

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,365
 :
 vs. :
 : CRIMINAL DIVISION
 NORMAN E. JOHNSON, :
 Defendant :

OPINION IN SUPPORT OF ORDER DATED
JULY 5, 2001 IN COMPLIANCE
WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals from this Court's Order of July 5, 2001, sentencing him to 42 months to 7 years incarceration for a conviction of intimidation of a witness on April 17, 2001. By way of background, it should be noted that after a jury trial, completed on April 17, 2001, the jury was hung on numerous more serious charges. Defendant was acquitted of one (1) charge, kidnaping to inflict bodily injury, and convicted of criminal trespass, possession of an instrument of crime, and intimidation of a witness or victim. The charges of criminal trespass and possessing an instrument of crime, as well as the more serious charges of rape and kidnaping, were filed to No. 00-10,984. The charge of intimidation of a witness or victim was, along with charges of harassment and stalking, filed to No. 00-11,365. Upon motion of the Commonwealth, certain of the charges filed to No. 00-11,365 had been consolidated with those filed to No. 00-10,984. Defendant has been scheduled for retrial on those charges filed to 00-10,984 upon which the jury was hung. By Order of May 23, 2001, the charges to No. 00-11,365 upon which the jury was hung were nol prossed. The instant appeal involves only the conviction of intimidation of a witness or victim and the sentencing thereon.

First, Defendant contends the Court erred by refusing to delay sentencing until after all of the charges in the combined indictments have been resolved. As noted above, all of the charges filed to

No. 00-11,365 had been resolved by the time of sentencing. Defendant advances no reason why sentencing on the individual charge of intimidation of a witness should have been delayed; there would certainly be no merger issue with respect to any of the other charges pending.

Next, Defendant contends the Court erred by failing to recuse itself from hearing the trial in this matter, based on the fact the Court heard the Protection From Abuse petition. The Court does not believe that simply having presided over other matters involving the same defendant gives rise to the need for recusal. Defendant cannot point to any other reason the Court should recuse itself, beyond general accusations of “prejudice”, and the Court cannot, therefore, find error in refusing to grant the recusal motion.

Next, Defendant contends the Court erred in refusing to recuse itself prior to sentencing. Defendant raised a recusal issue in his pre-trial motion with respect to retrial, and the Court refers the reader to its discussion of that issue in the Opinion and Order issued August 29, 2001. As noted therein, the Court believes there are no grounds for recusal and does not believe it erred in denying Defendant’s motion in that regard.

Next, Defendant contends the Court abused its discretion in sentencing Defendant on the charge of intimidation of a witness. Defendant’s sentence falls within the standard range of the sentencing guidelines, however. Without any more specific allegation of abuse of discretion, the Court is unable to find such.

Next, Defendant contends the Court erred by refusing to suppress the tapes of the phone conversations between he and the victim. His motion to suppress that evidence was denied by the Honorable Nancy L. Butts by Opinion and Order issued January 2, 2001. After consultation with Judge Butts, the Court chooses to rely on that Opinion to address this issue.

Next, Defendant contends the Court erred by refusing to suppress the letters exchanged between Defendant and the victim. A review of the record reveals no motion to suppress this evidence and Defendant has not alleged any grounds for suppression at this time. The Court will address the issue no further.

Next, Defendant contends the Court erred by failing to grant his demurrer to the charge of intimidation of a witness, by permitting the charge to go to the jury, and by entering a verdict of guilty

based upon the jury's verdict, contending the charge fails as a matter of law. The sufficiency of the evidence to support the charge was discussed in this Court's Opinion and Order of June 7, 2001 and the Court refers the reader to that Opinion.

Next, Defendant contends the Court erred in failing to suppress all evidence which was not provided in a timely manner by the District Attorney's Office and by failing to dismiss the matter on that basis. No suppression motion was filed by Defendant, however, and in fact he withdrew his Motion to Compel Discovery shortly before argument thereon. At this time, Defendant provides no specifics with regard to the allegation of grave misconduct on the District Attorney's part nor with respect to a showing of prejudice to Defendant, nor with respect to the necessary contention that Defendant was denied a fair trial. The Court will therefore address the issue no further.

Next, Defendant contends the Court erred in "forcing defense counsel to request a continuance by threatening to force him to go to trial without the benefit of adequate and timely discovery, when the District Attorney's office had admitted their failure to provide adequate and timely discovery." The Court is at a loss to understand Defendant's allegation in this charge of error and therefore will not address the matter further.

Next, Defendant contends the Court erred by failing to suppress the testimony from the Protection from Abuse proceedings. This issue was addressed in Judge Butt's Opinion and Order of January 2, 2001 and, again, the Court will defer to that Opinion for a resolution of that issue.

Next, Defendant contends the Court erred in denying Defendant's Rule 1100 Motion. Defendant's motion was denied by the Honorable Kenneth D. Brown by Opinion and Order issued January 17, 2001. After consultation with Judge Brown, the Court will rely on that Opinion with respect to this issue.

Next, Defendant contends the Court erred in its instruction to the jury on the charge of intimidation of a witness or victim. The standard jury charge was read to the jury and, moreover, Defendant failed to object to that charge. Without a more specific allegation of error, the Court cannot address the matter further.

Next, Defendant contends the Court erred by failing to order the District Attorney or the victim to provide any and all medical records related to a "certain medical condition." This issue was

address by Judge Butts in her Opinion and Order of January 2, 2001, and the Court refers the reader to that Opinion for resolution of this issue.

Next, Defendant contends this Court erred by failing to declare a mistrial when it was disclosed that some of the jurors had seen Defendant in the presence of sheriff's deputies. This issue was addressed by the Court in the Opinion and Order dated June 7, 2001 and the Court will rely on that Opinion with respect to this issue.

Finally, Defendant contends this Court erred by failing to recuse itself "in total" and "bring in an independent Judge", alleging "the Courts in Lycoming County were so prejudiced against your Defendant, that he could not receive a fair trial as a matter of law." Defendant has not, in any recusal motion or in his instant statement of matters complained of on appeal, been able to point to anything showing the Court's alleged prejudice. Defense counsel admitted in his argument at the pre-trial motion heard August 27, 2001, that nothing in the conduct of the trial showed prejudice and he was addressing only the sentencing issue as discussed in the Opinion and Order of August 29, 2001. Without more, the Court will not address the matter further.

Dated: September 24, 2001

By The Court,

Dudley N. Anderson, Judge

cc: DA
Matt Zeigler, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson