Evidence of Past Child Abuse Admissible for Substantive Reasons in International Kidnapping Case

In *United States v. Rizvanovic*, 572 F.3d 1152 (2009), the 10th Circuit found that a defendant’s prior acts of child abuse had material relevance to the defendant’s present kidnapping charge. Because of this independent basis of relevance, the 10th Circuit upheld the introduction of extrinsic evidence to prove the prior incidents of child abuse.

Under Fed. R. Evid. 608(b), the introduction of extrinsic evidence is not permitted for the sole purpose of impeaching a witness’s credibility. However, as the 2003 Amendments to Rule 608(b) clarify: “the absolute prohibition on extrinsic evidence applies only when the sole reason for proffering that evidence is to attack or support the witness’ character for truthfulness.”

In *Rizvanovic*, the defendant was convicted of international kidnapping. The mother had previously been awarded custody when she left the defendant and went to a shelter, taking the children with her. In the custody hearing, the judge found that the defendant had abused both the mother and the children and awarded the mother sole custody. When the defendant was allowed his first overnight visit with the children, he took them to Australia for three weeks and was arrested before boarding a flight to Macedonia.

During his trial for international kidnapping, the defendant admitted the kidnapping but claimed an affirmative defense—that he was rescuing the children from their abusive mother. During cross-examination the prosecutor asked the defendant about the custody court’s finding that he had abused the children. When he claimed not to remember, the prosecutor showed the defendant the court order.

On appeal, the defendant argued that the trial court erred in permitting the prosecutor to introduce the court order because Fed. R. Evid. 608(b) prohibits a prosecutor from using extrinsic evidence of a specific instance of conduct in order to attack a witness’s character for truthfulness during cross examination. Under this rule, the prosecutor must accept the witness’s answer and not introduce evidence to disprove it.

The *Rizvanovic* court found that attacking the witness’s character for truthfulness was not the sole reason for introducing the evidence. Since the defendant’s claimed motive was to protect his children from abuse, evidence that he had abused them went directly to disprove his stated motive.

Evidence that goes to a substantive issue such as intent is not barred under Rule 608(b). As the 10th Circuit held: “Rule 608(b) does not bar extrinsic evidence to the extent that it goes to substantive issues, and here the rebuttal evidence tended to disprove Defendant’s affirmative defense that he took the children to free them from domestic violence.”

Therefore, since the court order went to disprove the substantive issue of motive, it was not barred by Rule 608(b).

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2. *Rizvanovic*, 572 F.3d at 1155 n.1