

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 590, 803, and 804

COMMONWEALTH'S RIGHT TO HAVE JURY DETERMINE DEGREE OF GUILT

On September 18, 2008, effective November 1, 2008, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 590 and 803 to conform the rules with the Court's holding in *Commonwealth v. Miriam White*, 589 Pa. 642, 910 A.2d 648 (2006). The amendments make it clear in these rules that the Commonwealth has a right to have a jury determine the degree of guilt when the defendant pleads guilty to murder generally. The Court also amended Rule 804 to conform it to the jury waiver provisions in Rule 620.

1. Pa.Rs.Crim.P. 590 and 803

The Committee undertook a review of the guilty plea rules following the Court's decision in *Commonwealth v. Miriam White, supra.*, in which the Court held, *inter alia*, that the Commonwealth has a right to request that a jury determine the degree of guilt in cases in which the defendant pleads guilty to murder generally. In reaching this decision, Justice Eakin, writing for the majority, noted:

Waiving one's right, however, does not constitute waiver of another's corresponding right; White cannot vitiate the Commonwealth's right by waiving her own. Accordingly, we conclude the Commonwealth retains its right to a jury under Article I, § 6 of the Pennsylvania Constitution, Pa. Const. art. I, § 6 ("in criminal cases the Commonwealth shall have the same right to trial by jury as does the accused."); ... and it may request one at the degree of guilt hearing. *Id.* at 662.

¹ The Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

Paragraph (C) of Rule 590 (Pleas and Plea Agreements) and paragraph (A) of Rule 803 (Guilty Plea Procedure) provide in cases in which the defendant pleads guilty to murder generally, “the judge before whom the plea is entered shall alone determine the degree of guilt.” In view of *White*, this provision in the rules, without some further elaboration, is no longer procedurally accurate. Accordingly, Rule 590(C) and Rule 803(A) are amended to recognize the 1998 amendment to Article I, § 6 of the Pennsylvania Constitution and alert the bench and bar to the holding in *White*.

The Committee, in considering how to address the matter in the rules, observed that the right to a jury trial, granted by the Pennsylvania Constitution to both the defendant and the Commonwealth, is the default position. That is, both the defendant and the Commonwealth start with the right to a jury trial. Absent an affirmative waiver of the right to a jury trial by both parties, the case will proceed before a jury. The Committee also noted, as stated in *White, supra.* at 662, when a defendant enters a guilty plea to murder generally, the defendant is waiving his or her right to have a jury determine the degree of guilt. In view of this analysis, the amendments to Rule 590(C) and Rule 803(A) make it clear when a defendant pleads guilty to murder generally, the jury will determine the degree of guilt unless the Commonwealth elects to have the judge before whom the plea was entered make the determination.

During the Committee’s discussions about the proposed rule changes, several members opined that in order to make an informed decision whether to plead guilty to murder generally, the defendant must understand that the Commonwealth has a right to have a jury determine the degree of guilt in these circumstances. The Committee reasoned this information should be elicited as part of the guilty plea colloquy. To accomplish this, the areas of inquiry listed in the Rule 590 *Comment* have been revised to include a provision that the judge inquire into whether the defendant understands that the Commonwealth has a right to have a jury decide the degree of guilt when the defendant pleads guilty to murder generally.

In addition, the *Comments* to Rules 590 and 803 have been revised by the addition of references to Article 1 §6 of the Pennsylvania Constitution and to *Commonwealth v. White, supra.*

2. Pa.R.Crim.P. 804

Although not the subject of *White*, Rule 804 (Procedure When Jury Trial is Waived) also has been amended. Rule 804 provides, *inter alia*, that “When a defendant charged with murder waives a jury trial, the trial judge shall alone hear the evidence.” The Committee, during its discussions of Rules 590 and 803 and the Commonwealth’s right to a jury trial, noted that Rule 804 had not been amended at the same time that Rule 620 (Waiver of Jury Trial) was amended to reflect the 1998 amendment to Article I, § 6 of the Pennsylvania Constitution. In view of this, it makes sense at this time to amend Rule 804 to bring the rule into conformity with the waiver of jury trial provisions in Rule 620. Accordingly, paragraph (A) of Rule 804 is amended to provide that both the defendant and the attorney for the Commonwealth may waive a jury trial with the approval of the judge when the defendant is charged with murder.