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

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| **COMMONWEALTH** | **:** | |
| | **:** | |
| **vs.** | **:** | **No. CR-1442-2017** |
| | **:** | |
| **RASHAWN D. WILLIAMS,** | **:** | **Opinion re Defendant's post sentence motions** |
| **Defendant** | **:** | |

## OPINION

This matter came before the court on the post sentence motion filed by Defendant Rashawn Williams ("Williams"). Due to the time constraints for deciding post sentence motions, the court issued an order denying Defendant's post sentence motions on May 20, 2019, but indicated it would issue an Opinion explaining its decision in the near future. This is the Opinion.

By way of background, Williams was charged with an open count of homicide, two counts of aggravated assault, possession of an instrument of crime (PIC), tampering with physical evidence, and obstruction of administration of law, arising out of the stabbing death of Scott Cole on June 22, 2017.

A jury trial was held October 15-22, 2018. At trial, Williams presented claims of self-defense/justification and argued that if those claims were rejected then he was guilty of no more than voluntary manslaughter. On October 22, 2018, the jury found Williams guilty of first degree murder, both counts of aggravated assault, tampering with physical evidence and obstruction of administration of law. The Commonwealth withdrew the PIC charge.

On December 17, 2018, the court sentenced Williams to life in prison for first

degree murder and imposed consecutive sentences of five to ten years for aggravated assault, one to two years for tampering with physical evidence and one to two years for obstruction of administration of law.

On December 19, 2018, Williams filed a post sentence motion, in which he sought a new trial and reconsideration of his sentence.

Williams first asserts that the trial court erred by admitting text messages allegedly exchanged between the victim and Williams and finding that they were not hearsay. The court cannot agree. [1]

The text messages from Williams to the victim were not hearsay, as they were clearly within the hearsay exception for an opposing party's statements. Pennsylvania Rule of Evidence 803(25) states:

> The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
> (25) **An Opposing Party's Statement.** The statement is offered against an opposing party and:
> (A) was made by the party in an individual or representative capacity….

Pa. R. E. 803(25). The Commonwealth was offering Williams' text messages against Williams, the opposing party. There was no dispute that Williams sent the text messages. In fact, Williams testified about the text messages at trial.

The text messages from the victim to Williams simply were not hearsay. Hearsay is "a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in

the statement." Pa. R. E. 801(c). The victim's text messages were not being offered for the truth of the content, but rather to put Williams' text messages in context and to show his responses to the victim, which showed Williams' state of mind and his anger towards the victim. It didn't matter whether either the victim or Williams were in the car with anybody else or whether either had been in jail or traveled out of town.

Williams next contends that the trial court erred by permitting the Commonwealth to admit at trial a photograph of a man in a jock strap found on Williams' cell phone when the photograph was not properly authenticated, and the photograph contained no date or indication who would have added it to the phone. Williams also contends the court improperly found that the defense objections went to the weight of the evidence, not its admissibility.

During cross-examination, the prosecutor asked Defendant if there were any images of partially naked men on his phone and Defendant said no. N.T., 10/18/2018 at 68. After the defense rested, the Commonwealth sought to introduce the photograph to impeach Defendant's credibility. Defense counsel objected based on the lack of a date on the photograph and a lack of authentication based on *Koch*.[2] The court overruled defense counsel's objections and found that, under the circumstances of this case, *Koch* was distinguishable and the objections went to weight and not admissibility. N.T., 10/19, 2018, at 64-69.

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[1] For the parties argument and the court's ruling during the trial, see N.T., 10/17/2018, at 8-11, 18-27.
[2] *Commonwealth v. Koch*, 39 A.3d 996 (Pa. Super. 2011), *aff'd by evenly divided court*, 106 A.3d 705 (Pa. 2014).

In *Koch*, the Commonwealth was attempting to prove both the truth of the assertions made in the text messages and that they were sent by Koch. Here, however, the Commonwealth was not trying to prove that that Defendant took the photograph, that the photograph was an accurate representation of any particular person, or that Defendant was the one who put the photograph on the phone. The Commonwealth was only trying to prove that Defendant was not being truthful when he stated that no such photographs were on his phone.

There was more than enough circumstantial evidence to show that the phone belonged to Defendant, and defense counsel admitted such. N.T., 10/19/2018, at 68. Furthermore, Defendant testified about text messages on that phone between him and the victim, as well as the duration of various phone calls he made to the victim with that phone. N.T., 10/18/2018, at 30-32, 34-38, and 57-60. As there was ample evidence that the phone belonged to Defendant, the court properly permitted the Commonwealth to impeach Defendant's testimony with the photograph from that phone.

Williams alleges that the trial court abused its discretion by limiting the testimony of Dr. Scott Scotilla, the defense psychologist expert concerning heat of passion, when he did not include facts in his report even though the facts upon which Dr. Scotilla's report was based were revealed to the Commonwealth prior to trial through a proffer by defense counsel to the court.

"The admission of expert testimony is a matter of discretion [for] the trial court and will not be remanded, overruled or disturbed unless there was a clear abuse of

discretion." *Commonwealth v. Carter*, 111 A.3d 1221, 1222 (2015); *Commonwealth v. Brewer*, 876 A.2d 1029, 1034 (Pa. Super. 2005). "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is over ridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." *Commonwealth v. Walker*, 92 A.3d 766, 772-773 (Pa. 2014)(internal quotation marks omitted).

The court does not believe that it abused its discretion when it limited the testimony of Dr. Scotilla. The Pennsylvania Rules of Criminal Procedure contemplate that expert witnesses, particularly mental health experts, shall prepare a written report stating the subject matter on which the expert is expected to testify; the substance of facts relied upon; and a summary of the expert's opinions and the grounds for each opinion. Pa. R. Crim. P. 569; Pa. R. Crim. P. 573(C)(2). The failure to do so often results in the preclusion of the expert's opinions. Pa. R. Crim. P. 569(B)(2)("No mental health expert may be called to testify concerning the defendant's mental condition until the expert report has been provided…"); Pa. R. Crim. P. 573(E)("If a party fails to comply, the court may prohibit the party from introducing evidence not disclosed…or it may enter such other order as it deems just under the circumstances.")

At trial, the Commonwealth moved to preclude Dr. Scotilla from testifying regarding heat of passion because he made a conclusion in his report without any factual support so the Commonwealth could not obtain its own expert to counter it. The court granted the Commonwealth's motion. N.T., 10/18/2018, at 115-139.

Dr. Scotilla's report stated: "To a reasonable degree of certainty, this defendant is one who would meet the legal criteria of heat of passion in his reaction of stabbing his alleged attacker." While Dr. Scotilla's report delved into Defendant's mental health history and diagnoses, it did not relate that information to the alleged facts of this incident, even in hypothetical form. There was no discussion of the facts that allegedly caused Defendant to act in the heat of passion.

Defense counsel argued that a proffer was made at a pretrial hearing, which the court should have found sufficient. The court could not accept this argument. The court does not recall defense counsel making a detailed proffer related to Dr. Scotilla's report. The court recalls the Commonwealth making a similar objection to Dr. Cox's report and Dr. Cox supplying a supplemental report. Even if defense counsel made a proffer about the defendant's version of events, though, it did not inform the Commonwealth which of those facts Dr. Scotilla relied upon to form the basis of his opinion regarding heat of passion.

Williams next asserts that the trial court erred by limiting the testimony of Dr. Cox, his expert pathologist/toxicologist, concerning the effects of controlled substances found in the victim's system at autopsy, when Dr. Cox based his opinion of the victim's alleged behaviors on facts that had been provided from the defendant, and not permitting him to testify that the victim would have used cocaine shortly before his death.

The court precluded Dr. Cox from testifying that the victim had a cocaine dependency and that it is not uncommon for people with a cocaine dependency to manifest psychotic disorders with delusions of persecution, irrational fears, and hallucinations similar

to paranoid type of schizophrenia. Defense counsel agreed with this limitation. N.T., 10/19/2018, at 14-15. The court also precluded Dr. Cox from testifying about any marijuana that was in the victim's system at autopsy, because the victim only had an **inactive** metabolite in his system and there was no evidence that the victim took large doses of marijuana. N.T., 10/19/2018, at 16-17. Again, defense counsel did not have an issue with this limitation. Generally, the court permitted Dr. Cox to testify that the controlled substances in the victim's system were consistent with certain behaviors such as bizarre behaviors and aggression, but Dr. Cox could not testify that was the way the victim acted on the night in question as his report repeatedly indicated that the effects were dependent upon the individual's experience with the drugs. N.T., 10/19/2018, at 49-50. Dr. Cox's report did not include any facts regarding the victim's experience or use history.

Williams also avers that the trial court erred by not giving a cautionary instruction that the victim's family and friends should control their emotions when individuals were sobbing during the Commonwealth's opening statement. The court believes this issue was waived. The court could not find any place during the Commonwealth's opening statement where defense counsel objected or requested a cautionary instruction.

Even if defense counsel properly preserved this issue, the court finds that the lack of a cautionary instruction during opening statements was not prejudicial to Williams. The victim's family and friends may have been crying but they were not creating a distraction. It is utterly unrealistic to expect the family and friends of the victim of a violent murder to be stoic and completely in control of their emotions. Their loved one was stabbed

approximately 35 times. Furthermore, the court instructed the jury during closing instructions to base their deliberations and verdict on a rational and fair consideration of the evidence and not on passion or bias or prejudice in favor of or against anyone connected with this case. N.T., 10/22/2018, at 139, 157.

Williams next submits that the trial court abused its discretion by permitting Officer Ananea, who had been qualified as an expert, to give a lay opinion about cast off (blood spatter) on the side of a building.

Officer Joseph Ananea processed the crime scene. He observed and photographed the trail of blood from 321 Locust Street to the pool of blood where the victim died at the corner of Center Place and Locust Street. The Commonwealth sought to have Officer Ananea explain how blood got 6 or 7 feet high on the wall of a building on Locust Street. Defense counsel objected that such was not contained in Officer Ananea's report. The prosecutor argued that the report commented fairly extensively about blood. Defense counsel agreed that the report talked about blood, but it never discussed cast off or anything like that. The prosecutor noted that simply saying drops of blood is giving an opinion about how blood got somewhere. When defense counsel noted that a lay person could say it's a drop, the court asked defense counsel why a lay person couldn't testify about blood being on an object and being flung off the object to another location. At that point, defense counsel's objection changed to an argument that the witness could not or should not be permitted to render lay opinion testimony after providing expert opinion testimony. The court overruled defense counsel's objection. Officer Ananea then explained how blood could get 7 or 8 ft.

high on a wall using an analogy that the jury could understand, flailing a wet paint brush and paint going places where you may not intend it to go, where it might not have otherwise understood the term "cast-off." N.T., 10/15/2018, at 124-129.

Rule 701 of the Pennsylvania Rules of Evidence governs opinion testimony by lay witnesses. Despite that Rule beginning with the phrase "[i]f a witness is not testifying as an expert," Pennsylvania law does not preclude a single witness from testifying as both a lay and expert witness. *Commonwealth v. Huggins*, 68 A.3d 932, 967 (Pa. Super. 2013). Therefore, it was not error to permit Officer Ananea to provide lay opinion testimony simply because he had been qualified as an expert witness or provided expert opinion testimony.

Williams next contends that the trial court abused its discretion by precluding the defense from questioning Emerson Chase about aliases listed in his criminal history. The court did not preclude all references to Mr. Chase's aliases. The defense cross-examined Mr. Chase about four different aliases before the Commonwealth objected. N.T., October 16, 2018, at 101-102. The court precluded any testimony regarding any other aliases. The court was not convinced that merely because an alias was listed on a rap sheet meant that the witness was not credible. The court found that defense counsel's argument was speculative, the evidence was of questionable relevance and the court did not want to have "a trial within a trial." N.T., 10/16/2018, at 102-104.

The next day, defense counsel sought reconsideration. Although defense counsel could not find a Pennsylvania case on point, he argued that he should be permitted to present evidence regarding Mr. Chase's other aliases based on a *Walker* case from New

York.[3] In *Walker*, the individual gave 14 different names and 5 different dates of birth to the police on the occasions when he had been arrested. Here, defense counsel did not know to whom Mr. Chase provided the alias or under what circumstances. Therefore, the court did not reconsider its ruling. N.T., 10/17/18 at 2-4.

Without additional information regarding the surrounding circumstances, the mere use of a different name at some point in an individual's life would not necessarily mean the individual lacked credibility. An individual's name could change due to marriage, divorce or adoption and it would not relate to credibility at all. A name listed as an alias could also just be another form of the same name or a nickname. For example, an individual whose birth name is Robert Smith could have listed as aliases on his rap sheet the names Bob Smith, Bobby Smith, Rob Smith, Robbie Smith or Bert Smith.

Even assuming for the sake of argument that the court's ruling was erroneous, Williams was not prejudiced. The jury heard four aliases of Emerson Chase. Additional names would have merely been cumulative and would not have changed the outcome of the trial.

Williams also contends that he should have been permitted to testify about his intent to attend college and his contacts with a college. The Commonwealth objected, and the court precluded this evidence. N.T., 10/18/2018, at 18-23. Rule 401 of the Pennsylvania Rules of Evidence sets forth the test for relevant evidence. Rule 401 states:

> Evidence is relevant if:
> (a) it has any tendency to make a fact more or less probable than it

[3] *People v. Walker*, 83 N.Y.2d 455, 633 N.E.2d 472 (1994).

would be without the evidence; and

(b) the fact is of consequence in determining the action.

This evidence was not relevant. It did not make any fact of consequence more probable or less probable. It did not make it more or less probable that Williams was the person who stabbed the victim or that he did so intentionally, in self-defense or in the heat of passion. This information also was not a basis or a factor in any of the defense experts' opinions. This was not a capital case where evidence regarding the perpetrator's life and background is admissible as mitigating evidence. It was merely an attempt to garner sympathy toward Williams.

Even if this ruling was erroneous, Defendant was not prejudiced as Defendant testified on cross-examination that he was preparing to go to college. N.T., 10/18/2018, at 67.

Williams next contends the trial court abused its discretion by permitting the autopsy photos to go out with the jury during deliberations. The court cannot agree. The Rules of Criminal Procedure do not preclude the jury from possessing or viewing autopsy photographs during their deliberations. With the exception of transcripts of trial testimony, a confession of the defendant, a copy of the indictment or information, and written jury instructions other than instructions regarding the elements of the offenses and any defense, the jury may take with it any exhibits that the trial judge deems proper. Pa. R. Crim. P. 646.

The autopsy photographs were admitted into evidence and shown to the jury. The photographs were not inflammatory or unduly prejudicial. The photographs depicted the number and location of the victim's stab wounds. They were relevant evidence with respect

to malice and the intent to kill. Furthermore, the court instructed the jury on more than one occasion not to base their verdict on bias, prejudice, sympathy or emotion. The law presumes that the jury follows the court's instructions. *Commonwealth v. Means*, 773 A.2d 143, 157 (Pa. 2001)("A pillar upon which our system of trial by jury is based is that juries are presumed to follow the instructions of the court.").

Williams also avers that the trial court erred in its Castle instruction by giving a definition of "force" that stated force does not include opening an unlocked door.

Part of the Castle instruction states that the law presumes a defendant to have a reasonable belief that deadly force is immediately necessary to protect himself against death, serious bodily injury, kidnapping, or sexual intercourse compelled by force or threat if the person against whom the force is used is in the process of unlawfully and forcefully entering, or had unlawfully and forcefully entered and is present within a dwelling, residence or occupied vehicle; and the defendant knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred. The instruction, however, does not define what constitutes an unlawful or forceful entry.

Defense counsel noted that he could not find what that term meant, but argued that the court had to explain to the jury what that means. N.T., 10/22/2018, at 5-6. Neither defense attorneys nor the prosecutors provided the court with a proposed definition.

The court reviewed several cases in the burglary and criminal trespass contexts. The court defined forcefully entering as follows: "Forcefully means by an act of violence or threat, gesture, sign or menace as may give ground to apprehend personal injury

or danger in defense of possession. Actual violence is not needed, but the conduct must be calculated to alarm the most timid. Opening an unlocked door is not sufficient in and of itself." N.T., 10/22/2018, at 146. When the court finished its instructions to the jury, defense counsel approached and objected that the court gave a definition of force which was not within the standard instruction. N.T., 10/22/2018, at 161. After the court noted that defense counsel wanted a definition even though the term forcefully entering was not defined in the standard instruction, defense counsel noted that he believed force included entering an unlocked door. Id. Defense counsel did not submit any case law in support of his position or submit any alternate proposed instruction to define that term.

"[A] trial judge has wide latitude in charging the jury and may use any particular language provided the language used adequately and fully conveys to the jury the law applicable to the facts of the case." *Commonwealth v. Mease*, 516 A.2d 24, 28 (Pa. Super. 1986). The court based this instruction on cases such as *Commonwealth v. Leibowitz*, 157 A. 219, (Pa. Super. 1931) and *Commonwealth v. Cook*, 547 A.2d 406 (Pa. Super. 1988).

In *Leibowitz*, in overturning the defendant's conviction for forcible entry, the Superior Court reiterated the rule that "the force used must be 'at least such acts of violence, or such threats, menaces, signs or gestures as may give ground to apprehend personal injury or danger in standing in defense of possession.' Actual violence need not be proven, but there must be such conduct as is calculated to alarm the most timid." 157 A. at 220.

In *Cook*, the Superior Court reversed the appellant's sentence because opening a unlocked door was insufficient force to increase a criminal trespass from a felony

of the third degree to a felony of the second degree. In so holding, the Superior Court stated: "Entry into most buildings or separately secured portions thereof involves at least the opening of a door. Such entries are not generally considered to involve the use of force, violence, or compulsion….They involve, rather, the normal means of entering a doorway intended for human access." 546 A.2d at 411.

The legislative history of House Bill 40 regarding the Castle doctrine also supports the court's definition of excluding the opening of an unlocked door.

> Mr. SANTARSIERO. How is the term "forceful entry" defined in this bill?
>
> Mr. PERRY. Mr. Speaker, are you making reference to the terms "unlawfully" and "forceful entry"?
>
> Mr. SANTARSIERO. Right. Thank you, Mr. Speaker.
>
> As I read the presumption, which I think is section (2.1), it talks about the person against whom the force is going to be used had to both unlawfully and forcefully enter into a dwelling or residence. Is that correct?
>
> Mr. PERRY. That is correct. We are trying to protect the individual who might be coming over to borrow a cup of sugar or an egg or something like that from being randomly shot by his or her neighbor, obviously.
>
> Mr. SANTARSIERO. Thank you, Mr. Speaker. I understand.
>
> My question is, what is the term "forcefully" used, or what does it mean in this context?
>
> Mr. PERRY. It means just what it says-with force, to break in. It does not mean turning the doorknob and opening the door; it means knocking the door down, knocking the window out, something along those lines.

Pennsylvania House Journal, 2011 Reg. Sess. No. 26 (April 12, 2011).

Williams next contends that the court erred in not giving the general self-defense jury instruction (standard instruction 5.01) in addition to the Castle instruction (standard instruction 5.01A). The court informed the parties that it would not give both

instructions separately, but it would incorporate aspects of the general self-defense instruction into the Castle instruction. The court provided a copy of the instruction to the parties and no one objected. However, after the court finished instructing the jury, defense counsel objected that Instruction 5.01 was not given separately. N.T., 10/22/2018, at 162.

The general principles of self-defense/justification are covered in the early paragraphs of Instruction 5.01A. In fact, portions of Instruction 5.01A are virtually identical to Instruction 5.01. The court did not reiterate the duplicative provisions. The latter paragraphs of Instruction 5.01A discuss the Castle doctrine and Stand Your Ground. The Stand Your Ground provisions, however, were not applicable to this case as the victim did not possess a weapon. Therefore, those provisions of Instruction 5.01A were not given. The court also did not include other inapplicable provisions such as provisions related to the duty to retreat from one's place of work.

Instruction 5.01A tracks the language and format of 18 Pa. C.S. §505 (related to use of force in self-protection). Therefore, it adequately and fully conveyed to the jury the law regarding self-defense/justification. As previously noted, the court may use any language it wishes so long as the instruction provided adequately and fully conveys to the jury the law applicable to the case. *Mease,* 516 A.2d at 28.

Finally, Defendant seeks reconsideration of his sentence. He alleges that the consecutive statutory maximum sentences for aggravated assault, tampering, and obstruction serve no purpose where a mandatory life sentence has been imposed. He also asserts that statements by the court at sentencing that the picture Defendant painted of the victim during

trial was manufactured and the jury saw that and that Defendant was a cold hearted butcher reflected bias and ill will, rendering the consecutive sentences an abuse of discretion.

The court's comments did not reflect bias or ill will against Defendant. Its comments reflected the nature and circumstances of the crime and its observations of Defendant.

Defendant stabbed the victim at least 35 times. The stabbing began inside Defendant's residence, but it continued even after the victim left Defendant's residence and went onto the porch and into the street. Neighbors heard the victim screaming "he's killing me" and saw Defendant wildly swinging his arms while he was on top of the victim in the street. These facts show that Defendant was a butcher.

Defendant's lack of remorse and his attitude during trial and sentencing showed that he was cold hearted. Defendant described the victim as his friend, yet he showed an utter lack of remorse. During the trial and the sentencing, Defendant sat turned to the side with his head back and his arms crossed. Furthermore, while his friend lay dying in the street, Defendant attempted to cover up his crime by washing the knife, washing the blood off of himself and changing his clothes, which evidenced his consciousness of guilt.

The court typically does not impose consecutive sentences to a mandatory life sentence. The court felt compelled to do so in this case for several reasons. The manner of death in this case was particularly heinous. Defendant stabbed the victim at least 35 times. A portion of the stab wounds were life-threatening; the remaining stab wounds were not. The non-lethal stab wounds inflicted a considerable amount of bodily injury on the victim

prior to his death. These facts justified a consecutive sentence for aggravated assault causing bodily injury with a deadly weapon.

Society in general is the victim of the tampering and obstruction convictions, not any particular individual. That separate and distinct injury to society was not vindicated by the life sentence for murder and justified a separate consecutive sentence.

Finally, the court needed to make a statement and ensure the community was protected from Defendant. N.T., 12/17/2018, at 22.

DATED: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (DA)
Nicole Spring, Esquire (PD)
Gary Weber, Esquire (Lycoming Reporter)
Work File