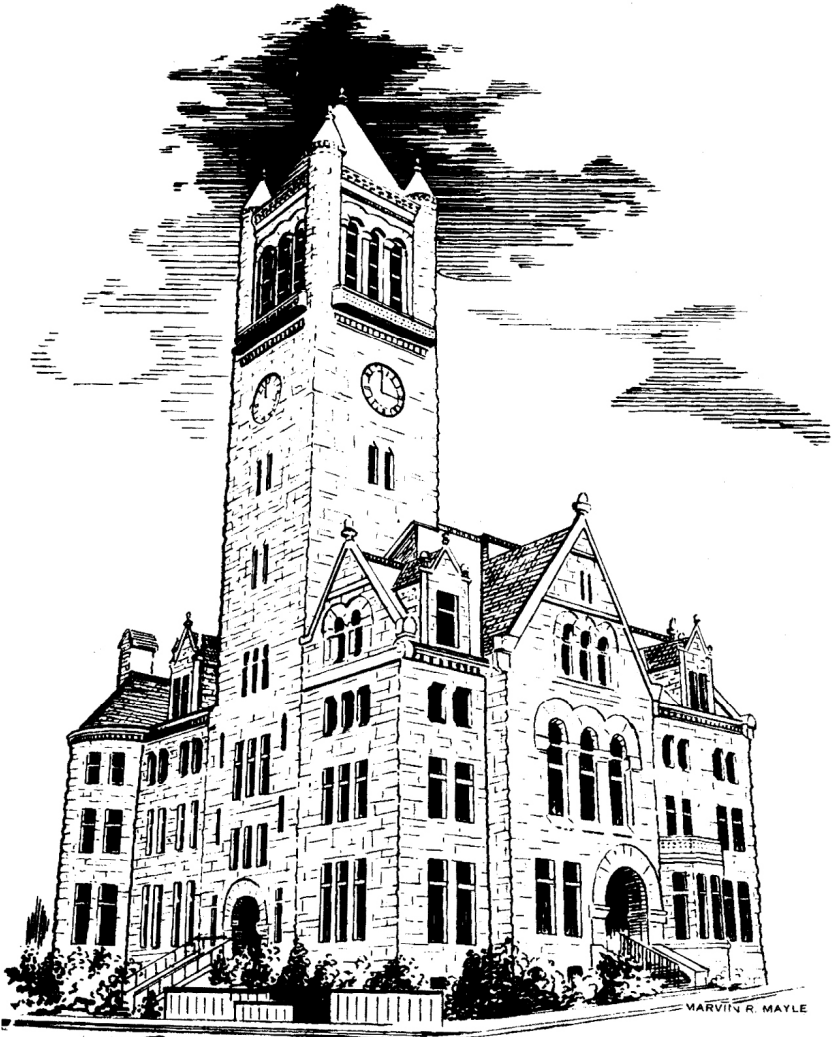


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NOTICE

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State on or about August 15, 2020 for a Limited Liability Company, organized under the Limited Liability Company Law of 1994, as from time to time amended. The name of the Company is Sleek Rides, LLC, having an address of 543 North Main Street, Masontown, PA 15461.

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JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA	:
	:
	:
v.	:
	:
DOMINIQUE JONES,	: No. 429 of 2019
Appellant.	: Honorable Judge Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

July 24, 2020

SUMMARY

As a result of a stabbing that occurred on December 25, 2018, Appellant was charged with one count of criminal homicide and three counts of endangering the welfare of children. Following a jury trial, Appellant was convicted of third-degree murder and all three counts of endangering the welfare of children. Appellant was sentenced to 6-12 years of incarceration. Appellant now appeals her judgment and sentence by challenging the admissibility of certain evidence at trial.

BACKGROUND

On December 25, 2018, Dominique Jones, Tre McCargo, and their three minor children walked into the Holiday Inn Express in Uniontown, Pennsylvania. They were staying in Room 110, which Ms. Jones had previously checked into. Video surveillance from the hotel showed the five of them walking past the front desk several times carrying Christmas presents.

The five of them went into their room for some time. Suddenly, Mr. McCargo came running around a corner into the front lobby bleeding from his neck, which he was holding. Mr. McCargo asked the front desk manager to call 9-1-1, which she did. Because it was Christmas Day, only one housekeeper was on staff. She was called down to the lobby to help. While the manager was on the phone with the state police, the housekeeper held pressure on Mr. McCargo’s neck with towels. Mr. McCargo was lying down at this point.

The police soon arrived and took over applying pressure on Mr. McCargo’s neck. Mr. McCargo was then transported to the hospital, where he died from his injury. Ms. Jones was taken into custody and charged with one count of criminal homicide. She was also charged with three counts of endangering the welfare of children for leaving the knife on the bed near the minor children and going into the bathroom after stabbing Mr.

McCargo.

Despite the nearly-1700 pages of trial transcripts, these facts were largely undisputed: Ms. Jones stabbed Mr. McCargo in the neck in their room at the Holiday Inn Express where their three children were present, and no intervening cause led to Mr. McCargo's death. The dispute at trial was why Ms. Jones stabbed Mr. McCargo. Ms. Jones's defense was that she suffered from battered-woman syndrome as a result of years of abuse from Mr. McCargo, and that she was in fear for her life when she stabbed him. The Commonwealth portrayed Ms. Jones as a jealous ex-girlfriend who stabbed Mr. McCargo in a fit of rage.

The issues on appeal largely deal with the admissibility of certain evidence that Appellant wanted to introduce at trial regarding Mr. McCargo's past, and how Ms. Jones's knowledge of his past affected her state of mind when she stabbed him.

Specifically, Appellant wanted to introduce evidence that Mr. McCargo was involved in "violent gang activity," that Mr. McCargo was a "major drug dealer," that Mr. McCargo kept guns in his house, and that Mr. McCargo had prior arrests in 2010 and 2013.

Additionally, the Commonwealth wanted to introduce evidence of an incident in 2015 where Ms. Jones stabbed Mr. McCargo, to which Appellant objected. After a pre-trial hearing on the admissibility of that evidence, which took place on December 17, 2019, this Court ruled that Appellant could not introduce evidence regarding the allegations that Mr. McCargo was in a gang or that he was a drug dealer, or that he kept guns in his house. This Court also ruled that the prior arrests of Mr. McCargo, which did not lead to convictions for violent offenses, were inadmissible. Finally, this Court ruled that the Commonwealth could introduce evidence of the 2015 stabbing. {1} {2}

Appellant was, however, permitted to present evidence at trial regarding prior instances of abuse she suffered at the hands of Mr. McCargo. Ms. Jones testified at trial that her and Mr. McCargo began dating, and she became pregnant with their first child, Serenity, in 2010. Ms. Jones was 18 or 19 at the time and Mr. McCargo was 16 or 17. (Criminal Jury Trial Proceedings - Day 5, Volume 1 of 2 at 193-94.) During one incident when she was pregnant with Serenity, Mr. McCargo was verbally abusive towards her and punched her in the face. (Id. at 194-95.) Mr. McCargo apologized to her, saying he didn't know why he did it. (Id.)

During another incident, Mr. McCargo slammed Ms. Jones through a wall. (Id. at 200-201.) Another time, Mr. McCargo punched Ms. Jones in the stomach when she was pregnant, which caused her to have a miscarriage. (Id. at 201-203.) After that, Ms. Jones became pregnant again, and Mr. McCargo kicked her in the stomach, which caused her to have a second miscarriage. (Id. at 208-209.) Later, Ms. Jones was pregnant again, and there was an incident where Mr. McCargo grabbed her, shook her, and choked her. (Id. at 210-11.)

{1} See two separate Orders from this Court, dated and filed on December 20, 2019.

{2} At trial, this Court also ordered that the expert witnesses redact any references in their reports to inadmissible evidence. See Criminal Jury Trial Proceedings - Day 5, Volume 1 of 2 at 84-89.

Mr. McCargo also gave Ms. Jones sexually transmitted diseases. (Id. at 212-13.) Mr. McCargo would not allow Ms. Jones to use birth control or tampons, he did not allow her to work, and they had sex whenever he demanded it. (Id. at 214 to 15.) Mr. McCargo once pointed a gun at Ms. Jones and then pistol-whipped her, because he did not like an outfit she was wearing. (Id. at 216.) He punched her in the mouth on another occasion. (Id. at 221-23.) He called her names and once threatened to kill her. (Id. at 227-230.) In 2018, Mr. McCargo weighed approximately 240 pounds and Ms. Jones weighed about 119. (Id. at 218-19.)

However, the trial testimony of Serenity-the daughter of Ms. Jones and Mr. McCargo who was eight years old in 2018-was that Ms. Jones was not provoked when she stabbed Mr. McCargo in the hotel room. (Criminal Jury Trial Proceedings - Day 3 at 131-41.)

According to Ms. Jones, on the day before the stabbing she found text messages on Mr. McCargo's phone that led her to believe that Mr. McCargo may have been romantically involved with a mutual friend. (Criminal Jury Trial Proceedings - Day 5, Volume 1 at 255-262.) On Christmas morning, Mr. McCargo and the children opened Christmas presents at his mother's house without Ms. Jones. (Id. at 265-67.) Ms. Jones also testified that she took the children to the hotel and did not plan to return them to his mother's house for Christmas dinner. (Id. at 268-73.) An argument ensued, Mr. McCargo became very angry and physically abusive, and that's when Ms. Jones stabbed him. (Id. at 273-278.)

At the conclusion of trial, the jury found Ms. Jones guilty of third-degree murder, and three counts of endangering the welfare of children. On March 2, 2020, Ms. Jones was sentenced to 6 to 12 years of incarceration.

ISSUES ON APPEAL

Appellant filed a timely Statement of Issues Complained of on Appeal on March 26, 2020, which raises six issues:

- 1) The court erred when it barred all testimony regarding the deceased (sic) violent gang activity known to the defendant in a case of self[-]defense. This evidence went to the state of mind of the defendant.
- 2) The court erred when it would not allow the defendant to introduce the deceased (sic) criminal record for violence known to the defendant. This evidence went to the state of mind of the defendant as it relates to self[-]defense.
- 3) The court erred when it barred all testimony that the deceased was violent and kept several weapons in the house in part to terrorize and control the defendant. This evidence went to the state of mind of the defendant in a case of self[-]defense.
- 4) The court erred when it would not allow testimony that the deceased was a major drug dealer which went to the defendant's state of mind that she was afraid of the deceased. This evidence went to the state of mind of the defendant in a case of self[-]defense.

5) The court erred in ordering both the defendant’s expert on battered woman syndrome, Dr[.] Eisenberg[,], and the Commonwealth’s expert on the same[,], Dr[.] Wright to redact from their reports and barred from testifying at trial that the deceased was a major drug dealer in arriving at their opinions re battered woman syndrome and PTSD. That sterilized their report[s] and altered/influenced their opinion[s] on a key point regarding the innocence of the defendant.

6) The court committed reversible error when it allowed into evidence testimony that three years prior [to] the crime in question, (2015)[,], the defendant and the deceased engaged in a fight and both of them were stabbed by each other[.]

Evidence of an accused’s other crimes, wrongs, or bad acts[] is generally not admissible solely to show action in conformity therewith on a particular occasion in a criminal case. See Pa.R.E. 404. More specifically, the evidence is inadmissible to prove a defendant’s propensity to commit the crime for which he is being tried. Pa.R.E. 404(b)(1) [Case citation omitted.] The Commonwealth introduced this evidence to show Jones acted in conformity to her actions in 2015 and argued that point to the jury.

Appellant’s Partial Statement of Issues Complained of on Appeal. {3}

DISCUSSION

All of Appellant’s Issues on Appeal deal with the admissibility of evidence. Specifically, this Court did not allow Appellant to introduce evidence of the victim’s criminal record or alleged gang activity, that the victim was a “major drug dealer,” or that the victim kept weapons in his house. This Court also ordered the expert witnesses to redact any references in their reports to any of the evidence that this Court determined to be inadmissible. Finally, this Court allowed the Commonwealth to present evidence of an incident in 2015 where Appellant stabbed the victim.

{3} Attorney Gettleman, Counsel for Appellant, asked for an additional 21 days from the date that the trial transcripts were filed to file a Supplemental Statement of Issues. After the trial transcripts were filed and delivered to Attorney Gettleman on June 15, 2020, this Court granted Appellant an additional 21 days from that date (by Monday, July 6, 2020) to submit a Supplemental Statement of Issues. However, Appellant did not submit a Supplemental Statement of Issues by that date. During the week of July 13-17, Attorney Gettleman contacted this Court’s chambers and left a voicemail message stating that Appellant does not intend to file a Supplemental Statement of Issues.

Appellant's First and Fourth Issues on Appeal allege that this Court erred by not permitting evidence that Mr. McCargo was involved in violent gang activity and was a "major drug dealer." {4} At the December 17, 2019 Hearing to determine the admissibility of the evidence, Appellant wanted to introduce an Affidavit of Probable Cause from an arrest of Mr. McCargo in 2010, when Mr. McCargo was 17 years old. According to the Affidavit, Mr. McCargo was alleged to have been in a gang called the "Killa Squad." However, Mr. McCargo was never arrested for or convicted of any gang-related offenses. Additionally, Appellant wanted to introduce evidence that she had firsthand knowledge that Mr. McCargo sold weed, even though Mr. McCargo was never arrested for or convicted of any drug-related offenses.

"All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not-admissible." Pa.RE. 402. "Evidence 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." Pa.RE. 401. Further, a court may exclude relevant evidence "if its probative value is outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, [or for other reasons]." Pa.RE. 403. This creates a two-part test to determine admissibility: first, courts must determine whether evidence is relevant. Second, if the evidence is relevant, courts must determine whether the prejudicial effect outweighs its probative value.

Appellant claimed that she stabbed Mr. McCargo in self-defense, and raised the issue that she suffered from the battered-woman syndrome. According to the Pennsylvania Superior Court:

[The battered-woman syndrome] does not represent a defense to homicide in and of itself, but rather, is a type of evidence [that] may be introduced on the question of the reasonable belief requirement of self-defense in cases [that] involve a history of abuse between the victim and the defendant.

Commw. v. Miller, 634 A.2d 614, 622 (Pa. Super. Ct. 1993). The issue here was whether the evidence regarding gang activity and drug dealing offered by Appellant made it more or less probable that she reasonably believed she was in fear of Mr. McCargo when she stabbed him at the Holiday Inn Express. This Court determined that it was not relevant.

{4} The term "major drug dealer," as used by Appellant throughout the pretrial and appellate stages, does not appear to hold any special legal significance. This Court interprets the term to mean that the victim sold drugs to earn money. However, this Court did not find it necessary to determine the alleged quantity of drugs sold, as it would have been irrelevant, prejudicial, and inadmissible evidence regardless of quantity.

With respect to the alleged gang activity, Appellant only sought to introduce evidence that Mr. McCargo was in a gang. {5} There does not appear to be any law in Pennsylvania that makes it illegal to just “be in a gang.” It is the underlying crimes themselves that gangs commit that are illegal. {6} Appellant did not allege that she personally witnessed or heard of any specific crimes or bad acts committed by Mr. McCargo as a member of a gang. Without that personal knowledge, the allegation in an affidavit of probable cause from 2010-when Mr. McCargo was a juvenile- that Mr. McCargo was in a gang was not indicative of Ms. Jones’s state of mind in 2018 when she stabbed Mr. McCargo during a domestic argument.

Additionally, even if such evidence was relevant, the prejudicial effect of such evidence would have far outweighed its probative value. The proffer by Appellant at the Hearing on the Motion was that Mr. McCargo was involved in a gang called the “Killa Squad.” Yet there was no evidence that Mr. McCargo ever engaged in killing, attempted murder, or conspiracy to commit murder, as the name of the gang suggests. Further, labeling Mr. McCargo as a “gang member” was clearly meant to dehumanize him. For a jury to hear that Mr. McCargo was in a gang could have improperly influenced them to decide Ms. Jones’s fate based on whether they believed the validity of such testimony. A jury that believed that Mr. McCargo was in a gang might have acquitted Ms. Jones based on a belief that Mr. McCargo’s life was not worth anything, rather than based on the critical issue of whether Ms. Jones was acting in self-defense in 2018. Thus, even if it was relevant to Ms. Jones’s state of mind, the prejudicial effect of such evidence would have far outweighed its probative value.

Likewise, the evidence that Mr. McCargo sold drugs was not relevant to the issue before the jury-whether Ms. Jones was reasonably in fear for her life at the time that she stabbed him in 2018. Mr. McCargo was never arrested for or convicted of selling drugs. Even if Ms. Jones presented testimony that she had firsthand knowledge that Mr. McCargo sold weed on a regular basis, that alone is not a violent activity nor was it abusive towards Ms. Jones. {7} Because the act of selling marijuana or drugs was not abusive towards Ms. Jones, it could not have affected her state of mind and caused her to reasonably fear for her life during the incident in 2018.

{5} Under Pennsylvania Law, the term “criminal gang” is defined as a “formal or informal ongoing organization, association[,] or group, with or without an established hierarchy, that has as one of its primary activities the commission of criminal or delinquent acts and that consists of three or more persons.” 18 Pa.C.S.A. § 5131(e). Black’s Law Dictionary defines a gang as “[a] group of persons who go about together or act in concert, esp. for antisocial or criminal purposes.” *Id.* at 748 (9th ed. 2009).

{6} Pennsylvania law does prohibit Recruiting Criminal Gang Members (18 Pa.C.S.A. § 5131). There is also a sentencing enhancement for offenses committed in association with a criminal gang (42 Pa.C.S.A. §9720-4). However, there was no evidence that Mr. McCargo recruited gang members, or that he was ever subjected to an enhanced criminal sentence for being in a gang.

{7} There was one incident that Ms. Jones testified to at trial regarding a time she knocked over some of Mr. McCargo’s upproduct”-which counsel for Appellant used as a not-very-subtle euphemism for marijuana. As a result of knocking the “product” on the floor, Mr. McCargo grabbed, shook, and choked Ms. Jones. (Criminal Jury Trial Proceedings - Day 5, Volume 1 of 2 at 206-207; 210-211.) While this incident of abuse was clearly relevant to her state of mind in 2018, the mere fact that Mr. McCargo sold this “product” was not.

Even if the evidence that Mr. McCargo was a drug dealer was relevant, it would not have been admissible because the prejudicial effect of such evidence far outweighed its probative value. Appellant did not just wish to introduce evidence that Mr. McCargo sold weed. Appellant wanted to label Mr. McCargo as a “major drug dealer.” {8} Again, this type of labeling was clearly meant to dehumanize Mr. McCargo in the eyes of the jury, and could have made the trial about whether Mr. McCargo “deserved to die,” rather than whether Ms. Jones was in reasonable fear for her life when she stabbed him. {9} Appellant’s First and Fourth Issues on Appeal are without merit.

Appellant’s Second Issue on Appeal is that this Court erred by not permitting evidence regarding the arrest record of Mr. McCargo. At the December 17, 2019 Hearing, Appellant wanted to introduce evidence of an arrest from 2010, where Mr. McCargo was arrested and charged with aggravated assault, riot, disorderly conduct, simple assault, and criminal conspiracy. Appellant also wanted to introduce evidence from an arrest in 2013 that Appellant alleged resulted in “almost identical charges.” December 17, 2019 Motions Proceedings at 18-19.

Evidence of knowledge of a victim’s arrests for violent crimes can be used by defendants to show that they reasonably believed their life was in danger when confronting the victim. *Commw. v. Darby*, 373 A.2d 1073, 1074-75 (Pa. 1977). Unlike the victim in *Darby*, Mr. McCargo was a minor when he was arrested for aggravated assault in 2010. Following that arrest, Mr. McCargo pleaded guilty to disorderly conduct. This Court does not believe that the arrest of an underage individual that led to a conviction for a non-violent offense should be admissible as evidence as to the victim’s quarrelsome and violent character.

The charges stemming from the 2013 arrest were all dismissed. {10} This Court believes that the 2013 arrest record was being offered to show the violent propensities of Mr. McCargo rather than to corroborate Ms. Jones’s knowledge that Mr. McCargo was a quarrelsome and violent person. At trial, Appellant was allowed to and in fact did present testimony that Mr. McCargo was violent and abusive towards her. This consisted not only of the testimony of Ms. Jones herself, but also in the corroborating testimony of both Serenity McCargo—who is the daughter of Ms. Jones and Mr. McCargo—and Melony Ferdinandus—who is the second cousin of Ms. Jones. Neither the arrest in 2010 nor the arrest in 2013 were for incidents involving Ms. Jones.

{8} Despite this Court ruling that evidence that Mr. McCargo was a “major drug dealer” was inadmissible, there were several instances at trial where both the Commonwealth and Appellant solicited responses from witnesses that Mr. McCargo sold weed.

{9} See *Commw. v. LaCaua*, 666 A.2d 221, 236-37 (Pa. 1995) (holding that a prosecutor improperly prejudiced a jury in a death-sentence penalty phase by his oratory on drug dealers and “their destructive effect on society.” The court added that “[t]he essence of the prosecutor’s argument was to convince the jury to sentence appellant to death as a form of retribution for the ills inflicted on society by those who sell drugs.”); but cf. *Commw. v. Collins*, 70 A.3d 1245, 1252 (Pa. Super. Ct. 2013) (holding that evidence that appellant and homicide victim were involved in rival drug distribution organizations could be introduced at trial, but solely for the purpose of demonstrating a motive for the killing. The court added that “[i]nvolvement in an illegal and often violent enterprise such as drug distribution is certainly prejudicial.”)

{10} Counsel for Appellant stated on the record at the December 17, 2019 Hearing only that the 2013 charges were “nearly identical” to the 2010 charges. Appellant’s Counsel did not state what exactly the 2013 charges were.

The 2013 arrest is also distinguishable from the facts described in Darby. In Darby, the appellant was found guilty of second-degree murder. Darby at 1073. The appellant claimed self-defense and wanted to introduce evidence that he was aware of the victim's prior arrests, even though no convictions resulted from those arrests. Id. at 1074. The charges at issue were for weapons-related offenses, as well as for being an accessory after the fact to murder and for assault with intent to kill. Id. at 1074 n-4. The Pennsylvania Supreme Court found that such charges were admissible to corroborate the appellant's belief that he was in reasonable fear for his life when he killed the victim. Id. at 1074-75.

Here, the charges against Mr. McCargo in both 2010 and 2013 were less serious than those in Darby, where the victim was charged with being an accessory after the fact to murder and with assault with intent to kill. Further, the 2013 arrest of Mr. McCargo was irrelevant to Ms. Jones's state of mind when she stabbed Mr. McCargo in 2018. Ms. Jones already knew that Mr. McCargo was violent and quarrelsome in 2018-she testified to as much. Unlike the relationship between the appellant and victim in Darby, Ms. Jones was intimately familiar with Mr. McCargo through their long relationship. As a result, this Court does not believe that the 2013 arrest record was offered to corroborate her testimony regarding abuse-which was corroborated by other witnesses-but instead was offered to show the violent propensities of Mr. McCargo. The evidence was inadmissible for such purpose, and Appellant's Second Issue on Appeal is without merit.

Appellant's Third Issue on Appeal is that this Court erred by not permitting evidence regarding the allegation that Mr. McCargo kept weapons in his house. {11} Similarly to the issues above, evidence that Mr. McCargo kept weapons in his house is not relevant to the issue of whether Ms. Jones was in reasonable fear of him when she stabbed him in 2018. First, Mr. McCargo was never arrested for nor convicted of any weapons-related offenses. Mr. McCargo was not a person prohibited from owning firearms. As such, Mr. McCargo's ownership of firearms was both legal and constitutional.

Second, the 2018 stabbing took place in the Holiday Inn Express, rather than in the home of Ms. Jones and Mr. McCargo. There was no evidence that Ms. Jones witnessed Mr. McCargo with a weapon at the Holiday Inn Express. There was not even any evidence that Ms. Jones believed that Mr. McCargo might have had a weapon. The only person who had a weapon at the Holiday Inn Express was Ms. Jones, who took a kitchen knife from her mother's house on Christmas morning. It would have been irrelevant to Ms. Jones's state of mind whether Mr. McCargo ever legally owned firearms and kept them in his house. Appellant's Third Issue is without merit.

Appellant's Fifth Issue on Appeal is that this Court erred by ordering that the expert witnesses redact from their reports any references to Mr. McCargo's alleged gang activity, drug dealing, arrest record, and weapon ownership. However, because such evidence was determined to be inadmissible, it would have been contrary to that ruling to allow the expert witnesses to introduce this evidence at trial.

{11} Appellant also argues that this Court "barred all testimony that the deceased was violent..." This is not true. As described above, Appellant was permitted to introduce significant evidence at trial regarding the violent abuse that she suffered from Mr. McCargo through her own testimony and through the testimony of others.

Appellant's Sixth Issue on Appeal is that this Court erred by allowing the Commonwealth to present evidence regarding an incident that took place in 2015. During that incident, Ms. Jones and Mr. McCargo were arguing and Ms. Jones allegedly stabbed Mr. McCargo in the shoulder. Mr. McCargo went to the hospital and got stitches for his injury.

Pennsylvania Rule of Evidence 404(b)(1) states, "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." However, evidence of a prior bad act is admissible for other purposes, "such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Pa.R.E. 404(b)(2). "In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice." *Id.*

Here, evidence regarding the incident in 2015 where Ms. Jones stabbed Mr. McCargo was admissible under the exceptions to Pa.R.E. 404 for both intent/lack of accident, as well as for common scheme, plan, or design.

Evidence of the 2015 stabbing was admissible to show that Ms. Jones intended to stab Mr. McCargo. The Commonwealth had the burden to prove beyond a reasonable doubt that Ms. Jones was not acting in self-defense when she stabbed Mr. McCargo. At trial, the issue was not whether Ms. Jones stabbed Mr. McCargo-the issue was why. The fact that Ms. Jones picked up a kitchen knife and stabbed Mr. McCargo once before during a domestic argument makes it more likely than not that she intentionally did the same thing in 2018.

Further, in 2015 Ms. Jones learned that when she stabbed Mr. McCargo with a knife, he only needed to go to the hospital to get stitches. It is possible that such was Ms. Jones's belief or intention of what would happen when she stabbed him in 2018. Ms. Jones was charged generally with criminal homicide, which requires that the person "intentionally, knowingly, recklessly[,] or negligently cause[] the death of another human being." 18 Pa.C.S.A. § 2501(a). As such, it is possible for the Commonwealth to have argued that Ms. Jones recklessly or negligently caused the death of Mr. McCargo, in which case she still would have been guilty of criminal homicide. {12}

{12} See Criminal Jury Trial Proceedings - Day 5, Volume 1 of 2 at 278:

Attorney Gettleman: "Did you intend to kill him?"

Ms. Jones: "No."

Attorney Gettleman: "Did you intend to hurt him?"

Ms. Jones: "I was just trying to get him off of me..."

The probative value of the 2015 stabbing for the purpose of showing intent or lack of accident also outweighed its prejudicial effect. Through her own testimony and that of other witnesses, Appellant presented testimony that she suffered from battered-woman syndrome and that Mr. McCargo was abusive towards her throughout their relationship. The 2015 stabbing showed that Ms. Jones was - on at least one other occasion - also violent towards Mr. McCargo. This was very relevant towards her state of mind in 2018. The prejudicial effect of such evidence was also minimized by the fact that Appellant was able to cross-examine the Commonwealth's witnesses about the 2015 incident, and by the fact that she was able to give an account of the 2015 incident where she portrayed it as "mutual combat."

Evidence of prior bad acts is also admissible to show "a common scheme, plan[,] or design embracing the commission of two or more crimes so related to each other that proof of one tends to prove the other..." *Commw. v. O'Brien*, 836 A.2d 966, 969 (Pa. Super. Ct. 2003). Here, the details surrounding the 2015 stabbing were substantially similar to the 2018 stabbing. Both events involved the same actors-Ms. Jones and Mr. McCargo, both happened during a domestic dispute, and in both instances Ms. Jones grabbed a kitchen knife to stab Mr. McCargo in the shoulder. According to the testimony of Jessica Keslar, a physician's assistant at Uniontown Hospital, Mr. McCargo came to the emergency room in 2015 with a stab wound in his shoulder and told Ms. Keslar that "he was having an argument with his girlfriend who then stabbed him with a kitchen knife in his right shoulder." Criminal Jury Trial Proceedings - Day 3 at 233.

Likewise, the probative value of the 2015 stabbing to show a common plan, scheme, or design outweighed its prejudicial effect. When fighting with Mr. McCargo, Ms. Jones had on at least one other occasion picked up a knife and stuck it into Mr. McCargo's shoulder. The similarity of the incidents was very probative for the jury to determine Ms. Jones's state of mind on December 25, 2018. Any prejudicial effect was also minimized by the fact that Ms. Jones-through her own testimony and that of other witnesses-was able to portray the 2015 stabbing as one of "mutual combat." It was up to the jury to decide whether to believe Ms. Jones's version of the 2015 stabbing or the Commonwealth's, and whether the incident had any impact on Ms. Jones's state of mind when she stabbed Mr. McCargo in 2018. Appellant's Sixth Issue on Appeal is without merit.

CONCLUSION

For the foregoing reasons, this Court respectfully requests that the judgment and sentence of Ms. Jones be AFFIRMED.

BY THE COURT:
LINDA R. CORDARO, JUDGE

ATTEST:
Clerk of Courts

Date: July 24, 2020

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- Discussion topics:
Sentencing Guidelines and the Justice Reinvestment Initiative
- Presenters:
Honorable Joseph M. George, Jr. - Judge, Fayette County Court of Common Pleas
Ryan S. Meyers - Pennsylvania Commission on Sentencing
Joshua Britt - Fayette County Adult Probation

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If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Monday, September 14th.

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