IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**No. CR-159-2005**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
RONALD D. RICHARDSON,	:	
Defendant	:	**Post Verdict Motion**

OPINION

The defendant in the post verdict motion challenges the sufficiency and weight of the evidence. The court believes the evidence is ample to support the defendant's conviction for the offense of unauthorized use of motor vehicle.[1]

The defendant was driving a vehicle owned by Michelle Dobbs on January 13, 2005, whereupon he was in a motor vehicle accident around 3:45 – 4:00 p.m., when he traveled through a stop sign and impacted a van occupied by Bruce Paulhamus and his daughter. The defendant was with his girlfriend and her child. Mr. Paulhamus' daughter heard the defendant tell an individual who was at the scene that he had borrowed the car from a friend. The police prosecutor, Officer Bachman, responded to the scene and asked the defendant to produce registration for the vehicle. The defendant looked in the glove box and produced papers, which identified Michelle Dobbs as the vehicle's owner. The

1 While the jury found the defendant guilty of unauthorized use, they failed to reach a verdict on theft of the automobile and a mistrial was declared on that count. The auto theft count was subsequently dismissed.

Officer, Ronald Bachman, asked the defendant how he obtained the vehicle, and the defendant told him he brokered a deal for the car for $5 from a taxi driver named Black. The defendant claimed Mr. Black came to his home on Second Street the night before and offered the vehicle to him.

Officer Bachman then learned the vehicle was reported stolen. The officer identified the owner of the vehicle as Ms. Dobbs and the defendant did not know her. Ms. Dobbs testified at trial that she did not know the defendant and did not consent to his driving her vehicle.

Officer Bachman testified that the defendant testified at the Preliminary hearing in the case and the defendant testified that a neighbor of his named Barbara introduced him to an individual who provided the car to the defendant for $20.00. Ms. Dobbs appeared at the preliminary hearing with her husband, Ronald Dotson, and the defendant identified Mr. Dotson, as the man who provided the vehicle to him. The defendant testified at the Preliminary Hearing that he was supposed to return the vehicle to Dotson by noon the next day. The defendant claimed this transaction occurred around l:00 a.m.[2]

2 Ms. Dobbs testified at trial. At the time of trial she had separated from her husband Mr. Dotson. Mr. Dotson did not testify at trial.

The accident occurred about a block from Ms. Dobbs' residence. The defendant at the time of the accident was driving away from the area of Ms. Dobbs' home.

The jury was entitled, based on the evidence to find that Ms. Dobbs did not consent to the defendant's use of the vehicle. The jury was likewise entitled to find the defendant's story of obtaining the vehicle around 1:00 a.m. the night before for a small amount of money from a man he did not know was incredible or at the very least evidenced recklessness in respect to the owner's lack of consent. *See,* ***Commonwealth v. Carson***, 405 Pa. Super. 492, 592 A.2d 1318, appeal denied 600 A.2d 533, 529 Pa. 616 (1991) (crime may be proven by showing the defendant was reckless with respect to owner's lack of consent).

The defendant at trial offered the testimony of his girlfriend Georgeann Lawton to say that she and the defendant needed a car to go shopping. She asked a neighbor, Barbara if she knew someone who could loan them a car. Later on that night a Mr. Black came to their back door. They exchanged cash for the use of the car which they were supposed to bring back at 3:00 p.m. the next day. The meeting with Mr. Black occurred around 1:30-2:00 a.m. Ms. Lawton did not know her neighbor Barbara's last name nor did she know Mr. Black prior to this occasion.

The jury could have disbelieved Ms. Lawton's testimony. Likewise, the jury even accepting her testimony could have found the defendant's actions to be reckless in taking a vehicle for a small amount of money around 1:30-2:00 a.m. in the morning.

The Court believes the evidence is sufficient to sustain the elements of the case of unauthorized use of the vehicle and that the verdict is not against the weight of the evidence.

The final issues raised in the Defendant's Motion for a New Trial are based upon alleged discovery violations. In regard to the in-trial objections of the defendant to the testimony of Christina Kennedy, the daughter of Mr. Paulhamus, the Court at trial held an in-camera argument and overruled the defendant's objection. To our recollection, the Commonwealth provided this information to defense counsel promptly upon obtaining it and in light of the other similar statements made by the defendant in court saw no particular harm or prejudice to the defendant in allowing Christina's testimony.

The information contained in the defendant's Motion that after the trial First Assistant District Attorney, Kenneth Osokow, provided information to defense counsel about Michelle Dobbs (the owner of the vehicle) is more troubling.

Ms. Dobbs in talking with the officers sometime prior to trial, told them that she had had forgery-related charges filed against her husband, Mr. Dotson, relating to his forgery of his wife's name on some of her checks. The alleged forgery occurred on or about March 10, 2005. We note the date of the crime in our own case was January 12, 2005.

The Assistant District Attorney who tried this case, William Simmers, became aware of this before the trial and he reviewed this information with the District Attorney, Michael Dinges, and they decided the information was not exculpatory as to the Defendant, Ronald Richardson, so the information was not provided to defense counsel prior to or during trial.

Defense counsel in his new trial motion claims this evidence could have been used to impeach Ms. Dobbs at trial and that the information was Brady material as it would have supported the defendant's defense of how he came about receiving the vehicle allegedly from Ms. Dobbs.

We do not believe this evidence in any way impeaches the credibility of Ms. Dobbs. It is more arguable that this evidence would in some way bolster the defense claim that Mr. Dotson in fact provided Ms. Dobbs' car to the defendant. However, the fact Mr. Dotson may have forged some checks of his wife is certainly different that a claim that he loaned Ms. Dobbs' car to the defendant for money. Moreover, the

import of this evidence is predicated on a theory that Mr. Dotson on January 12-13, 2005 was acting in conformance with his later criminal acts of the forging of his wife's checks. Normally, evidence of other crimes to show someone acted in conformance with the other criminal conduct is inadmissible at trial. *See,* Pa. Rule of Evidence 404(6)(1).

Pa. Rule of Criminal Procedure 573 requires that the Commonwealth "shall disclose to the defendant's attorney ... any evidence favorable to the accused that is material to guilt or to punishment." However, the mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish materiality in the constitutional sense. *See,* ***Commonwealth v. Ferguson***, 866 A.2d 403,Pa.Super. 2004.) The Pa. Superior Court in ***Commonwealth v. Ferguson***, states:

> … in the context of pre-trial disclosure, evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.

866 A.2d at 407, citing ***U.S. v. Bagley***, 473 US 667, 682.

In this case even accepting the defendant's statement at the preliminary hearing which was presented at trial through Officer Bachman's testimony, the defendant testified he had to return the car by noon the next day. The defendant was driving the vehicle around 3:30 p.m. the next

day when he traveled through a stop sign and impacted another vehicle. He was thus driving the vehicle over three hours after he, according to his prior statement, should have returned the vehicle.

Further, the surrounding circumstances of the purported transfer of the vehicle are improbable. According to the defense a man, at the time only known by the defendant as Mr. Black, came to his door about 1:30-2:00 a.m. and offered to let the defendant use his vehicle for a sum of $5 or $20 depending on which of defendant's statements would be accepted. It does not appear to the Court, in light of all the other evidence, that the after discovered evidence would have created a reasonable probability that if it was heard by the jury the verdict would have been different. In light of this the after discovered evidence does not appear to be material so as to implicate the application of a Brady claim.

Accordingly, the Defendant's Post Verdict Motion is denied.

By The Court,

Kenneth D. Brown, J.

cc: William Simmers, Esquire, ADA
Charles G. Brace, Esquire, PD
Judges