pertinent to the defendant's sexual

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[60] By contrast, if alcohol was present in both instances, that would weigh in favor of deeming the 1996 incident admissible to show motive. For example, in *State v. Meeks*, 34 N.E.3d 382, 2015-Ohio-1527, ¶¶ 95-96 (5th Dist. 2015), the Fifth District Court of Appeals allowed prior acts testimony where the defendant had vaginal intercourse with two minors while he was sober and they were highly intoxicated, as it went to his motive, intent, or plan.

[61] Notably, standing alone, the fact that a defendant abused both relatives and non-relatives does not mean "other acts" are not probative of the defendant's intent, motive, or purpose. For example, in *State v. Goldblum*, 2nd Dist. Montgomery No. 25841, 2014-Ohio-5068, the defendant had molested his niece and his daughter's girlfriends during sleepovers at his home, and the victim involved in the charge was a daughter's girlfriend as well. Id. at ¶ 3. The court observed that the defendant exhibited a pattern whereby he would enter the room while the girls slept, pull the covers back, pull down the girls' pajama bottoms and underwear, and either gaze at them or insert his fingers or other objects into their vaginas. Id. The court found the evidence admissible under *Williams* because it assisted the trier of fact in determining the defendant's intent. Id. at ¶ 34. Similar to the present case, the abuse in *Goldblum* involved victims who were relatives and non-relatives. Thus, standing alone, the fact that a defendant abuses both relatives and non-relatives does not necessarily mean that the "other acts" are not probative of the defendant's intent or motive. However, unlike the case at bar, the incidences in *Goldblum* occurred numerous times with numerous victims and were almost all factually identical. They all involved sleepovers, pulling down the girls' pajama bottoms in their sleep, and gazing at them or penetrating their vaginas with his fingers or objects. Further, the victim in *Goldblum* was not a relative and most of the "other acts" similarly involved non-relatives, with the exception of the niece.

motivation or intent.[62] *Dove* is a noteworthy exception to that trend because it involved dissimilar situations, and yet the court allowed "other acts" to be admitted when they were only "marginally" relevant to the defendant's sexual motivation.

By comparison to the present case, the 1996 incident is even less probative of the defendant's sexual motivation or intent for his alleged sexual contact with his daughter in 2015. While there were many factual differences involved in *Dove* between the first and second instances of sexual abuse, the acts were only nine years apart. As discussed, the instant case has many differences from the 1996 incident, and it additionally involves an almost 20 year time gap.[63]

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[62] In fact, sometimes even when the facts are very similar, they still may not sufficiently show motive, intent, or purpose. For instance, recently the First District Court of Appeals in *State v. Cobia*, 1st Dist. Hamilton No. C-140058, 2015-Ohio-331, prohibited evidence of "other acts" to prove motive. In *Cobia* the defendant coerced a 17-year-old to have sex with him while impersonating a police officer. Id. at ¶ 1. Six years earlier, the defendant had coerced a woman to have sex with him by alleging he was a police officer. Id. at ¶ 2. The state argued that the earlier incident was admissible for motive. Id. at ¶¶ 18-19. The court rejected motive as a basis because the "2004 crime didn't suggest a motive or intent for the crime in 2013—it didn't show why he might have committed the crime; it simply showed that he had committed a similar crime in the past." Id. at ¶ 19. Hence, even when "other acts" seem to closely parallel the present crime, they still may be inadequate to demonstrate motive. These cases underscore how factually dependent each case is in determining relevancy and admissibility under R.C.2945.59 and Evid.R. 404(B).

[63] *See State v. Strobel*, 51 Ohio App.3d 31, 38, 554 N.E.2d 916 (3rd Dist. 1988) (excluding prior sexual acts that occurred 26 and 13 years before the trial, for although some similarities existed between the acts, significant differences also existed, including the type of the abusive conduct). There are rare instances where a 20 year gap between the "other acts" evidence and the acts at issue is deemed permissible due to the strong similarities between the cases, such as in *State v. Herrington*, 8th Dist. Cuyahoga No. 101322, 2015-Ohio-1820. Immediately before the sexual abuse occurred, the defendant would take his victims, teenaged girls, for "driving lessons." Id. at ¶ 33. The court found the evidence was presented for the legitimate purpose of collectively demonstrating the defendant's motives, preparation, and plan. Id. Because the trial court issued a limiting instruction to the jury, the prejudicial effect did not substantially outweigh the probative value of the evidence. Id. at ¶ 34. *See also State v. Murray*, 8th Dist. Cuyahoga No. 91268, 2009–Ohio–2580, ¶ 24 (finding 17 years between the two incidents did not render the other acts evidence inadmissible due to the "strong similarities between the incidents").

The state argues that the 1996 incident is probative of the defendant's intent to sexually gratify himself by sexually abusing 14-year-old girls.[64] The state further highlights that the defendant had control over both alleged victims. In 1996 he used drugs and alcohol on his babysitter, and the 2015 incident involves his daughter, thereby affording him inherent control over her as her parent.[65]

While it is true that both victims were 14 during the alleged sexual abuse, that is the sum total of similarities. First, the settings were very different. In 1996 the defendant played pornographic material and the abuse occurred with a teenage boy and his son present. In 2015 the defendant was alone with K.C. and no pornography was present. Second, the sex acts themselves are different. In 1996 the defendant kissed the babysitter's neck and breasts and rubbed her buttocks and legs. In 2015 the defendant allegedly touched K.C.'s vagina. Third, the defendant's strategies to sexually abuse the victims differ. In 1996, the sexual abuse was facilitated by giving the babysitter alcohol and marijuana. In 2015, the defendant used a massage to facilitate the alleged sexual contact. Fourth, the defendant did not openly ejaculate in the 2015 incident. Fifth, the present case involves incest. Sixth, the level of control over the victims is different. While the defendant certainly has control of K.C. as her parent, it is a much higher degree of control than the control he has over a babysitter who is about to leave. Finally, a nearly 20 year time span separates the two incidents.

Due to these numerous differences, the defendant's obvious intent or motive to sexually gratify himself in the 1996 incident is only marginally probative, at most, of whether the alleged contact with his daughter was likewise done with intent or motive to

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[64] Pl's. Resp. at pg. 3.
[65] Pl's. Resp. at pgs. 3-4.

sexually gratify himself. Even if the court finds that the first two steps from *Williams* are satisfied – (1) the "other acts" are relevant (albeit minimally) and (2) motive and intent are recognized exceptions under Evid.R. 404(B) and R.C. 2945.59 – the evidence fails at the third step of *Williams*.

The final inquiry under *Williams* is whether the probative value of the "other acts" is substantially outweighed by the danger of unfair prejudice. The court finds that it is. The 1996 incident is highly inflammatory because it involved pornography, alcohol, drugs, the presence of a small child, touching and kissing of different erogenous zones, and ejaculating on a couch.

Upon learning this, it will be tempting for the jury to conclude that the defendant is guilty in this case because he is a pedophilic pervert who acted in conformity with that character trait. In other words, the defendant acted like a pedophilic pervert in 1996, and thus he must have touched his daughter's vagina in 2015. That is the very type of logic that Evid.R. 404(B) and R.C. 1945.59 seek to prevent. Therefore, even if the 1996 "other acts" are slightly probative of the defendant's intent or motive, their de minimis value is substantially outweighed by the risk of unfair prejudice. As such, the 1996 convictions for sexual battery and the facts surrounding them are inadmissible to show motive or intent.

Because the 1996 sexual abuse incident cannot be admitted on the basis that it is probative of motive or intent, there are two remaining bases for admission that the state argued. Specifically, the state posited that the 1996 incident is relevant to the

defendant's plan or preparation to target teenage girls for his sexual gratification.[66] The argument that the "other acts" tend to prove the defendant's plan or preparation fails for reasons similar to the reasons they fail to prove motive or intent.

In addition to motive, the *Williams* Court held that testimony of "other acts" was relevant to and probative of the defendant's preparation or plan to sexually abuse teenage boys that he mentored.[67] The defendant's preparation and plan was to target and groom teenage boys so that he could sexually abuse them.[68] The evidence showed that the defendant targeted teenage boys who had no father figure in order to gain the boys' trust and confidence and prepare them for sexual activity.[69]

The recently decided case of *State v. Meeks*, 34 N.E.3d 382, 2015-Ohio-1527, ¶¶ 95-96 (5th Dist. 2015), also provides a helpful illustration of "other acts" probative of a defendant's preparation or plan. In *Meeks*, the defendant had vaginal intercourse with two minors while he was sober and they were highly intoxicated.[70] Furthermore, in both assaults the defendant helped facilitate the victims' intoxication, he separated and isolated the victims, and he engaged in vaginal intercourse with them when they were in

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[66] Pls. Resp. at pg. 3. The state also argues that the "other acts" are relevant to lack of accident or mistake. As discussed, the defendant's lack of accident or mistake is irrelevant because he does not argue that he touched K.C.'s vagina accidentally or mistakenly.
[67] *Williams*, 2012-Ohio-5695.
[68] *Williams*, 2012-Ohio-5695, at ¶ 22. For additional plan or preparation examples, *see State v. Powers*, 12th Dist. No. CA2006-01-002, 2006-Ohio-6547, ¶¶ 14-15 (other acts evidence was permitted as evidence of the defendant's "plan or preparation" where, although the acts were 7-8 years apart, they shared several common facts. Both victims were roughly the same age, both would spend the night at the defendant's home, and the defendant would perform sexual conduct orally and with his hands on the victims). *But see Strobel*, 51 Ohio App.3d at 38 (excluding prior sexual acts that occurred 26 and 13 years before the trial, for although some similarities existed between the acts, significant differences also existed, including the type of the abusive conduct).
[69] *Williams* at ¶ 25.
[70] *Meeks*, 2015-Ohio-1527, at ¶¶ 95-96.

and out of consciousness.[71] As such, the court found that the circumstances surrounding each rape "are relevant in making it more likely appellant had sex with an unwilling intoxicated victim."[72] Consequently, evidence that the defendant had non-consensual, intoxicated sex with a girl prior to the alleged rape he was charged for was admissible to show the defendant's plan or scheme.[73]

The evidence supporting the defendant's "preparation or plan" in *Williams* and *Meeks* is dissimilar to the facts of the present case. As discussed, the context of the two incidents are different from one another in that in 1996 the defendant used drugs, alcohol, and pornography in order to sexually abuse a 14 year old minor, and he did so in the presence of another male teenager and his five year old son. In the alleged 2015 incident, the defendant transitioned into the sexual contact by giving his daughter a massage while they were alone in his house.

In addition to different contexts, the types of victim in the 1996 and alleged 2015 incidents are different. While both victims were 14 years old, one is the defendant's daughter and the other is a non-blood relation. The state highlights that in both incidents the defendant targeted minor girls whom he was in a position of authority over. This is true in a general sense, but as discussed, the authority the defendant may exercise over a non-relative babysitter is surely less than the authority he maintains over his own child.

The case of *Stave v. Ceron*, 8th Dist. Cuyahoga No.99388, 2013-Ohio-5241, demonstrates how the difference in the type of target can render "other act" evidence irrelevant to the defendant's plan or preparation. In *Ceron*, the court held that prior sex

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[71] Id.
[72] Id. at ¶ 95.
[73] Id. at ¶ 97.

acts were not permitted to show, among other things, the defendant's plan or preparation. The criminal charge alleged the defendant climbed on top of his sleeping five year old granddaughter, pulled down her pants, and digitally penetrated her.[74]

The state attempted to introduce evidence that a few years before, the defendant had attempted to pull down the pants of an adult family member while she slept.[75] The court explained that the defendant's conduct did not constitute a "unique behavioral footprint" sufficient to show a plan or scheme because there is a "'fundamental difference' between a man desiring to engage in sexual activity with an adult, whether appropriate or not, and desiring sexual contact with a very young child."[76] Consequently, there was no legitimate purpose for the "other acts" evidence, and it was found inadmissible.[77]

The "other acts" evidence in *Ceron* was irrelevant to the defendant's plan or preparation in the charged crime because his targeted victims were very different. As the court phrased it, there is a fundamental difference between trying to sexually abuse an adult and trying to abuse a child. The targets in the present case were both 14, however they are significantly different targets because K.C. is the defendant's own daughter. Incest may or may not rise to the level of a "fundamental difference," but it is, at the very least, a major distinction between the 1996 and 2015 victims. Coupled with the fact that the defendant executed the alleged sexual abuses using different strategies

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[74] *Stave v. Ceron*, 8th Dist. Cuyahoga No.99388, 2013-Ohio-5241, ¶ 8.
[75] *Ceron* at ¶ 89.
[76] *Ceron*, 2013-Ohio-5241, at ¶ 89. A similar result was reached in *State v. Morris*, 985 N.E. 274, 2012-Ohio-6151, ¶ 22 (9th Dist.) where the Ninth District excluded evidence that the defendant had drunkenly propositioned the victim's sister for sex because the adult sister was seven years older than the victim. The events were not "idiosyncratic" enough to be considered part of a plan or scheme to commit multiple assaults on the younger sister. Id. at ¶¶ 22-24.
[77] *Ceron* at ¶¶ 92, 94-95.

and in different contexts, the court cannot conclude that the 1996 incident is probative of the defendant's plan or preparation to sexually abuse his daughter in 2015. For the foregoing reasons, the defendant's motion to exclude evidence regarding his 1996 convictions for sexual battery is granted.

(B) STATE'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF K.C.'S MEDICAL CARE AND PSYCHOLOGICAL TREATMENT

The state moved to exclude evidence of and reference to any individual involved with the medical or psychological treatment of K.C., including but not limited to Dr. Joseph Cresci and employees of Beech Acres. In the defendant's response and during oral argument on this issue, the defendant clarified that he does not intend to introduce this evidence, with one exception. The defendant wants to introduce evidence from a medical report discussing prior sexual abuse of K.C. by a cousin. Specifically, when K.C. was 12-13 years old, her cousin entered her bedroom while she slept at a relative's house and placed his fingers inside of K.C.'s vagina.

In his response, the defendant argues that such evidence tends to show the knowledge of the victim based upon this prior act.[78] During oral argument on this matter, the defendant additionally asserted that such evidence is admissible to, in essence, impeach K.C.'s reputation for truth telling. His specific argument for relevance is that the allegation involving the cousin is very similar to the one involving the defendant, and the incident with the cousin was fabricated, tending to show that K.C. has the ability to fabricate a new but false sexual abuse allegation against the

[78] Def's. Resp. at pgs. 2-3.

defendant. However, the defense conceded that it is unknown whether the abuse by the cousin is, in fact, a fabrication.

The Ohio Rape Shield Law "prohibit[s] the introduction of any extrinsic evidence pertaining to past sexual activity by the alleged victim or defendant."[79] Such evidence is inadmissible unless the "trial court determines it is material to a fact at issue and that its prejudicial nature does not outweigh its probative value."[80] Moreover, "[e]vidence of unrelated incidents of sexual abuse is typically inadmissible."[81] Further, instances of past sexual activity "offered simply to impeach the credibility of the victim" are "clearly" inadmissible.[82]

The four exceptions to the law are for the origin of semen, pregnancy, or disease, or of the victim's past sexual activity with the accused.[83] Ohio's Rape Shield Law is codified in R.C. 2907.05(E), which provides:

> "Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value."

It is well established that due process affords the accused the "right to confront and cross-examine witnesses."[84] In determining whether the Ohio Rape Shield Law has

[79] *State v. Guthrie*, 86 Ohio App.3d 465, 467, 621 N.E.2d 551 (12th Dist. 1993).
[80] *Guthrie* at 467, citing *State v. Leslie*, 14 Ohio App.3d 343, 14 O.B.R. 410, 471 N.E.2d 503 (1984).
[81] *State v. Spaurer*, 12th Dist. Warren No. 04CR21626, 2006-Ohio-1146, ¶ 20, citing *State v. Guthrie*, 86 Ohio App.3d 465, 467 (1993).
[82] *State v. Ferguson*, 5 Ohio St.3d 160, 164-65, 450 N.E.2d 265, 5 O.B.R. 380 (1983).
[83] *Guthrie*, 86 Ohio App.3d at 467.

been unconstitutionally applied in a particular case, the court must "balance the state interest which the statute is designed to protect against the probative value of the excluded defense."[85]

The Ohio Rape Shield Law furthers multiple state interests: guarding the victim's sexual privacy, protecting the victim from undue harassment, discouraging the tendency to try the victim rather than the accused, encouraging the reporting of sexual offenses, excluding unduly inflammatory and prejudicial evidence that would prove only minimally probative, and assisting in the truth finding process.[86]

In dealing with the victim's prior sexual conduct, the Supreme Court of Ohio has advised that "[t]he key to assessing the probative value of the excluded evidence is its relevancy to the matters as proof of which it is offered."[87] "It is within sound discretion of the trial court to determine the relevancy of evidence in a rape prosecution and to apply Ohio's rape shield law in a manner which best meets the purpose behind the statute."[88] Notwithstanding this discretion, "where the contested evidence is submitted merely to impeach the victim's credibility, such evidence is prohibited by the rape shield law."[89]

The Twelfth District Court of Appeals has addressed the admissibility of evidence showing that the victim had previously been sexually abused in *State v. Guthrie*, 86 Ohio App.3d 465, 621 N.E.2d 551 (12th Dist. 1993). In *Guthrie*, the defendant was

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[84] *State v. Gardner*, 59 Ohio St.2d 14, 16-17, 391 N.E.2d 337, 13 O.O.3d 8 (1979). *State v. Stoffer*, 7th Dist. Columbiana No. 09-CO-1, 2011-Ohio-5133, ¶ 90 (holding same).
[85] *Gardner* at 17. *See State v. Hennis*, 2nd Dist. Clark No. Civ.A.2003 CA, 2005-Ohio-51, ¶ 48 (stating that the trial court must balance the interests furthered by the Ohio Rape Shield Law with the probative value of the evidence).
[86] *Gardner*, 59 Ohio St.2d at 17-18. *See Stoffer*, 2011-Ohio-5133, at ¶ 90 (holding same).
[87] *Gardner* at 18.
[88] *Guthrie*, 86 Ohio App.3d at 467.
[89] Id. at 467 citing *Ferguson*, 5 Ohio St.3d 160. *See Gardner* at 18 (finding the trial court did not err in excluding evidence of the victim's sexual reputation and specific prior sexual conduct when such evidence was only offered to impeach her credibility).

charged with, among other counts, gross sexual imposition for abusing three children.[90] The children had been previously abused by another individual, and no criminal charges had been brought.[91]

The defendant argued that such evidence was admissible for the "purpose of showing an alternative explanation for the children's sexual knowledge."[92] The court rejected the defendant's argument, instead holding that the "trial court's decision to refuse to admit evidence of the children's prior allegations of sexual abuse does not conflict with relevant Ohio law nor is it an abuse of the trial court's discretion."[93] Indeed, the Ohio Rape Shield Law "does not provide for impeachment of reputation for truth-telling by evidence of a victim's past sexual conduct which tends to show that she may have the ability to fabricate a new but fictitious story."[94] The court further concluded that such evidence was not material to a fact at issue.[95]

In support of admitting evidence of K.C.'s prior sexual abuse, the defendant cites to two cases from other districts, the first of which is *State v. Stoffer*, 7th Dist. Columbiana No. 09-CO-1, 2011-Ohio-5133. The victim in *Stoffer* was seven years old.[96] The defendant had abused the victim by kissing her mouth and chest, by touching her vagina, by having her touch his penis over his clothing, and by taking naked photos of her.[97] The year before, the victim had been inappropriately touched by

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[90] *Guthrie* at 466.
[91] Id. at 466-67.
[92] Id. at 466.
[93] *Guthrie* at 468.
[94] Id. quoting *State v. Tomlinson*, 33 Ohio App.3d 278, 280, 515 N.E.2d 963 (1986).
[95] *Guthrie* at 468.
[96] *Stoffer*, 2011-Ohio-5133, at ¶ 2.
[97] Id. at ¶¶ 6-7, 10.

another child at school.[98] The defendant wanted to introduce the prior abuse at the school because it was of the same nature and occurred around the same time as the charges in his case.[99]

Upon reviewing the legislative intent of the Ohio Rape Shield Act, the Seventh District Court of Appeals concluded that the law only applied to past consensual activity of the victim and not prior sexual abuse of the victim.[100] Notwithstanding this conclusion, the court held that the evidence of prior sexual abuse was irrelevant and inadmissible.[101] The prior abuse was irrelevant because the prosecutor never suggested that the victim's age-inappropriate sexual knowledge proved that the victim was telling the truth.[102]

The defendant also cites to *In re Michael*, 119 Ohio App.3d 112, 118, 694 N.E.2d 538 (2nd 1997), to further support admitting evidence of K.C.'s prior sexual abuse. The victim in *In re Michael* was eight years old, and the sexual abuse acts at issue included oral and anal sex, which the child was able to graphically describe in detail.[103] An expert testified that the child's advanced knowledge of sexuality indicated that he had been sexually abused.

The defendant argued that evidence that the victim's prior sexual abuse was relevant to his defense because it would show that the victim's advanced sexual knowledge was not the result of the defendant abusing the victim.[104] The court reasoned that a young child could not have described the sex acts such as he did

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[98] Id. at ¶ 11.
[99] Id. at ¶ 86.
[100] Id. at ¶ 98.
[101] *Stoffer* at ¶ 101.
[102] Id.
[103] *In re Michael*, 119 Ohio App.3d 112, 116-117, 694 N.E.2d 538 (2nd Dist. 1997).
[104] Id. at 120.

unless the acts had actually occurred.[105] As such, the prior abuse was material to the defendant's defense that there was an alternative cause for the child to have such advanced sexual knowledge. The Second District Court of Appeals found that evidence of prior sexual abuse may be probative when a victim is of such a young age that his or her knowledge of sexuality was inappropriate.[106] In such a limited circumstance, the Ohio Rape Shield Law does not apply.

Although the Ohio Rape Shield Law was held inapplicable, the *In re Michael* Court still found the trial court was correct in prohibiting the defense from cross examining the victim about the prior sexual abuse.[107] The court puzzled that it failed "to see how admission of prior sexual abuse to test the accuracy and truthfulness of [the victim's] testimony is for a more important purpose than mere impeachment of [the victim's] credibility."[108] Accordingly, the court held that evidence of the victim's prior sexual abuse was inadmissible for impeachment purposes.[109] Moreover, the court noted that allowing such a cross examination of the child could "frustrate the goals behind the rape shield statute by exposing [the victim] to undue harassment," which is especially important in cases dealing with testifying children victims.[110]

In *State v. Hennis*, 2nd Dist. Clark No. Civ.A.2003 CA 21, 2005-Ohio-51, ¶ 2, a teenage victim accused her adoptive mother's husband of sexually abusing her. At the trial, the defendant sought to introduce evidence that the victim, who was in high school,

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[105] Id. at 121.
[106] Id.
[107] *In re Michael*, 119 Ohio App.3d at 123.
[108] Id.
[109] Id.
[110] Id.

previously accused her uncle of sexual abuse.[111] The Second District Court of Appeals affirmed the trial court's decision to exclude the evidence, concluding that, unlike the eight year old victim in *Michael*, the victim in *Hennis* was old enough that her sexual knowledge alone was not evidence that the defendant had sexually abused her.[112] As such, the court could find no purpose for admitting evidence that the victim had previously been sexually abused "other than to impeach her credibility."[113] The court concluded that the victim's credibility was not a "sufficiently probative rationale for overcoming the Rape Shield Law."[114]

In the instant case, the defendant wants to introduce evidence that the victim, K.C., had previously accused a cousin of sexually abusing her on one occasion. The previous allegation has not been investigated or prosecuted. In his briefing the defendant argues that such evidence is not protected by the Ohio Rape Shield Law and tends to show K.C.'s knowledge based upon the prior sexual abuse.[115] During oral argument, the defendant additionally asserted that such evidence is admissible to impeach K.C.'s credibility.

Evidence regarding K.C.'s prior sexual abuse by her cousin is inadmissible in this case. Unlike the victims in *In re Michael* and *State v. Stoffer*, which the defendant relies upon, K.C. is not an eight year old but a 14 year old. In this regard, this case is akin to *State v. Hennis*, where prior sexual abuse was excluded as irrelevant due to the child's older age. As in *Hennis*, K.C. is a teenager, and thus her sexual knowledge does not have any tendency to make the existence of any fact that is of consequence to the

[111] *State v. Hennis*, 2nd Dist. Clark No. Civ.A.2003 CA 21, 2005-Ohio-51, ¶ 45.
[112] Id. at ¶ 50.
[113] Id. at ¶ 52.
[114] *Hennis* at ¶ 52.
[115] Defs. Resp. at pgs. 2-3.

determination of the whether her father touched her vagina more or less probable.[116] While it is clearly age-inappropriate for an eight year old to describe oral and anal sex in graphic detail, the same cannot be said of a 14 year old who articulated that her father touched her vagina over her underwear. In other words, the jury cannot infer that because K.C. knew of and described vaginal touching she therefore must have experienced vaginal touching at some point.

The irrelevancy is further buttressed by the social worker report regarding K.C., which states that she is a "developmentally/age appropriate 14 y.o." For this reason, the court is unable to conclude that evidence of prior sexual abuse "is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value."[117]

The second reason that evidence of K.C.'s prior sexual abuse must be excluded is because it is improper for the defense to impeach the victim's credibility based on prior sexual abuse.[118] Ohio law has consistently held that the Ohio Rape Shield Law does not permit such impeachment. As the Twelfth District Court of Appeals has explained, the Ohio Rape Shield Law "does not provide for impeachment of reputation for truth-telling by evidence of a victim's past sexual conduct which tends to show that she may have the ability to fabricate a new but fictitious story."[119]

Furthermore, there is simply no proof that the victim lied about being abused by her cousin. Thus, even if it was permissible for the defendant to impeach K.C.'s credibility with prior sexual abuse, the jury would be in a position where it would need to

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[116] Evid.R. 401.
[117] R.C. 2907.05(E).
[118] *See Ferguson*, 5 Ohio St.3d at 164-65; *Gardner*, 59 Ohio St.2d at 18; *Guthrie*, 86 Ohio App.3d at 468; *In re Michael*, 119 Ohio App.3d at 123; *Hennis*, 2005-Ohio-51, at ¶ 52.
[119] *Guthrie* at 468, quoting *Tomlinson*, 33 Ohio App.3d at 280.

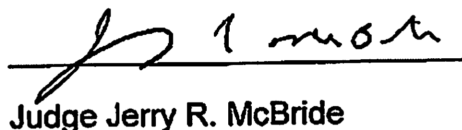
improperly speculate whether K.C. lied about the incident with her cousin. For these reasons, and in accordance with *State v. Guthrie*, the court grants the state's motion to exclude evidence that K.C. was previously sexually abused because it is irrelevant to the determination of whether her father abused her, and it could only serve to improperly impeach her credibility.

CONCLUSION

For the foregoing reasons, the defendant's motion to exclude evidence and testimony regarding the defendant's 1996 convictions for sexual battery is well-taken and granted. The state's motion to exclude evidence and testimony regarding K.C.'s medical and psychological treatment as it relates to prior sexual abuse is well-taken and granted.

IT IS SO ORDERED.

DATED: 11-30-15



Judge Jerry R. McBride