

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-11,108
	:
	:
vs.	: CRIMINAL DIVISION
	: Reconsideration
MUHAMMAD CANNON,	:
Defendant	:

OPINION AND ORDER

The Commonwealth seeks reconsideration of this Court's Order of June 4, 2001, in which the Court's previous sentencing Order of April 4, 2001 was vacated and resentencing was scheduled for July 5, 2001. At sentencing, Defendant was subjected to the mandatory minimum five (5) year sentence of 42 Pa. C.S. Section 9712, on the grounds that his co-felon who actually robbed the jewelry store (Defendant having played the role of the get-away driver), visibly possessed a fire arm during the robbery. After a post-sentence motion, however, the Court found the evidence insufficient to show that Defendant knew that his co-felon visibly possessed the gun during the robbery, on the basis of Commonwealth v Smith, 563 A.2d 905 (Pa. Super. 1989), which required the Commonwealth to establish by a preponderance of the evidence that the unarmed accomplice had knowledge that the firearm was visibly possessed by his co-felon in the commission of the crime. The Commonwealth has now presented the Court with the very recent case of Commonwealth v Reeves, filed by the Superior Court on June 5, 2001 to No. 1885 MDA 2000, in which the Superior Court has again addressed the issue of the get- away driver's susceptibility to the mandatory minimum sentence for visible possession of a firearm. The Commonwealth argues that Reeves requires this Court to reconsider its June 4, 2001 Order. The Court agrees.

In Reeves, the Court stated:

If we were to conclude that Reeves needed to actually see the gun being pointed at the victim, then the result would be that drivers of get-away cars would be immune from the dictates of Section 9712 merely because they chose to remain in their cars. Such a result was not intended by the legislature when the mandatory minimum sentencing requirement was passed into law. We hold that where the evidence reveals that drivers of get-away cars have specific knowledge that their co-felons used a gun during a robbery, then those drivers shall be subject to Section 9712.

Reeves, *Supra*, at p. 8. The evidence in Reeves upon which the Superior Court based a finding of specific knowledge was such that four (4) people agreed to rob a convenience store, one (1) of whom testified that the foursome had agreed that a gun was needed for the robbery, and another of whom testified that all four (4) had discussed the fact that a gun was needed and that while in the car, driven by Reeves, the stick-up man had displayed the gun. Further, a third co-felon testified that she knew a gun was going to be used during the robbery because Reeves had told her so. The Court then specifically concluded that the Commonwealth had demonstrated that Reeves' co-felon visibly possessed a gun during the robbery and that Reeves was aware of that fact.

Defendant points to the evidence in Reeves that Reeves himself told a co-felon that a gun was going to be used, apparently seeking to require direct evidence of the knowledge element. The Court does not believe that direct evidence is necessary, however, and believes that the circumstantial evidence in the instant matter is sufficient to show the requisite knowledge. Specifically, as noted in the Opinion and Order of June 4, 2001, the evidence showed that Defendant along with three (3) others had been passing a weapon around and discussing the proposed robbery of a jewelry store prior to the robbery, that the gun was taken in the car and Defendant knew the gun was in the car, and that the stick-up man took the gun into the jewelry store and Defendant knew he took it into the jewelry store. The Court believes that the required knowledge may be imputed to Defendant based on these circumstances, as that knowledge is defined by Reeves.

ORDER

AND NOW, this day of June, 2001, for the foregoing reasons, this Court's Order of June 4, 2001 is hereby vacated and the Order of April 4, 2001 is hereby reinstated.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 Ed Rymza, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson