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Third Publication

CYNTHIA CASEY, a/k/a CYNTHIA R. CASEY, a/k/a CYNTHIA L. KISNER, late of Franklin Township, Fayette County, PA (3)

Executor: Jeremy A. Kline, Sr.
c/o River Front Professional Center
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JENNIE P. GRADOS, late of Jefferson Township, Fayette County, PA (3)

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661 Grindstone Road
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220 Spruce Street
Canonsburg, PA 15317
c/o 513 Schoonmaker Avenue
Monessen, PA 15062
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JODIE LEIGH GUTHRIE, late of Fairchance, Fayette County, PA (3)

Personal Representative: Donna J. Guthrie
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SAMUEL R. THOMAS, late of Perry Township, Fayette County, PA (3)

Co-Executors: Samuel O. Thomas and
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Second Publication

ANNA CONAWAY, a/k/a ANNA P. CONAWAY, late of Masontown, Fayette County, PA (2)

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First Publication

EUGENE W. MARTINOSKY, JR., late of Everson, Fayette County, PA (1)

Administratrix: Darlene Martinosky
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Executor: Robert L. Webster, Jr.
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

LEGAL NOTICES

*** NONE ***

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF :
PENNSYLVANIA :
 :
V. :
 :
LORI ANN TRESSLER, : No. 11 of 2016
Defendant. : Honorable Judge Linda R. Cordaro

OPINION

Linda R. Cordaro, Judge

October 21, 2019

SUMMARY

Appellant was tried before a jury and found guilty of Third-Degree Murder. Appellant was sentenced to 20 to 40 years of incarceration and now appeals her conviction and sentence.

BACKGROUND

Appellant, Lori Tressler, was arrested and charged with Criminal Homicide after an incident that occurred on August 22, 2015. A jury trial was held on April 1-4, 2019. The following testimony was presented at trial.

On the evening of August 21, 2015, Raymond Dice was with Lori Tressler and Robert Engle. They were drinking on Mr. Dice's porch when they got bored and wanted to go out. First, they went to a bar called Johnny's where they had a few beers. Next, they went to Forty & Eight, a club in Smithfield, Pennsylvania.

At Forty & Eight, Armando Friend joined their group. Mr. Friend is Ms. Tressler's cousin. The four of them then went back to Johnny's Bar, where they stayed until closing time. They then went back to Mr. Dice's house, where they continued drinking. By then, it was early in the morning on August 22, 2015. There was an argument between Ms. Tressler and Mr. Engle concerning a radio missing its fuse. Mr. Engle told Ms. Tressler that her son was the one who messed with it, and Mr. Engle was going to talk to him when he got home. {1} Ms. Tressler, Mr. Engle, and Mr. Friend then left Mr. Dice's house to go to Ms. Tressler's house.

Upon arrival at Ms. Tressler's house, Mr. Engle became upset because Ms. Tressler's son, Jeffrey Tressler, was parked in the wrong spot. Ms. Tressler and Mr. Friend got out of the car they were in. Mr. Engle also got out of the car but then got back in to the driver's seat and began using that vehicle to try and push the other car out of its spot.

{1} Jeffrey Tressler is the son of Lori Tressler, but is not related to Robert Engle.

While this was going on, Jeffrey Tressler was having a bonfire at his mother's house with his friends. Jeffrey Tressler and several of his friends who were there that night testified at the trial to corroborate the events.

After Mr. Engle tried moving the other car out of his parking spot, he got out of his car and, by some witnesses' accounts, he became abrasive towards Jeffrey Tressler and his friends. Jeffrey Tressler testified at trial that Mr. Engle was yelling at several people and that he got into a scuffle with his mother, Ms. Tressler, at which time Mr. Engle threw Ms. Tressler to the ground. Jeffrey Tressler heard his mother say, "You're done Mother F'er." *Id.* at 230. Ms. Tressler then ran towards the house.

At that point, Mr. Friend was standing on the porch of Ms. Tressler's house. He saw Ms. Tressler go into her house. As she was going in, Mr. Friend heard her say, "I'm gonna stab the son of a bitch." *Criminal Jury Trial Proceedings, Volume 2* at 107. Mr. Friend saw Ms. Tressler come back out of the house with a knife in her hand, and he saw her chasing Robert Engle down the road.

Jeffrey Tressler testified that he saw his mother come out of the house and stand within a foot of Mr. Engle. "I saw her stab him in the chest with a knife. Hard enough that I heard her fist connect and make a smacking sound off of his chest." *Id.* at 231. Jeffrey Tressler and his friends were just finishing changing a tire on their vehicle at that point, and then they got in their car and took off.

Jeffrey Tressler also testified that he had previously seen his mother stab Mr. Engle on multiple occasions in the past. When asked how many times, Jeffrey Tressler replied, "There's too many times to honestly count how many." *Id.* at 238. Jeffrey Tressler then recounted the latest incident he could remember, which happened in 2009:

... [M]y mom grabbed a knife and she stabbed Robert in the chest a couple different times. It might've all been in the chest, but she lunged towards him with a knife multiple times. The only one I remember seeing is the one plunged [into] his chest. *Criminal Jury Trial Proceedings, Volume 3* at 6-7.

Prior to trial, Appellant filed a Motion in Limine seeking to exclude evidence of prior incidents of Ms. Tressler allegedly stabbing Mr. Engle with a knife. Specifically, Appellant sought to preclude evidence of the 2009 incident. By Order dated June 22, 2017, this Court granted Appellant's Motion in Limine in part as it pertained to precluding the Commonwealth from introducing evidence at trial regarding prior incidents of Ms. Tressler stabbing Mr. Engle.

However, on June 30, 2017, the Commonwealth filed an Interlocutory Appeal to the Pennsylvania Superior Court, stating that this Court's Order precluding evidence of the prior stabbings would substantially handicap the prosecution of its case. On May 15, 2018, the Superior Court reversed this Court's decision as it pertained to the introduction of evidence related to prior incidents of Ms. Tressler stabbing Mr. Engle. *Commonwealth v. Tressler*, 970 WDA 2017 (Pa. Super. Ct. May 15, 2018) (Unpublished Memorandum). The Superior Court reasoned that the introduction of the prior bad acts could be introduced because the probative value of the evidence outweighed the risk of unfair prejudice to Ms. Tressler. *Id.* at 18.

On June 7, 2018, Appellant filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. On October 17, 2018, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal at Pennsylvania Supreme Court Docket Number 236 WAL 2018. The case was then remanded to this Court, at which point this Court proceeded in accordance with the Pennsylvania Superior Court's decision.

Also at trial, Dr. Cyril Wecht testified regarding the autopsy of Robert Engle. Dr. Wecht was admitted as an expert witness in the field of Forensic Pathology. Dr. Wecht described the stab wound to Mr. Engle. The autopsy showed that the stab wound went through Mr. Engle's chest wall and into his heart. This produced a substantial amount of blood, which caused Mr. Engle's death.

Dr. Wecht was asked by the Commonwealth to look at two different knives and to hypothetically opine on whether each one could have been used in the stabbing of Robert Engle. {2} The Commonwealth first showed Dr. Wecht a knife that was found in a grassy area near where Mr. Engle was stabbed and was admitted into evidence at trial as Commonwealth Exhibit 8. That knife had a black handle and a blood-stained blade and was similar in appearance to other knives found in the kitchen sink of Ms. Tressler's house. The Commonwealth asked Dr. Wecht whether that knife could have been used to cause the injuries to Mr. Engle. Dr. Wecht replied that it could have been used, although he could not identify whether it was the knife that was actually used.

The Commonwealth next showed Dr. Wecht a second knife, which was a silver, metal survival knife and was admittedly owned by Roger Angelo. The second knife was admitted into evidence at trial by stipulation of both parties as Commonwealth Exhibit 13. The Commonwealth asked whether that knife could have been used to cause the injuries to Mr. Engle. Dr. Wecht replied that he did not believe the second knife could have been used to cause the injuries because that knife would have fractured two ribs, produced a larger stab wound, and left a pattern of serration on the wound. Dr. Wecht testified that his conclusions were within a reasonable degree of medical certainty.

At the conclusion of the trial, the jury found Ms. Tressler guilty of Third-Degree Murder. On May 31, 2019, Ms. Tressler was sentenced to 20-40 years of incarceration.

On June 13, 2019, Ms. Tressler filed a timely Notice of Appeal. {3} In accordance with Pa.R.A.P. 1925(b), this Court ordered Appellant to file a concise statement of errors complained of on appeal.

{2} Appellant's theory of defense at trial was not that Ms. Tressler stabbed Mr. Engle in self-defense or in the heat of passion, but rather that one of Jeffrey Tressler's friends, Roger Angelo, stabbed Mr. Engle. Two knives were therefore collected into evidence in this case.

{3} According to Pennsylvania Rule of Appellate Procedure 1931(a)(1), "... the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal." As stated above, Ms. Tressler filed a timely Notice of Appeal on June 13, 2019.

On August 16, 2019, before the Record was transmitted to the Pennsylvania Superior Court, this Court received a Notice from the Superior Court that Ms. Tressler's Appeal was dismissed due to Appellant's failure to file a docketing statement. As a result of said Notice, this Court did not produce an Opinion. The Record was not transmitted to the Superior Court either as a result of said dismissal. ...

ISSUE ON APPEAL

Appellant raises two issues on appeal:

- 1) Whether the Trial Court erred in permitting the Commonwealth to elicit testimony from its expert [Dr.] Wecht that exceeded the scope of the expert's report?
- 2) Whether the Trial Court erred in permitting the Commonwealth to present testimony from Appellant's son regarding prior bad acts of Appellant?

Appellant's Concise Issues (capitalization omitted).

DISCUSSION

Appellant's first issue on appeal is that the Court erred in allowing the Commonwealth to elicit testimony from Dr. Cyril Wecht that exceeded the scope of his expert report. At trial, Appellant objected to the Commonwealth's questions to Dr. Wecht as to whether each knife collected into evidence in this case could have been used to stab Mr. Engle. Appellant's objection was that the information was outside the scope of Dr. Wecht's report.

"The purpose of expert testimony is to assist in grasping complex issues not within the ordinary knowledge, intelligence[,] and experience of the jury." *Commonwealth v. Zook*, 615 A.2d 1, 11 (Pa. 1992) (internal citations omitted). Further, the admission of expert testimony "is a matter for the discretion of the trial court." *Id.* at 11-12 (citing *Commonwealth v. Emge*, 553 A.2d 74, 74 (Pa. Super. Ct. 1992)). Pennsylvania Rule of Evidence 702 states:

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} ... On September 11, 2019, the Superior Court reinstated this Appeal sua sponte, after receiving an Application for Extension of Time to File Docketing Statement from Appellant.

On October 8, 2019, the Superior Court sent a Notice to this Court regarding a delinquent Record, asking for a satisfactory reason as to why the Record had not yet been produced. The reason for the delay is because the Appeal was dismissed by the Superior Court before an Opinion was produced and the Record transmitted in August. The Pennsylvania Rules of Appellate Procedure do not appear to state a time for the transmission of the Record when an appeal is dismissed and then reinstated.

Based on Pa.R.E. 702, this Court allowed the Commonwealth to elicit testimony from Dr. Wecht in the form of a hypothetical opinion as to which knife could have been used to stab Mr. Engle. Dr. Wecht was admitted as an expert witness in the field of Forensic Pathology. His knowledge regarding the wounds of a stab victim is clearly beyond that possessed by the average layperson, and he testified that his methodology is generally accepted in the medical field, satisfying Pa.R.E. 702(a) and (c).

Further, Appellant's theory of defense was that a different person-Roger Angelo-used a different knife to stab Robert Engle. One of the knives collected into evidence in this case belonged to Mr. Angelo, who was a friend of Jeffrey Tressler and was present on the night in question. It was therefore a relevant factor for the jury to determine whether the knife belonging to Mr. Angelo or the knife belonging to Ms. Tressler was used to stab Mr. Engle. As such, Dr. Wecht's testimony as to which of the two knives he believed could have caused the stab wounds was proper under Pa.R.E. 702(b).

Further, Dr. Wecht's opinion regarding the knives was based on his expert knowledge in the field of Forensic Pathology. He testified that the second knife-owned by Mr. Angelo-could not have been used in his opinion because it would have fractured two of Mr. Engle's ribs, it would have caused a larger wound than the actual wound, and it would have left a pattern of serration, which was not present in the actual wound.

Appellant argues that Dr. Wecht's testimony exceeded the scope of his expert report. In *Commonwealth v. Roles*, 116 A.3d 122 (Pa. Super. Ct. 2015), the Superior Court stated that:

Although there are no rules of procedure in criminal cases precisely governing expert reports, it cannot be asserted that either the Commonwealth or a defendant has *carte blanche* to allow an expert to testify beyond the information contained in his or her report. To hold otherwise would eviscerate the requirement that reports be disclosed.

Id. at 131-32. In *Roles*, the expert witness at issue testified that he had changed his opinion regarding an issue from what he had originally concluded in his expert report without disclosing his new opinion. *Id.* at 130-31. The Superior Court determined that the witness's testimony was different from and beyond the scope his expert report, and that therefore a discovery violation occurred. *Id.* at 132.

Here, the issue is not whether Dr. Wecht changed his testimony from that contained in his expert report, but whether he was permitted to render a hypothetical opinion. In *Commonwealth v. Petrovich*, 648 A.2d 771 (Pa. 1994), the Pennsylvania Supreme Court stated:

[A]n expert may give an opinion in response to a hypothetical, provided the set of facts assumed in the hypothetical is eventually supported by competent evidence and reasonable inferences derived therefrom, [however] an expert may not base an opinion on conjecture or guesswork.

Id. at 772. Dr. Wecht's opinions regarding which of the two knives in response to a hypothetical question were based on the information contained in his expert report, which

included the description of the stab wounds to Mr. Engle's heart. Dr. Wecht's opinions were not based on mere conjecture or guesswork.

Counsel for Appellant also argued that the admission of Dr. Wecht's testimony was prejudicial because Appellant did not have a chance to obtain an expert witness to rebut Dr. Wecht's testimony. However, Appellant's theory of defense was that Roger Angelo—rather than Ms. Tressler—stabbed Robert Engle, and that a knife belonging to Mr. Angelo was used in the stabbing. Appellant, knowing before trial what she was attempting to prove to the jury, was free to obtain an expert witness prior to trial who would testify that the stab wounds to Mr. Engle were caused by a knife more similar to the one owned by Mr. Angelo than the one owned by Ms. Tressler. Appellant's decision not to seek her own expert witness prior to trial should not have precluded the Commonwealth from asking permissible hypothetical questions to its own expert witness.

For those reasons, Appellant's first issue on appeal is without merit.

Appellant's second issue on appeal is that the Court erred in allowing the Commonwealth to present testimony from Appellant's son regarding prior bad acts of Appellant. As stated above, this issue was addressed by the Trial Court before trial when the Trial Court granted Appellant's Motion in Limine to preclude the use of this evidence. That decision was then reversed by the Pennsylvania Superior Court, who reasoned that the probative value of evidence of Ms. Tressler previously stabbing Robert Engle outweighed its prejudicial effect. The Pennsylvania Supreme Court then denied Appellant's Petition for Allowance of Appeal.

This Court then proceeded to follow the decision of the Pennsylvania Superior Court by allowing the admission of testimony at trial regarding Ms. Tressler's previous stabbings of Mr. Engle. Because this issue has already been addressed by the Pennsylvania appellate courts, it should be precluded from review in this appeal.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Appellant's issues on appeal are without merit and that the judgment and sentence of Lori Tressler should be **AFFIRMED**.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

Date: October 21, 2019



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8:30 a.m. to 3:45 p.m.
5 substantive/1 ethics
- December 19 **Essential Ethics 2019**
9 a.m. to 4:15 p.m.
6 ethics - Full Day or 3 ethics AM/PM session
- January 23 **24th Annual Bankruptcy Institute**
9:00 a.m. to 3:30 p.m.
5 substantive/1 ethics
- January 28 **Title Insurance 101**
9:00 a.m. to 3:30 p.m.
5 substantive/1 ethics
- February 5 **Estate and Elder Law Symposium**
9:00 a.m. to 4:10 p.m.
5 substantive/1 ethics
- February 11 **A View From the Workers' Comp Bench**
9:00 a.m. to 11:00 a.m.
2 substantive
- March 4 **Civil Litigation Update**
9:00 a.m. to 4:15 p.m.
5 substantive/1 ethics
- March 12 **Hot Topics in Oil & Gas Law**
9:00 a.m. to 12:00 p.m.
3 substantive
- March 24 **Handling the Workers' Comp Case**
9:00 a.m. to 4:15 p.m.
5 substantive/1 ethics



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