

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-11,465
:
vs. :
:
:
BRIAN YASIPOUR, SR., :
Defendant :

SUPPLEMENTAL OPINION IN SUPPORT OF ORDER OF AUGUST 21, 2006,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

On September 8, 2006, this Court issued a Rule 1925(A) opinion in response to Defendant's Statement of Matters Complained of on Appeal. New counsel was appointed on March 6, 2007, however, and by Order dated March 27, 2007, counsel was granted additional time to file a supplemental statement after all transcripts were completed. That statement was filed June 28, 2007, and the Court now issues this supplemental opinion in response thereto.

First, Defendant contends the Court erred in determining the evidence was insufficient to establish his insanity at the time of the offense. This issue was raised in the original 1925(b) Statement, and will not be addressed further herein.

Next, Defendant contends the Court's 20 to 40 year sentence for third degree murder constitutes "cruel and unusual punishment". Inasmuch as such a sentence is within the statutory limits, the Court fails to see how it could be found to be "cruel and unusual".¹ Moreover, this Court explained its reasons for the sentence, and believes such to be appropriate given the circumstances.

Finally, Defendant contends the evidence was insufficient to support his conviction of tampering with evidence, specifically contending the evidence failed to show that his behavior impaired the availability of evidence to the police and/or that he possessed the requisite intent to commit the offense. As was explained in this Court's original 1925(A) opinion, Defendant was found guilty of this offense on the basis of his actions in washing the knives used to

1 See Commonwealth v. DuPont, 730 A.2d 970 (Pa. Super. 1999)(an argument that the sentence is excessive when it falls within statutory limits fails to raise a substantial question); Commonwealth v. Gallagher, 442 A.2d 820 (Pa. Super. 1982)(because the sentence imposed was within the statutorily prescribed limits, the Court would not disturb the sentence as unduly harsh or manifestly excessive); and Commonwealth v. Parker, 718 A.2d 1266, 1269 (Pa. Super. 1998)(when examining the proportionality of a sentence, the court is to begin with the acknowledgement that the "fixing of prison terms for specific crimes involves a substantive penological judgment that, as a general matter, is properly within the province of the legislatures, not courts"), quoting Commonwealth v. Spells, 612 A.2d 458,462 (Pa. Super. 1992).

commit the murder and also his actions in laundering the bedclothes.² Section 4910 of the Crimes Code provides, in pertinent part, as follows:

4910. Tampering with or fabricating physical evidence

A person commits a misdemeanor of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) alters, destroys, conceals or removes any record, document or thing with intent to impair its verity or availability in such proceeding or investigation;

18 Pa.C.S. Section 4910(1). As is clear from the language of the statute itself, it is not necessary that the availability of the evidence actually be impaired, only that the person intends to accomplish that result. With respect to the element of intent, such may be inferred from Defendant's actions of washing the knives, washing the bedclothes, calling the police to come to the home and then maintaining that he did not know what happened to his daughter. The Court believed such an inference properly supported the charge in this instance,³ and thus found the evidence of tampering with evidence to have been sufficient.

Dated: July 5, 2007

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: DA
Edward J. Rymysza, Esq.
Gary L. Weber, Esq.
Hon. Dudley Anderson

² At trial, the Commonwealth established that the victim was stabbed to death while lying in bed.

³ Because direct evidence of intent is often unattainable, it may be proven entirely from overt acts, relationship, conduct or circumstances of the parties. Commonwealth v. Neckerauer, 617 A.2d 1281 (Pa. Super. 1992).