

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

COMMONWEALTH OF PENNSYLVANIA, :

v. :

No. CR-1666-2016

GRACE ANN PORTER, :  
Defendant :

Seth E. Miller, Esquire  
Assistant District Attorney

Counsel for the Commonwealth

Michael P. Gough, Esquire

Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - December 8, 2020

Grace Ann Porter (hereinafter "the Defendant") is charged with two (2) counts of Neglect of Care- Dependent Person (18 Pa. C.S.A. § 2713(a)(1)). The Defendant's counsel has filed a "Petition to Preclude Commonwealth from Introducing Certain Photographs at Trial" relative to a series of photographs that were taken by Trooper Jonathan Bailey, depicting the residence in which the victim was found on the date of the Defendant's arrest. Based upon the evidence presented at a hearing before the undersigned and the post-hearing briefs submitted by counsel, and for the reasons which follow, we will deny the Defendant's petition.

FS-47-2020

FILED  
DEC - 8 P 1:12  
COURTS

FACTUAL AND PROCEDURAL BACKGROUND

On October 8, 2016, four (4) members of the Pennsylvania State Police, including Trooper Jonathan Bailey, were dispatched to a reported disturbance at 85 and 86 Buckhill Road, Penn Forest Township, Carbon County, at 11:54 p.m. Upon making contact with occupants of both residences, the troopers learned of the presence of the victim, Carolyn Baker, in the residence at 85 Buckhill Road (Criminal Complaint).

Carolyn Baker has been a care-dependent person since she suffered a series of strokes in 1999. Her brother, Charles Porter, "had lost track of his sister for a while and found her at a nursing home in New Jersey" (N.T. 7/30/20, p. 9). Mr. Porter and his wife, the Defendant, then moved Miss Baker into the residence at 85 Buckhill Road in November of 2005. Miss Baker remained living at that address until the date of the Defendant's arrest (N.T. 7/30/20, p. 9).

According to the Defendant, during the time that Miss Baker was living at 85 Buckhill Road, she was unable to walk or use a wheelchair independently (N.T. 7/30/20, p. 9). Miss Baker has lost the ability to speak and communicate with the exception of a few words. Due to her limitations, Miss Baker must utilize a catheter, colostomy bag, and adult diapers (N.T. 7/30/20, p. 21). She also requires assistance to eat (N.T. 7/30/20, p. 16).

Because Miss Baker was care-dependent, the Defendant made arrangements through the agency "Public Partnership" in Allentown, Pennsylvania to be paid a monetary sum as her caretaker (Criminal Complaint). The Defendant lived with Miss Baker at 85 Buckhill Road until a few months prior to her arrest, when she relocated to 86 Buckhill Road. During her time as a caretaker, the Defendant was responsible for feeding, bathing, and managing the health of Miss Baker. The Defendant was responsible for tending to Miss Baker's catheter and colostomy bag and taking her to medical appointments. During her time as a caretaker, the Defendant secured a hospital bed and a wheelchair which were kept in Miss Baker's bedroom (N.T. 7/30/20, p. 13).

Though Miss Baker had her own bedroom, the Defendant would relocate her daily for meals in the living room, where she would feed her using a tray (N.T. 7/30/20, pp. 15-16). Additionally, the Defendant occasionally took Miss Baker outside for walks and to medical appointments (N.T. 7/30/20, p. 16).

The residence at 85 Buckhill Road where Miss Baker lived was described as an "open-style floor plan" (N.T. 7/30/20, p. 27). One would enter through the living room, which leads into a kitchen and dining room area. There is a "right wing" to the house, which includes three bedrooms, including Miss Baker's bedroom, and a bathroom (N.T. 7/30/20, p. 25). Miss Baker's bedroom was

approximately six (6) feet away from the bathroom and ten (10) to twelve (12) feet from the kitchen (N.T. 7/30/20, pp. 27-28).

On the date of the incident, troopers were informed by one of the individuals they encountered that Miss Baker was inside of the residence at 85 Buckhill Road and required medical care (Criminal Complaint). Upon entering that residence, the troopers encountered what Trooper Bailey later described as "deplorable" conditions. According to Trooper Bailey, there was a strong odor of mold and feces that was immediately apparent upon entering the residence. Trooper Bailey also observed dirt in various corners of the house and mold growing in the bathroom (N.T. 7/30/20, p. 27).

Trooper Bailey recalled that Miss Baker was found lying in her own feces in her bedroom and that animal feces were found in an adjacent bedroom. Officer Bailey testified that all of the odors in the house could be smelled from Miss Baker's bedroom. The odors were so strong that Officer Bailey found it "difficult to breathe" while in the residence (N.T. 7/30/20, p.28).

Trooper Bailey took photographs of the residence to use as evidence. He explained that he photographed parts of the living room, Miss Baker's bedroom, the bathroom, the kitchen, the dining area, and one other bedroom.

The photographs of Miss Baker's bedroom depict a cluttered room with a hospital bed that contained a ripped mattress. There

is garbage scattered around the room. Many of the items in the room had gathered dirt or dust. There are also spider webs hanging from the ceiling.

The photographs of the bathroom depict a similar state of clutter. Some of the floor tiles are missing. There is noticeable mold growing on the walls and ceiling. Like Miss Baker's bedroom, there is a buildup of garbage and items gathering dirt and dust. The sink is covered in dirt, as are parts of the bathtub/shower and toilet. Bathroom products are scattered around in odd places. The heater was broken and gathering dust on the inside.

As to the photographs of the rest of the house, there is noticeable clutter and pet dander. The state of the remainder of the house is similar to the condition of Miss Baker's bedroom. The house, as a whole, appears unclean and disorganized.

#### ISSUE PRESENTED

Must the photographs taken by the Pennsylvania State Police and depicting anything other than the room in which the alleged victim was found on the date the Defendant was arrested be excluded at trial as irrelevant or, in the alternative, because any probative value is outweighed by potential prejudice?

#### DISCUSSION

Through her pre-trial motion, the Defendant challenges the admissibility of any photographs of the residence at 85 Buckhill

Road that depict anything other than the room in which Miss Baker was found. The Defendant contends that the photographs are irrelevant to the charges filed against her. She further contends that should we find the photographs to be relevant to the charges, said photographs must nonetheless be precluded, as the prejudice to the Defendant would outweigh any probative value they might have as evidence in the case.

The Defendant is charged with Neglect of a Care-Dependent Person (18 Pa. C.S.A. § 2713(a)(1)). Section 2713(a)(1) reads as follows:

(a) Offense defined- A caretaker is guilty of neglect of a care-dependent person if he:  
(1) Intentionally, knowingly or recklessly causes bodily injury, serious bodily injury or death by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care.

As to whether the photographs are relevant to prove that the Defendant committed the offense with which she is charged, "[e]vidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact." Commonwealth v. Fransen, 42 A.3d 1100, 1106 (Pa. Super. 2012). According to Pennsylvania Rule of Evidence 401, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence;

and (b) the fact is of consequence in determining the action.” Commonwealth v. McCarthy, 180 A.3d 368, 377 (Pa. Super. 2018) (quoting Pa.R.E. 401).

In the case of Commonwealth v. McCarthy, the Pennsylvania Superior Court upheld the trial court’s decision to admit photographic evidence of the defendant’s failure to maintain his elderly mother’s home while he was acting as her power of attorney. McCarthy, 180 A.3d at 379. The defendant was charged with a variety of theft-related crimes concerning the victim’s assets. The Pennsylvania Superior Court found that the condition of the home was relevant because it could be considered circumstantial evidence of the defendant’s criminal intent concerning his mother’s assets. Id. at 378.

Like McCarthy, the photographs of the poorly maintained home in the instant case are relevant to the charges against the Defendant. The Defendant was responsible for Miss Baker’s care. The photographs of 85 Buckhill Drive are circumstantial evidence of the Defendant’s criminal intent concerning the care of Miss Baker. The type of environment in which Miss Baker was living is relevant to the quality of her care. Though it is undisputed that there was only one room devoted to Miss Baker in the subject residence, she would often pass through other parts of the house. Further, as Trooper Bailey testified, the foul odors emitting from different parts of the residence could be smelled in Miss Baker’s

room to the extent that it was difficult to breathe. Therefore, all photographs of the residence are relevant to the charges against the Defendant.

Next, we move to the question of whether the admission of the photographs would unfairly prejudice the Defendant. Pa.R.E., Rule 403 reads as follows:

The court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Pa. R. E., Rule 403.

The comment to Rule 403 clarifies that "unfair prejudice" is defined as "a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." Pa.R.E., Rule 403.

However, "[e]vidence will not be prohibited merely because it is harmful to the defendant. [E]xclusion is limited to evidence so prejudicial that it would inflame the jury to make a decision based on something other than the legal propositions relevant to the case.... This Court has stated that it is not required to sanitize the trial to eliminate all unpleasant facts from the jury's consideration where those facts are relevant to the issues at



hand[.]” McCarthy, 180 A.3d at 377 (citing Commonwealth v. Kouma, 53 A.3d 760, 770 (Pa. Super. 2012)).

As previously noted, the photographs in this case are highly probative of the Defendant’s mental state. While the photographs may be harmful to the Defendant’s case, we do not find that they would inflame the jury to the extent that their preclusion would be necessary to ensure a fair trial.

#### CONCLUSION

For the reasons set forth hereinabove, the Defendant’s “Petition to Preclude Commonwealth from Introducing Certain Photographs at Trial” will be denied and we will enter the following

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COMMONWEALTH OF PENNSYLVANIA :  
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 v. : No. CR 1666-2019  
 :  
 GRACE ANN PORTER, :  
 Defendant :

Seth E. Miller, Esquire Counsel for the Commonwealth  
Assistant District Attorney

Michael P. Gough, Esquire Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 8<sup>th</sup> day of December, 2020, upon consideration of "Defendant's Petition to Preclude Commonwealth from Introducing Certain Photographs at Trial" and hearing held thereon, and following our review of the post-hearing briefs of counsel, and in accordance with our memorandum opinion bearing even date herewith, it is hereby

ORDERED and DECREED that the aforesaid petition is DENIED and that the parties shall appear for a pre-trial conference at 3:15 p.m. on January 8, 2021 in the Office of the District Attorney on the second floor of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:

  
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Steven R. Serfass, J.