

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 98-10,643

VS :

JONATHAN WILLIAMS :

OPINION IS SUPPORT OF ORDER  
IN COMPLIANCE WITH RULE 1925(A)  
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order dated January 26, 1999. Pursuant to that Order, the Defendant was sentenced to undergo incarceration for a minimum of eleven and a half months and a maximum of twenty-three months, and a one year term of probation consecutive to the prison sentence. This sentence was entered after the Defendant was found guilty by a jury of simple assault (physical menace), recklessly endangering another person, and terroristic threats. The evidence presented at the trial is as follows:

On the evening of March 15, 1998, Sisto Campana was out walking his dog in the neighborhood within the Brandon Park area of Williamsport. Mr. Campana testified that he walked along High Street and turned down Center Street where he encountered the Defendant and a nother individual. The Defendant and the second man immediately began yelling obscenities at him and "tried to say that my dog went to the bathroom in his yard" (N.T.11/17/98, p.9). He testified that the Defendant was aggressive, and boisterous. At some point, he drew a knife, and was yelling "f\_\_\_ you, and I'm going to stick you with this f\_\_\_ing knife." (Id., p.10.) A few minutes later, the Defendant threw a

beer bottle from the bag that he was holding and hit Mr. Campana in the left side of the head. The second individual tried to hit Mr. Campana and his dog with a board that came from a nearby road barricade.

Mr. Campana testified that he was trying to walk away from the individuals, but they were yelling that they were going to “take care of him” right then. Within minutes, Officer Vilello, of the Williamsport Bureau of Police showed up. After Officer Vilello confronted the men and requested that they stop using obscenities, the second man took off running. Officer Vilello ran after him. Mr. Campana testified that he started walking toward his house, but the Defendant followed him, saying that “he was going to get me for getting my friend in trouble. He was- - he was going to get his boys and come to my house beat me up. He threw sticks just all the way home . . .” (Id., p.13). The Defendant followed Mr. Campana all the way to his doorstep.

Officer Kevin Stiles of the Williamsport Bureau of Police testified that he was called to assist in apprehending the Defendant that evening. He testified that he found the Defendant at the Laundromat on Pine Street. At some point that evening, he did a search of the Defendant for weapons and found a black folding lock out type of knife that was approximately four inches long. The Defendant was placed under arrest and turned over to Officer Vilello.

Officer Jeffrey Vilello of the Williamsport Bureau of Police testified that he was patrolling near the corner of Park Avenue and Center Street in Williamsport when he was flagged down by two females and alerted to the situation on the 400 block of Park Avenue. After approaching the situation, he initially warned the two men to stop using obscene language. The Defendant’s friend, Mr. Boyd (Boyd), was specifically warned.

When he did not stop using the language, he put him under arrest. He stepped forward to put him under arrest, but Boyd immediately ran eastbound on Park Avenue, and it was several minutes before he was able to get him in custody. Officer Vilello testified that once he had Boyd in custody, he notified the other officers on the shift that he had one suspect in custody, and was looking for a second black male and a white male with a dog. A short while later one of the officers radioed to notify him that they had located the second black male at the Pine Street Laundromat. Officer Vilello made contact with the Defendant and detained him for questioning.

Officer Vilello also made contact with Mr. Campana that evening. After Mr. Campana relayed the events that had occurred, Officer Vilello advised Officer Stiles to place the Defendant under arrest and search him for weapons. Mr. Campana was taken to the station to get a more detailed statement. While at the station, Mr. Campana positively identified the knife found in the Defendant's possession.

The parties stipulated that if called to testify, Mr. Kevin Rooker of Rooker's Janitorial Service would state the Defendant was in his employ during the time frame of the incident. He would further testify that the Defendant carries a knife, which he uses in his employment for the purpose of cutting boxes and cutting things down for trash disposal.

The parties also stipulated that if called to testify, Mr. James Weston, the manager of Chi Chi's Restaurant in Williamsport, would testify that the Defendant was in his employ at the time of the incident. He would further testify that in the course of his employment as a line cook, the Defendant would use a knife to open boxes of food and for other uses associated with his position.

The Defendant testified that he came home from work that evening and met up with Boyd. The two of them decided to walk to the CMart to purchase some cigarettes. On their way past Boyd's house, they noticed Mr. Campana standing near his basement door. Boyd walked over to Mr. Campana and asked him what he was doing. He testified that Mr. Campana looked around, said "F' you I'll take you both on and ran at us with the dog. . ." (Id., p.74). Mr. Campana's dog then jumped up and snapped at Boyd's neck, which particularly scared the Defendant since he had been bit by various dogs on five previous occasions. He testified that Mr. Campana then said, "now I'm going to make him kill you" (Id., p.77). It was at that point that the Defendant pulled out his knife, to show Mr. Campana that he would have to protect himself if he let the dog go. The Defendant testified that it was actually Mr. Campana who threw the beer bottle, and Campana was aiming at them.

The Defendant testified that he was trying to calm Mr. Campana down and explained to him that he shouldn't be getting upset when he was the one in the wrong. He testified that in his opinion, Mr. Campana had been drinking that evening. He testified that Mr. Campana kept saying "F' you all I don't care," then he tried to kick the Defendant in the face, hit the Defendant, and he spit in the Defendant's face. The Defendant tried to spit back, but he missed. The Defendant testified that it was actually Mr. Campana who pushed the barricade backwards. When he pushed it, the Defendant testified that he nearly "clocked me in the face and I had to block it when he picked it up just threw it out the way" (Id., p.80). It was approximately at that point that the officer arrived.

He testified that after the officer chased after Boyd, he followed Mr. Campana to his home. On the way, he told Mr. Campana that he planned to call the cops to report the incident. He testified that Mr. Campana threatened to get out other pit bulls at his house. At that point, the Defendant called 911 on his cellular phone and reported the things that Mr. Campana had done. He also reported to the police that he was at the Laundromat. On cross-examination the Defendant stated that he did not call the police earlier because he did not believe that the incident would escalate that far. He testified that he “was still trying to talk to this man it just escalated and Shawn being stupid I suppose and him running and so I figured, you know, since this man’s fault this stuff is happening anyway, he deserves to be punished just like he is” (Id., p. 92).

Officer Vilello was recalled to testify that he had contacts with Mr. Campana that evening, and that he exhibited no signs of use of alcoholic beverage that evening. Specifically, Mr. Campana neither had an unsteady gait, or redness of the eyes. Further, his demeanor was not consistent with one who is under the influence of alcohol.

### ***REFERENCE TO PRIOR CRIMINAL CONTACTS***

In his statement of matters complained of on appeal, the Defendant first argues that the Court erred by not granting Defense Counsel’s request for a mistrial when Officer Vilello referred to the Defendant’s prior criminal record during testimony. The statement was made during Defense Counsel’s cross-examination concerning statements that were made during the tape-recorded interview of the Defendant taken the night of the incident. The questioning was as follows:

Q. Okay. In fact weren't you pointedly asking him come on didn't you have a stick?

A. I believe so.

Q. What was the reason for using the come on?

A. Well individuals when they're in custody it's my experience as a police officer tends not to be as honest or truthful as they would if you were just talking to them as friends or someone on the street. Sometimes individuals have things to hide and, therefore, interrogation techniques are used.

Q. So you're telling him basically you didn't believe him, correct?

A. That is correct.

Q. And in terms of taking a statement from an individual accused of a crime whether or not they're believable it's a subjective judgement you're making.

A. What is that again, sir?

Q. In terms of whether or not to believe a statement during the time that you're taking it the only thing you have to rely on is your subjective judgment as to whether or not you believe it's the truth or not, is that correct?

*A. No, that's not correct. I have the use of in-house computer system at City Hall which lists all the contacts and arrests that Mr. Williams has had.*

(Id., p. 52)(emphasis added)

It was at that point that Defense Counsel requested a mistrial on the basis that the officer had revealed that his client had a criminal record. The Court denied the Defendant's request for a mistrial, but gave an instruction to the jury to disregard the statement made by the witness.

References by a Commonwealth witness to prior criminal activity on the part of a criminal defendant are generally inadmissible. Commonwealth v. Watson, 355 Pa. Super. 160, 167, 512 A.2d 1261, 1265 (1986); Alloc dn. 527 A.2d 540; Commonwealth

v. Turner, 454 Pa. 439, 442, 311 A.2d 899, 900 (1973). The probative value of such evidence is outweighed by the risk that a jury will infer guilt based on a perception of the defendant's propensity for crime. Commonwealth v. Allen, 448 Pa. 177, 181-182, 292 A.2d 373, 375 (1972). However, not every passing reference to prior criminal behavior mandates a new trial. Commonwealth v. Williams, 470 Pa. 172, 368 A.2d 249 (1977). A mistrial is only warranted if the reference manifests prejudice to the defendant with prejudice resulting 'where the testimony conveys to the jury, either expressly or by reasonable implication, the fact of a prior criminal offense.' Commonwealth v. Morris, 513 Pa. 169, 519 A.2d 374 (1986).

Also, the nature of the reference and whether the remark was intentionally elicited by the Commonwealth, or elicited by defense counsel are all considerations relevant to the determination of whether a mistrial is required, see Commonwealth v. Gilliard, 300 Pa. Super. 469, 446 A.2d 951 (1982). Further, a comment may be cured by appropriate instructions, see Commonwealth v. Richardson, 496 Pa. 521, 437 A.2d 1162 (1981). In Gilliard, supra, defense counsel asked a prosecution witness, who was a detective, on cross-examination, the following question:

DEFENSE COUNSEL: Now isn't it true Detective Miller that he was in the Glynn County cell room as a result of your request to the Brunswick County police to detain him for you as a result of this warrant?

WITNESS: It was on several different charges that he was there, sir.

Mine plus—

The answer was cut off. The judge also offered to give cautionary instructions, which were declined for tactical reasons. In finding that a mistrial was inappropriate, the

court noted that “it is well settled that the defendant must assume the risk of his counsel’s questions and he cannot benefit on appeal when his own cross-examination elicited an unwelcome response.” Gilliard, 446 A2d at 954, *citing* Commonwealth v. Hall, 264 Pa. Super. 261, 399 A.2d 767 (1979); Commonwealth v. Hill, 237 Pa. Super.543, 353 A.2d 870 (1975). In the instant case, the Court found that a mistrial was not appropriate. Like the statement in Gilliard, the statement in this case was elicited by defense counsel. Furthermore, any prejudice that may have resulted was minimized by the Court’s instructions to disregard the statement, and was not sufficient to warrant a mistrial.

### ***SUFFICIENCY OF THE EVIDENCE***

The Defendant next alleges that there was insufficient evidence to find the Defendant guilty of the charges beyond a reasonable doubt. The Court does not agree. "The test of the sufficiency of the evidence in a criminal case is whether, viewing the evidence admitted at trial in the light most favorable to the Commonwealth and drawing all reasonable inferences in the Commonwealth's favor, there is sufficient evidence to enable the trier of fact to find every element of the [crime] charged beyond a reasonable doubt." Commonwealth v. Jones, 449 Pa. Super. 58, 672 A.2d 1353, 1354, (Pa. Super. 1996), *citing*, Commonwealth v. Carter, 329 Pa. Super. 490, 495-96, 478 A.2d 1286, 1288 (1984); Commonwealth v. Peduzzi, 338 Pa. Super. 551, 555, 488 A.2d 29, 31-32 (1985).

Applying the foregoing standard, in order to have found the Defendant guilty of simple assault, the Commonwealth must have proven beyond a reasonable doubt that the Defendant attempted to put Mr. Campana in fear of imminent serious bodily injury



by engaging in a physical act which was menacing or frightening. 18 Pa.C.S.A. § 2701(a)(3). Instantly, the Court finds that the Defendant's conduct of waving a knife back and forth while telling the victim that he planned to "stick " him with the knife, when coupled with the fact that the Defendant threw a beer bottle which hit the side of the victim's head is sufficient to establish that the Defendant intentionally engaged in a menacing or frightening act which put the victim in fear of serious bodily injury.

The Defendant next argues that the evidence was insufficient to sustain a conviction for terroristic threats. The elements of the offense of terroristic threats are: 1) a threat to commit a crime of violence, and; 2) communication of such threat with intent to terrorize or with reckless disregard of the risk of causing such terror.

Commonwealth v. Lumpkins, 324 Pa. Super. 8, 471 A.2d 96, (1984), *citing* Commonwealth v. Ferrer, 283 Pa. Super. 21, 423 A.2d 423 (1980). Instantly, the Court finds that the Defendant's actions of waving the knife at the victim while telling him that he ought to stick him with it was enough to constitute a threat of violence which was communicated with the intent to terrorize, *see also* Commonwealth v. Griffin, 310 Pa. Super. 39, 456 A.2d 171 (1983).

The Defendant next argues that the evidence was insufficient to sustain a verdict for recklessly endangering another person. A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury, 18 Pa.C.S.A. § 2705. Instantly, the Court finds that the Commonwealth established beyond a reasonable doubt that the Defendant engaged in conduct of waving a knife at the victim and threatening to stab

the victim, and that this conduct was sufficient to place the victim in fear of serious bodily injury or death.

The Defendant next alleges that the evidence was insufficient to establish the offense of disorderly conduct. A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- (1) engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) makes unreasonable noise;
- (3) uses obscene language, or makes an obscene gesture; or
- (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

18 Pa.C.S.A. § 5503(a)

In the instant case, the evidence showed that the Defendant used obscene language and engaged in fighting and threatening behavior. The Court therefore finds that the Commonwealth established beyond a reasonable doubt that the Defendant is guilty of disorderly conduct.

### ***WEIGHT OF THE EVIDENCE***

The Defendant next alleges that the verdict was against the weight of the evidence. The Court does not agree. The test for determining whether the verdict is against the weight of the evidence, is not whether the Court would have decided the case in the same way, but whether the verdict is so contrary to the evidence as to make the award of a new trial imperative so that right may be given another opportunity to prevail. Commonwealth v. Whiteman, 336 Pa.Super. 120, 485 A.2d 459 (1984).

Instantly, the evidence showed that the victim was confronted by two victims including the Defendant. The Defendant pulled out a knife and waved it in front of the victim while telling him that he planned to “stick” him with it. While the Defendant was yelling obscenities at the victim, he took a bottle from a bag that he was carrying and threw it at the victim, hitting him in the head. The Court cannot conclude that the verdict was so contrary to the evidence that the award of a new trial is imperative so that justice may have another opportunity to prevail.

### ***IMPEACHMENT TESTIMONY***

The Defendant last alleges that the Court erred in excluding the testimony of defense witness, Steve Fedroff, who would have offered impeachment testimony regarding the disposition of the victim’s dog. Mr. Fedroff was the first proposed witness on behalf of the defense. Defense counsel gave an offer of proof with regard to Mr. Fedroff before he was called as a witness. In his offer, defense counsel stated that Mr. Fedroff would be called to testify that he would have been in Brandon Park with the Defendant and his dog in approximately April of 1998. While at the park, they ran into the victim and his dog. When the Defendant’s dog approached the victim’s dog, the victim’s dog snapped out at the Defendant’s dog. The victim took no action at that time to stop his dog.

The Commonwealth argued that the offered testimony had no relevance to the incident that occurred. The Court agreed, and sustained the objection. The credibility of a witness may be impeached (1) by showing that, on a prior occasion, he made a statement inconsistent with his present testimony, (2) by competent evidence tending to show defects in memory, or (3) by contradictory testimony from other witnesses whose

version of the facts differs from the witness being impeached, Walley v. Iraca, 360 Pa. Super. 436, 520 A.2d 886, (Pa. Super. 1987) *citing* Commonwealth v. Baez, 494 Pa. 388, 431 A.2d 909, 912 (1981); McCormick, Evidence, § 33 at 66 (2d ed.1972). This, of course, does not permit the impeachment of a witness on collateral matters; the grounds for contradicting a witness must be germane to the issues at trial. McGoldrick v. Pennsylvania R. Co., 430 Pa. 597, 241 A.2d 90, 92 (1968). Instantly, the Court could not find that the actions of the victim's dog toward another dog had any relevance to the actions of the dog on the night of the incident. The Court therefore found that the testimony of Mr. Fedroff would have been improper for impeachment purposes.

Dated: June 15, 1999

By The Court,

Nancy L. Butts, Judge

xc: Joseph K. Cottrell, Esquire  
Robert Ferrell, Esquire  
Honorable Nancy L. Butts  
Law Clerk  
Gary Weber, Esquire  
Judges