

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 02-10006
:
:
vs. : CRIMINAL DIVISION
:
:
MATTHEW EISNER, :
Defendant : 1925(a) Opinion

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

This opinion is written in support of this Court's Judgment of Sentence dated October 16, 2002 and docketed on October 18, 2002.

The facts relevant to this appeal are as follows. On or about June 21, 2001, the defendant and Mitchell Bradley broke into the residence of Mr. and Mrs. James Miles at 1129 Dewey Avenue, Williamsport, Pennsylvania and stole a safe. They took the safe to Bradley's cousin's house and forced it open. The safe contained approximately \$2200 in cash, a .22 caliber Rohm handgun and a .38 caliber Smith and Wesson handgun. The defendant and Bradley sold the .38 caliber handgun to Ernest Welch and the .22 caliber handgun to Rob Brown.

Mr. Welch was arrested on unrelated charges and the .38 caliber Smith and Wesson was discovered. The police

eventually connected the handgun to the burglary of the Miles residence. They asked Mr. Welch how he came into possession of the handgun and he indicated he purchased it from the defendant for \$50. The police also discovered Mr. Brown purchased the other handgun.

The Court held a jury trial on August 22-23, 2002. The jury found the defendant guilty of burglary, theft by unlawful taking, criminal trespass, two counts of receiving stolen property, criminal conspiracy to commit burglary, criminal conspiracy to possess or dispose of stolen handguns and person not to possess firearm. On October 16, 2002, the Court sentenced the defendant to an aggregate term of incarceration in a state correctional institution of 4½ to 10 years and a consecutive term of 5 years probation. The defendant filed a notice of appeal on October 24, 2002.

The first issue raised by the defendant is that the Court erred in denying a mistrial based on the showing of a photograph of the defendant with two other individuals who were allegedly involved in other criminal matters thereby inferring to the jury other criminal conduct on the part of the defendant. The Court cannot agree. Initially, the Court notes the defendant's allegation is factually inaccurate. The photograph of the defendant with two other individuals was neither introduced into evidence nor shown to the jury.

Rather, one of the Commonwealth witnesses, Officer Leonard Dincher, testified about the photograph. During his testimony, Officer Dincher indicated Mr. Welch identified the defendant as one of the persons from whom he bought the handgun from a photograph depicting the defendant, Mitchell Bradley and another individual. The photograph came from a search of the other individual's residence during a counterfeiting investigation of that individual. N.T., August 23, 2002, at 22. Defense counsel requested a mistrial. During a somewhat lengthy sidebar conference, Officer Dincher was questioned regarding the defendant's involvement, or lack thereof, in the counterfeiting case. Id. at 22-40. When the jury returned to the courtroom, Officer Dincher testified that neither Mr. Bradley nor the defendant were part of the counterfeiting investigation. Id. at 40. They were never arrested for counterfeiting and had no involvement in that case. Id. at 41. Defense counsel requested another sidebar conference and renewed his request for a mistrial, which the Court denied. Id. at 44-46. At a later sidebar conference, the Court offered to give a cautionary instruction on the mistrial issue, but the defense did not want the Court to give such an instruction. Id. at 117-118.

A mistrial is granted "only where an event

prejudicial to a defendant occurs at trial and where the unavoidable effect of that event is to deprive the defendant of a fair trial." Commonwealth v. Brown, 544 Pa. 406, 676 A.2d 1178, 1184 (1996). A trial court's denial of a motion for a mistrial shall not be reversed unless the appellate court determines that the trial court abused its discretion. Commonwealth v. Mayhue, 536 Pa. 271, 639 A.2d 421, 431 (1994). The Court does not believe the defendant was deprived of a fair trial. Not all references that may indicate prior criminal activity require reversal. Commonwealth v. Blystone, 555 Pa. 565, 580-81, 725 A.2d 1197, 1204-05 (1999), citing Commonwealth v. Nichols, 485 Pa. 1, 4, 400 A.2d 1281, 1282 (1979). The mere fact that the police possess a photograph of the defendant does not necessarily infer prior criminal conduct. See Commonwealth v. Brown, 511 Pa. 155, 160-161, 512 A.2d 596, 598-599 (1986) ("One's picture may be in the possession of the police even though the person was neither charged, tried nor convicted of any crime."). Since the record clearly indicated the defendant was **not** involved in the counterfeiting case, the Court does not believe the jury would infer that he was. Therefore, a mistrial was not warranted. Even assuming arguendo that the testimony would indicate prior bad acts by this defendant, such evidence would be admissible as part of a chain or sequence of events that formed the

history of the case and were part of its natural development.”
Commonwealth v. Reid, 811 A.2d 530, 550-51 (Pa. 2002), citing
Commonwealth v. Billa, 521 Pa. 168, 555 A.2d 835, 840 (1989).

The other issue the defendant raises on appeal is that the Court erred in denying a mistrial where the defendant, in response to questioning by the Commonwealth, testified that he gave information to the police about other crimes that had occurred thereby inferring to the jury that the defendant was involved in other criminal activity. Again, the Court cannot agree. People can give information to the police about criminal activity without being involved in the criminal activity; they are known as witnesses. Given the record as a whole, including but not limited to Officer Dincher’s testimony that the defendant was not involved in the counterfeiting case, the defendant’s testimony that he sought out the police when he heard they wanted to talk to him, and both Officer Dincher’s and the defendant’s testimony regarding the defendant’s cooperative attitude, the Court believes the reasonable inference to the jury was that the defendant was providing information about other cases as a witness and not as a person who was involved in other criminal activity.

DATE: _____

By The Court,

Kenneth D. Brown, Judge

cc: William Simmers, Esquire
James Protasio, Esquire
Law Clerk
Work file