

**IN THE COURT OF COMMON PLEAS
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH	:	
	:	
v.	:	No.: 03-10,594
	:	
EARL SAMPSON,	:	
Defendant	:	

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

Defendant appeals this Court's Order of Sentence dated March 22, 2004 and filed on April 14, 2004, sentencing him to a twenty-four month period of Intermediate Punishment, with the first four months to be served at the Lycoming County Pre-Release Center. The Defendant was given credit for four months previously served and released to the supervision of the Lycoming County Adult Probation Office. Defendant filed a timely Notice of Appeal in his case on April 16, 2004, and a timely statement under Pennsylvania Rules of Appellate Procedure Rule 1925(b) on April 29, 2004, asserting that this Court erred in his case by precluding him from presenting evidence tending to show bias on the part of the prosecuting officer. Specifically, he alleges that the prosecuting officer in the case was involved in a civil action in 1997 where the prosecuting officer unsuccessfully attempted to assist the Defendant's landlord to evict the Defendant and his family.

The facts of the case are that the Defendant was charged under the above information with multiple offenses, alleging that on April 6, 2003

officers were called to the Defendant's residence by his wife. N.T. January 15, 2004, p. 16. When they arrived at the home, they entered to determine the welfare of Mrs. Sampson. The Defendant allegedly began to physically prevent the officers from remaining in the entrance to the home and began to attempt to punch one of the officers as they insisted upon speaking to the female caller. Id. at pp. 17 – 20. Ultimately, the officers were forced to retreat from the home and call for backup, Id. at p. 21, but both officers received minor injuries during the altercation and one sought medical attention Id. at p. 25, 56. It was only after backup arrived that the officers were able to gain access to Mrs. Sampson and determine her allegations. Id. at p. 22. On January 16, 2004 a jury in the case returned a verdict of guilty on the charge of Obstructing the Administration of Law and not guilty on the charges of Aggravated Assault and Resisting Arrest.

During the course of the trial, the Defendant attempted to produce evidence that the prosecuting officer in the case, Corporal Raymond O. Kontz, was involved in a landlord tenant dispute between the Defendant and his landlord in 1997. Specifically, he wished to show through court documents and oral testimony that the Defendant had obtained an injunction against the landlord preventing him from renting a particular property to the Corporal. Id. at pp. 144 – 153. The Court ruled that the specifics of the dispute would not be admitted, but that the Defendant would be permitted to testify that he believed the Corporal held personal animosity against him because of something that happened between the Corporal and the

Defendant. Id. at 145. The Court further ruled that the court documents regarding the injunction obtained by the Defendant would not be admitted because the injunction was obtained against the landlord, not the Corporal, and the Corporal's name was not mentioned anywhere in the documents. Id.

The Defendant now asserts in his appeal that the Court improperly excluded that evidence.

The United States Supreme Court has defined bias as "the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party." United States v. Abel, 469 U.S. 45, 52, 105 S. Ct. 465, 83 L. Ed. 2d 450 (1984). Pennsylvania courts have recognized that evidence of bias is relevant to impeach the credibility of a witness and held that "proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." Commonwealth v. Rouse, ___ Pa. Super. ___, ___ A.2d ___ (Pa.Super.Ct., 2001, citing Commonwealth v. Abu-Jamal, 521 Pa. 188, 555 A.2d 846, 853 (Pa. 1989). See Commonwealth v. Nolen, 535 Pa. 77, 634 A.2d 192 (Pa. 1993)(evidence of bias, interest, or corruption is always relevant impeachment evidence); Commonwealth v. Mullins, 445 Pa. Super. 583, 665 A.2d 1275 (Pa. Super. 1995)(same); Commonwealth v. Bridges, 563 Pa. 1, 757 A.2d 859, 875 (Pa. 2000)(in Pennsylvania, a witness may be cross-examined as to any matter tending to show the interest or bias of that witness so that a jury can properly

evaluate the witness' credibility). Additionally, Pennsylvania courts have held that it is "particularly important that, where the determination of a defendant's guilt or innocence is dependent upon the credibility of a prosecution witness, an adequate opportunity be afforded to demonstrate through cross-examination that the witness is biased." Commonwealth v. Birch, 532 Pa. 563, 565-566, 616 A.2d 977, 978 (Pa. 1992) (case involving a prosecution witness involved in a related civil action with the Defendant). Indeed, "the right guaranteed by Art. I Section 9 of the Pennsylvania Constitution to confront witnesses against a defendant in a criminal case entails that a criminal defendant must be permitted to challenge a witness's self-interest by questioning him about possible or actual favored treatment by the prosecuting authority in the case at bar, or in any other non-final matter involving the same prosecuting authority." Commonwealth v. Lane, 533 Pa. 276, 280, ___ A.2d ___ (Pa. 1993). That right has been extended to cross-examination of a prosecution witness regarding a pending civil action between the witness and the Defendant which underlies the criminal case before the jury. Id. It is equally true, however, that "a trial court has broad discretion to determine the scope of cross-examination in this as in other situations." Id. See also Commonwealth v. Beasley, 504 Pa. 485, 475 A.2d 730 (Pa. 1984); Commonwealth v. Sisco, 484 Pa. 85, 398 A.2d 955 (Pa. 1979). Nevertheless, "excluding an inquiry into bias will often be an abuse of that discretion." Commonwealth v. Reed, 435 Pa.Super. 36, 46 ___ A.2d ___ (Pa.Super. 1994).

In this case, the Court did not exclude the Defendant's inquiry into whether Corporal Kontz was biased against the Defendant because the Defendant obtained a 1997 injunction against a landlord preventing the landlord from renting a particular property to the Corporal. The Defendant made no attempt to show bias on the part of Corporal Kontz during his cross-examination of the Corporal during the Commonwealth's case in chief. During his own direct examination, the Defendant attempted to mark as an exhibit the court documentation of an injunction obtained against his former landlord. Corporal Kontz was not a party to the civil action, nor is his name listed anywhere within the documents proffered by the Defendant. The Court did not abuse its discretion in barring the Defendant from presenting the irrelevant paperwork.

The Defendant also offered to testify orally regarding the circumstances of the injunction. The Court inquired of Defendant's attorney whether the Defendant could testify generally that something had happened between him and the prosecuting officer. Counsel indicated that this would be fine and requested that he be allowed to give the Defendant some guidance as to the area in which it had been agreed that he would testify. The Court then sent the jurors out of the room so that this could be accomplished. N.T. at p. 147. The Defendant was advised by the Court on the record that he "could establish for the record that he had a problem with Officer Kontz because of prior contacts, but this is not the time to re-litigate whatever it may have been back in 1997 between the two of them". N.T. at

p. 148. The jury was returned to the courtroom, but the Court was forced to excuse them again three minutes later when the Defendant provided non-responsive answers to his attorney's direct examination on this issue, lost his composure, and began to complain to the jury regarding the charges against him and his pre-trial incarceration. Id. at p. 150 – 151. When Court reconvened, neither the Defendant nor his attorney mentioned any potential bias against the Defendant on the part of Corporal Kontz. The record therefore shows that the Court permitted the Defendant to present evidence regarding potential bias of the prosecuting officer, but that the Defendant did not choose to avail himself of that opportunity. The Defendant's assertion of error must fail because he has no legal right to complain on appeal that he and his attorney would choose differently if given the chance.

By the Court,

Nancy L. Butts, Judge J.

xc: DA (CH)
Jason Poplaski, Esquire
Hon. Judge Nancy L. Butts
Judges
Gary Weber, Esquire
Diane L. Turner, Esquire

The following are some of the factors that you may and should consider when judging credibility and deciding whether or not to believe testimony:

(e) Did the witness have any interest in the outcome of the case, bias, prejudice or other motive that might affect his testimony?

PA Standard Suggested Jury Instructions, 4.17

It is well established that a criminal defendant has a right to cross-examine any adverse witness in order attempt to impeach the witness' credibility. Credibility may be impeached by "evidence which tends to show that the witness had an interest in the outcome of the trial, Commonwealth v. Sullivan, 485 Pa. 392, 402 A.2d 1019 (1979), or that the witness's testimony may be untruthful, Commonwealth v. Updegrove, 413 Pa. 599, 198 A.2d 534 (1964); or that the witness may possess a bias which colors his testimony, Commonwealth v. Collins, 519 Pa. 58, 545 A.2d 882 (1988); Commonwealth v. Hamm, 474 Pa. 487, 378 A.2d 1219 (1977)." Commonwealth v. Lane, 533 Pa. 276, 280, ___ A.2d ___ (Pa. 1993).