

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 317 - 2009

vs. :

MAURICE FUDGE, :
Defendant :

OPINION IN SUPPORT OF ORDER OF DECEMBER 4, 2009,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court’s Order of December 4, 2009, which denied his post-sentence motion following Defendant’s conviction by a jury of robbery, conspiracy and related counts, and the imposition of a sentence of ten to twenty years incarceration. In his Concise Statement of Matters Complained of on Appeal, Defendant contends the Court erred in admitting into evidence a video-taped interview of Defendant’s co-conspirator, alleging such was inadmissible because it “amounted to unsworn testimony” and “its inflammatory effect on the jury was prejudicial to the Defendant.”

At trial, it was shown by the Commonwealth that Defendant and another man entered a small neighborhood business and Defendant demanded money from the owner and a patron. Defendant and the other man, Michael Brown, were detained by the police shortly thereafter and, after being identified by the store owner, were taken to police headquarters where Mr. Brown was interviewed by the police. During that interview, which was video-taped, Mr. Brown implicated Defendant in the robbery. At trial, however, when called by the Commonwealth to testify, Mr. Brown claimed to not be able to remember most of the statements he made to police during that interview. The Commonwealth therefore sought to introduce the video-tape and such was admitted under Pa.R.E. 803.1(1)(c).

Defendant's claim that such "amounted to unsworn testimony" is misplaced, as the rule excepts from the hearsay rule "[a] statement by a declarant that is inconsistent with the declarant's testimony, and was (a) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) is a writing signed and adopted by the declarant, *or* is a verbatim contemporaneous recording of an oral statement." Pa.R.E. 803.1(1)(c) (emphasis added). As the statement qualifies under subsection (c), it matters not that it may not qualify under subsection (b), as they are listed in the alternative.

With respect to the claim that the statement's "inflammatory effect on the jury was prejudicial to the Defendant," while the testimony contained within the tape was indeed prejudicial to the Defendant's case, it certainly cannot be called inflammatory.

Thus, since the declarant testified at trial and was subject to cross-examination concerning the statement as required by the rule, the tape was admitted into evidence.

Dated: March 23, 2010

Respectfully Submitted,

Dudley N. Anderson, Judge