

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-708-2013  
 :  
 GLENN A . JACKSON, :  
 Defendant : Commonwealth's Motion in Limine

**OPINION AND ORDER**

Before the court is the Commonwealth's motion in limine filed on February 17, 2015. The court held an argument on the motion on April 2, 2015. Not unexpectedly, the parties argued their respective positions with the zeal and passion befitting the nature of the charges against Defendant. Unfortunately, after thoroughly reviewing the cases not only referenced by the parties but discovered by the court, the court is not nearly as convinced as the parties regarding the controlling case law. Indeed, a disposition of the issue raised in the Commonwealth's motion is not nearly as clear-cut as advocated by the parties. The controlling case law is problematic at best.

By Information filed on June 3, 2013, Defendant is charged with criminal homicide, aggravated assault, possessing instruments of crime, abuse of a corpse, simple assault and tampering with or fabricating physical evidence. It is evident that Defendant intends to raise the defense of self-defense.

Defendant underwent a psychiatric evaluation by Dr. Terri Calvert on October 17, 2014. Dr. Calvert prepared a written report on December 21, 2014. The report concludes that Defendant "did reasonably believe that he was in imminent danger of death or great bodily harm during the clash with [the victim], causing him to lash back at [the victim] with

a weapon, ending in [the victim's] death.”

The Commonwealth's motion seeks to preclude the testimony of Dr. Calvert asserting that it is being offered solely to buttress the credibility of the Defendant, simply relates the version of the incident as related to Dr. Calvert by Defendant, and does not relate that Defendant had any psychological issues at the time of the incident. The Commonwealth claims that the controlling case law is clear and that the testimony must be precluded.

Defendant argues, to the contrary, that the controlling case law mandates that the testimony be permitted. Defendant argues that expert testimony is admissible to establish Defendant's state of mind for purposes of presenting a theory of self-defense.

In *Commonwealth v. Light*, 458 Pa. 328, 326 A.2d 288 (1974), the Supreme Court of Pennsylvania concluded that it was error for the trial court to exclude a psychiatrist's testimony “in so far as it pertained to [the defendant's] subjective belief” that he was in imminent danger and acting in self-defense when he shot the two victims, but “because of the unique circumstances of [the] case” the error did not require reversal. 326 A.2d at 291.

The Court detailed the elements relating to self-defense noting that, among other things, the “slayer must have reasonably believed that he was in imminent danger of death, great bodily harm, or some felony and that there was a necessity to kill in order to save himself therefrom....” *Id.*, quoting *Commonwealth v. Roundtree*, 440 Pa. 199, 204, 269 A.2d 709, 712 (1970).

This belief, however, encompasses two elements. “First, the defendant in fact

must have acted out of an honest, bona fide belief that he was in imminent danger. Second, the belief must be reasonable in light of the facts as they appeared to him.” *Light*, 326 A.2d at 292, citing *Murray v. Commonwealth*, 79 Pa. 311, 317 (1875). The Court concluded that psychiatric testimony should be admissible as to the subjective element of the defendant’s state of mind at the time of the occurrence. *Light*, supra.

The facts in *Light* involved the defendant and others sitting around the defendant’s residence drinking beer. The defendant left to get more beer. During his absence, a few of the others went upstairs. When the defendant arrived back, he noticed that the upstairs lights were on. Concerned, he took the gun which he kept in his car and went inside. As the defendant went into the living room, a few of the others were running down the stairs. The defendant fired the gun, wounding one and killing the other.

The defendant testified that he shot the two because he thought they were going “to get him.” He claimed that he caught them stealing. As well, there were prior incidents involving the others. Four years earlier, for example, he had a fight with one while they were previously employed together. The other had threatened to “get” the defendant. The defendant also testified to three burglaries that had taken place in his home during the previous four years.

Although the Pennsylvania Supreme Court found that the trial court should have permitted the defendant to introduce psychiatric testimony to show that he subjectively believed that he was in imminent danger of death, great bodily injury or some felony, the Court found that reversal was not required because the defendant’s belief was not objectively

reasonable.

Subsequent to the *Light* decision, the courts have confirmed that “[d]ecisional law supports that expert testimony may be admissible to establish the defendant’s subjective state of mind – whether the defendant had an ‘honest, bona fide belief that he was in imminent danger’ – for purposes of presenting a theory of self-defense.” *Commonwealth v. Sepulveda*, 55 A.3d 1108, 1125 (Pa. 2012); see also *Commonwealth v. Mouzon*, 53 A.3d 738 (Pa. 2012); *Commonwealth v. Ventura*, 975 A.2d 1128, 1140 (Pa. Super. 2009).

If these were the only cases addressing this issue, a conclusion regarding the merits of the motion could easily be reached. Unfortunately, there are other decisions out of the appellate courts that appear to distinguish *Light* and its progeny.

In both *Commonwealth v. O’Searo*, 466 Pa. 224, 352 A.2d 30 (1976) and *Commonwealth v. Battle*, 289 Pa. Super. 369, 433 A.2d 496 (1981), the Courts were confronted with what, on their face, appeared to be the identical issues as in *Light*, but reached different conclusions.

In *O’Searo*, the defendant was convicted of murder in the first degree. During the trial, he proffered a clinical psychologist as an expert witness who was to testify, among other things, that during the scuffle with the victim he became fearful of a heart attack and drew the gun to get away from the victim.

The defendant in *Battle* was convicted of involuntary manslaughter. He proffered during the trial a clinical psychologist to establish that at the time of the killing, the defendant was acting out of an honest, bona fide belief that he was in imminent danger.

Specifically, the defendant's expert was to testify that based on the history of domestic problems between the Battles and the crisis situation before the defendant at the time of the shooting, the defendant acted out of a belief that he was in danger for purposes of establishing the defense of self-defense.

In both cases, the trial court refused to allow the proffered expert testimony and in both cases the decision on appeal was affirmed.

In *O'Searo*, the Supreme Court, while not even referencing *Light*, concluded that the proffered testimony was not admissible as expert testimony because its only purpose was to buttress the credibility of the Defendant as to his version of the critical events and did not touch upon the psychological likelihood of Defendant's behavior under a given stimulus. *O'Searo*, 352 A.2d at 32. The Court explained that expert testimony is inadmissible where it involves a matter of common knowledge and that the determination of credibility is within the sole province of the factfinder. *Id.*

In *Battle*, the Court addressed both the *Light* and *O'Searo* decisions. The Court noted that there is "no clear basis for distinguishing *Light* and *O'Searo*." *Battle*, 433 A.2d at 498. The Court referenced that in *O'Searo*, the psychiatric testimony was not permitted despite the pronouncement in *Light* holding that psychiatric evidence was relevant to whether a homicide, otherwise unjustified, could be said to have been justifiable because of the defendant's fear for his life. *Id.*, citing *Light*, 326 A.2d at 292. Despite not being able to distinguish the holdings in *Light* and *O'Searo*, the Superior Court in *Battle* followed the holding in *O'Searo* for two reasons: first, the Court concluded that it was the latest

pronouncement by the Supreme Court and second, it noted that it was consistent with those Supreme Court cases upon which *Light* relied.

Similarly, this Court cannot distinguish the facts in *O'Searo* from the facts in this case. As in *O'Searo* and *Battle*, the testimony of the expert restates Defendant's version of the events and what caused him to defend himself. Dr. Calvert notes, for example, that Defendant appeared to be a very good historian, there was no evidence that he was embellishing for secondary gain, and that there was no evidence that he was not truthful in relaying the events. Dr. Calvert's report does not address any mental health issues that impacted Defendant's behavior under a given stimulus. Furthermore, and unlike the other cases referenced above, Dr. Calvert's proffered testimony goes beyond even Defendant's subjective belief. She does not note that Defendant was acting out of a bona fide belief that he was in imminent danger; rather, she notes that he "reasonably believed that he was in imminent danger." Even under *Light* and *Sepulveda*, expert testimony is only admissible with respect to the defendant's subjective belief; it is not relevant or admissible to the objective factor of reasonableness of a defendant's belief. *Sepulveda*, 55 A.3d at 1125; *Light*, 326 A.2d at 292; see also *Commonwealth v. Sheppard*, 648 A.2d 563, 568 (Pa. Super. 1994).

A thorough review of Dr. Calvert's report reveals that Defendant's cognition was above-average, there was no evidence of psychosis and that he was in alcohol dependence, in forced remission. Her proposed testimony does not "touch upon" any psychological likelihood of Defendant's behavior under a given stimulus. It appears clear that the testimony does nothing more than buttress the credibility of Defendant which is

prohibited under *O'Searo*.

Expert testimony is permitted as an aid to the jury when the subject matter is distinctly related to a science, skill or occupation beyond the knowledge or experience of the average layman. *Commonwealth v. Aufer*, 545 Pa. 521, 681 A.2d 1305, 1317 (1996), citing *O'Searo*, 352 A.2d at 32. However, “[a]ny analysis of the admissibility of a particular type of evidence must start with the threshold inquiry as to its relevance and probative value.” *Commonwealth v. Robinson*, 554 Pa. 293, 771 A.2d 344, 350 (1998). The credibility of witnesses is within the sole province of the jury. *Commonwealth v. Couterman*, 719 A.2d 284, 304 (Pa. 1998); *Commonwealth v. Hampton*, 462 Pa. 322, 341 A.2d 101, 103 (1975). If the purpose of testimony, classified as expert testimony, is solely to buttress the credibility of Defendant as to his version of the events, it is clearly not relevant or permissible. *Commonwealth v. Crawford*, 718 A.2d 768, 772 (Pa. 1998).

### **ORDER**

**AND NOW**, this \_\_\_ day of April 2015, following an argument on the Commonwealth’s motion in limine, said motion is **GRANTED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: William Miele/Nicole Spring, Esquire (PD)  
Eric Linhardt/Kenneth Osokow, Esquire (DA)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file