

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-724-2015  
:   
vs. :   
:   
PHILIP SAILOR, : Opinion and Order re Commonwealth's  
: Motion in Limine to Preclude Testimony  
Defendant : of Dr. Guzzardi

**OPINION AND ORDER**

Defendant is charged with aggravated assault by a vehicle while under the influence of alcohol and related charges regarding an incident that allegedly occurred on November 21, 2014 on Northway Road in Loyalsock Township. Defendant is alleged to have been operating a vehicle which struck a 15 year old pedestrian while she was crossing the roadway. Defendant is alleged to have been driving under the influence of marijuana and/or to have marijuana in his blood.

On August 17, 2015, the Commonwealth filed a motion to preclude the testimony of Dr. Lawrence J. Guzzardi, Defendant's proposed expert. The Commonwealth contends that the expert report provided by Dr. Guzzardi does not comply with the mandates of the Pennsylvania Rules of Criminal Procedure in that it is not specific enough.

An argument was held on the Commonwealth's motion on September 23, 2015.

Dr. Guzzardi issued a report on June 26, 2015. After the Commonwealth filed its motion, Dr. Guzzardi issued a supplemental report dated September 5, 2015. Both of these reports were submitted to the court for review.

Among Dr. Guzzardi's conclusions are the following: "I disagree with the

conclusions of Trooper Kirk. While my opinions will be more thorough at the time of the trial, the physical signs he documented have many causes besides the effects of THC and in any event do not indicate impairment sufficient to be unable to safely drive a motor vehicle”; “I do not believe Ms. Chan-Hosokawa has the qualifications to determine whether Mr. Sailor was impaired”; “Mr. Sailor’s very low of THC present at the time of testing may have been the result of passive inhalation of THC”; “ I do not believe that the level of THC present in the blood of Mr. Sailor was sufficient to cause him to be unable to safely drive a motor vehicle”; “I do not believe the odor of marijuana nor the presence of paraphernalia associated with the use of marijuana are indicative of impairment”; “ I do believe that the physical signs exhibited by Mr. Sailor are the result of other causes.” In his September 5, 2015 supplemental report, Dr. Guzzardi references alleged case law as well as, what it appears to be, a Department of Transportation regulation.

Rule 573 of the Pennsylvania Rules of Criminal Procedure governs pretrial discovery. Pursuant to Rule 573 (C) (2), if the Defendant intends to call an expert and the expert has not prepared a report, the court “may order that the expert prepare and the defendant disclose a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert’s opinions and the grounds for each opinion.” PA. R. CRIM. P. 573(C)(2).

Dr. Guzzardi’s report fails to comply with the mandates of Rule 573. He fails to set forth the grounds upon which he disagrees with the conclusions of Trooper Kirk. It is insufficient to state that his opinions “will be more thorough at the time of trial.” He fails to

state what “causes besides the effects of THC” may explain Defendant’s “physical signs.” He fails to state the grounds upon which he concludes that Ms. Chan-Hosokawa does not have the qualifications to determine whether Defendant was impaired. He fails to state the grounds upon which he concludes that the THC present in Defendant’s blood “may have been the result of passive inhalation of THC.” Finally, he fails to set forth the grounds upon which he concludes “that the physical signs exhibited by [Defendant] are the result of other causes.”

Despite these failures, the Commonwealth’s request to preclude Dr. Guzzardi from testifying at this time shall not be granted. A trial court has broad discretion in choosing an appropriate remedy for a discovery violation. *Commonwealth v. Burke*, 556 Pa. 402, 781 A.2d 1136, 1143 (2001); *Commonwealth v. Causey*, 833 A.2d 165, 171 (Pa. Super. 2003). The court has many remedies available to it including, but not limited to, ordering the offending party to permit discovery, granting a continuance, prohibiting the use of the evidence or any other order that as it deems just under the circumstances. *Burke*, 781 A.2d at 1141; *Causey*, supra.

In this case, it does not appear that Defendant’s discovery violation was in bad faith or that the prosecution is prejudiced. In reviewing the docket in this matter, it appears that the case is on the December 2015 pretrial list with a potential for it being tried in January or March of 2016. Accordingly, the court will enter an order deemed just under the circumstances as set forth below.

### **ORDER**

**AND NOW**, this 29<sup>th</sup> day of September 2015 following a hearing and

argument, the court GRANTS in part the Commonwealth's motion to preclude expert testimony. If Defendant intends to utilize the testimony of Dr. Guzzardi, he must produce a report consistent with this opinion and said report must be provided to the Commonwealth no later than December 4, 2015. If the report is not prepared and submitted to the Commonwealth as directed or if the report fails to meet the requirements of this order, the Commonwealth may petition the court for further relief including, but not limited to, precluding Dr. Guzzardi from testifying.

By The Court,

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Marc F. Lovecchio, Judge

cc: DA (NI)  
PD (JB)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file