

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

**COMMONWEALTH OF PENNSYLVANIA : NO. CR 1783-2010**

**VS.**

**BRUCE JOHNSON,  
Defendant**

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**OPINION AND ORDER**

Defendant filed a timely notice of insanity defense pursuant to Pa.R.Crim.P.568(a)(1 and 2). Defendant alleges that at the time of the commission of the offenses charged against him, Aggravated Assault at 18 Pa.C.S. Section 2702(a)(4) and Possession of an Instrument of Crime at 18 Pa.C.S. Section 907(a), he was suffering from a panic attack and was under such respiratory distress, it caused him to not comprehend what he was doing or that his actions were wrong. In response to the notice filed by Defense, the Commonwealth filed a Motion to Preclude the Defense of Insanity on February 14, 2011. Commonwealth alleges that Defendant's notice does not qualify under either the guilty but mentally ill, or the insanity definition, and as such should be precluded. A hearing on the motion to preclude the defense of insanity was ultimately heard on June 13, 2011 by this Court.

At the time of the hearing on the Motion to Preclude, Defense Counsel presented the testimony of Dr. Shaheer Alamy (Alamy), a psychiatrist employed by Susquehanna Health System. Alamy testified that he has known the Defendant since September of 2006 and has been treating him for major depressive disorder and panic disorder. Alamy's training and experience as a psychiatrist has not included training in forensic psychiatry; however, he had some very

limited forensic experience when he was training at the University of Missouri at Kansas City. Alamy's testimony would be that the Defendant reported to the Divine Providence Hospital for an emergency visit on November 24, 2010. Defendant presented as severely anxious and had passive thoughts of suicide; while he was waiting to be seen by the doctor he exhibited the signs of a severe anxiety attack. Alamy described Defendant as being very depressed, having difficulty breathing and at one point vomiting in the bathroom. As a result of his anxiety and nausea he appeared to become hypoxic; in other words he was breathing improperly so his body was not receiving the oxygen it needed. Alamy observed the Defendant's deteriorating condition and left the Defendant's presence to retrieve oxygen. As Alamy left, the Defendant also attempted to leave his office. Defendant indicated that he believed that animals were attacking him so hospital security was called. At that point, the Defendant became physical and he pushed the LPN on the unit away from him. Shortly thereafter, the Defendant was brought to the emergency room and transferred to the inpatient psychiatric unit. Alamy opined that Defendant's behavior on the unit toward the nurse was as a result of his panic attack and his lack of oxygen; due to the lack of oxygen, the Defendant was experiencing hallucinations and would not have been able to discern right from wrong.

In order to determine the admissibility of Alamy's opinion, the Court must first review whether or not the testimony was relevant as to the issue of whether the Defendant was insane at the time he committed the offenses charged against him. The Commonwealth opines that Alamy's opinion did not meet the definition of any legally recognized mental infirmity defense under Pennsylvania law and is therefore neither relevant nor admissible.

Generally, all relevant evidence is admissible. Pa.R.E. 403. However, relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. *Id.*

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence more or less probable than it would be without the evidence. *Id.*

The defense of insanity is set forth at 18 Pa.C.S.A. 315, and states the following:

(a) GENERAL RULE – The mental soundness of an actor engaged in conduct charged to constitute an offense shall only be a defense to the charged offense when the act proves by a preponderance of evidence that the actor was legally insane at the time of the commission of the offense.

(b) DEFINITION—For purposes of this section, the phrase “LEGALLY INSANE” means that, at the time of the commission of the offense, the actor was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if the actor did know the quality of the act, that he did not know what he was doing was wrong.

A finding of “guilty but mentally ill” is authorized by 18 Pa.C.S.A. 314, which states, in pertinent part, the following:

(a) GENERAL RULE – A person who timely offers a defense of insanity in accordance with the Rules of Criminal Procedure may be found “guilty but mentally ill” at trial if the trier of facts finds, beyond a reasonable doubt, that the person is guilty of an offense, was mentally ill at the time of the commission of the offense and was not legally insane at the time of the commission of the offense.

...

(c) DEFINITIONS – For the purpose of this section and 42 Pa.C.S.A. 9727, (relating to depositions of people found guilty but mentally ill):

(1) “*Mentally Ill*” – one who as a result of mental disease or defect, lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

As previously stated, Alamy’s opinion was that because of the Defendant’s anxiety and the fact that he was vomiting, his brain and body were deprived of the necessary oxygen for him to be able to accurately perceive what was happening around him at the time and caused him to

hallucinate; thus the Defendant did not understand what was happening at that time and consequently behaved in a manner that, had those circumstances not existed, he would not have ordinarily acted. The Court interprets Alamy's opinion to be that at that moment in time, the Defendant behaved in a manner he believed necessary to protect himself.

In Pennsylvania, the test of insanity requires the element of cognition, where guilty but mentally ill involves volition. *Commonwealth v. Rabold*, 951 A.2d 329, 332 (Pa. 2008). Appreciation is not the legal test of insanity in Pennsylvania, but is the test of mental illness under the concept in Pennsylvania of guilty but mentally ill. *Id.* Applying this reasoning, the opinion offered by Alamy does not meet the legal definition of insanity. However, since the opinion by Alamy does meet the definition of guilty but mentally ill statute, his testimony would be relevant at trial.

### **ORDER**

AND NOW, this 26<sup>th</sup> day of August, 2011, after hearing on the Commonwealth's Motion to Preclude Defense of Insanity the motion is GRANTED. It is ORDERED AND DIRECTED that Defense Counsel may not argue that the Defendant was legally insane at the time of the commission of the offense.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
PD

