

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 98-11,884
	:
vs.	: CRIMINAL DIVISION
	:
JAMES SNYDER,	:
Defendant	: 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 June 9, 1999. The relevant facts are as follows. On Saturday, September 12, 1998, a .22 caliber revolver with a five (5) inch barrel and a holster was stolen out of the unlocked truck of John L. Cohick. The gun was operable and it was loaded with bird shot. On Sunday morning, Mr. Cohick went to his truck and noticed the gun was missing. The truck was parked outside his home. Mr. Cohick called the Pennsylvania State Police to report the theft. Mr. Cohick informed the responding trooper that he noticed a bunch of teenagers hanging around the area the night before. The gun was never recovered or returned to Mr. Cohick.

On or about October 2, 1998, the defendant James Snyder was charged with receiving stolen property and persons not to possess a firearm. A jury trial was held April 19-20, 1999.

Trevor Fisher was called as a witness for the Commonwealth. See N.T., April 19, 1999, pp. 15-24. Mr. Fisher was age 17. He testified that he was not present

when the gun was stolen on the evening of September 12, 1998, but that he heard that Chris Bowling and Crystal Bufford stole the gun. Mr. Fisher claimed that a friend of his, Ricky McAlister, was staying at his house that night. He claimed that he and McAlister ran into Chris Bowling, who told them about the gun he had just stolen. Mr. Bowling offered to show them the gun but they were not interested in seeing it. The next morning, Trevor Fisher claimed he was called by Crystal Bufford. Ms. Bufford told him about the gun and claimed that she had thrown or placed it in some weeds in a nearby wooded area. She also expressed concern that the gun could be found by a child who could inadvertently be shot or hurt by the gun.

As a result of Ms. Bufford's concerns, Mr. Fisher and Ricky McAlister went out to look for the gun. They found the gun in the grass near Lycoming Creek. Mr. Fisher testified he pushed the gun underneath a rock so it would not be found or picked up by young kids. N.T., April 19, 1999, p. 18.

Later that day, Mr. Fisher and Mr. McAlister met up with the defendant, James Snyder, who they only knew casually. This was about 1:00 p.m. They also met Chris Bowling. At some point, the conversation from Mr. Bowling alluded to the gun. Subsequently, Bowling, Fisher, McAlister and the defendant went to the location where the gun was hidden. The defendant looked at the gun, unloaded the bullets and then put the gun in his gray hooded sweatshirt. There was discussion about the gun being stolen after which, the defendant left with the gun. When approached by the state police, Mr. Fisher told them the information he conveyed to the jury. Mr. Fisher was not charged with any crime by the police.

The next witness called by the Commonwealth was Christopher Bowling. See N.T., April 19, 1999, pp. 24-34. Mr. Bowling is 16 years of age. Mr. Bowling testified that the gun was taken from Mr. Cohick's truck by himself and "Tim."¹ N.T., April 19, 1999, p. 27. Shortly after they took the gun, Crystal Bufford came over and they told her what they did. After talking with them about getting in trouble, Ms. Bufford agreed to put the gun back in Mr. Cohick's truck. Mr. Bowling testified that he found out the next day from Trevor Fisher that Crystal did not return the gun to the Cohick vehicle but instead, she threw the gun on the ground by Lycoming Creek. Later that night, Mr. Bowling met with the defendant, Trevor Fisher and Rick McAlister. They all went down to the area where the gun was supposed to be located. The defendant picked up the gun, checked the chamber, put the shells and gun in his pocket, and left. N.T., April 19, 1999, p. 28. Mr. Bowling further testified that he told the defendant that he (Bowling) and "Tim" had stolen the gun. N.T., April 19, 1999, at p. 29.

Richard McAlister was called as a witness by the Commonwealth after Mr. Bowling. See N.T., April 19, 1999, pp.34-40. Mr. McAlister is 15 years of age. Mr. McAlister testified that on September 12, 1998, Chris Bowling told him and Trevor Fisher that he (Bowling) stole a gun. The next day Mr. McAlister and Mr. Fisher looked for the gun along Lycoming Creek, because they were concerned that someone could pick up the gun and get shot. They found the gun and moved it underneath a rock along the creek. Later

¹The Court believes the reference to "Tim" would be a Timothy Clair. See N.T., April 19, 1999, at p. 42. Mr. Bowling and Tim Clair were charged by the state police with theft of the gun involved in this case. N.T., p. 46.

they were talking to the defendant and Chris Bowling. The defendant asked them to show him the gun. N.T., April 19, 1999, at p. 37. The defendant was taken to the location of gun. He looked at it, emptied out the bullets and took the gun. N.T., p. 37. The witness did not see the gun after the defendant took it.

On April 20, 1999, the jury found the defendant guilty of receiving stolen property and person not to possess a firearm. The Court sentenced the defendant on June 9, 1999. The defendant filed a Notice of Appeal to the Pennsylvania Superior Court on July 8, 1999.

On July 23, 1999, the defendant filed a Concise Statement of Matters Complained of on Appeal which raises only one (1) issue. The defendant claims the Court erred in failing to instruct the jury that the Commonwealth's witnesses, Trevor C. Fisher, Christopher Bowling and Richard McAlister were accomplices as a matter of law and that their testimony should be received with caution as detailed in Pennsylvania Standard Jury Instruction (criminal) 4.01 entitled "Accomplice Testimony."

In fact, the Court did give Pennsylvania Standard Jury Instruction (criminal) 4.01 and instructed the jury that Commonwealth witness Christopher Bowling was an accomplice as a matter of law. See N.T., April 20, 1999, pp. 46-47.

In regard to Commonwealth witnesses Trevor Fisher and Richard McAlister, the Court allowed the jury to factually determine whether these witnesses were accomplices to the crimes charged in order to determine whether they would apply the Accomplice Instruction to the witnesses' testimony. See N.T., April 20, 1999, pp. 47-49.

The Court believes that the jury was appropriately instructed in this case.

The Court instructed the jury that Christopher Bowling was an accomplice as a matter of law and told them to apply the special rules for considering accomplice testimony contained in Pennsylvania Standard Jury Instruction 4.01, because Mr. Bowling was clearly involved in the theft of the gun which the defendant ultimately received and therefore, he arguably had a motive to incriminate another party to gain favor for himself in his own criminal or juvenile proceeding. Thus, the Court gave the instruction finding Mr. Bowling to be an accomplice as a matter of law. See N.T., April 20, 1999, at pp. 46-47. The Court did not believe the evidence presented indicated that Commonwealth witness Trevor Fisher or Richard McAlister were accomplices of the defendant in the commission of the crimes of receiving stolen property or person not to possess a firearm. While Fisher and McAlister helped lead the defendant to the location of the gun, the evidence does not indicate that they had any awareness he would then take the gun. Rather, all the evidence reveals the defendant did this of his own accord without encouragement from the other parties at the scene. In an abundance of caution, however, the Court did permit the jury to make their own determination whether they believed Mr. Fisher or Mr. McAlister were accomplices to the crimes charged, and if they found that they were, the jury was instructed to apply the Accomplice Instruction to their receipt of Mr. Fisher's and Mr. McAlister's testimony. See N.T., April 20, 1999, at pp. 47-49. If, the Court erred in not instructing the jury that McAlister and Fisher were accomplices as a matter of law, the Court believes such error would be harmless because the jury was given the option of finding the witnesses to be accomplices and was told that if they so found they should receive the testimony of these two (2) witnesses with caution because of their accomplice status.

Thus, the Court believes the jury was appropriately instructed at trial and that there was no error which could warrant to grant a new trial in this case.

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: District Attorney
Jay Stillman, Esquire (APD)
Law Clerk
Court Reporter
Superior Court (original & 1)