

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-409-2002
	:	(02-10,409)
vs.	:	CRIMINAL DIVISION
	:	
	:	
JOSEPH STAVOY,	:	
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 issued January 11, 2005 and its Order docketed March 11, 2005, which denied appellant's post sentence motions.

Appellant was found guilty by a jury on October 22, 2004 of four (4) separate counts of delivery of heroin, four (4) counts of criminal use of a communications facility and three (3) counts of conspiracy to deliver heroin. The trial was held on October 21, 22, 2004.

Appellant was sentenced by the court on January 4, 2005 to an aggregate incarceration term of three (3) to seven (7) years in a state correctional institution. The court ran the sentence concurrent to another sentence the Appellant was serving for Clinton County.

Appellant filed a post-sentence motion, which the court denied by order dated March 9, 2005. Appellant filed a Notice of Appeal on March 18, 2005. On March 21, 2005, the court filed an order pursuant to rule 1925(b) of the Pennsylvania Rules of Appellate Procedure requiring Appellant to file a concise statement of matters complained of on appeal.

The court granted Appellant's counsel delays in filing matters complained of on appeal because he did not have transcripts of the trial. Counsel filed his statement of matters complained of on appeal on December 27, 2005. This appeal is the court's response to the matters complained of on appeal.

It is difficult for the court to respond to Appellant's statement of matters complained on appeal because the two issues raised were not issues raised at trial. Instead, Appellant requests a new trial on theories of prosecutorial misconduct concerning a key Commonwealth trial witness, Elizabeth Hanford, who was the confidential informant that purchased heroin from Appellant under police auspices on four (4) separate occasions.

In issue number 1 Appellant in matters complained of on appeal, for the first time, alleges the Commonwealth at trial failed to reveal existence of all agreements or understandings, which the Commonwealth had with Ms. Hanford.

The issue number 2 Appellant claims he is entitled to a new trial because the Commonwealth failed to correct testimony of Ms. Hanford at trial, which minimized her criminal record and that she testified falsely regarding her agreement of leniency with the Commonwealth.

Before listing these two issues, Appellant includes a four (4) page narrative about Ms. Hanford's record, which purportedly supports the two (2) listed issues complained of on appeal. The narrative seems to be based on Appellant's counsel reviewing several Lycoming County criminal case files for Ms. Hanford, which were available to defense counsel at trial and which, the court believes has been reviewed by trial counsel at or before

trial.¹

The Lycoming County case files for Ms. Hanford are numbers 01-11,080, 01-11,655 and 01-11,656. The case files also include the following numbers: 02-10,414, 02-10,415, 02-10,276 and 02-10,824.

The deliveries of heroin from Appellant to Ms. Hanford occurred on the afternoon of November 7, 2001, evening of November 7, 2001, November 8, 2001 and November 28, 2001.

Case file number 01-11,080 charges Ms. Hanford with theft, receiving stolen property and conspiracy, all misdemeanors, which allegedly occurred in April 2001. Case number 01-11,655 charges Ms. Hanford with theft by deception and receiving stolen property, both misdemeanors and two (2) summary offense counts of bad checks, which allegedly occurred in June 2001. Case number 01-11,656, charges Ms. Hanford with theft by deception and receiving stolen property, both misdemeanors, and two (2) summary offense counts of bad checks, which allegedly occurred in August 2001. Ms. Hanford pled guilty on these cases and was sentenced on December 18, 2001 to all three (3) cases to an aggregate sentence of one (1) year probation. On April 26, 2002, Ms. Hanford's probation was revoked and she received an incarceration sentence of fifteen (15) days in prison to a maximum of one (1) year to case number 01-11,280.

The 2002 cases against Ms. Hanford concern criminal conduct occurring in May, July and September 2001. All cases contain charges of theft by deception, receiving stolen property and bad checks and all counts are misdemeanors or summaries. All counts

¹ Appellant's counsel was not the defense attorney who tried the case. However, Appellant's counsel is from the same law firm as trial counsel. Trial counsel has since left this law firm.

appear to resolve around Ms. Hanford writing bad checks to numerous merchants. All of these cases were disposed of by nol pros by order of June 13, 2002, contingent upon Ms. Hanford paying restitution to all victims. See Pa.R.Cr.P. 586.

Mrs. Hanford's testimony against Appellant at trial occurred several years later on October 21, 2004.

The information was not hidden from Appellant at trial. The Assistant District Attorney in his opening statement referred to her checkered past and that she had had theft and bad check charges filed against her. The prosecutor indicated she then agreed to cooperate with the police. N.T., October 21, 2004,² at p. 7. the prosecutor also revealed in his opening statement that Ms. Hanford had a DUI charge "out there." Id.

Ms. Hanford also admitted in her trial testimony that she has been arrested for bad checks, DUI, underage drinking and theft by deception. Id. at pp. 77-78. Ms. Hanford revealed she was a heroin addict. Id. at p. 78. It was noted she was told her cooperation would be made known by the police to the judge when she would be sentenced. Id. at p. 202.

Prior to trial, the Commonwealth provided defense counsel with a listing of Ms. Hanford's criminal record. They also revealed Ms. Hanford might have a DUI charge in a neighboring county. See N.T., September 20, 2004, at p. 3.

While Appellant's counsel complains about the four (4) cases from 2002 that were nol prossed being a benefit given to Ms. Hanford, counsel acknowledges that the Commonwealth told defense counsel before trial about the fact that cases were nol prossed. Appellant's statement of matters complained of on appeal at p. 2. These case files were readily available to defense counsel as they were Lycoming County cases. It is also doubtful

whether the nol pros of these cases related to Ms. Hanford's work as an informant for the police. A look at the files in the year 2002 cases shows the Rule 586 agreement for these cases was entered into on May 16, 2002 at the preliminary hearing for these cases. Rule 586 is used to resolve many check related cases in Lycoming County. Further, the plea agreement form for these cases does not refer to cooperation in return for the nol pros of these cases. The form simply states, "Rule 586 settlement (charges to be dismissed upon payment of restitution and costs)."

Finally, the court notes as stated at the outset that it is difficult to respond to matters complained of on appeal, which were not raised before the trial court. Rule 301(a) of the Pennsylvania Rules of Appellate Procedure states as the general rule, "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."

For these reasons, the court does not believe Appellant in his matters complained of on appeal states a basis, which should grant him an award of a new trial.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: District Attorney
Eric Linhardt, Esquire
Law Clerk
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)