

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PA,	:	
Plaintiff	:	
	:	
v.	:	No. 02-10,246
	:	
STEVEN A. SMITH,	:	
Defendant	:	

OPINION

Issued Pursuant to R.A.P. 1925(a)

The defendant has raised two concerns in his Statement of Matters Complained of on Appeal: the court erred in denying the defendant’s request to recuse the District Attorney’s Office and the court erred in refusing to grant a mistrial based upon one or more jurors seeing the defendant in handcuffs.

Regarding the motion to recuse, which is more properly termed a motion to disqualify, the motion is based upon the fact the defendant’s previous public defender attorney, Donald Martino, who represented him at the preliminary hearing, now works as an Assistant District Attorney. Mr. Martino testified he had no communication whatsoever concerning the case with anyone in the District Attorney’s Office. The court correctly found that a “Chinese Wall” had been built which adequately protected the defendant’s rights. This ruling is consistent with Commonwealth v. Miller, 422 A.2d 525 (Pa. Super. 1980), a case directly on point, which fully explains why disqualification of the entire District Attorney’s office would be an “extravagantly indulgent” action.

Regarding the refusal to grant a mistrial, that motion was based upon the fact that one or possibly two jurors inadvertently saw the defendant in handcuffs, being led by a Deputy Sheriff, and as many as six jurors possibly heard one Deputy Sheriff say to

the defense attorney, “Can you come upstairs, he [the defendant] wants to talk to you?” Apparently, although the sheriffs were attempting to move the defendant along the hallway quickly to avoid such incidents, the defendant was delaying in an attempt to talk to his attorney. The court denied the defendant’s motion because the statement about coming upstairs is insufficient to imply incarceration or create prejudice. Regarding the witnessing of the defendant in handcuffs, a mere accidental observation of a defendant in handcuffs outside a courtroom by a juror does not, without more, require the granting of a mistrial. *See Commonwealth of Evans*, 348 A.2d 92 (Pa. 1975), again a case directly on point.

Date: _____ BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
James Protasio, Esq.
District Attorney (Charles Hardaway, Esq.)
Gary Weber, Esq.