

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,588
:
vs. : CRIMINAL DIVISION
: Motion to Suppress
REGINALD JOHNSON, : Reconsideration
:
Defendant :

OPINION AND ORDER

The Commonwealth has asked this Court to reconsider its Order dated April 11, 2001, which granted Defendant's Motion to Suppress in part and prohibited the Commonwealth from introducing into evidence the identifications of Defendant while standing on his porch. The Court found Defendant had the right to counsel, which was not afforded him, as he was determined by the Court to have been in custody at the time of the porch identification. After argument on the Commonwealth's Motion for Reconsideration, heard May 9, 2001, the Court agrees with the Commonwealth that although the general rule requires counsel for an identification procedure when the suspect is considered in custody, the instant matter falls within the exception to that rule for prompt, pre-incarceration identification procedures. Commonwealth v Gray, 396 A.2d 790 (Pa. Super. 1979); Commonwealth v Aaron, 386 A.2d 1006 (Pa. Super. 1979); Commonwealth v Ray, 315 A.2d 634 (Pa. 1974). In these cases, the identification took place soon after the criminal event and although after the suspect's arrest, prior to his introduction into a formal custodial environment.¹

Defendant argues that the one (1) hour lapse of time between the stabbing and the identification procedure in the instant matter is too long of a delay and removes the instant matter from

¹In Gray, the perpetrators were brought back to the scene of the crime in a police van no more than 90 minutes after the crime. In Ray, the victim was driven to view the perpetrator, who had been stopped for speeding nearby, approximately 50 minutes after the criminal incident. In Aaron, the identification took place 1 ½ hours after the crime.

the exception to the rule. The Court does not agree as the cases referred to above extend the time period up to 1 ½ hours.

Defendant further argues that even if an absque counsel identification procedure is admissible, the instant identification procedure was unduly suggestive and therefore inadmissible based upon Defendant's being viewed while in the custody of police officers and having been asked to put on his glasses. In Aaron, supra, the Court considered the suggestiveness argument and specifically referred to Russell v U.S., 133 U.S.A.pp.D.C. 77, 408 F.2D. 1280 (1969), which recognized the high degree of suggestiveness in confrontations where a single suspect is viewed in the custody of police but decided that the reliability inherent in an immediate identification and the rapid release of a mistaken suspect outweighed any prejudice. Further, the Court does not believe that the police request of Defendant to put his glasses on during the identification procedure made the identification any more suggestive.

The Court therefore finds no basis upon which to suppress the identification.

ORDER

AND NOW, this day of May, 2001, for the foregoing reasons, this Court's Order of April 11, 2001, is hereby vacated and Defendant's Motion to Suppress is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 William Miele, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson