

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	
	:	
v.	:	<b>No. 1061-2008</b>
	:	<b>CRIMINAL</b>
<b>MAURICE PATTERSON,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

On August 7, 2009, the Defendant filed an Omnibus Pre-Trial Motion. A hearing on the Motion was held on September 10, 2009. At the time of the hearing, some of the issues raised in the Omnibus Motion had been resolved. The main issues remaining before the Court will be addressed in this Opinion.

***Discussion***

***Motion to instruct the jury as to the definition of life imprisonment at all levels of the pending proceeding***

Defendant asserts that the jury should be instructed during all levels of the proceeding that a life sentence in Pennsylvania means life without parole.

The United States Supreme Court in Simmons v. South Carolina, 512 U.S. 154 (1994) decided “that where future dangerousness is at issue and a specific request is made by the capital defendant, it is a denial of due process to refuse to tell a jury what the term life sentence means.” Commonwealth v. Wright, 961 A.2d 119, 146-47 (Pa. 2008) (quoting Commonwealth v. Chambers, 685 A.2d 96, 106 (Pa. 1996)). See also Commonwealth v. Baumhammers, 960 A.2d, 90-91 (Pa. 2008). Pennsylvania Courts recently “reaffirmed that a Simmons instruction is

only available where future dangerousness is raised and defense counsel has requested such instruction.” Commonwealth v. Wright, 961 A.2d at 147. See also Commonwealth v. Moore, 937 A.2d 1062, 1074 (Pa. 2007).

Based upon both the United States Supreme Court and the Pennsylvania Supreme Court rulings that a Defendant is not entitled to a “life means life” instruction unless (1) the Commonwealth puts future dangerousness at issue and (2) he requests such an instruction, the Court finds the Defendant is not entitled to that instruction throughout all stages of the proceeding. The Defendant may however, be entitled to such an instruction during the penalty phase if both elements are met.

***Motion to hold Pennsylvania death penalty unconstitutional as being in violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment, Motion to declare 42 Pa.C.S. § 9711 unconstitutional and bar imposition of the death penalty, and Motion to preclude the Commonwealth from seeking the Death Penalty as cruel and unusual***

Defendant next alleges that the Pennsylvania Death Penalty should be held unconstitutional as a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. Moreover, the Defendant argues the Pennsylvania Death Penalty Statute should be held unconstitutional as a defendant, if convicted of first degree murder and the jury finds at least one aggravating factor and no mitigating circumstance, the sentence must be a sentence of death. Further, the Defendant asserts the Commonwealth should be precluded from seeking the Death Penalty as it is cruel and unusual punishment.

The Pennsylvania Supreme Court in Commonwealth v. Zettlemoyer, held, “it is undisputed that the framers of the United States Constitution did not consider the death penalty

to be a per se violation of the prohibition against ‘cruel punishments’.” 500 Pa. 16, 454 A.2d 937, 967 (Pa. 1982). The framers of the “Pennsylvania Constitution, Article I, 9 enacted simultaneously with Article I, §13, [which] provides ‘nor can [the accused in a criminal prosecution] be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land’,” also found the death penalty was not per se unconstitutional. Id. at 967. “Additionally, the Pennsylvania Supreme Court has upheld the validity of Pennsylvania's death penalty. The courts have ruled that 42 Pa. C.S.A. §9711(d)(16) is not unconstitutionally vague or overbroad.” Commonwealth v. Perez, 6 Pa. D. & C.5th 272, 285 (Berks Co., 2008). The death penalty statute at “42 Pa. C.S.A. §9711 is not denial of equal protection of law since the statute creates categories for which the penalty may be imposed and is rationally related to a legitimate state objective.” Id. Further, “[a]bsent some showing that prosecutorial discretion is being abused in the selection of cases in which the death penalty will be sought, there is no basis . . . [that the statute violates the Eighth Amendment].” Id. at 285-86 (citing Commonwealth v. DeHart, 516 A.2d 656 (Pa. 1986)). The same rationale is to be applied to an “‘unsupported equal protection challenge.’” Perez, 6 Pa. D. & C. 5<sup>th</sup> at 286 (citing Commonwealth v. Hardcastle, 546 A.2d 1101, 1111 (Pa. 1988)).

As the Death Penalty is not considered cruel and unusual punishment by the Eighth Amendment, or violates the Due Process Clause, and the Pennsylvania Supreme Court has upheld the validity of the Pennsylvania Death Penalty Statute, this Court will defer to that Court’s decision. Therefore, the Defendant’s Motion to hold the Pennsylvania Death Penalty unconstitutional shall be denied.

***Motion to preclude the Commonwealth from seeking the Death Penalty as depriving the Defendant of an impartial jury and Motion for Separate Guilt Phase and Penalty Phase Jurors***

Next, Defendant asserts that the Commonwealth should be precluded from seeking the Death Penalty as the “death qualification” process deprives the Defendant of an impartial jury. The Defendant also asserts that a separate jury should be used in both phases of his trial.

The Pennsylvania Supreme Court has held that “[t]he process of asking questions during voir dire to identify individuals who object to the death penalty and excluding those persons from the jury is known as “death-qualifying” the jury, which is proper and necessary to ensure a fair trial.” Commonwealth v. Wright, 916 A.2d 119, 149 (Pa. 2008) (and cases cited therein). A Defendant “tried in a capital case before a “death-qualified” jury [is] not deprive[d] . . . of a fair and impartial jury from a representative cross-section of the community.” Id. The Pennsylvania Supreme Court has held that “[e]xclusion of such jurors does not result in a jury inclined to impose death in capital murder prosecution.” Id. Furthermore, as some jurors might “believe that all defendants found guilty of first degree murder should be sentenced to death. It would be unfair to a defendant if any members of the jury opposed life sentences so vehemently that they could not impose a life sentence under any circumstances.” Commonwealth v. Morris, 684 A.2d 1037, 1040, fn. 2 (Pa. 1996). Therefore, “to prevent the service of a juror incapable of returning a verdict of life imprisonment, a defendant is permitted to pose questions during voir dire to identify those potential jurors pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” Id. (citing Morgan v. Illinois, 504 U.S. 719, (1992)). This process is known as “life-qualifying” the jury. Id.

The Court, in reliance on both the United States Supreme Court and Pennsylvania Supreme Court rulings, finds that the “death qualification” process does not violate the Defendant’s right to a fair and impartial trial by jury under either Constitution. The Court also finds that separate guilt phase jurors and penalty phase jurors are not necessary as the “death qualification” process does not violate the Defendant’s rights. Therefore, the Commonwealth shall not be precluded from seeking the Death Penalty and separate juries should not be empanelled for the guilt phase and the penalty phase.

***Motion to sequester the trial jurors***

The Defendant also asserts that the trial jurors should be sequestered pursuant to Pa.R. Crim. P. 642. Specifically, the Defendant asserts that there has been substantial pre-trial publicity in his case and of his two Co-Defendant’s cases.

According to Rule 642(a) of the Pennsylvania Rules of Criminal Procedure, sequestration of trial jurors is within the judge’s discretion. The rule states further that the judge may order sequestration “at any time during a trial when the interests of justice require.” Pa.R. Crim. P. 642(c).

The Court finds that sequestration is not necessary at this time. The Court believes there has not been much media coverage at this point, but will be conscientious of the publicity as the time for trial approaches. However, this issue may be reviewed at a later date if the Court feels there is too much publicity surrounding this trial to which the jurors would be exposed if left unsequestered.

***Motion to view the scene***

Finally, Defendant alleges he and the jurors should be permitted to view the homicide scene as it is important for the jury to know what took place and where, and as the Defendant who was not present for the homicide can contemplate the scene.

According to Pennsylvania Rule of Criminal Procedure 643, “(A) The trial judge may in the judge's discretion order a view by the jury.” The Court finds that going to the scene will not help the jury to know the relationship between the Defendant and Co-Defendants and is therefore, irrelevant. As such, the Defendant’s Motion shall be denied.

**ORDER**

AND NOW, this \_\_\_\_ day of October 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

- I. Defendant’s Motion to instruct the jury as to the definition of life imprisonment at all levels of the pending proceeding is DENIED.
- II. Defendant’s Motion to hold Pennsylvania Death Penalty as unconstitutional is DENIED.
- III. Defendant’s Motion to preclude the Commonwealth from seeking the Death Penalty as depriving the Defendant of an impartial jury is DENIED.
- IV. Defendant’s Motion for separate guilty phase and penalty phase jurors is DENIED.
- V. Defendant’s Motion to declare 42 Pa.C.S. § 9711 unconstitutional and to bar imposition of the Death Penalty is DENIED.

- VI. Defendant's Motion to preclude the Commonwealth from seeking the Death Penalty as cruel and unusual punishment is DENIED.
- VII. As to the Defendant's Motion in Limine to preclude the Commonwealth from introducing the Defendant's record in the guilty phase of the trial, the Commonwealth concurs that the record is both prejudicial and irrelevant to admit during vior dire or the guilt phase. The Commonwealth will only be permitted to inform the jury that the Defendant and Co-Defendant Sean Durrant met in the State Correctional Institution at Huntington, but cannot reveal the circumstances surrounding the Defendant's placement there.
- VIII. Defendant's Motion to sequester the trial jurors pursuant to Pa.R.Crim.P 642 is DENIED.
- IX. Defendant's Motion to view the scene pursuant to Pa.R.Crim.P. 643 is DENIED.
- X. As to Defendant's Motion in Limine to preclude photographs of Eric Sawyer, at the October 1, 2009 hearing, this Court made rulings on the record as to which photographs are admissible. This Court's rulings shall stand. The Defendant's record is protected as to this issue.
- XI. Defendant's Motion for daily transcript of trial is DENIED. However, the Defendant may renew this Motion at trial if the circumstances warrant a daily transcript.

By the Court,

Nancy L. Butts, Judge

xc: DA (EL) & (KO)

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