

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**vs.**

**BRIAN MURRAY,  
Defendant**

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**: No. CR-769-2010**

**OPINION AND ORDER**

Defendant is charged by an Information filed on June 21, 2010 with one count of Burglary, one count of Criminal Trespass and one count of Theft by unlawful Taking or Disposition. The Commonwealth alleges that between July 30, 2003 and July 31, 2003, the Defendant broke a window to gain entry into Williamsport Auto Sales and that once inside, he removed cash from a cash drawer and two car radios.

On December 6, 2010, Defendant filed a Motion to Dismiss alleging that the prosecution is barred by the statute of limitations set forth in 42 Pa. C.S.A. § 5552. More specifically, Defendant argues that the offenses allegedly occurred on July 30 and/or 31 of 2003 and that the prosecution was required to be commenced within five (5) years of those dates.

A hearing was held before the Court on December 27, 2010. The parties stipulated to the relevant facts. The crimes that Defendant allegedly committed occurred on or about July 30, 2003 and/or July 31, 2003. During the initial investigation of the incidents, law enforcement located several pieces of broken glass and were able to remove blood samples and hairs from the glass.

The blood samples and hairs were secured as evidence and sent to the Pennsylvania State Police Greensburg Lab. The lab reported that the testing of the blood

resulted in the obtaining of a genetic profile. At the time that the genetic profile was obtained, it could not be matched with any other profile contained in the State Police DNA data bank.

On October 14, 2009, many years after the incident, the lab issued a report noting that a recently conducted search of the State Police DNA data bank determined that a convicted offender from the Commonwealth of PA could not be eliminated as a possible investigative lead to the previously unidentified profile. The convicted offender was identified as the Defendant.

The Defendant was subsequently interviewed but denied having any involvement in the matter. Pursuant to a search warrant, a DNA sample was obtained from the Defendant. The sample was subsequently sent to the lab in Greensburg for a comparison.

The lab issued a report on March 16, 2010 concluding that the DNA profile obtained from the burglary matched that of the profile obtained from the search warrant on the Defendant.

While the Commonwealth concedes that the statute of limitations with respect to the charges against the Defendant is five (5) years, it argues that notwithstanding this, because the DNA evidence was subsequently used to identify the Defendant, who was otherwise unidentified as the perpetrator of the offense, the prosecution may be commenced within one (1) year after the Defendant's identity was determined. 42 Pa. C.S.A. § 5552 (c.1).

Defendant argues that the exception to the statute of limitations set forth in the statute is intended to apply only if the DNA testing methodology was not available at the time the crime was committed. Defendant further argues that the exception set forth in the statute must be limited to such circumstances; otherwise it would eviscerate the policy underlying the

statute and permit the prosecution to delay without limit the prosecution of certain cases thus prejudicing the ability of a Defendant to properly defend against the charges. Defendant has failed, however, to set forth any legislative history, case law or other authority to support his position.

When interpreting a statute, the Court is guided by the Statutory Construction Act. Commonwealth v. Reed, 2010 Pa. LEXIS 2010 (Pa. December 21, 2010); 1 Pa. C.S. § 1501 et seq. The Court's task is to effectuate the intent of the General Assembly. Reed, supra.

In Commonwealth v. Davidson, 595 Pa. 1, 938 A.2d 198 (2007), our Supreme Court set forth the principles for determining legislative intent as follows: "Every statute shall be construed, if possible, to give effect to all its provisions. In general, the best indication of the General Assembly's intent is the plain language of the statute. When reviewing the language of a statute, the words and phrases employed by the General Assembly shall be construed according to rules of grammar and according to their common and approved usage. When the words of a statute are clear and unambiguous, there is no need to look beyond the plain meaning of the statute under the pretext of pursuing its spirit. Consequently only when the words of a statute are ambiguous should a court seek to ascertain the intent of the General Assembly through consideration of statutory construction factors." Davidson, supra. at 32, 938 A.2d at 216-17 (citations omitted); see also, Reed, supra.

As a general rule, the best indication of legislative intent is the plain language of the statute. Commonwealth v. Bradley, 834 A.2d 1127, 1132 (Pa. 2003); 1 Pa. C.S.A. § 1921 (b). A presumption exists that the legislature placed every word, sentence and provision in a statute for some purpose and therefore the courts must give effect to every word.

Commonwealth v. Morris, 958 A.2d 569, 579 (Pa. Super. 2008); Commonwealth v. Seiders, 2010 Pa. Super. 194 (October 25, 2010).

The Court finds no ambiguity whatsoever in the statutory exception at issue. The words are clear and their meaning is plain. Accordingly, the Court will give effect to the language of the statute and not infer any meaning otherwise. Indeed, had the legislature intended what was argued by Defendant, it clearly could have set forth such intention in the statute.

Defendant was charged with two felony offenses, burglary and criminal trespass. Evidence was obtained containing DNA. This evidence was subsequently used to identify the Defendant as the perpetrator of the offense. Defendant was identified as the perpetrator by utilizing the DNA evidence as early as October 14, 2009 and as late as March 16, 2010. Previously, the perpetrator of the offense was an otherwise unidentified individual.

The charges against the Defendant were filed on May 11, 2010 which is within one (1) year of both October 14, 2009 and March 16, 2010. Accordingly, the exception applies and with respect to the felony offenses charged against the Defendant, Defendant's Motion to Dismiss fails.

The Court does note that there is no exception in the statute for misdemeanor offenses that are not "sexual" and accordingly will grant Defendant's Motion with respect to Count 3, theft, a misdemeanor one offense.

**ORDER**

AND NOW, this 30<sup>th</sup> day of December 2010 following a hearing and argument, the Court grants in part and denies in part Defendant's Motion to Dismiss. The Court **GRANTS** the Defendant's Motion with respect to Count 3, theft, a misdemeanor one offense. The Court **DENIES** Defendant's Motion with respect to Count 1, burglary, a felony one offense and Count 2, criminal trespass, a felony two offense.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: DA  
PD (JL)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File