

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF
PENNSYLVANIA

vs.

MARCELLUS TURNER

Defendant

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NO: CR-548-2010

OPINION

The Defendant is charged in the above-captioned matter with Persons Not to Possess a Firearm (18 Pa.C.S. § 6105), Receiving Stolen Property (18 Pa.C.S. § 3925(a)) and Possession of a Controlled Substance (35 P.S. §780-113(a)(16)). The Persons Not to Possess charge stems from seizure of a firearm which was found underneath a mattress in Bedroom 8 in a home located at 523 Fifth Avenue in Williamsport.

On September 27, 2010 the Commonwealth filed a Motion to Admit Bad Acts. The Commonwealth seeks to introduce evidence that the Defendant informed his parole agent two days before the incident that his room in the residence located at 523 Fifth Avenue was Bedroom 8.

During argument, the Commonwealth and counsel for the Defendant agreed that the statements at issue were essentially admissions of fact, as opposed to evidence of bad acts. As the statement was allegedly made to a parole agent,

however, bad act evidence is implied pursuant to the parole agent's involvement with the Defendant.

Pennsylvania Rule of Evidence 403 provides:

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The Defendant argues that there is little probative value in the statement made by the Defendant to the parole agent since similar statements were made to Agent Dincher of the Williamsport Bureau of Police and also to the Defendant's father. The Defendant additionally contends that the probative value of such testimony is greatly outweighed by the danger of prejudice, as testimony from a parole agent actively involved with the Defendant suggests to the jury that the Defendant was recently convicted of a crime.

The Commonwealth contends that the Defendant's father recanted on his testimony regarding statements made by the Defendant at a suppression hearing, and asserts that the testimony is relevant to show that the Defendant had control of the room in which the gun was found.

Although the Court acknowledges some prejudicial effect to permitting the introduction of the statement made by the Defendant to his parole agent, the Court believes that the probative value of the statement which links the Defendant to the bedroom in which the gun was found outweighs the danger of prejudice, especially in light of the fact that the Persons Not to Possess charge implies that the Defendant had previous felony convictions.

ORDER

AND NOW, this 11th day of October, 2010, the statement made by the Defendant to his parole agent in which the Defendant verified that his bedroom was bedroom No. 8, will be ADMITTED at trial.

BY THE COURT,

Richard A. Gray, J.

cc: Michael Morrone, Esquire
District Attorney (MK)
Gary Weber, Esquire