

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:
Appellant	:
	:
v.	: No. 1646 C.D. 2009
	:
John Light	:
	:
Commonwealth of Pennsylvania	:
	:
v.	: No. 1647 C.D. 2009
	: Submitted: December 24, 2009
John Light,	:
Appellant	:

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: January 25, 2010

John Light (Light) appeals from an order of the Court of Common Pleas of Lebanon County (trial court) denying his motion to dismiss for selective or vindictive prosecution by denying his omnibus pretrial motion as untimely and for excluding evidence purportedly relating to his claim of selective or vindictive prosecution. The Commonwealth of Pennsylvania (Commonwealth) has filed a cross-appeal arguing that the trial court erred by failing to impose statutory, mandatory minimum fines for the offenses of Light's conviction.

Light owns property at 307 Pine Meadow Road in Swatara and Bethel Townships known as the Light farm. On that farm is a large incinerator, approximately eight feet by seven feet, as well as a garage. He also owns a warehouse/apartment building located at 118-130 North 8th Street in Swatara Township. Beginning in 1996, Michael Pavelek (Pavelek) of the Greater Lebanon Refuse Authority went to Light's property as a result of a complaint that the Department of Environmental Protection (DEP) received about the state of his property. He talked to him about lead batteries on the ground, a burning in a pit adjacent to Pine Meadow Road burning lead acid batteries, various municipal wastes including appliances with Freon, waste, tires and demolition waste – some coated with lead based paint, all adjacent to a small creek. There was also a considerable amount of garbage and trash on the property and in vehicles around the property. He explained the concerns for burning of material and about lead contamination in the air and in the water that was possible from combustion of demolition materials with lead based paint on them. He explained that lead acid batteries were a major concern. He specified that Light was in violation of transporting, disposing of and processing of waste without a license, as well as burning or burying or disposing of waste without a license and gave him a copy of the rules. He warned Light about what “trash” was and was not permissible to store and bury on his farm property due to complaints about materials on his farm property, including lead batteries and garbage, and told him that he was in violation of the environmental laws. He told Light that his property had to be cleaned up.

Pavelek stated that he kept in touch with Light to see if he was cleaning up the property, which he was not. Because Pavelek saw that no effort was being

made by Light to clean up his property, he contacted DEP to investigate. DEP found that including in 2001, when an extremely large fire took place in Light's garage due to the large amount of stored waste in the garage that should have been disposed of in a landfill, he continued to bury, burn, store and dump illegal waste on his farm property. DEP inspectors also told him that Light had stored approximately 28 drums in his warehouse property, with 20 of the drums containing what appeared to be antifreeze and eight of the drums containing black, oily liquid that was hazardous.

Because it was ultimately determined that Light had not cleaned up his property from 1996 to 2006, DEP referred the case to the Environmental Crimes Section of the Office of Attorney General who executed a search warrant. On November 29, 2006, a criminal complaint was filed against Light charging him with 12 violations of the Solid Waste Management Act (Act) between March 2002 and 2006.¹ Specifically, Light was charged with seven counts of Unlawful Conduct, Sections 610(1), (2), (3), (4) and (6) of the Act, 35 P.S. §6018.610(1), (2), (3), (4) and (6); four counts of Management of Hazardous Waste, Section 401(a) of the Act, 35 P.S. §6018.401(a); and one count of Generation, Transportation, Storage, Treatment and Disposal of Hazardous Waste, Section 403(b)(2) of the Act, 35 P.S. §6018.403(b)(2).

Following a preliminary hearing, the charges were held for court. On June 13, 2007, Light waived his formal arraignment. An omnibus pretrial motion was due on or before July 13, 2007, but the only timely pretrial motion filed by Light

¹ Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§6018.101-6018.1003.

was a motion to compel discovery. At the request of defense counsel, the trial court scheduled a hearing for July 11, 2007, but Light failed to appear on that date and the trial court denied his motion. No other pretrial motions were filed before July 13, 2007. Finally, on September 20, 2007, Light filed his omnibus pretrial motion in which he argued that the search warrant that was issued was on less than sufficient probable cause and was not executed properly, and the evidence obtained in the case should be suppressed. He also argued that the criminal charges filed against him were an attempt by DEP to manipulate the federal civil rights action he had pending in the United States District Court for the Middle District of Pennsylvania, Number 1: CV-03-725, against the Secretary for DEP. The trial court denied his omnibus pretrial motion on September 21, 2007, and Light filed a nunc pro tunc omnibus pretrial motion on October 4, 2007, that was denied as untimely on October 5, 2007.

After the trial, on June 4, 2008, a jury returned a guilty verdict on all of the charges.² Judge Charles imposed an aggregate sentence of imprisonment for 11 months to two years less one day to be followed by a 10-year period of probation, fines totaling \$18,000 and payment of the costs of prosecution. The sentence was later modified to include a number of special conditions.

Light appealed to the Superior Court which quashed the appeal as premature but then reconsidered and transferred the matter to this Court. The

² Three employees who worked for Light – Brian Conklin, Michael Morgan and Robert Fake – testified about the drums that were in the warehouse property and the burning of garbage in the incinerator. “Garbage” included televisions, computers, furniture, etc. (Reproduced Record at 621a.) DEP specialists also testified regarding the lack of vegetation and soil samples indicating lead exceeding the legal limit.

Commonwealth filed a motion to quash the appeal as premature and also filed a motion for reconsideration of the sentence asking the trial court to impose mandatory fines totaling \$21 million. On January 7, 2009, we granted the Commonwealth's motion to quash and remanded the matter for consideration of the Commonwealth's post-sentence motion. On May 1, 2009, the sentencing court granted the motion for reconsideration of the sentence and on June 19, 2009, reimposed the sentence to include conditions of supervision. However, the sentencing court denied the Commonwealth's request that the mandatory fines be imposed. On July 15, 2009, Light filed an appeal and the Commonwealth cross-appealed. The cases have been consolidated for our review.³

Light now contends that the trial court abused its discretion because it failed to hold a pretrial hearing on the issue of selective and vindictive prosecution.⁴ He argues that the trial court was obligated to conduct a hearing as to whether the prosecution was initiated as a result of his civil rights lawsuit against DEP.

A claim of vindictive prosecution must be raised in an omnibus pretrial motion. Pennsylvania Rule of Criminal Procedure (Pa. R. Crim. P.) 578 provides: "Unless otherwise required in the interest of justice, all pretrial requests for relief

³ Originally, Light filed his appeal with the Superior Court, as did the Commonwealth with its cross-appeal, which transferred the matters to our Court's appellate jurisdiction.

⁴ A claim of vindictive prosecution is one that is premised on the theory that due process prohibits a prosecution brought in retaliation for a defendant's exercise of a constitutional right and must be presented to the trial court via a motion to dismiss. *Commonwealth v. Butler*, 529 Pa. 7, 601 A.2d 268 (1992). Such a claim is a question of law and not of fact and is unrelated to the question of guilt or innocence. *Id.* at 13, 601 A.2d at 270.

shall be included in one omnibus motion.” Regarding the time for filing an omnibus pretrial motion, Pa. R. Crim. P. 579(A) provides:

Except as otherwise provided in these rules, the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless opportunity therefore did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown.

For purposes of Rule 579, an arraignment includes a proceeding in lieu of a formal arraignment consistent with a local rule as permitted under Pa. R. Crim. P. 571. *See* Comment to Rule 579. Rule 571(d) permits a waiver of arraignment and the trial court has adopted by local rule 52-CrD-104 the use of a waiver of arraignment form.

The trial court dismissed Light’s omnibus pretrial motion because it was untimely filed. He waived his formal arraignment on June 13, 2007, so his omnibus pretrial motion was due on or before July 13, 2007. By his own admission, Light filed his omnibus motion on September 20, 2007, regarding the issue of selective and vindictive prosecution which the trial court dismissed as untimely. He did not provide a reason for the late filing on the original motion, and when he filed the nunc pro tunc motion on October 5, 2007, the reason offered for that late filing was that his attorney was unaware of some of the factual bases surrounding the federal action until “after the 30 day time frame after the arraignment had lapsed and shortly before filing the Omnibus Pre-Trial Motion.” (Reproduced Record at 67a.)

Although Pa. R. Crim P. 579(A) allows for a late omnibus pretrial motion filing when the defendant's counsel is unaware of grounds for the motion, the trial court did not believe that Light's counsel's failure to be aware of his federal action prior to filing his omnibus pretrial motion had any relevance to the search warrant for the matter currently before the trial court. Light's attorney handling the nunc pro tunc omnibus pretrial motion was the same attorney handling the original omnibus pretrial motion. In paragraph 8 of the original omnibus pretrial motion, his attorney mentioned the federal action stating:

8. The Defendant believes and therefore avers that the criminal charges filed herein are an attempt by the Pennsylvania Department of Environmental Protection and the Pennsylvania Attorney General's Office to undermine and manipulate the Federal Civil Rights action of Mr. Light which has been pending in the United States District Court for the Middle District of Pennsylvania, in the case of Light vs. Secretary for the Pennsylvania Department of Environmental Protection, et al., 1:03-CV00725-CCC.

Because Light and his attorney were well aware of the federal case at the time the original omnibus pretrial motion was filed, the trial court did not abuse its discretion in denying the nunc pro tunc omnibus motion, and Light's argument is without merit.⁵

⁵ Light also argues that the trial court abused its discretion by refusing to address the issues raised by him in his pretrial motion; however, because it was untimely filed, the trial court acted properly.

Light also argues that the trial court abused its discretion by permitting the Commonwealth to introduce evidence to the jury relating to events prior to the period charged in the criminal information but refusing to allow his attorney to do the same. He does not specify what evidence the Commonwealth introduced but merely states that “[a]lthough the Commonwealth was permitted to go back to the middle 1990s in their opening statement as well as the presentation of their case, the defense was denied the same opportunity. An example of this occurred at a side bar where the Trial Court stated that the Commonwealth was permitted to present this information to the jury but the defense was not because the trial [sic] believed the defense’s information was ‘more questionable’ than that of the Commonwealth.” (Light’s brief at 23.) Light goes on to state: “The limitation of the defense in presenting evidence of the history between the Defendant and DEP would have included testimony and facts that DEP had indeed found the Defendant (Appellant)’s 307 Pine Meadow Road Farm compliant (in 2005) long after the fire incident in 2001.” (Light’s brief at 23.)

Because it was within the discretion of the trial court to determine what evidence to allow at trial, *Commonwealth v. Malloy*, 579 Pa. 425, 856 A.2d 767 (2004), and Light has not specified what evidence the trial court did not allow him to present, we cannot find that the trial court abused its discretion.

Finally, addressing the Commonwealth’s cross-appeal, it argues that the sentencing court imposed an illegal sentence by failing to order Light to pay the mandatory minimum fines required by Section 606 of the Act, 35 P.S. §§6018.606(b)

and (f),⁶ based on its conclusion that those fines were unconstitutionally excessive. In its motion for reconsideration of sentence, the Commonwealth stated that the trial court had no discretion when it came to mandatory fines and should have imposed the minimum fine each day Light was found in violation on each of the 12 counts.⁷ Ultimately, the Commonwealth believed that the trial court should have imposed upon Light approximately \$21 million in fines.

⁶ 35 P.S. §§6018.606(b) and (f) provide the following:

(b) Any person other than a municipal official exercising his official duties who violates any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$1,000 but not more than \$25,000 per day for each violation or to imprisonment for a period of not more than one year, or both.

* * *

(f) Any person who stores, transports, treats, or disposes of hazardous waste within the Commonwealth in violation of section 401, or in violation of any order of the department shall be guilty of a felony of the second degree and, upon conviction, shall be sentenced to pay a fine of less than \$2,500 but not more than \$100,000 per day for each violation or to imprisonment for not less than two years but no more than ten years, or both.

⁷ The Commonwealth indicated that for Counts 1 and 2, the mandatory minimum fine for each was \$2,243,000 or \$4,486,000; for Counts 3 and 4, the mandatory minimum fine for each was \$1,346,000 or \$2,692,000; for Counts 5 and 6, the mandatory minimum fine for each was \$5,607,500 or \$11,215,000; for Counts 7 and 8, the mandatory minimum fine for each was \$498,000 or \$996,000; for Count 9, the mandatory minimum fine was \$1,000; for Count 10, the mandatory minimum fine was \$1,245,000; for Count 11, the mandatory minimum fine was \$2,500; and for Count 12, the mandatory minimum fine was \$498,000. The Commonwealth recommended a total of \$21,135,500 in fines.

Ignoring that the jury returned the verdict sheet only indicating that he was guilty of the offenses without references to the number of days in question, the trial court, well versed in the Pennsylvania Constitution, cited Article I, Section 13, which prohibits the imposition of excessive fines, and refused to impose a fine greater than the one it imposed: on Counts 1-4, a fine of \$1,000; on Counts 5 and 6, a fine of \$2,500 each; on Counts 7, 8, 9 and 12, a fine of \$1,000; on Counts 10 and 11, a fine of \$2,500 each, for a total of \$18,000. The trial court stated:

As we read appellate case law interpreting Article 1, Section 13 of Pennsylvania's Constitution, we have little difficulty concluding that the fines requested by the Commonwealth would be unconstitutionally excessive. See **Commonwealth v. Heggenstaller**, 699 A.2d 767 (Pa. Super. 1997); and **Commonwealth v. Strunk**, 582 A.2d 1326 (Pa. Super. 1990).

We recognize that the Defendant's resources are not unlimited, and the intent of our sentence was that the Defendant use his resources to remediate the two properties that are the subject of the criminal charges filed against him.

Imposition of a fine greater than the one we imposed could prevent the Defendant from completing remediation that our sentencing order was intended to encourage. (Emphasis in original.)

(Reproduced Record at 286a-287a.) Because the fines the Commonwealth is requesting are beyond excessive, the sentencing court did not impose an illegal sentence.

Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, JUDGE

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	:
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ORDER

AND NOW, this 25th day of January, 2010, the order of the Lebanon County Court of Common Pleas, dated June 19, 2009, is affirmed.

DAN PELLEGRINI, JUDGE