

# ***Centre Daily Times*** (State College, PA)

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## **Trial to Test Legal Waters: Judge to Allow Groundbreaking Testimony in Assault Case**

By Pete Bosak, The Centre Daily Times

[Apr. 21 – BELLEFONTE ] – A Centre County judge ruled Friday that he will allow a legally groundbreaking prosecution of a man accused of raping a woman who police said the man beat up seven times prior by allowing testimony from an expert on “counterintuitive behavior” by domestic violence victims.

Centre County Judge Bradley P. Lunsford said he will allow a jury to hear evidence of James A. Green’s prior assaults on the woman and limited expert testimony as to the issue of consent regarding domestic violence victims.

“The victim’s behavior may not only be difficult for a juror to understand, but also it defies common sense,” Lunsford wrote in his opinion and order.

This approach, which the defense argues will prejudice the jury, has never been done before in Pennsylvania, according to the judge and involved attorneys.

“I know this hasn’t been done,” Centre County Assistant District Attorney Steve Sloane said. “But we need to try. It’s a new day in Pennsylvania for victims of domestic violence.”

The latest assault is one of eight incidents in a 12-month span in which Green was accused of beating the same woman, who kept going back to the man despite his history, Sloane said.

Lunsford ruled, despite defense objections, that Green’s “prior bad acts” are admissible, as they can show his state of mind and perhaps his intent to harm the alleged victim in the case at hand.

Green faces rape and kidnapping charges in connection with an incident that allegedly occurred in September at his Philipsburg home while he was on work release from Centre County jail. According to court documents, Green contacted the woman, and she met him at his home. When she got there, Green shut the garage door and threatened her before assaulting and raping her, police said.

Green returned to prison that same day – on a previous conviction of beating the woman.

The decision came after a sometimes contentious two-hour hearing Thursday in which Lunsford peppered both sides' attorneys with probing questions on case law as to the commonwealth calling an expert on domestic violence. The judge said, if the prosecution would move forward, he wanted to assure a conviction would withstand the guaranteed appeal to higher courts.

"I'm with you on wanting to do this," Lunsford told Sloane at one point. "But if we are going to do this, we are going to do this right."

Sloane plans to call State College police Detective Dierdri Fishel as an expert witness on domestic violence and the "counterintuitive behavior" that is normal for such victims, but likely would be incomprehensible to a jury.

Sloane fears a jury, with no knowledge of the behavior of domestic violence survivors, will blame the victim for repeatedly going back to her alleged abuser when her behavior can be explained through research and the practical experience of experts such as Fishel.

"The average person, even a police officer, the average person looks to make sense of this through their own experience," Fishel testified during a pre-trial hearing Thursday. "If they have not experienced domestic violence, they have no way to do that."

Victims often feel trapped, perhaps because of having children with the abuser or a mortgage, and convince themselves the batterer is going to change, Fishel said.

"The victim learns what would be acceptable behavior to avoid the abuse," Fishel said.

Sloane equated this with trying to "find a safe place in a mine field."

But Green's defense attorney, Centre County Assistant Public Defender Parvis Ansari, said allowing testimony from Fishel will prejudice the jury against his client to the point he cannot receive a fair trial.

Lunsford agreed with Ansari to an extent and ruled Fishel cannot testify about common domestic violence victim behavior as to reporting abuse and cooperating with police. She also may not testify about whether the alleged victim's behavior in this case matches that of known victims of domestic violence, Lunsford ruled.

Ansari said this type of prosecution has never been allowed by Pennsylvania courts for a reason.

"This is about two people, one incident, and was it consensual or not," said Ansari. "There is something to be said for fairness and due process."

Sloane said he needs Fishel as an expert because he predicts Ansari will attack the alleged victim's credibility by pointing out to a jury that she knew Green was out of jail on work release when he called her to come over to his home -- but she went anyway.

“(Green’s) created this woman, and now he’s going to use that against her,” Sloane said in arguing for his prosecution to be allowed. “He’s going to throw gas on that fire, and I have nothing to put it out with.”

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