

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 01-11,825

VS :

TAMMY COLLINS :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925 (A)
OF THE RULES OF APPELLATE PROCEDURE

On July 31, 2001 Defendant, Tammy Collins, was charged by the Pennsylvania State Police with Driving Under the Influence, in violation of 75 Pa.C.S.A. § 3731 along with related summaries. After being held for court on October 18, 2001, the Defendant was scheduled for jury trial before this Court on March 21, 2002. During the testimony of the Commonwealth's only witness, after defense motion, this Court granted the request for a mistrial. Defendant was again tried before the Honorable William S. Kieser and convicted. Defendant appeals this Court's denial of the Defendant's Motion to Dismiss on double jeopardy grounds.

During the testimony of the prosecuting officer, Trooper Eisenhower, the Commonwealth's attorney and he engaged in the following exchange.

Ferrell: And at some point, did you advise Miss Collins of your intention to place her under arrest?

Eisenhower: Yes, I did.

Ferrell: And did she have any further conversation with you regarding her condition or anything of that nature?

Eisenhower: Yes, she had. Once she was out of the vehicle she-- once I started placing her under arrest she started crying. She asked me to cut her a break because she had kids to go home to because she had already been arrested for DUI.

N.T. 3/21/02 at pp.10-11.

As soon as Eisenhower finished his statement, Defense Counsel requested a sidebar to move for a mistrial. During the sidebar conversation, the Assistant District Attorney indicated that he had indeed spoken with the trooper about this particular statement and was surprised he had actually said it. Id. In fact, the Commonwealth made a particular effort to warn the trooper not to make the statement, as the trooper had done so previously at the preliminary hearing. Id. Later, outside the presence of the jury, this Court reviewed the reasons for the grant of the Defense request for mistrial. Id. at 13-15. In fact, Defense Counsel agreed that the Commonwealth [did not] "engaged in anything other than the conduct he should." Id. at 14.

In [Commonwealth v. Yost, 305 Pa.Super. 316, 451 A.2d 549 \(1982\)](#), the trial court instructed the prosecutor to direct his witnesses to avoid testifying about an objectionable fact regarding the defendant. Nevertheless, a Commonwealth witness made an improper reference, and the trial court granted the defendant's motion for a mistrial. On appeal, the court found that a retrial was not barred by the double jeopardy clause because there was no evidence of prosecutorial intent to provoke a mistrial or prejudice the defendant. Such is the case here. We can find no evidence of prosecutorial

intent to provoke a mistrial or prejudice the defendant. The Court found that the Commonwealth did not act improperly since the Commonwealth's question was not designed to elicit the offered statement. Therefore, jeopardy did not attach and the Commonwealth would be free to try the Defendant again.

Date: January 6, 2003

By the Court,

Nancy L. Butts, Judge

Xc: George Lepley, Esq.
Robert Ferrell, Esq.
Honorable Nancy L. Butts
Judges
Gary Weber, Esq.