

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : NO. 1707-2005  
 :  
 TYRONE WILLIAMS, :  
 :  
 Defendant : 1925(a) OPINION

Date: December 27, 2007

**OPINION IN SUPPORT OF THE ORDER OF OCTOBER 17, 2006 IN COMPLIANCE  
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Tyrone Williams (hereafter “Williams”) has appealed from the judgment of sentence entered on October 17, 2006. Following a non-jury trial held on September 25 and 26, 2006, this court in a ruling made October 6, 2006 found Defendant guilty of committing an armed robbery. This crime had occurred October 11, 2005, during which the victim had been shot twice at close range by the robber. On October 17, 2006, this court sentenced Williams as follows: Count 1 Aggravated Assault, 18 Pa.C.S.A. § 2702(a)(1), to confinement at a state correctional institution for a minimum term of seventy-two months and a maximum term of fifteen years; Count 3, Robbery, 18 Pa.C.S.A. § 3701(a)(1)(ii), to confinement at a state correctional facility for a minimum term of fifty-four months and a maximum term of fifteen years; Count 6 Possessing Instruments of Crime, 18 Pa.C.S.A. § 907(b), to five years probation; Count 7, Firearms not to be Carried without a License, 18 Pa.C.S.A. § 6106(a)(1), to seven years probation. The sentences under Counts 1 and 3 were to be served concurrently with each other. So were the sentences under Counts 6 and 7. The sentences under Counts 6 and 7 were to be served consecutively with the sentences under Counts 1 and 3.

Defendant initially filed an appeal on November 20, 2006. That was entered to case #2005-MDA-2006 in the Superior Court. That appeal was dismissed by order of the Superior Court dated January 3, 2007 because of Appellant's failure to comply with Pa.R.A.P. 3517.

Subsequently, new counsel was appointed for Williams. A PCRA petition was filed alleging ineffective assistance of counsel had caused the dismissal of his first direct appeal. A conference on the PCRA petition was held June 20, 2007. The Commonwealth agreed that Williams' direct appeal rights should be reinstated. An order to that effect was entered. Subsequently, Williams has filed the current appeal on July 17, 2007. Williams filed a Concise Statement of Matters complained of on appeal July 31, 2007.

Williams' primary assertion on appeal set forth in the Statement of Matters Complained of on Appeal is that his trial counsel was ineffective. Williams itemizes 10 specific reasons for trial counsel's ineffectiveness set forth in subparagraphs A through J of paragraph 11. Williams also asserts, in paragraph 14 of the Statement of Matters Complained of on Appeal, that the court erred in permitting testimony of a witness, "Gerry", by a tape recorded interview; further, in paragraph 15, that the court erred in admitting the taped interviews, "even though they were hearsay". In paragraph 16, it is alleged that the court erred in permitting hearsay statements of Agent Sorage over objections of trial counsel (Officer Sorage being the prosecuting police officer in the case). Paragraph 17, contains a general averment that the court erred in determining that Williams should be found guilty of the crimes charged.

## **FACTS**

The Commonwealth's evidence in this case essentially rested upon testimony by the victim, Jonathan Konoski, that he had been assaulted and robbed in the early morning hours. The victim testified that he had been grabbed from behind and turned around by the Defendant who had wanted his wallet and upon giving \$20.00 to the Defendant, he was shot twice by the Defendant. The victim, Mr. Konoski, had indicated just prior to this that he had been talking with one or more acquaintances on the front stoop of their residence and they had left to go inside. The victim had then turned to walk away and had not seen the Defendant approaching prior to the time he was grabbed. He further testified that a short struggle ensued with the Defendant shooting him and the Defendant then ran away to the north. The Defendant was not known previously to the victim. The victim could give only a limited description to the police who responded to the scene. Nevertheless, a few days later the victim picked the Defendant out of a photo array. There also was testimony that during the course of the assault the Defendant apparently lost his cell phone since it was found at the scene, shortly after the police had arrived.

The Defendant was also identified by the victim at the preliminary hearing. This identification included the victim's recognition of the Defendant's voice. The victim was further able to identify the Defendant at trial.

## **DISCUSSION**

We will address the issues raised by Williams in this appeal by dividing the issues into four categories: 1) Trial counsel's ineffectiveness; 2) Errors in introducing tape recorded

statements including that of “Gerry”; 3) Testimony of Agent Sorage; and general court error resulting in finding Williams guilty.

### **Counsel’s ineffectiveness**

Defendant’s claims of ineffectiveness include assertions that counsel did not properly prepare for trial and interview witnesses, failed to call witnesses “Gerry”, Eric Smith, Robin Jason, and unnamed witnesses who would have contradicted the victims testimony and verified the Defendant’s innocence; failed to object to the victim’s identification; failed to have a strategic tactical reason for not calling witnesses; and, failed to cross-examine Agent Sorage appropriately.

The victim’s testimony as to identification in court and at the preliminary hearing and through the photo array is referenced in the direct examination of the victim in the Notes of Testimony of September 25, 2006 in pages 19-23 (hereafter N.T. 9/25 pp.19-23). There was no obvious reason for trial counsel to object to this identification. Any objection would, more likely than not, have been overruled and may have cast additional emphasis on the identification. The victim had testified that he was face to face with the Defendant and there was sufficient lighting in the area to permit him to observe his assailant. Trial counsel, however, aggressively and effectively cross-examined the victim on the issue of the identification. See, *e.g.* N.T. 9/25 pp.37-39, 41-43. This included questioning that brought out issues concerning the use of the photo array and whether the victim was or was not definite in selecting an identification from the photo array, attacking the photo array identification solely on facial shape, raising issues at the preliminary hearing the Defendant was the only African American and also that he was the only African American in the courtroom. Defense counsel’s

cross-examination also raised the issues as to Defendant's bar hopping, being intoxicated, having an alcohol problem and being on the prowl in that neighborhood to find some female companionship. See, for example, N.T. 9/25, pp.30-34. The victim's inability to remember certain aspects as to the events and including what he told police officers and what police officers were there was also emphasized in cross-examination. See, for example, *Id.* at 30, 31.

The overall approach of defense counsel to cross-examination during the course of trial raised appropriate issues concerning the accuracy of the victim's identification. Upon review of the transcript this court finds no error having been committed nor that counsel is in anyway ineffective.

To the extent that the Defendant on appeal may be asserting that there was something improper about the photo array, such was not raised by trial counsel nor is it specifically mentioned in the Statement of Matters Complained on Appeal. However, the photo array, Commonwealth's Exhibit No. 6, was viewed by the court to be an appropriate non-prejudicial photo array.

On the second day of trial, September 26, 2006, the Defendant raised with this court his concerns over the appropriateness of the way trial counsel was conducting the trial. The court had a thorough on the record colloquy. See, N.T. 9/26, pp. 1-18. At the end of the colloquy, the court indicated its reasons as to why it believed that there was no ineffectiveness or inappropriate action taken by defense counsel. *Id.* at 15-17. Defendant was given the opportunity to dismiss trial counsel and determined that he would not. *Id.* at 18. Throughout the colloquy, defense counsel indicated the time that he had spent (during the few days before trial at least) reviewing the case and the tactics suggested by his client and why he had rejected

certain tactics. Counsel explained that as to his cross-examination rather than attack some of the victim's discrepancies by questioning the victim himself it was better for defense counsel to raise the discrepancies through bringing out the inconsistencies when he examined individual police officers who wrote of these inconsistencies in their reports. Defense counsel did in fact appropriately cross-examine the officers concerning the inconsistencies of the victim. See, for example, cross-examination of Officer Gable, N.T. 9/25, pp.84-95 and 98-100. The court also notes that one of the assertions about not cross-examining the victim about the face to face identification raised by the Defendant simply is not true. See, *e.g.* N.T. 9/25, p.43. Counsel's tactic seems wise as the victim took advantage of one confrontation by explaining of being able to identify the Defendant at the preliminary hearing by raising the matter of recognizing his voice, see N.T. 9/25, pp.42, 43. The victim may have also been able to explain away other inconsistencies. This court did not observe nor does it find upon a review of the record any basis for the ineffective claims as it relates to preparation and as to appropriately examining witnesses including cross-examination of the victim as to issues of identification.

The court also does not find that trial counsel is lacking in the conduct of the cross-examination as to Agent Sorage. This cross-examination is found in N.T. 9/25, pp.134-140, N.T. 9/26, pp.28-69. This court believes that the cross-examination was thorough based upon the evidence of which the court was aware and the matters set forth in the police reports and interviews which made for appropriate cross-examination material. The court also notes that prior to starting cross-examination, defense counsel appropriately asked for a recess, see, N.T. 9/26, p. 24 and then did conduct an extensive cross-examination of Agent Sorage. We find no evidence of counsel being ineffective in that regard.

**Introduction of testimony of “Gerry” by a tape recorded interview and other tape recorded interview errors.**

The final aspect of the ineffectiveness claim relates to the failure to call “Gerry” and other witnesses. The Defendant does not really assert what those witnesses would have testified to or if there was any real reason to believe that they were going to support the Defendant’s testimony. We also note that at the time during the trial where issues concerning defense counsel’s tactics and techniques were raised by the Defendant that there were no issues raised concerning failure to subpoena appropriate witnesses. See, N.T. 9/26, pp. 3-18.

Defendant’s main defense to the charges was that he had been at the apartment of an acquaintance, a female “Gerry” (this court also notes that the name could in fact be Sherry). During the course of investigation, the Defendant agreed to be interviewed by Agent Sorage. During the course of the interview, Agent Sorage posed a question to the Defendant with the preface that the police had spoken to “Gerry” and “Gerry” did not support Defendant’s contention that he had been at her residence during the time frame relating to the robbery time. Defense counsel objected to the admission of this part of the taped interview. See, N.T. 9/25, p. 141 et sec, N.T. 9/26, p. 19-24. The court did not accept the statements in the interview as any proof that the Defendant was not at “Gerry’s” apartment nor in fact any proof that “Gerry” had ever made such a statement. The court recognizes argued by the District Attorney that this was simply part of an interview technique and what was significant was the Defendant’s reaction to this line of questioning. Defense counsel raised the objection. The court believes the objection was properly overruled and the evidence admitted appropriately.

The Defendant also raises the issue of introduction of other taped interviews. The court is not certain as to what the Defendant refers to except to be referring to the admission of his own taped statements. There appear to be no issue concerning the voluntariness or the appropriateness of those statements. The court took the voluntariness issues into consideration in determining how they evaluate and what weight to give to those taped interviews. Upon review of the transcript, the court again finds no error either in the admission of the taped interviews nor of any failure of defense counsel to object or take any other strategic approach to oppose the Commonwealth's use of the tapes.

#### **Testimony of Agent Sorage**

The court also concludes Agent Sorage's testimony was admitted properly and without trial error nor any error by defense counsel in failing to raise appropriate objections. The Defendant's statements to Agent Sorage included in custody interviews to which the Defendant consented to be interviewed, which took place over two days as well as a statement made at the time of his preliminary arraignment. See, N.T. 9/25, pp.141- 145. Defense counsel objected to the preliminary arraignment statement. The latter the court admitted because it was not a statement made in response to any questioning of the Defendant by the police but was a spontaneous effort on the part of Defendant to try to negotiate with the police. There also appear to be no question as to the appropriateness of the custodial investigation. (See, for example, Defense counsel's comment at N.T. 9/25, p. 143) (The Defendant was advised of his rights and voluntarily tried to outwit Agent Sorage as demonstrated in the taped interviews introduced into evidence, *Id.* at 156-159). The statements the Defendant made were not improperly admitted as although such statements would constitute hearsay, they are



appropriately, and were appropriately, admitted under Pennsylvania Rule of Evidence, 803(25) as an exception to the hearsay rule. Again, Agent Sorage was properly cross-examined by defense counsel concerning these statements as well as other inconsistencies in the investigation.

**Court's error in determining guilt.**

In conclusion, this court does not believe there was any error committed during this trial which would permit a reversal of this court's finding of guilt and imposition of sentence. Defense counsel gave an impressive closing statement raising all issues that benefitted the Defendant and had the basis of establishing reasonable doubt. See, N.T. 10/05/06, pp.2-26. This court, however, concluded the Defendant was appropriately identified and his guilt established beyond a reasonable doubt. The court gave an on record review of the evidence and reasons for its finding that Defendant was guilty of the crimes charged against him. See, N.T. 10/05, pp. 51-58.

This court respectfully suggests, therefore, to the Pennsylvania Superior Court that its judgment of conviction and sentence should be affirmed on appeal.

BY THE COURT,

William S. Kieser, Judge

cc: James Cleland, Esquire  
PD  
DA  
Judges  
Rebecca Penn, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)