

Circuit Court for Somerset County

Case No. C-19-CR-18-000200

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2010

September Term, 2019

ROSS WOMICK

V.

STATE OF MARYLAND

Fader, C.J.
Reed,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: April 6, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The appellant, Ross Womick, was convicted in the Circuit Court for Somerset County by a jury, presided over by Judge W. Newton Jackson, III, of attempted murder in the first degree and the possession of a weapon in a place of confinement. On this appeal, the appellant raises the following two contentions:

- 1. THE CIRCUIT COURT SHOULD NOT HAVE PERMITTED DR. CLEM TO TESTIFY AS AN EXPERT, AND**
- 2. THE CIRCUIT COURT ABUSED ITS DISCRETION BY NOT ORDERING A PSI, AND THE SENTENCING HEARING DENIED APPELLANT DUE PROCESS OF LAW.**

The murderous assault in this case occurred on September 18, 2018 at the Eastern Correctional Institution (“ECI”) in Westover, Maryland. Both the appellant and his victim, Brentyn Finn, were fellow prisoners, incarcerated at ECI. The appellant does not challenge the legal sufficiency of the evidence and most of the circumstances of the crime are, therefore, irrelevant.

The Expertise Of Dr. Clem

The appellant stabbed Finn with a knife a number of times, inflicting a variety of wounds to the victim’s neck, lower body, and chest area. The victim himself described his medical treatment as consisting of a “blood transfusion, a repaired spleen, a repaired lung, a bunch of staples, and surgery.”

Dr. Jason Clem, the resident physician at ECI, described the victim’s injuries:

He had a number of injuries, most of them laceration-related, a lot of soft tissue injuries around the head and back. His biggest injuries were he had pneumothorax, which is a collapsed lung. He also had a rupture of the diaphragm. He also had a ruptured spleen, a laceration to his spleen, and he had a chipped fracture to his sternum.

Dr. Clem testified further as to the life-threatening nature of some of the injuries:

Pneumothoraxes are life threatening, a splenic rupture is life threatening...the chipped sternum isn't very dangerous...but you can definitely die from a collapsed lung from the pressure and you can definitely bleed out from the splenic rupture.

When the State had earlier offered Dr. Clem as an expert witness, the appellant objected on the ground that Dr. Clem was not a specialist in the field of “trauma care.” The voir dire of his expertise showed that Dr. Clem had graduated from medical school in 1999, completed his residency in 2002, and had been in full-time practice since then. With respect to the treatment of stab wounds specifically, the State’s redirect examination developed the following on-the-job-experience:

[QUESTION]: Dr. Clem, you work in ECI. How long have you worked at ECI?

[ANSWER]: Eight years.

[QUESTION]: Do you have occasion to treat knife wounds?

[ANSWER]: Quite often.

[QUESTION]: How often?

[ANSWER]: Once a week.

(Emphasis supplied.)

Judge Jackson ruled that Dr. Clem was qualified to testify as an expert in this case. We affirm that ruling. “Under the well-established Maryland common law of evidence, it is within the sound discretion of the trial court to determine the admissibility of expert testimony.” Sippio v. State, 350 Md. 633, 648, 714 A.2d 864 (1998). Sippio also noted,

350 Md. at 648, “A trial court’s ruling either admitting or excluding such testimony will seldom constitute a ground for reversal.”

In terms of what goes into a witness’s expertise, we note the reference in Massie v. State, 349 Md. 834, 851, 709 A.2d 1316 (1998) to “actual experience.”

The trial court is free to consider any aspect of a witness’s background in determining whether the witness is sufficiently familiar with the subject to render an expert opinion, including the witness’s formal education, professional training, personal observations, and actual experience.

(Emphasis supplied.) With that in mind, it is hard to ignore Dr. Clem’s “once a week” treatment of “knife wounds” over the course of “eight years.” That could be some 400 occasions. In any event, Judge Jackson did not abuse his discretion in ruling that Dr. Clem was qualified to testify as an expert.

Declining To Order A PSI

Immediately after the jury rendered its verdicts, defense counsel requested a PSI investigation before sentencing but Judge Jackson declined to order one. Sample v. State, 33 Md. App. 398, 406, 365 A.2d 773 (1976), made it very clear that “[w]hether or not a court orders a presentence investigation in a particular case is within the discretion of the court.” This was not a case where Judge Jackson was called upon to make a close call between the pro’s and con’s of incarceration, on the one hand, and the feasibility of probation, on the other hand. The appellant here was already serving a sentence of 25 years for his participation as a co-defendant in the robbery of a drug dealer in which the drug dealer was murdered. Judge Jackson concluded that a presentence evaluation wouldn’t help him in deciding on an appropriate sentence. That was a call within his discretion.

**JUDGMENTS AFFIRMED;
COSTS TO BE PAID BY
APPELLANT.**