

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1643-2010  
vs. :  
MARKALE SOWELL, : CRIMINAL DIVISION  
Appellant :  
: 1925(a) Opinion

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

This opinion is written in support of this court's judgment of sentence dated November 30, 2011 and its Opinion and Order entered on March 30, 2012, which denied Appellant Markale Sowell's post sentence motions. The relevant facts follow.

On September 26, 2010, at approximately 1:00 p.m. Tamika Moore and some of her female relatives were fighting with some other females, including one or more of Sowell's female relatives. The fight broke up and the group of females dispersed. Sowell, who resided in Harrisburg, came to Williamsport in his aunt's vehicle, arriving in the later afternoon around supper time.

Ms. Moore was in a residence cooking dinner when her son ran into the house and said, "Ma, Aunt Fe is getting jumped." As Ms. Moore went to go outside to see what was going on, she was met at her front screen door by Sowell, who had a gun in the front of his waistband. Sowell pulled a revolver with brown grips from his waistband, pointed it at Ms. Moore's hip and said, "Bitch, you are coming to the other side." Ms. Moore took this to mean that Sowell wanted her to fight on the side of his wife and relatives, instead of with her

relatives, who were now engaged in a second fight. Ms. Moore grabbed her eleven year old son who was standing near her, and slammed the front door shut. She called the police, and then she went outside.

She saw Sowell leaving in a silver sedan just as a police officer was arriving in the area in an unmarked maroon police vehicle. She recognized the vehicle and began yelling and gesturing to the officer that Sowell was leaving in the silver sedan. The officer activated his lights and sirens, but Sowell sped off.

Sowell took the police on a high speed chase through busy intersections in the City of Williamsport. He ran numerous red lights and stop signs. When he attempted to turn left from Fourth Street onto Campbell Street, Sowell lost control of the silver sedan, striking a tree and the Weightman apartment building. Two pedestrians, Emily Moon and Alicia Binando, had to jump out of the way to avoid being hit by the vehicle. Although the vehicle was disabled, Sowell continued to flee from the police. He jumped out the vehicle and ran away on foot. The police yelled for him to stop, but Sowell did not. The police chased him on foot, and ultimately apprehended him by utilizing their tasers.

The police received consent from the owner of the vehicle and searched the vehicle. They found a .22 caliber H&R revolver with brown grips wrapped in a gold scarf. The police ran the serial number on the gun and discovered that it had been reported stolen. The police also ran a criminal history check on Sowell and discovered that he had a robbery conviction from New Jersey, which made it unlawful for him to possess a firearm and rendered him ineligible to obtain a license to do so.

Sowell was arrested and charged with the following offenses: fleeing or attempting to elude a police officer, a felony of the third degree under 75 Pa.C.S.A. §3733;

persons not to possess firearms, a felony of the second degree under 18 Pa.C.S.A. §6105; receiving stolen property, a felony of the second degree under 18 Pa.C.S.A. §3925; firearms not be carried without a license, a felony of the third degree under 18 Pa.C.S.A. §6106; two counts of recklessly endangering another person, misdemeanors of the second degree under 18 Pa.C.S.A. §2705; simple assault by physical menace, a misdemeanor of the second degree under Pa.C.S.A. §2701; and the summary traffic offenses of reckless driving (75 Pa.C.S.A. §3736) and driving without a license (75 Pa.C.S.A. 1501).

A jury trial was held on August 3, 2011. The jury found Sowell guilty of all the misdemeanor and felony charges, except receiving stolen property. The Court found Sowell guilty of the summary offenses. On November 30, 2011, the Court imposed an aggregate sentence of 8 ½ to 17 years incarceration in a state correctional institution, and Sowell filed timely post sentence motions, which the court denied in an Opinion and Order entered on March 30, 2012.

Sowell filed a pro se notice of appeal, a statement of matters complained of on appeal, and a request for the appointment of counsel.<sup>1</sup> The court appointed counsel to represent Sowell on appeal and gave appointed counsel an opportunity to file an amended or supplemental statement of errors on appeal. Since counsel has not filed an amended or supplemental statement, the court will do its best to identify and address the issues raised in Sowell's pro se statement.

Sowell first asserts that the charges against him should be dismissed, because he was never fingerprinted, photographed, or read his Miranda rights in violation of his Due

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<sup>1</sup> Sowell waived his right to counsel and elected to represent himself at trial and in the pursuit of various pre-trial motions.

Process rights.

The Due Process Clause does not specifically state that a defendant shall be photographed, fingerprinted, or read his Miranda rights. Although defendants are often photographed and fingerprinted by the police, the Court has found no statute, rule or case that requires dismissal of the charges filed against a defendant if he is not photographed, fingerprinted or read his Miranda rights. If a defendant is subject to custodial interrogation and makes incriminating statements, the statements can be subject to suppression pursuant to Miranda as a violation of a defendant's Fifth Amendment right against self-incrimination, but the case is not automatically dismissed.

In the case at bar, Sowell was not subject to custodial interrogation and he did not give any incriminating, testimonial statements to the police. The only questions the police asked Sowell pertained to biographical information that the police needed for booking purposes. Sowell asked the court to suppress this evidence, but the court did not, because case law clearly establishes that routine booking questions to secure biographical information are exempt from Miranda. Pennsylvania v. Muniz, 496 U.S. 582, 601, 110 S.Ct. 2638, 2650 (1990); Commonwealth v. Daniels, 537 Pa. 464, 644 A.2d 1175, 1181 (1994); Commonwealth v. Jasper, 526 Pa. 497, 587 A.2d 705, 708-09 (1991).

Sowell was arrested immediately following the incident and has been in custody for the vast majority of the time since his arrest. Moreover, Sowell took the stand at trial, testified his name was Markale Sowell, and admitted he was the individual driving the silver sedan who fled from the police. Clearly, this is not a case where identification was an issue. Therefore, the fact that Sowell was not photographed, fingerprinted, or read his Miranda rights was immaterial because it had absolutely no effect on the jury's verdict.

Sowell next alleges that his convictions for the firearms offenses should be overturned because: (1) the gun was previously reported stolen, others pleaded guilty to stealing the gun, and Sowell did not have any connection to those individuals; (2) the gun was never fingerprinted or tested for DNA; (3) the gun was unlawfully tampered with when Officer Snyder broke the evidence seals and test-fired the gun without a court order; (4) Sowell testified that he never had a gun; and (5) Tamika Moore's testimony could not be trusted.

Although the record establishes that the firearm was reported stolen to the Old Lycoming Township police and other individuals pled guilty to criminal charges arising out of that incident, there is nothing in the record to show that Sowell did not have any connection to those individuals. Furthermore, the evidence presented at trial established that the weapon was never recovered in connection with that case. Instead, the evidence clearly showed that the firearm was not recovered until it was found in the silver sedan that Sowell crashed at the intersection of Fourth and Campbell Streets.

Even if the evidence showed that Sowell did not have any connection to those individuals, it would not necessarily mean that Sowell did not possess that firearm on September 26, 2010. There are several ways the firearm could have gotten from the individuals who stole it to the Sowell, including numerous indirect ways. For example, the individuals could have given or sold the gun to someone else, who then provided it to Sowell or the individuals could have discarded the weapon and Sowell found it. It doesn't matter how Sowell came into possession of the firearm; it only matters whether he possessed it.

Sowell contends the evidence was insufficient to prove his guilt beyond a reasonable doubt, because the firearm was never fingerprinted or tested for DNA. Again, the

court cannot agree.

When deciding a sufficiency of the evidence claim, the court considers whether the evidence and all reasonable inferences that can be drawn from the evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the jury to find every element of the offense beyond a reasonable doubt. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (Pa. 2004). Circumstantial evidence can be as reliable and persuasive as eyewitness testimony and may be of sufficient quantity and quality to establish guilt beyond a reasonable doubt. Commonwealth v. Tedford, 523 Pa. 305, 567 A.2d 610, 618 (Pa. 1989)(citations omitted). The court notes that the term “reasonable doubt” does not mean beyond all doubt or to a mathematical certainty. Rather, a reasonable doubt is “a doubt that would cause a reasonably careful and sensible person to hesitate before acting upon a matter of importance in his or her own affairs.” PaSSJI (Crim), §7.01; see also Commonwealth v. Montalvo, 604 Pa. 386, 986 A.2d 84, 107 (Pa. 2009); Commonwealth v. Cook, 597 Pa. 572, 952 A.2d 594, 630-31 (Pa. 2008); Commonwealth v. Jermyn, 101 Pa. Super. 455, 473 (Pa. Super. 1930).

Sowell was charged with persons not to possess a firearm and possessing a firearm without a license. For the persons not to possess charge, the Commonwealth needed to prove the following elements: (1) Sowell possessed a firearm; and (2) he was convicted of an offense that prohibits him from possessing, using, controlling or transferring a firearm. 18 Pa.C.S.A. §6105; Commonwealth v. Thomas, 988 A.2d 669, 670 (Pa. Super. 2009). As used in section 6105, a “firearm” is any weapon that is “designed to or may readily be converted to expel any projectile by the action of any explosive or the frame or receiver of any such

weapon.” 18 Pa.C.S.A. §6105(i).

The evidence produced at trial showed these elements. Sowell stipulated that he was a person who had a conviction that precluded him from possessing a firearm. Tamika Moore testified that Sowell pulled a gun from his waistband and pointed it at her hip area. She described the weapon to the police as a revolver with brown grips. When the police arrived on the scene, Sowell was leaving in a silver sedan. The police activated their lights and sirens to get Sowell to stop, but he took them on a high speed chase, travelling in excess of 85 miles per hour on busy city streets. Sowell crashed the vehicle and fled on foot. The police obtained consent to search the vehicle from its owner and discovered a loaded, nine-shot, .22 caliber revolver with brown grips wrapped in a scarf. Officer Snyder, a certified firearms instructor, test fired the revolver. He testified at trial that he shot nine rounds of .22 caliber police ammunition and the revolver was operable. From this evidence, the jury could conclude beyond a reasonable doubt that Sowell possessed the revolver found in the silver sedan and that the revolver met the definition of a “firearm” as used in section 6105 of the Crimes Code.

Similarly, the evidence was sufficient for the firearms without a license charge. To prove this offense beyond a reasonable doubt, the Commonwealth must prove that: “(a) the weapon was a firearm; (b) the firearm was unlicensed; and (c) where the firearm was concealed on or about the person, it was outside his home or place of business.” Commonwealth v. Parker, 847 A.2d 745, 750 (Pa. Super. 2004), citing Commonwealth v. Bavusa, 750 A.2d 855, 857 (Pa. Super. 2000), affirmed, 574 Pa. 620, 832 A.2d 1042 (2003)(citations omitted); see also 18 Pa.C.S. §6106(a)(1). As used in section 6106(a)(1), “firearm” is any revolver with a barrel length less than 15 inches or with an overall length of

less the 26 inches, by measuring from the muzzle of the barrel to the face of the cylinder. 18 Pa.C.S.A. §6102.

Tamika Moore testified that Sowell was standing outside her screen door when he pulled a gun from his waistband and pointed it at her hip. She described the weapon to police after the incident and in her trial testimony, as a revolver with brown grips. Officer Paulhamus discovered a revolver with brown grips in the silver sedan in which Sowell fled from police. The revolver was admitted into evidence and shown to the jury. Officer Paulhamus testified that the barrel of the revolver was about six or seven inches in length. Sowell stipulated that he had a conviction that prohibited him from possessing a firearm. Officer Paulhamus testified that such a conviction also would preclude Sowell from obtaining a license. This evidence was sufficient for the jury to convict Sowell of the offense of possessing a firearm without a license.

Despite this evidence, Sowell asserts his firearms convictions cannot be permitted to stand because the firearm was tampered with by Officer Snyder, who was a canine handler and not a certified Pennsylvania State Police firearms instructor. Sowell relies on the definition of tampering with physical evidence contained in the Crimes Code, 18 Pa.C.S.A. §4910.

Initially, the court notes there seems to be some confusion on Sowell's part about Officer Snyder's qualifications. Although Officer Snyder is a canine handler with the Williamsport police,<sup>2</sup> he also is a firearms instructor. Officer Snyder did not testify that he was employed by the State Police. He stated he was a municipal firearms instructor, certified by the Pennsylvania State Police. In other words, Officer Snyder took training and was



certified by the Pennsylvania State Police to be a firearms instructor, but he instructs municipal police officers, like the officers employed by the Williamsport Bureau of Police, and not State Police Troopers.

Sowell's contention that Officer Snyder "tampered with" the firearm also lacks merit. Officer Snyder test fired the weapon to prove it was operable. The Commonwealth routinely sends evidence to experts for testing and does not need to obtain a court order to do so. Furthermore, Officer Snyder's conduct does not meet the Crimes Code definition of tampering with physical evidence. Section 4910 states: "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; or (2) makes, presents or uses any record, document or thing knowing it to be false and with intent to mislead a public servant who is or may be engaged in such proceeding or investigation." 18 Pa.C.S.A. §4910. Although Officer Snyder removed the firearm from its evidence envelope, he did not do so with the intent to impair its availability

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<sup>2</sup> No evidence, however, was presented at trial to show that Officer Snyder is a K-9 handler.

in these criminal proceedings. The firearm was available and was introduced into evidence. Instead, Officer Snyder removed the firearm from its evidence envelope in order to prove that the firearm was operable.

It appears that Sowell is dissatisfied with the jury's verdict because the jury apparently accepted Officer Paulhamus' and Ms. Moore's testimony and rejected his testimony regarding possession of the firearm. When deciding a sufficiency of the evidence claim, however, the court must view the evidence and all reasonable inferences that can be drawn from the evidence in the light most favorable to the Commonwealth, as verdict winner. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (Pa. 2004). The credibility of witnesses is within the sole province of the jury, which is free to believe all, part, or none of any witness's testimony. Commonwealth v. Johnson, 910 A.2d 60, 65 (Pa. Super. 2006); Commonwealth v. Gibson, 553 Pa. 648, 720 A.2d 473, 480 (Pa. 1998). Therefore, Sowell is not entitled to relief on this claim.

Sowell also claims that statements claimed to have been made to the police by Emily Moon and Alicia Binando should have been suppressed and the charges dismissed or Sowell should have been found not guilty because neither Emily Moon nor Alicia Binando signed a statement against Sowell or appeared in court to testify.

Sowell filed a variety of pretrial motions. In one of his motions, he sought dismissal of the recklessly endangering another person charges, because Moon and Binando had neither given a signed statement nor testified at Sowell's preliminary hearing. There was sufficient evidence to establish a prima facie case of these charges without their testimony or a signed statement. The DVD of the high speed chase, which was recorded by the on-board

camera in the police vehicle and played for the jury, showed Sowell losing control of the silver sedan. The vehicle struck a tree. Two females who were standing near the tree jumped out of the way to avoid being struck by the vehicle. The police interviewed the two females, who gave the police their name, address and a cell phone number. It was apparent from the DVD that Sowell's actions placed or may have placed these females in danger of death or serious bodily injury.

Sowell's claims seemed to be more in the nature of hearsay and confrontation issues, which the court indicated Sowell should raise at trial. Sowell waived these issues at trial, however, by failing to object or by eliciting Moon's and Binando's statements through his own questioning of the police officers.

On direct examination, Officer Paulhamus testified regarding the names of these two females, and Sowell did not object. When Officer Paulhamus proceeded to testify that these victims feared they would be hit by Sowell's vehicle, Sowell objected. The Court sustained Sowell's objection and told the jury to disregard that testimony. On cross-examination, however, Sowell asked questions of Officer Paulhamus that showed these individuals were placed in danger of death or serious bodily injury. For example, Sowell asked Officer Paulhamus if he could testify that their lives were in jeopardy. Officer Paulhamus testified that it was a 2,000 pound vehicle skidding out of control through an intersection; if the vehicle had struck them, they could easily have been seriously injured or killed. Sowell also asked Officer Paulhamus what the names of these individuals were and how he knew who they were. Officer Paulhamus testified that they gave him their names and dates of birth at the scene. Sowell then asked Officer Paulhamus if he had anything with their signature or any physical evidence to show who they were, and Officer Paulhamus

replied that he didn't have anything like that on him. On redirect, the Commonwealth elicited testimony from Officer Paulhamus to the effect that either the females showed him their driver's licenses or he looked them up through JNET. The Commonwealth then introduced its exhibit 7, which was a piece of notebook paper with the females' names, addresses, and telephone numbers. On recross, Officer Paulhamus admitted that Exhibit 7 was not in his handwriting, but was Captain Orwig's.

Sowell called Captain Orwig as a defense witness to establish that the captain did not know if the information that the individuals provided to him was true. On rebuttal, the Commonwealth re-called Officer Paulhamus, who investigated those names by looking up each individual's driver's license information. These driver's license photographs were introduced as Commonwealth's Exhibits 12 and 13. The photographs depicted the two females that the police spoke to at the scene who were nearly struck by the vehicle driven by Sowell.

Based on the foregoing, it is clear that neither the court nor the Commonwealth violated Sowell's Confrontation rights. Rather, Sowell waived these rights by failing to object or by asking questions of the police officers that elicited information about these individuals and the statements that they made to the police.

Sowell next asserts that the evidence was insufficient to sustain his conviction for simple assault by physical menace, because the video recordings do not show Sowell in possession of a firearm and Tamika Moore gave inconsistent statements and is untrustworthy.

The elements that must be proven for the offense of simple assault by physical menace are intentionally placing another in fear of imminent serious bodily injury through

the use of menacing or frightening activity. 18 Pa.C.S.A. §2701(a)(3); Commonwealth v. Reynolds, 835 A.2d 720, 726 (Pa. Super. 2003). “The act of pointing a gun at another person [can] constitute simple assault as an attempt by physical menace to put another in fear of imminent serious bodily injury.” Reynolds, supra, quoting, In re Maloney, 431 Pa. Super. 321, 636 A.2d 671, 674 (Pa. Super. 1994)(citations and internal quotation marks omitted).

Tamika Moore testified that Sowell pulled a revolved with brown grips from his waistband, pointed it at her hip and said, “Bitch, you are coming to the other side.” The police followed the silver sedan from the scene of the incident. Sowell was the driver and sole occupant of the vehicle. The police recovered a loaded, .22 caliber revolver with brown grips inside the car Sowell was driving. This evidence was sufficient to prove Sowell committed the offense of simple assault by physical menace.

Sowell basically argues that the jury should not have believed Ms. Moore’s testimony because her statements were inconsistent. When deciding a sufficiency of the evidence claim, however, the court must view the evidence and all reasonable inferences that can be drawn from the evidence in the light most favorable to the Commonwealth, as verdict winner. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (Pa. 2004). The credibility of witnesses is within the sole province of the jury, which is free to believe all, part, or none of any witness’s testimony. Commonwealth v. Johnson, 910 A.2d 60, 65 (Pa. Super. 2006); Commonwealth v. Gibson, 553 Pa. 648, 720 A.2d 473, 480 (Pa. 1998). Ms. Moore’s testimony was corroborated by the fact that the police found a revolver with brown grips inside the vehicle. Therefore, Sowell is not entitled to relief on this claim.

Similarly, the mere fact that Ms. Moore is depicted on the DVD with a knife

but the DVD does not show Sowell with a gun does not entitle Sowell to relief, as this fact can readily be explained from the circumstances of this incident. The DVD was from the on-board camera in the police cruiser. Ms. Moore testified that she was making dinner. When she exited the residence after calling the police, she still had a knife in her hands. When the police arrived, Sowell was already leaving the scene in the silver sedan, and Ms. Moore flagged them down by waving her hands and arms, including her hand holding the knife. Therefore, it is not surprising that Ms. Moore is depicted holding a knife on the DVD, but one cannot see Sowell with a gun.

The court also notes that before Sowell left the scene, he had been concealing the gun in his waistband. When he pulled it out and pointed it at Ms. Moore's hip, he was standing in her doorway and the gun was between his body and hers. Thus, Sowell possessed the gun in a manner such that it probably would not be visible to other people.

Sowell also claims that the recklessly endangering charges should be dismissed due to prosecutorial misconduct. The alleged misconduct is the failure of the Commonwealth to provide Sowell with a copy of a traffic report and the copies of Emily Moon's and Alicia Binando's driver's licenses that were admitted as Commonwealth exhibits.

A defendant seeking relief based on a discovery violation must demonstrate prejudice to be entitled to a new trial. Commonwealth v. Williams, 581 Pa. 57, 683 A.2d 505, 516 (Pa. 2004); Commonwealth v. Jones, 542 Pa. 464, 688 A.2d 491, 512-513 (Pa. 1995). Although Sowell did not receive copies of the traffic incident report or Commonwealth's Exhibit 12 and 13 prior to trial, Sowell has not shown that he suffered prejudice as a result of the late disclosure. There was no new information in either the traffic

incident report or exhibits 12 and 13. The traffic incident report contained the same information as was contained in the criminal incident report and depicted on the DVD. Sowell was aware of the identities of the alleged victims for the recklessly endangering another person charges in advance of trial, as this information was contained in the affidavit of probable cause filed with the criminal complaint and the police reports that Sowell received in discovery. In fact, it was Sowell's cross-examination of Officer Paulhamus that initially resulted in the introduction of evidence that Officer Paulhamus looked at the victim's photo identifications to confirm that they were who they said they were. Therefore, Sowell is not entitled to dismissal of the charges or a new trial based on any alleged discovery violation.

Sowell next contends the court erred in denying multiple bail reduction motions, claiming he was not a flight risk. Sowell was charged with serious offenses. He threatened another person with a firearm when he was a person prohibited by law from possessing a firearm due to his prior criminal history. To make matters worse, he fled from the police, taking them on a high speed chase through the City of Williamsport. He crashed the vehicle into a tree, nearly striking two pedestrians. Despite the vehicle being disabled, Sowell did not submit to police authority; instead he got out of the vehicle and continued to flee on foot. In his trial testimony, Sowell admitted that he fled from the police. Sowell had a significant criminal history that included a robbery and numerous firearm offenses. He resided in Harrisburg and had little or no connections to the community in Williamsport or Lycoming County. Given the facts and circumstances of this case, the court set bail in an appropriate amount.

Sowell does not have the same right to bail pending appeal because he was

convicted and his sentence included imprisonment of two years or more. Pa.R.Cr.P. 521(B)(2). The length of Sowell's sentence also increased the likelihood that he would flee the jurisdiction. Pa.R.Cr.P. (D)(2).

Even if bail was set too high, the amount of bail did not affect the jury's verdict and this issue would not entitle Sowell to a new trial.

Sowell claims Tamika Moore was never married to his brother-in-law and no evidence was presented to the court by way of a marriage license. Sowell did not raise this issue at trial or in his post sentence motions. Therefore, this issue is waived. Pa.R.App.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

Even if this issue had been raised and preserved, it would not entitle Sowell to relief. Whether Ms. Moore was married to Sowell's brother-in-law was a collateral issue. Moreover, not every fact a witness testifies to must be corroborated by documentary or physical evidence. Rather, the witness' testimony is evidence, which the jury is free to believe or reject, depending on the jury's assessment of the credibility of the witness.

Sowell also alleges the arresting officer sat next to the assistant district attorney during the trial in his uniform, which may have prejudiced the jury. Sowell never raised this issue at trial; therefore it is waived. Furthermore, the court does not recall the arresting officer being in his police uniform during the trial.

Sowell asserts that the assistant district attorney telling the jury that he eluded or fled from the police because he had a gun in the car was prejudicial to him and misleading to the jury because there are numerous reasons why people don't pull over for the police and it does not mean that they all have a gun.



Sowell did not raise this issue at trial; therefore it is waived. Even if Sowell had objected to the prosecutor's argument, the objection would have been overruled and he would not be entitled to relief. The law in Pennsylvania is that the jury can consider flight as consciousness of guilt. See Commonwealth v. Johnson, 576 Pa. 23, 53, 838 A.2d 663, 681 (2003), cert. denied, 543 U.S. 1008, 125 S.Ct. 617 (2004); Commonwealth v. Lukowich, 875 A.2d 1169, 1173-74 (Pa. Super. 2005).

Sowell questions whether Officer Paulhamus' actions with the evidence constitute tampering, rendering the court's admission of the evidence error. If this issue relates to Officer Snyder obtaining access to the firearm and test-firing it, the court would rely on its previous discussion of that issue. If this issue relates to any other actions, Sowell failed to raise this issue previously; therefore it is waived. Furthermore, there is no evidence that Officer Paulhamus tampered with evidence nor any support for Sowell's claim that the court erred in admitting testimony or evidence from Officer Paulhamus.

DATE: \_\_\_\_\_

By The Court,

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Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire  
Julian Allatt, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)