

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1548-2013
 :
 MILLARD S. BEATTY, III, :
 Defendant :

OPINION AND ORDER

This matter came before the court on Defendant Millard Beatty's Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

On June 5, 2013, Officer Jonathan Deprenda of the Williamsport Bureau of Police stopped a black Volkswagen Jetta with an obstructed license plate on Fourth Street in the city of Williamsport. Officer Joshua Bell responded to that location to assist Officer Deprenda.

Defendant Millard Beatty ("Beatty"), who the police later determined was the driver of the Jetta and whose operating privilege was suspended, failed to provide a driver's license or identification and gave the officers a false or fictitious name. The officer told Beatty that if they were unable to confirm his identity, they would have to fingerprint him. When they asked Beatty to exit his vehicle, he fled the scene by driving away. Officer Deprenda and Officer Bell pursued Beatty in separate, marked patrol cars with their lights and sirens activated.

A high-speed chase ensued over narrow, winding roads. Beatty lost control of his vehicle on Windy Ridge Road. He struck a tree and became stuck on an embankment. Officer Bell stopped his vehicle a few feet away from Beatty's vehicle. As Officer Bell

approached Beatty's vehicle on foot, Beatty revved the Jetta's engine to free the Jetta from the embankment. In freeing the vehicle and again fleeing from the police, Beatty struck the driver's side door of Officer Bell's vehicle and nearly struck Officer Bell, who jumped out of the way to avoid being struck. Officer Deprenda fired shots at Beatty's vehicle.

Beatty eventually abandoned the Jetta on Water Company Road. Witnesses observed Beatty running away from his vehicle and into the woods.

During Beatty's flight from the police, Beatty drove through Kenneth Porter's yard and damaged a tree. Beatty also ran stop signs/signals, drove the wrong way on a one-way street, failed to use his turn signal, and crossed the centerline, which forced other motorists off the roadway and nearly caused a crash.

Beatty was apprehended and charged with multiple counts of aggravated assault, fleeing or attempting to elude police, multiple counts of recklessly endangering another person, simple assault, false identification to law enforcement, criminal mischief, and numerous summary traffic offenses.

Beatty was initially represented by counsel, but he knowingly, intelligently, and voluntarily waived his right to counsel and elected to represent himself with an assistant public defender as standby counsel.

On March 27, 2014, Beatty entered a negotiated guilty plea to count 3, fleeing or attempting to elude a police officer, a felony of the second degree, and count 5, recklessly endangering another person (REAP), a misdemeanor of the second degree for an aggregate sentence in this case of 18-36 months of incarceration in a state correctional institution to be

served consecutive to any other sentence.

Beatty filed a timely PCRA petition in which he alleged that: the Commonwealth violated its Brady¹ obligations; standby counsel was ineffective for incorrectly advising him that another sentence would not aggregate with the sentence in this case; and his guilty plea was invalid due to the alleged Brady violations with respect to his conviction for REAP, the improper grading of the fleeing and eluding charge, and restitution being unlawfully ordered for the damage to Mr. Porter's tree. As this was Beatty's first PCRA petition in this case and he was indigent, the court appointed counsel to represent Beatty; however, after a colloquy, Beatty again waived his right to counsel and elected to represent himself. During that hearing, the court discussed the PCRA petition with the parties, and the Commonwealth asserted that Beatty was not entitled to an evidentiary hearing on his claims.

The court gave Beatty an opportunity to file a brief in support of his PCRA petition and the Commonwealth an opportunity to file an opposing brief before deciding whether to grant an evidentiary hearing in this matter.

After an independent review of the record in this matter, the court concludes that Beatty is not entitled to an evidentiary hearing or any relief.

Beatty first claims that the Commonwealth violated its Brady obligations and his constitutional rights by failing to provide a Lycoming County 911 Center recording of the incident, ballistics exam results, an internal affairs report for Officer Deprenda regarding the

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

discharge of his weapon in this case, and an internal affairs report for Officer Deprenda from a fleeing and eluding incident in another case. The court cannot agree.

The Brady Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment irrespective of the good or bad faith of the prosecution.”

Commonwealth v. Lambert, 584 Pa. 461, 884 A.2d 848, 853 (2005). Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defendant, the result of the proceeding would have been different. *Id.*

In order for a defendant to establish the existence of a Brady violation, he must establish that there has been a suppression by the prosecution of either exculpatory or impeachment evidence that was favorable to the accused, and that the omission of such evidence prejudiced the defendant. Furthermore, no Brady violation occurs where the parties had equal access to the information or if the defendant knew or could have uncovered such evidence with reasonable diligence.

Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726, 730 (2002)(citing *Commonwealth v. Paddy*, 569 Pa. 47, 800 A.2d 294, 305 (2002)).

No Brady violation occurred with respect to the 911 recording, because Beatty was aware of such evidence and/or had equal access to it. Clearly, Beatty was aware of this evidence. It was referenced and summarized in the police reports. See Exhibit A-4 attached to Beatty’s PCRA petition. Beatty also had equal access to the 911 recordings. All he had to do to obtain the recordings was issue a subpoena to the Lycoming County Communications Center. Beatty’s failure to obtain a copy of the 911 recordings was the result of his election to represent himself, and not any effort by the prosecution to suppress this evidence.

With respect to the ballistic exam results, Beatty assumes a ballistic examination was conducted. Although a bullet and a bullet fragment were recovered from the passenger side air conditioning vent and logged into evidence as item F1-20139E and the bullets, bullet fragment and dashboard were photographed to depict the bullet's path of travel, there is nothing in the record to indicate that any examination or testing of this evidence occurred. In fact, the Commonwealth has represented that "no ballistics tests were performed in this case." If Beatty wanted ballistics tests performed in this case to support his contention that Officer Bell's weapon accidentally discharged when he was pounding on Beatty's window, he could have filed a motion with the court requesting the appointment of a ballistics expert; however, he did not do so. Moreover, Beatty was not prejudiced because the aggravated assault charges were dismissed and, in any event, those charges were not based on Beatty firing a weapon.

The REAP charge to which Beatty pled guilty was based on Beatty nearly hitting Officer Bell with his vehicle. In some ways, evidence that would tend to show Officer Bell was standing right next to Beatty's vehicle pounding on the window would strengthen the Commonwealth's case that Beatty placed Officer Bell in danger when he fled from the police a second time after getting his vehicle stuck on an embankment. Certainly someone standing right next to the vehicle would be placed in danger of death or serious bodily from being struck by the vehicle when the driver revs his engine and speeds away.

The court believes Beatty's theory is that he was somehow justified in fleeing as soon as a shot was fired and, according to Beatty, ballistics testing would support that

theory. However, the court does not believe there is a reasonable probability that Beatty would have rejected the plea agreement or, even if he would have, that a jury would have accepted Beatty's theory under the facts and circumstances of this case. Prior to any shots being fired, Beatty had already fled from the police and taken them on a high speed chase for a significant distance. Furthermore, if Beatty had not provided a false name and fled in response to the initial traffic stop or if he had surrendered once his vehicle became stuck on the embankment, he would not have been charged with REAP based on nearly hitting Officer Bell with his vehicle. Beatty also would have been taking a great risk to reject the plea agreement when there was the possibility that he could be convicted of numerous, serious crimes that could have resulted in a much longer sentence than the one he received in exchange for his plea agreement.

Beatty also contends that the internal affairs report related to Officer Deprenda firing his weapon would constitute Brady material. Again, the court cannot agree. Even if an internal affairs report exists and concludes that Officer Deprenda violated policies or procedures by discharging his weapon under the facts and circumstances of this case, this information would not be exculpatory. Beatty does not assert that Deprenda's statements in the internal affairs report would contradict any other statements that he made. Instead, Beatty asserts the physical evidence would show that the shots fired by Deprenda did not enter the vehicle with a front to rear trajectory; therefore, Deprenda was not "in danger of being run over." Furthermore, Beatty did not plead guilty to recklessly endangering Officer Deprenda. Rather, he pled guilty to endangering Officer Bell and fleeing or attempting to

elude law enforcement officers. Beatty fled from the police and took them on a high speed chase prior to Officer Deprenda firing shots at Beatty's vehicle. Therefore, Beatty was not prejudiced by failing to receive this report. Moreover, Beatty could have sent a subpoena to the police to obtain a copy of this report. See *Commonwealth v. Mejia-Arias*, 734 A.2d 870 (Pa. Super. 1999).

Beatty also contends that an internal affairs report relating to an incident involving police misconduct of Officer Deprenda in January of 2014 was Brady material that the Commonwealth failed to disclose. Again, the court cannot agree.

As with the other internal affairs report, Beatty could have sought to subpoena this report from the police department. Furthermore, Beatty's theory of how the January 2014 incident is relevant to his case does not hold water. The other incident occurred months **after** the incident giving rise to the charges against Beatty and the incidents were not similar to each other.²

Beatty next contends that his guilty plea was invalid, because there was no factual basis for REAP or the felony of the third degree grading for fleeing or attempting to elude a police officer. This contention is belied by the record.

Fleeing or attempting to elude a police officer is graded as a felony of the third degree if the driver endangers a law enforcement officer or member of the general

² In the January 2014 incident, Officer Deprenda was traveling to respond to an emergency call. He was driving on the wrong side of the road at a high rate of speed and struck another vehicle. The driver of the other vehicle died as a result of the collision. See *Commonwealth v. Deprenda*, CP-41-CR-0000245-2014.

public due to the driver engaging in a high speed chase. 75 PA. CONS. STAT. ANN. §3733(a.2)(2)(iii). In *In the Interest of R.C.Y.*, 27 A.3d 227, 230 (Pa. Super. 2011), the Pennsylvania Superior Court found that the legislature did not intend the term “high-speed chase” to be construed literally. Instead, the Superior Court state the term was meant to be a term of art, which

was intended to merely require a different level of danger from the run-of-the-mill dangers posed by merely failing to stop when signaled to do so by a police officer. In other words, the legislature included this term to indicate that the enhanced penalties applied only in cases where the defendant’s actions created an extraordinary danger to the public at large or to police officers.

Id. The court is bound by this interpretation of the term “high-speed chase.”

REAP occurs when a person “engages in conduct which places or may place another person in danger of death or serious bodily injury.” 18 PA. CONS. STAT. ANN. §2705.

Beatty admitted the following facts during the guilty plea hearing: he was driving a vehicle on June 5, 2013; the police attempted to stop him by giving both a visual and audible signal; he fled from them for approximately 26 minutes; and during the course of that fleeing, he dove in a manner that was reckless and may have placed one of the officers in danger of serious bodily injury. N.T., 3/27/2014, at 16-17. These admissions supply a factual basis for REAP and the felony grading for fleeing or attempt to elude a police officer.

Beatty next contends that the portion of his sentence requiring him to pay restitution to Erie Insurance and Kenneth and Barbara Porter must be vacated because he did

not plead guilty to the criminal mischief charge. Although Beatty did not plead guilty to criminal mischief, the order directing him to pay restitution is nonetheless valid because the damage to the Porter's property was a direct result of Beatty fleeing or attempting to elude the police and driving his vehicle onto the Porter's property and striking a tree during the course of doing so.

The remaining claim asserted in Beatty's PCRA petition is a claim of ineffective assistance of standby counsel. Such a claim is not cognizable under the PCRA. *Commonwealth v. Blakeney*, 108 A.2d 739, 756-757 (Pa. 2014)(a defendant who chooses to represent himself cannot obtain post-conviction relief by raising a claim of his own ineffectiveness or that of standby counsel).

ORDER

AND NOW, this ___ day of January 2016, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that Beatty is not entitled to an evidentiary hearing or relief on his claims. As no purpose would be served by conducting a hearing, none will be scheduled and the parties are hereby notified of this court's intention to dismiss Beatty's PCRA petition. Beatty may respond to this proposed dismissal within twenty (20) days. If no response is received within that time

period, the court will enter an order dismissing the petition.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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Gary Weber, Esquire (Lycoming Reporter)
Work file