

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

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
	:	CR-1004-2024
	:	
v.	:	Omnibus Motion
	:	
JEANETTE N. HUNSBERGER,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court on the Amended Omnibus Pretrial Motion filed on November 5, 2024, by and through Defendant’s counsel, Leonard Gryskewicz, Esquire. A hearing on the Motion occurred on November 13, 2024.

The preliminary hearing occurred on July 12, 2024. Defendant waived her arraignment on August 5, 2024. By way of the Criminal Information filed on October 29, 2024, Defendant is charged with eight counts of Endangering Welfare of Children pursuant to 18 Pa.C.S. Section 4304 (a)(1) and eight counts of Simple Assault pursuant to 18 Pa.C.S. Section 2701(a)(1), following the preliminary hearing¹.

Contained in her Omnibus Motion are a Motion of Writ of Habeas Corpus on all counts, a Motion for a Frye Hearing, a Motion to Compel Discovery, and a Motion for Leave to File an Amended Omnibus Pre-trial Motion and/or Additional Motions.

At the hearing on the Motion, the Commonwealth submitted the following exhibits for the Court’s consideration of Defendant’s Motion for Writ of Habeas Corpus: (1) Exhibit 1, the Transcript of the Preliminary Hearing from July 12, 2024; (2) Exhibit 2, the curriculum vitae of Dr. Kathryn Crowell, M.D.; (3) Exhibit 3, Dr. Crowell’s Expert Report, November 15, 2023; (4) Exhibit 4, Dr. Pat Joseph Bruno’s, M.D., FAAP, curriculum vitae; (5) Exhibit

¹ Magisterial District Judge Denise Dieter ultimately dismissed three counts of Endangering the Welfare of Children and three counts of Simple Assault at the conclusion of the preliminary hearing.

5, Dr. Bruno's Expert Report, February 2, 2024. Defendant objected to the curriculum vitae of both Dr. Crowell and Dr. Bruno and their reports on the basis that the exhibits were not authenticated and are inadmissible hearsay that were not admitted at the preliminary hearing. Over the objection of the Defendant, the exhibits were admitted to the record.

Background

The charges were based upon the following procedural history. On July 12, 2024, a preliminary hearing was held in this case and Trooper Matthew Miller ("Tpr. Miller") testified as follows:

He was assigned a Childline investigation into Jeanette Hunsberger. Prelim.Tr. 12-13 H.N. was suspected of being physically abused in this report. Prelim. Tr.13. H.N. and her sister H.N.2. were placed with Jeanette Hunsberger and her husband, Justice Hunsberger, after being removed from their biological parents' custody. Prelim.Tr. at 15. H.N. and her sister resided with Mr. and Mrs. Hunsberger from November 2022 through October 3, 2023 on the Hunsberger's dairy farm. Prelim.Tr. at 15; 45-46. H.N. is a non-verbal autistic child. Prelim.Tr. at 46-47. Tpr. Miller reviewed H.N.'s medical records. Therein, she was taken to the doctor multiple times for varying bruises. Prelim.Tr. at 16-18. H.N. was tested for a blood disorder that could make her bruise easily and she did not have any such disorder. Prelim.Tr. at 18.

The medical records revealed a fracture in her right-hand finger that was discovered on June 27, 2023. Prelim.Tr. at 18. However, there was no reference for when this fracture actually occurred since it was healing at the time. Prelim.Tr. at 49-50. The doctor who reviewed this injury at the time concluded that this injury was not likely to be caused by abuse. Dr. Crowell Report at 2. Lycoming County Children and Youth directed Mr. and Mrs. Hunsberger to message them pictures of any injuries H.N. sustained along with an

explanation. Prelim.Tr. at 19. Mr. and Mrs. Hunsberger did so as requested. Id. These images and explanations were sent to Dr. Kathryn Crowell for an expert opinion regarding whether the bruises were caused by abuse. Prelim.Tr. at 20.

The Commonwealth presented no evidence at the preliminary hearing that Dr. Kathryn Crowell was in fact an expert witness. The Commonwealth argued that Dr. Crowell did not have to be qualified as an expert witness for a preliminary hearing. Defense Counsel argued that the Commonwealth did have to submit evidence of Dr. Crowell's expert qualifications to comply with the rules of evidence. The Magistrate District Judge ultimately considered Dr. Crowell's findings.

Dr. Crowell opined in a written letter that eight (8) different incidents reported to Children and Youth by the Hunsbergers were suggestive of physical abuse. Prelim.Tr. at 28-36. The eight incidents are as follows:

- i. December 15, 2022- reported that H.N. ran into a refrigerator and images were associated with that incident. Prelim.Tr. at 29-30. Dr. Crowell wrote that these injuries were highly suggestive of child physical abuse. Prelim.Tr. at 30.
- ii. June 17, 2023- reported that H.N. fell onto a grate that ran behind the cows on Mr. and Mrs. Hunsberger's dairy farm. Prelim.Tr. at 30. Dr. Crowell wrote that these injuries were highly suggestive of child physical abuse. Prelim.Tr. at 30-31. The report from the June 27, 2023 date noted that H.N. was taken for medical evaluation on June 27, 2023 and a different child abuse expert concluded that "in his opinion, the bruises described were in keeping with bruises in an active child" and the finger fracture "was felt to be in keeping with the kind of fracture a child might get from falling and was reported to "not have a high specificity for abuse." Dr. Crowell Report at 3.
- iii. July 23, 2023- images of bruises on H.N.'s arm, shin, and thigh were sent to children and youth. Prelim.Tr. at 31. Dr. Crowell wrote that these injuries were highly suggestive of child physical abuse. Prelim.Tr. at 31.
- iv. July 24, 2023- images of bruises on H.N. were sent to children and youth. Prelim.Tr. at 31. Dr. Crowell wrote that these bruises were highly suggestive of child physical abuse. Prelim. Tr. at 31-32.

- v. July 31, 2023- images of a cluster of bruises were sent to children and youth. Prelim.Tr. at 32. Dr. Crowell wrote that these bruises were highly suggestive of child physical abuse. Prelim.Tr. at 32.
- vi. August 19, 2023- images of bruises were sent to children and youth. Prelim.Tr. at 32. Dr. Crowell wrote that these bruises were highly suggestive of child physical abuse. Prelim.Tr. at 32-33.
- vii. August 25, 2023- images of bruises were sent to children and youth. Prelim.Tr. at 33. Dr. Crowell wrote that these bruises were highly suggestive of child physical abuse. Prelim.Tr. at 33-34.
- viii. October 3, 2023- image of a handprint on the thigh of H.N. was sent to children and youth. Prelim.Tr. at 34-35. Mrs. Hunsberger explained that she caused this handprint when she went to discipline the child for trying to reach into the toilet to touch her own feces. Prelim.Tr. at 35. Mrs. Hunsberger told children and youth that she would smack the child's hand as a form of discipline on occasion to stop the child from touching things she wasn't supposed to. Prelim.Tr. at 35. On this occasion, she missed the child's hand and struck her thigh by accident causing the handprint. Prelim.Tr. at 35. Dr. Crowell concluded that this was suggestive of physical abuse. Prelim.Tr. at 36.

Tpr. Miller stated that his investigation did not yield any other information regarding how the injuries were caused to H.N. other than what was reported by the Hunsbergers to Children and Youth. Prelim.Tr. at 41-3. Therefore, he did not know who caused the injuries or how the injuries were caused to the child, other than the October 3, 2023 handprint that Mrs. Hunsberger admitted to accidentally causing. Prelim.Tr. 41-43. Tpr. Miller charged a total of 11 counts of simple assault and 11 counts of endangering the welfare of children. However, Tpr. Miller conceded that Dr. Crowell only opined on eight incidents that the counts were based upon. Prelim.Tr. at 50-51. No other witnesses besides Tpr. Miller testified at the preliminary hearing. Ultimately, the Magisterial District Justice bound over 8 counts of endangering welfare of children and 8 counts of simple assault. Prelim.Tr. at 64.

I. **MOTION FOR WRIT OF HABEAS CORPUS**

When a Defendant chooses to test whether the Commonwealth has sufficient evidence to establish a *prima facie* case that he or she has committed a crime, the proper

means is a motion for habeas corpus. *Commonwealth v. Dantzler*, 135 A.3d at 1112, citing *Commonwealth v. Carroll*, 936 A.2d 1148, 1152 (Pa. Super. 2007). “To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein,” *id.*, and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id.*

It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant's guilt beyond a reasonable doubt at that stage. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case “that a crime has been committed and that the accused is probably the one who committed it.” *Id.*; Pa.R.Crim.P. 141(d). Additionally, the weight and credibility of the evidence are not factors for the Court to consider. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that “[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury”). “Inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

a. **Defendant's Argument that all Charges be Dismissed because of a due process violation should be denied.**

Defendant's Motion for Writ of Habeas Corpus on all counts is predicated on the argument that the Commonwealth did not submit any evidence that Dr. Kathryn Crowell, M.D. was an expert witness. As a result, Defendant's due process rights were violated under the United States and Pennsylvania Constitutions because only non-admissible hearsay was admitted at the preliminary hearing. Defendant argued that the Commonwealth did not

submit any evidence of her qualifications or methodology regarding her medical conclusions in this case under Pennsylvania Rules of Evidence, Rule 702^{2,3}. Thus, because Dr. Crowell's testimony was improperly admitted at the preliminary hearing, all charges should be dismissed for failure of the Commonwealth to establish a *prima facie* case. Defendant raised this argument at the preliminary hearing as well.

In response at that time, the Commonwealth argued that Dr. Crowell's report was admissible as hearsay at the preliminary hearing stage because the report will be supported by some non-hearsay evidence provided by Trooper Miller who was able to testify to a synopsis of Dr. Crowell's report and that Dr. Crowell would be available for trial.

Prelim.Tr.3:16-25. Counsel for Defendant argued that he did not disagree with the standard presented in *Commonwealth v. Harris*, agreeing with the Commonwealth that some hearsay is permitted. However, Defendant argued further that all evidence presented here at the preliminary hearing was hearsay without Dr. Crowell present to testify. Meaning that, the Commonwealth would only present hearsay evidence to show the child victim was abused without presenting testimony from the physician and permitting the Defendant an opportunity to cross-examine. Defendant supported his argument by stating that *Commonwealth v. McClelland* controls here. Ultimately, the parties determined the most

² Pa.R.E. Rule 702 provides: A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson; (b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and (c) the expert's methodology is generally accepted in the relevant field.

³ Aside from a broad claim, Defendant submitted no other evidence or argument to contradict Dr. Crowell's medical expertise or knowledge. This issue was raised at the preliminary hearing, and the Commonwealth and Defense Counsel agreed there is no case law to support or negate what needs to be proven in regard to an expert at the preliminary hearing stage. More specifically, the Commonwealth argued that Defense Counsel's objection to such evidence is a credibility determination that can be raised at trial. Defense Counsel argued that the Commonwealth does not have case law to support its claim. Notwithstanding, in paragraph 30 of her motion, Defendant speculated that Dr. Crowell's report or methodology is likely not generally accepted in her relevant field because two other doctors concluded the injuries were not physical abuse. At the hearing on the Motion, the Commonwealth presented both Dr. Crowell's report and her CV establishing at the least that she is an expert in her field. Further credibility determinations are premature at this stage.

effective way to determine the applicability of the opposing arguments was to move forward with Trooper Matthew Miller's testimony and counsel's argument.

Magisterial District Judge Dieter ultimately concluded that *Commonwealth v. Harris* controlled, and that the evidence, including Dr. Crowell's report, was permissible to bound the majority of charges for court.

Defendant argues in her motion that this was a mistake of law and in violation of her due process rights, and at issue still is whether Pennsylvania Rules of Evidence Rule 542(E) permits the use of hearsay alone in the magistrate's determination that a *prima facie* case exists. Pennsylvania Rules of Evidence Rule 542 (E) provides: "Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property."

In *McCelland*, the Pennsylvania Supreme Court held that Rule 542(E) does not permit hearsay evidence alone to establish all elements of all crimes for purposes of establishing a *prima facie* case at a defendant's preliminary hearing. *Commonwealth v. Harris*, 315 A.3d 26 (2024). In *Harris*, the Court adopted from *McCelland* its interpretation that "[h]earsay as provided by law" "could reasonably mean hearsay as defined by law, i.e.,] an out-of-court statement presented as evidence of the truth of the matter asserted." *Commonwealth v. Harris*, 315 A.3d 26 (2024). The Court in *Harris* continued with the second portion of section E, stating that the text of the statute suggests, and the comment confirms, that "hearsay, whether written or oral, may establish *the elements of any offense*. The presence of witnesses to establish *these elements* is not required at a preliminary hearing." *Commonwealth v. Harris*, 315 A.3d 26, 36 (2024)(noting that the statutory

construction is silent with regard to the identity of an accused as the perpetrator of the offenses charged)(emphasis in original). Further, the Court explained, utilizing the rationale from *McClelland*, that “when Rule 542(E) was first promulgated in 2011, it ‘was of limited scope’—its primary purpose was to ease the Commonwealth’s burden in ‘establish[ing] elements of property offenses;’” and, “[a]lthough the 2013 amendment expanded the rule’s reach beyond property offenses, *the expansion was still limited to elements of crimes....*” *Commonwealth v. Harris*, 315 A.3d 26, 36 (2024). This analysis delivered the Court to its determination that hearsay is only discussed in the rule in the context of the elements of the charge⁴. *Id.* The Court in *Harris* then moved on to its analysis regarding the identity of an accused and the evidence necessary to establish a *prima facie* case at the preliminary hearing stage, which is not at issue here. Regarding the use of hearsay at preliminary hearings, the Court in *Harris* summarized as follows:

Rule 542(E) ‘is intended to allow some use of’ otherwise inadmissible hearsay by the Commonwealth to establish a *prima facie* case that an offense has been committed. *McClelland*, 233 A.3d at 735. But ‘[t]he plain language of the rule does not state a *prima facie* case may be established solely on the basis of hearsay[,]’ and to do so would violate due process in any event. *Id.*

At 37.

In consideration of the aforementioned, the arguments made by counsel at the preliminary hearing, and Dr. Crowell’s and Dr. Bruno’s reports and CVs admitted at the hearing on this Motion, the Court finds that MDJ Dieter ruled correctly in determining that the evidence and reports presented at the preliminary hearing were admissible in light of the non-hearsay testimony provided by Trooper Miller under the Rules of Evidence and the legal precedent set forth and not in violation of Defendant’s due process rights under the United

⁴ Ultimately, the Court explained, utilizing the rationale from *McClelland*, that “ when Rule 542(E) was first promulgated in 2011, it ‘was of limited scope’—its primary purpose was to ease the Commonwealth’s burden in ‘establish[ing] elements of property offenses.’

States and Pennsylvania Constitutions. Thus, Defendant's Motion for Writ of Habeas Corpus on all counts is **DENIED** in so far as it relates to this argument.

b. Defendant's Motion for Writ of Habeas Corpus to Dismiss Counts 1 through 8 should be granted in part.

Defendant is charged in counts one through eight with 18 Pa.C.S.A. Section 4304(a)(1)—Endangering the Welfare of Children for the eight incidents enumerated above. Under 18 Pa.C.S.A. Section 4304(a)(1), “[a] parent, guardian or other person supervising the welfare of child under 18 years of age, or a person that employs or supervises such a person, commits an offense if [she] knowingly endangers the welfare of the child by violating a duty of care, protection or support.”

Defendant argues in her motion that the Commonwealth did not submit any evidence that she knew H.N. was being abused or that she failed to act to stop any abuse. Rather, Defendant argues that the evidence that the Commonwealth did submit is contrary to the allegations against the Defendant. More specifically, Defendant argued that the photographs of bruises on the child submitted by the Commonwealth were photographs that Defendant or her husband captured to send to CYS in compliance with the directions from CYS. Additionally, Defendant argued that the Commonwealth submitted evidence that Defendant took the child to the doctor on June 27, 2023, to be evaluated for the bruises that were caused by abuse and that doctor concluded the bruises were not caused by abuse. Thus, the evidence the Commonwealth submitted at the preliminary hearing demonstrates that Defendant regularly took H.N. to receive medical treatment, and because of that, the Commonwealth has not set forth sufficient evidence to establish a *prima facie* case that Defendant had any knowledge the child was being abused or that Defendant did in fact cause any of the alleged abuse.

Regarding the allegations of Endangering the Welfare of Children stemming from the incident that occurred on October 3, 2023, Defendant argues that the Commonwealth only submitted evidence that the handprint was caused when Defendant attempted to discipline the child by striking H.N.'s hand and missed thereby striking her leg which was done to stop the child from playing in her own fecal matter. Defendant argues here that the Commonwealth did not submit any supporting evidence to show that Defendant violated a duty of care, protection, and support when she acted on October 3, 2023, and thus, the Commonwealth has not set forth sufficient evidence to establish that a *prima facie* case exists to substantiate a second charge of endangering the welfare of children.

Defendant attacks the remaining six charges on the same grounds, arguing that the Commonwealth did not put forth sufficient evidence to establish a *prima facie* case.

Regarding the requisite evidence the Commonwealth must proffer to establish a *prima facie* case, the Court finds that there is sufficient evidence to substantiate that at least eight incidents of abuse occurred. While there is not direct eyewitness testimony of any particular act done by the Defendant, the testimony provided through Dr. Crowell's report specifically states the incidents in which child abuse was highly likely to occur. Whether the Defendant was the cause or a witness thereof is for a jury to determine.

Defendant further asserts that practically all eight counts of endangering the welfare of children cannot be graded individually as felonies of the third degree because the child was not under the age of six (6) years at the time of the alleged incidents of abuse, citing 18 Pa.C.S.A. Section 4304(b)(2). The child has a date of birth of July 3, 2017. The child was under the age of six (6) years at the time of the December 15, 2022, and June 17, 2023 incidents evaluated by medical staff. Thus, two out of the eight charges could be graded as felonies based on the age of the child at the time of the alleged incidents of abuse. However,

that is not the way in which the Commonwealth went about charging the Defendant. The basis of the Defendant's charges, as indicated by the Criminal Information, is a course of conduct. Thus, the Court moves to the Defendant's next argument.

More specifically, Defendant argues that eight separate incidents cannot be charged as eight separate counts of course of conduct. Rather, Defendant avers that the eight incidents would be one course of conduct which requires the Court to dismiss seven of the eight counts of endangering the welfare of children. More specifically, in order for the Defendant to be charged with eight separate counts of Endangering the Welfare of Children—Course of Conduct, the Commonwealth would need to present sufficient evidence to establish a *prima facie* case that each of those counts encompasses more than one incident as alleged in the Information. The Pennsylvania Superior Court has previously interpreted the language of the statutory provision provided by subsection (b) of 18 Pa.C.S.A. Section 4304, stating that: "...with this offense, the logical interpretation of the legislative language in subsection (b) is that it is designed to punish a parent who *over days, weeks, or months*, abuses his children, such as repeatedly beating them or depriving them of food." *Commonwealth v. Popow*, 844 A.2d 13, 16 (Pa. Super. 2004)(citing *Commonwealth v. Ressler*, 798 A.2d 221 (Pa. Super. 2002)(emphasis added). The Court further stated that "[t]he statute was clearly not designed for an event that occurs within minutes, or perhaps in a given case, even hours." *Id.*

Here, the Court is apt to agree with the Defendant's argument that a course of conduct, as indicated by the medical reports and as charged in the Criminal Information, triggers evidence of a string of incidents adding to one collective charge of Endangering the Welfare of Children rather than each piece of the course of conduct being charged individually. Thus, because the Commonwealth did not present any evidence that each charge of Endangering the Welfare of Children—Course of Conduct was preceded by its

own string of incidents, the Defendant's Motion for Habeas Corpus regarding seven of the eight counts is **GRANTED**, and counts **two through eight are DISMISSED**.

c. **Defendant's Motion for Writ of Habeas Corpus to Dismiss Counts 9 through 16 should be denied.**

Under 18 Pa.C.S.A. Section 2701(a)(1)—Simple Assault, "...a person is guilty of assault if [she] attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another." Defendant claims that, at most, the Commonwealth has only presented testimony of one incident that alleges the Defendant actually caused an injury to H.N. The Defendant claims that the only incident attributed to the Defendant was the allegation that while trying to discipline the child, she accidentally hit the child in manner that left a handprint. While the Defense concedes that this testimony would be sufficient to meet the elements for Simple Assault for causing an injury, the Defense contests there is sufficient testimony to establish H.N. suffered either an impairment of physical condition or substantial pain from the injury. There was no testimony presented that H.N. incurred an impairment from this incident and Dr. Crowell testified that it is difficult to determine the level of pain with a non-verbal child like H.N. The Defendant contests that Dr. Crowell's testimony establishes H.N. suffered substantial pain.

The Court disagrees with the Defendant's conclusion that Dr. Crowell's statement that a non-verbal child's difficulty in expressing level of pain negates a jury from determining H.N. suffered substantial pain from an incident that left a hand print mark on her body. The determination as to whether or not H. N. suffered substantial pain is a matter for a jury to determine based on all of the testimony offered at trial. To hold otherwise, would leave non-verbal individuals vulnerable to abuse due to the simple fact they are unable to effectively communicate by traditional means. Additionally, regarding the Defendant's habeas motion, the Commonwealth introduced the report of Dr. Pat Bruno. In this report, Dr.

Bruno stated significant pain likely was incurred by H.N. (p 3/3). The Court holds that the Commonwealth has put forth a *prima facie* case related to the Simple Assault charge related to the incident with the handprint.

Similarly, the Defendant attacks the other 7 counts of Simple Assault on the grounds the Commonwealth's testimony fails to directly link the Defendant to the injury incurred by H.N. and whether or not she incurred substantial pain from it. While there is not direct eyewitness testimony of any particular act done by the Defendant, the testimony provided through Dr. Crowell's report specifically states the incidents in which child abuse was highly likely to occur. Thus, the Court holds that the Commonwealth has proffered sufficient evidence to establish a *prima facie* case for all eight counts of Simple Assault charged against the Defendant, and the Defendant's Motion for Writ of Habeas Corpus on these counts is **DENIED**.

II. MOTION FOR FRYE HEARING

Next, Defendant requests this Court conduct a *Frye* hearing to determine if Dr. Crowell's conclusions should be admitted into evidence.

"In general, expert testimony is permitted in all trials 'when it involves explanations and inferences not within the range of ordinary training[,] knowledge, intelligence and experience.'" *Commonwealth v. Jacoby*, 642 Pa. 623, 667 (2017). The Pennsylvania Supreme Court has held that trial courts must apply the *Frye* test to determine whether to admit novel scientific evidence in a criminal trial. *Commonwealth v. Cramer*, 195 A.3d 594, 605 (Pa. 2018). A *Frye* hearing is "...warranted only when a trial court has articulable grounds to believe that an expert witness has not applied accepted scientific methodology in a conventional fashion in reaching his or her conclusions." *Id* at 606. A *Frye* hearing is not required any time a party seeks to introduce scientific evidence. *Id*. "A party opposing the

scientific evidence must demonstrate that the expert's testimony is based on novel scientific evidence, *i.e.*, 'that there is a legitimate dispute regarding the reliability of the expert's conclusions.'" *Id.* If the moving party identifies novel scientific evidence, then the proponent of the expert testimony and novel scientific evidence must show that the expert's methodology is generally accepted in the relevant scientific community. *Id.* Thus, Defendant bears the burden of establishing that there is a legitimate dispute regarding the reliability of Dr. Crowell's expert conclusions and that her testimony or reports are based on novel scientific evidence.

Defendant argues that the limited expert report issued by Dr. Crowell proves that there is a legitimate dispute regarding the reliability of her expert conclusions. More specifically, Defendant argues that Dr. Crowell noted in her limited report on June 27, 2023, a "child abuse specialist at the child advocacy center" rendered an opinion that the bruises and healing finger fracture were indicative of an active child rather than a victim of abuse or neglect. Moreover, Defendant argues that because Dr. Crowell cites how other experts in her alleged field contradicted her findings, and she does not list her methodology in her report for determining if an injury is child abuse, there are grounds to believe that Dr. Crowell has not applied accepted scientific methodology in reaching her conclusions.

Dr. Crowell is currently an Associate Professor in the Department of Pediatrics at Penn State Health, Milton S. Hershey Medical Center. (Commonwealth Exhibit 2, Dr. Kathryn Crowell's CV). Regarding her education, Dr. Crowell completed her Bachelors in Science in 1994, she received her Doctor of Medicine in 1998 from Georgetown University School of Medicine, and she completed her residency in 2001 through Penn State University Children's Hospital. Dr. Crowell has worked as an associate professor in the Department of Pediatrics at Penn State Health. Dr. Crowell has an extensive background in the medical area

of pediatrics and she has conducted invited talks or workshops extensively. Specifically, she has spoken on physical and/or child abuse since 2010⁵.

In her report, Dr. Crowell did not state her exact methodology. However, Dr. Crowell explained how she reached her medical conclusions within her report. Moreover, her report encompasses the public's logical, common-sense understanding of medical knowledge. In other words, Dr. Crowell does not purport in her CV or report to practice a non-traditional or newly discovered area of medicine. Merriam-Webster defines "novel—adjective" as "new and not resembling something formerly known or used; not previously identified; original or striking especially in conception or style."

Defendant has not established that any of the steps, education, or evaluations conducted by Dr. Crowell are a novel area of medicine nor a novel methodology of reaching medical based conclusions supported by extensive education and experience. Moreover, Defendant's argument alleges that Dr. Crowell cites the findings of other medical evaluators in her report. If this practice is part of her methodology, it is not novel for doctors to evaluate and rely on or provide contradicting opinions to those of their peers. There is nothing in the exhibits admitted to the record nor the Defendant's argument that indicates Dr. Crowell's expert opinion contained in her report is a novel science.

In *Cramer*, the Court evaluated the admitted expert testimony of Dr. Veronique Valliere, who testified about her professional experiences and opinions with respect to victims of counterintuitive responses to sexual violence. *Commonwealth v. Cramer*, 195

⁵ See Commonwealth Exhibit No. 2, Dr. Kathryn Crowell's CV, "Invited Talks/Workshops" section, *i.e.*, 2010—Penn State University Children's Hospital PICU/PIMCU Trauma Update Day, "Physical Abuse;" 2012—Pennsylvania State Police, First Annual Child Abuse Conference, "Medical Evaluation Child Abuse;" 2014—Penn State University School of Medicine, Children's Hospital, Moses Taylor Hospital Nursing Staff Update "Suspected Child Abuse and Reporting Guidelines;" 2016—CCAP, Child Welfare Training, "Bruising and Cutaneous Findings of Physical Abuse;" 2016—Northeast Regional Children's Advocacy Center, Medical Training Academy, "Skeletal Injuries in Physical Abuse;" 2023—York County CYS Training, "Child Abuse: How to Spot the Clues;" 2023—Life Lion Spring Fling, "Child Abuse: Spotting the Clues, a Visual Journey."

A.3d 594, 605 (Pa. Super. 2018). After careful review of the record, the Pennsylvania Superior Court did not find that the trial court abused its discretion in rejecting appellant's request for a *Frye* hearing because the appellant failed to make an initial showing that Dr. Valliere's expert testimony was based on novel scientific evidence. *Id* at 607. Defendant's supporting case law did not find that the trial court abused its discretion in rejecting a *Frye* hearing for a relatively new concept from expert testimony regarding victims of sexual violence or abuse.

Accordingly, in consideration of the foregoing, and in concluding that Defendant has not met her burden of establishing that Dr. Crowell utilized novel scientific evidence or methodology in reaching her conclusions, the Motion for a *Frye* hearing is **DENIED**.

III. DEFENDANT'S MOTION TO COMPEL DISCOVERY

In her motion, Defendant requested the following discovery: (1) recorded interviews from Lycoming County Children and Youth Services as indicated in Tpr. Miller's report in which Heather Wood, Colleen Bolton, and Ryan Snyder were interviewed by Jordan Watkins from October 23, 2023; (2) the Children's Advocacy Center interview of H.N.2 that took place on November 14, 2023; (3) Children's Advocacy Center interview of H.N.; (4) all Lycoming County Children and Youth Services records for H.N. prior to her placement with the Hunsberger family, including but not limited to all photographs; (5) all written communication between Tpr. Miller and Jordan Watkins, including but not limited to, text messages and emails; and (6) a copy of CYS case notes and Tpr. Miller's report that do not have handwritten notes and highlighting for the purposes of submitting exhibits.

At the hearing on the Motion, the Commonwealth indicated that Tpr. Miller received conducted by Jordan Watkins of the above-named Lycoming County CYS caseworkers, but stated that recordings of the interviews do not exist. Regarding the interviews of H.N.2 and

H.N. that were conducted at the CAC, the Commonwealth supplied that the interview turned over of H.N.2 occurred on November 16, 2023, not on November 14, 2023, as he asserted. Additionally, H.N. is a nonverbal child, thus, no interview took place.

Regarding CYS records from the time prior to H.N.'s placement with the Hunsberger family, the records were turned over to this Court for an in-camera review of relevancy. On April 9, 2025, this Court issued its order finding that all records from CYS are relevant to either the Commonwealth or the Defense, and directed Lycoming County Children and Youth redact any information deemed protected and provide a complete set of redacted documents to the Commonwealth and Defense Counsel.

With regard to communications between Tpr. Miller and Jordan Watkins, Tpr. Miller indicated to the Commonwealth and the Court that his phone was destroyed, so the record of any such communications on his end are not within his power. Tpr. Miller offered to turn over the record of property destruction. In order to compel the requested discovery from Jordan Watkins' devices, Defendant must file a separate motion requesting the records from the solicitor for the Agency under which Jordan Watkins' employment falls.

Finally, Defendant requested copies of the case notes and police report that do not have personal handwriting, notes, and highlights. The Commonwealth indicated that an unmarked copy of the CYS notes were turned over to Defendant prior to the hearing. Tpr. Miller indicated that he is not certain whether an unmarked copy of his report is available.

Thus, Defendant's requests for discovery were individually reviewed and decided upon at the hearing on the Motion.

IV. REQUEST FOR RESERVATION OF RIGHT

In her Motion, Defendant requested permission to file additional motions based on newly discovered evidence provided by the Commonwealth. At the hearing on the Motion,

the request was granted, and Defendant was provided thirty (30) additional days to file subsequent, supplemental motions based on the requested discovery. At this time, Defendant has not filed any additional motions in this matter.

ORDER

AND NOW, this 1st day of December, 2025, the Court enters the following Order with regards to Defendant's Omnibus Motion:

- I. Defendant's Motion for Habeas Corpus on all Counts as evidence was inadmissibly submitted against her and in violation of her due process rights is **DENIED**;
- II. Defendant's Motion for Habeas Corpus on all Counts on the basis that the Commonwealth presented insufficient evidence to establish a *prima facie* case is **GRANTED IN PART and DENIED IN PART**:
 - a. Request to dismiss Counts 1 through 8—Endangering the Welfare of Children for insufficient evidence to substantiate the charge is **DENIED**;
 - b. Request to Dismiss Counts 2 through 8—Endangering the Welfare of Children for insufficient evidence to establish that each charge is a course of conduct is **GRANTED**, and Counts 2 through 8 are **DISMISSED**;
 - c. Request to Dismiss Counts 9 through 16—Simple Assault for insufficient evidence to substantiate the charge is **DENIED**;
- III. Defendant's Motion for a *Frye* hearing is **DENIED**;
- IV. Defendant's Motion to Compel Discovery was **GRANTED** in part, and otherwise disposed of at the hearing on the Motion;
- V. Defendant's Request for Reservation of Right was **GRANTED**.

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA; CA

Leonard Gryskewicz, Esq.

2 Public Sq.

Wilkes-Barre, PA 18701

Gary Weber, Esq.—Lycoming Reporter