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COMMONWEALTH v. LYNN

No. 2171 EDA 2012.

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COMMONWEALTH OF PENNSYLVANIA, Appellee, v. WILLIAM J. LYNN, Appellant.

Superior Court of Pennsylvania.

Filed December 22, 2015.

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BEFORE: BENDER, P.J.E., DONOHUE, J., and MUSMANNO, J.

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P 65.37

MEMORANDUM BY **BENDER, P.J.E.**

Appellant, William J. Lynn, appeals from the judgment of sentence of 3-6 years' incarceration, imposed following his conviction for endangering the welfare of children (EWOC).¹ The instant case is on remand from our Supreme Court, *see Commonwealth v. Lynn*, [114 A.3d 796](#) (Pa. 2015), for consideration of issues originally raised but not decided by our Court, *see Commonwealth v. Lynn*, [83 A.3d 434](#) (Pa. Super. 2013). After careful review, we conclude that the trial court abused its discretion by admitting a high volume of unfairly prejudicial other-acts evidence and, on that basis, we vacate Appellant's judgment of sentence and remand for a new trial.

Factual Background

Appellant, Monsignor William J. Lynn, served as Secretary for Clergy ("Secretary") for the Archdiocese of Philadelphia ("Archdiocese") from June of 1992 until June of 2004. During that time, Appellant was responsible for, *inter alia*, handling clergy sexual abuse issues that arose within the Archdiocese. In that capacity, Appellant supervised a priest, Edward V. Avery ("Avery"), who molested a ten-year-old altar boy at St. Jerome's Parish in 1999. In his capacity as Secretary, Appellant placed Avery in a rectory at St. Jerome's following allegations of sexual abuse that came to light in 1992, regarding Avery's conduct at another parish between 1978 and 1981. The jury in this case ultimately convicted Appellant of EWOC for his deficient supervision of Avery. A full summary of the facts relating to Appellant's supervision of Avery can be found in our December 26, 2013 Opinion. *See Lynn*, [83 A.3d at 437-45](#). Additionally, our Supreme Court also provided its own summary of this evidence, and related matters, in its April 27, 2015 decision. *See Lynn*, [114 A.3d at 798-808](#).

Procedural History

As we noted in our previous opinion:

This case was initiated by a criminal complaint charging Appellant with two counts each of EWOC, 18 Pa.C.S. § 4304, and conspiracy to commit EWOC, 18 Pa.C.S. § 903, relating to his supervision of Avery and another priest, Reverend James Brennan (Brennan). Initially, both Avery and Brennan were scheduled to be tried alongside Appellant as co-defendants. However, Avery pled guilty to involuntary deviate sexual intercourse[, 18 Pa.C.S. § 3123,] and conspiracy to commit EWOC on March 22, 2012, after the jury had been selected but before the Commonwealth began presenting its case. Brennan remained as Appellant's co-

defendant until the case concluded.

Appellant's and Brennan's jury trial commenced on March 26, 2012. The Commonwealth rested its case on May 17, 2012 and, at that time, the trial court granted Appellant's motion for judgment of acquittal with regard to the Brennan-related conspiracy count, but denied the motion with respect to the remaining counts. The trial ended on June 22, 2012, when the jury returned a verdict of guilty with respect to the Avery-related EWOC charge, and acquitted him of the Avery-related conspiracy and Brennan-related EWOC charges.¹⁷ Appellant did not file post-sentence motions.

¹⁷ The jury failed to reach a verdict on any of the charges pending against Brennan.

On July 24, 2012, the trial court sentenced Appellant to a term of 3-6 years' incarceration for EWOC, graded as a third-degree felony.¹⁸ Appellant filed a timely notice of appeal on August 8, 2012, and complied in a timely fashion with the trial court's order to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). The trial court eventually filed its 1925(a) opinion on April 12, 2013.

¹⁸ EWOC is a third-degree felony, rather than a first-degree misdemeanor, where there is a course of conduct of endangering the welfare of a child[.] *18 Pa.C.S. § 4304(b)*.

Lynn, 83 A.3d at 445.

Appellant originally presented ten questions for our review, which fall generally into four categories: First, Appellant challenged the sufficiency of the evidence supporting his conviction. Appellant's Brief, at 16-40. Second, Appellant asserted the trial court abused its discretion by improperly charging the jury. *Id.* at 40-54. Third, he claimed the trial court abused its discretion by improperly admitting evidence of twenty-one instances of other-acts under Pa.R.E. 404(b)(2). *Id.* at 54-68. Fourth, Appellant claimed the trial court abused its discretion when it denied his motion for a mistrial following prosecutorial misconduct that purportedly occurred during the Commonwealth's closing argument. *Id.* at 68-70.

In an opinion filed on December 26, 2013, this Court reversed Appellant's conviction on sufficiency grounds, concluding that Appellant was not a "supervisor" within the meaning of the EWOC statute and, therefore, that he could not be charged as a principal thereunder. See *Lynn*, 83 A.3d at 453-54. Additionally, we held that there was insufficient evidence to hold him accountable as an accomplice to Avery's commission of an EWOC offense. *Id.* at 457. Consequently, this Court did not address Appellant's non-sufficiency related claims. This Court also did not address certain aspects of Appellant's sufficiency-related claims, particularly with respect to whether Appellant possessed the requisite *mens rea* to commit EWOC as a principal.

Following our decision, the Commonwealth petitioned Pennsylvania's Supreme Court for allowance of appeal. The Supreme Court granted that petition on May 8, 2014, accepting for review the following issues:

(1) Was the evidence insufficient to prove endangering the welfare of children because defendant did not have direct contact with children?

(2) Assuming *arguendo* defendant could not endanger the welfare of children in his individual capacity, but as part of a general scheme placed a known sexual predator under his control in a position that promoted the risk of further sexual assaults, was the evidence sufficient to convict him as an accomplice?

Commonwealth v. Lynn, 91 A.3d 1233 (Pa. 2014) (*per curiam* order).

In an opinion issued on April 27, 2015, the Supreme Court reversed our December 26, 2013 decision, finding that this Court "erred in holding that the EWOC statute required evidence of direct supervision of children and overturning Appellee's conviction on that basis[,]" *Lynn*, 114 A.3d at 827, because "the statute is plain and unambiguous that it is not the child that Appellee must have been supervising, but the child's welfare," *id.* at 823. The Supreme Court declined to answer the second issue upon which it granted the Commonwealth's petition for allowance of appeal, because the Court ostensibly found that "the Commonwealth's evidence was sufficient to sustain the conviction for EWOC as a principal." *Id.* at 827. Finally, the Supreme Court remanded "for further proceedings consistent with" its opinion. *Id.*

Following our Supreme Court's decision, the parties flooded this Court with numerous filings seeking to litigate, *inter alia*, whether this panel could still address aspects of Appellant's sufficiency claim(s) that were left unanswered by our December 26, 2013 opinion, and which were ostensibly outside the scope of our Supreme Court's granting of the Commonwealth's petition for allowance of appeal. See Appellant's Application for Additional Briefing, 5/11/2015; and see Commonwealth's Answer to Application for Additional Briefing, 5/18/2015. In response, by order dated June 16, 2015, this Court directed the parties, pursuant to Appellant's request, to provide supplemental briefing on the matter. See Order, 6/16/15, at 1-3. The parties complied in a timely fashion; Appellant filed a supplemental brief on June 30, 2015, and the Commonwealth filed its reply on August 5, 2015.

Appellant's original brief presented the following questions for our review:

1. Whether the pre-amended version of 18 Pa.C.S.A. § 4304 (endangering the welfare of children) (EWOC) did not properly apply to Appellant, Msgr. William Lynn, who was not a parent, guardian or other person supervising the welfare of a child and who had no direct involvement with the child, never met and never knew the child, and whether Appellant's trial as a supervisor under EWOC was a violation of the *ex post facto* clauses of the U.S. and Pennsylvania Constitutions?

2. Whether the trial court erred in allowing the jury to deliberate on whether Appellant can be liable for EWOC as a principal or an

