

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

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| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellee | : | |
| | : | |
| v. | : | |
| | : | |
| KEVIN EDWARD CAMPBELL, | : | |
| | : | |
| Appellant | : | No. 1869 WDA 2011 |

Appeal from the Judgment of Sentence October 5, 2011,
Court of Common Pleas, Butler County,
Criminal Division at No. CP-10-CR-0000941-2010

BEFORE: BOWES, DONOHUE and MUNDY, JJ.

MEMORANDUM BY DONOHUE, J.: FILED: May 2, 2013

Kevin Edward Campbell (“Campbell”) appeals from the judgment of sentence entered following his convictions of first degree murder, second degree murder, third degree murder and abuse of a corpse.¹ Following our careful review, we affirm.

The trial court summarized the facts underlying Campbell’s convictions as follows:

[O]n December 23, 2008, victim Shawn Murphey went to the Lyndora Tattoo Shop (hereinafter ‘Shop’) at 100 Bessemer Avenue in Lyndora, PA to have a tattoo placed on his arm. Locally, Murphey was a seller and abuser of illegal drugs. At the time of Murphey’s disappearance and death, [Campbell] was employed as a tattoo artist at the Shop. On the evening of December 23, 2008 and into the early morning hours of December 24, 2008, [Campbell] was working on a tattoo on the

¹ 18 Pa.C.S.A. §§ 2502(a), 2502(b), 2502(c), 5510.

victim's arm. Testimony established that [Campbell] was the last person to see the victim alive.

Commonwealth witness Justin Enslin testified that he, Murphey and Tom Wallenbrock arrived at the Shop around 3:00 p.m. on December 23, 2008. Enslin stated that he was at the Shop for about a half hour and then left and that he never saw Murphey again. Wallenbrock testified that Murphey was wearing a red cap, a red hoodie, jeans and Jordan shoes when he met up with him on December 23, 2008. He stated that Murphey had a low supply of drugs on his person and had about \$1000.00 in cash in his pants pocket. Wallenbrock testified that around 4:00 a.m. on December 24, 2008, he and Frank Tebay went to a nearby 7-11 convenience store to buy snacks and soda for Murphey. When they returned to the Shop, [Campbell] was still working on the tattoo on Murphey's arm. [Campbell] also wanted some snacks, so Wallenbrock and Tebay went back to the 7-11.

Wallenbrock testified that when he and Tebay returned to the Shop, the front door was locked. Tebay pounded on the front door for several minutes before [Campbell] answered. Wallenbrock testified that the lights inside the Shop were off. [Campbell] told them the police were there and Murphey ran. Wallenbrock stated that he and Tebay drove around looking for Murphey. Wallenbrock dropped Tebay [off] at a house and then returned to the Shop. [Campbell] let Wallenbrock in the Shop through the back door and Wallenbrock took Murphey's cell phone. Wallenbrock testified that he drove around again looking for Murphey. Eventually, he parked in the nearby K-Mart lot and went to sleep. After he woke, he went back to the Shop and again asked [Campbell] about Murphey's whereabouts. [Campbell] told Wallenbrock that he hadn't seen him. Wallenbrock left Murphey's cell phone at Desmond Waterson's house.

Leonard Walkowiak, owner of 100 Bessemer Avenue, testified that John Benko owned the tattoo business in his building. On January 25, 2009, Mr. Walkowiak met a prospective renter of the basement area at 100 Bessemer Avenue. After the prospective renter left, Mr. Walkowiak discovered Murphey's body beneath a blue plastic cover in a small room in the basement.

Forensic pathologist Dr. Abdulrezak Shakir, of the Medical Examiner's Office of Allegheny County, conducted an autopsy of Murphey's body and found the presence of a gunshot wound to the back of his head. Dr. Shakir performed the autopsy on January 25, 2009. He stated that the signs of decomposition he found on Murphey's body were consistent with him dying any time between the 24th ([of] December, 2008) until about a week or two prior to the autopsy. Dr. Shakir testified that he observed tattoo impressions on Murphey's left arm.

... Cpl. Robert Hagin, [Pennsylvania State Police] forensic firearm and toolmark expert, testified that the firearm found in [Campbell's] office at the Shop was the weapon used to kill Murphey. He also stated that the muzzle of the firearm was either in contact with the back of Murphey's head or up to [12] inches away upon discharge. Testimony revealed that [Campbell] stole the firearm from his father-in-law, James Hopson.

Mr. Hopson testified that close to Christmas of 2008, [Campbell] asked him for a loan. Mr. Hopson testified that he and his wife ... took out a loan of between \$1,000 and \$3,000 to lend to [Campbell] to take care of a child support obligation to his ex-wife.

Trial Court Opinion, 3/8/2012, at 2-4 (citations to notes of testimony omitted).

Campbell was arrested on April 12, 2010. He filed an omnibus pre-trial motion seeking, *inter alia*, the suppression of evidence recovered from a computer that was located in the Shop. The trial court denied Campbell's motion. A five-day trial commenced on September 19, 2011, at the conclusion of which the jury found Campbell guilty of the aforementioned crimes. Campbell was subsequently sentenced to life imprisonment on the first-degree murder conviction, with no further penalty imposed on the remaining three convictions. Following the denial of his post-sentence motion, Campbell filed this timely appeal.

Campbell presents the following two issues for our review:

1. Whether the trial court erred by permitting the Commonwealth to adduce as evidence of motive that [] Campbell had outstanding child support arrearages, when at the time of the crime his ex-wife had forgiven any outstanding debt, waived further support payments and he was current on the arrearage payments to the Department of Public Welfare?
2. Whether the trial court erred by refusing to suppress evidence derived from a computer seized from [] Campbell's place of business on the grounds that he did not have a possessory interest in the computer or expectation of privacy in its contents, where he was the [*sic*] operating the business from which the computer had been seized and had entered into a contract to purchase the business and its contents?

Appellant's Brief at 4.

Campbell's first issue challenges an evidentiary ruling. "The admissibility of evidence is within the sound discretion of the trial court, which may only be reversed upon a showing that the court abused its discretion." ***Commonwealth v. Bryant***, 57 A.3d 191, 194 (Pa. Super. 2012). With this standard of review in mind, we address Campbell's claim.

Campbell argues that the trial court erred in allowing the Commonwealth to present evidence that he owed a debt to the Department of Public Welfare ("DPW") in relation to a defunct child support obligation. Campbell first raised this issue in a motion *in limine* to preclude the introduction of evidence, a hearing on which was held on September 8, 2011. At that time, the Commonwealth indicated that it intended to introduce evidence, to establish motive for killing the victim, that Campbell missed two child support payments in late 2008 in conjunction with evidence that Campbell's tattoo business was declining and that he recently began abusing drugs. N.T., 9/8/11, at 23-25. The trial court denied Campbell's motion.

At trial, a representative from the Butler County Domestic Relations Office, Adam Fencil ("Fencil"), testified that in June 2007, Butler County registered a support order from Virginia, which provided that Campbell was required to pay his ex-wife \$570 per month for the support of their four children. N.T., 9/21/11, Afternoon Session, at 80. Fencil further testified that in July 2007, a contempt hearing was scheduled because Campbell

failed to make a support payment. **Id.** at 81. As a result of the contempt proceeding, Campbell brought himself current on his support obligation and remained current until he failed to make support payments in October and November of 2008. **Id.** at 83-84. At a subsequent contempt hearing before Fencil in December 2008, it became clear that while Campbell's ex-wife had requested that the support case be closed in October 2008, Campbell was still obligated to pay approximately \$3,200 to DPW for benefits that his ex-wife had received. N.T., 9/21/11 Afternoon Session, at 85-86. At this hearing, Campbell made a payment of \$570 and indicated that his income had decreased to approximately \$800 per month. **Id.** at 86. In light of this reduction of income, Fencil decreased Campbell's monthly payment to \$300 per month. **Id.** at 87. The outcome of the hearing was that Campbell was not found to be in contempt, Campbell was determined to be current on his payments toward the outstanding Department of Welfare arrearages, and no payment was due until January 31, 2009. **Id.**

Following the conclusion of Fencil's testimony, Campbell moved to have it struck on grounds that it was "in no way, shape or form relative to a motive" because it failed to establish that Campbell was delinquent on his child support obligation or was facing penalties for any such delinquency. **Id.** at 92. The trial court denied Campbell's motion.

On appeal, Campbell contends that the trial court erred in denying his motion to strike this testimony. He argues that "[t]he reality of [Campbell's]

child support situation, combined with the facts of the [] case, demonstrate that [his] child support obligation was not relevant to a determination of a fact of consequence relating to any degree of murder or abuse of a corpse[.]” Appellant’s Brief at 16.

“The admissibility of evidence depends on relevance and probative value. Evidence is only considered relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact.” **Commonwealth v. Bryant**, 57 A.3d 191, 195 (Pa. Super. 2012) (internal citations omitted). Even relevant evidence, however, may be excluded if its probative value is outweighed by the danger of unfair prejudice. Pa.R.E. 403.

With regard to evidence of debts, our law provides that “evidence of specific debts may be introduced where the jury may clearly draw an inference that the financial difficulties of the defendant were material to his motive or state of mind in committing a crime.” **Commonwealth v. Brown**, 911 A.2d 576, 584 (Pa. Super. 2006) (citing **Commonwealth v. Wax**, 571 A.2d 386, 388-89 (Pa. Super. 1990)). As this Court has previously summarized,

[T]he Supreme Court has held that the Commonwealth cannot use evidence of a defendant's unemployment to establish a motive to commit a crime. **Commonwealth v. Barkelbaugh**, 526 Pa. 133, 584 A.2d 927 (1990) (citing **Commonwealth**

v. Haight, 514 Pa. 438, 525 A.2d 1199 (1987)). That is, the Commonwealth cannot introduce evidence of unemployment in order to suggest to the jury some stigma to be attached to unemployed individuals. **See Brennan, supra**. However, this Court has held that there is no absolute bar to the admission of all evidence of financial difficulties. **Commonwealth v. Wax**, 391 Pa.Super. 314, 571 A.2d 386 (1990). That is, where evidence of the financial difficulty/debt is specific and evidence of the debt was not intended to stigmatize the appellant on the basis of his economic status, the general prejudice discussed in **Barkelbaugh** is not present. Under such circumstances, the admissibility of the disputed testimony should be assessed under the traditional considerations of relevancy. **Wax, supra**.

Id.

The trial court concluded that in this instance, “Fencil’s testimony regarding [Campbell’s] debt to the [DPW] was specific, relevant [to establishing a motive], and not intended to stigmatize [Campbell], and therefore admissible.” Trial Court Opinion, 3/8/12, at 8. We can find no abuse of discretion in this ruling. Fencil’s testimony established that although Campbell’s child support obligation terminated, he still owed a debt of approximately \$3,200 to DPW; that Campbell’s income had significantly decreased; and that he needed to seek a reduction in the amount of his monthly payments. We can find no error in the trial court’s conclusion that this evidence, in combination with the testimony that the victim had approximately \$1,000 on him at the time of the murder, could permit the jury to draw the inference that financial difficulties were a possible motive,

and therefore that it was relevant. **See *Brown***, 911 A.2d at 584. Furthermore, we do not agree with Campbell that it prejudiced him by “creat[ing] an impression for the jury ... of a ne’er-do-well who failed in the most important of all human obligations – the moral and legal requirement to care for one’s children.” Appellant’s Brief at 17. Rather, the evidence presented the image of a man who in large part honored this obligation, as Fencil testified to only a few missed payments, with most of these occurring after Campbell’s ex-wife had requested that the obligation be terminated. We therefore find no abuse of discretion in the trial court’s ruling.

In his second issue on appeal, Campbell challenges the trial court’s denial of his suppression motion. We apply the following standard of review when considering such challenges:

Our standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court’s factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court’s factual findings are supported by the record, we are bound by these findings and may reverse only if the court’s legal conclusions are erroneous.

Commonwealth v. Jones, 605 Pa. 188, 197-98, 988 A.2d 649, 654 (2010).

Campbell argues that the trial court erred in concluding that he did not have standing to challenge the search of the computer found in the Shop and that he did not have an expectation of privacy in the computer. Appellant's Brief at 23. Campbell claims that he had standing to challenge the search of the computer because, *inter alia*, he entered into a contract to purchase the Shop and its assets, including the computer. ***Id.*** Following our review of the record and in light of our standard of review, we conclude that even if we assume that Campbell had standing, he would still not be entitled to relief because he could not establish that he had an expectation of privacy in the computer or its contents.

A defendant in a suppression hearing has the preliminary burden of establishing both that he has standing and a legitimate expectation of privacy. ***Commonwealth v. Burton***, 973 A.2d 428, 435 (Pa. Super. 2009).

Standing requires a defendant to demonstrate one of the following: (1) his presence on the premises at the time of the search and seizure; (2) a possessory interest in the evidence improperly seized; (3) that the offense charged includes as an essential element the element of possession; or (4) a proprietary or possessory interest in the searched premises. A defendant must separately establish a legitimate expectation of privacy in the area searched or thing seized. Whether defendant has a legitimate expectation of privacy is a component of the merits analysis of the suppression motion.

Id. (citations omitted).

Where a person establishes a legitimate expectation of privacy in the invaded place, an illegal search of that place will result in a violation of that person's constitutional rights. ***Commonwealth v. Govens***, 632 A.2d 1316, 1319 (Pa. Super. 1993). Courts determine whether a person's expectation of privacy is legitimate based on the totality of the circumstances. ***Commonwealth v. Viall***, 890 A.2d 419, 422 (Pa. Super. 2005).

Regarding an expectation of privacy, the trial court found as follows:

[T]he computer was located in a public area of the [Shop], *i.e.*, on top of the counter. Employees and customers alike had access to the computer. [Campbell] testified that he did not own the [Shop] and the computer and he failed to testify that he had exclusive use and control of the computer. Based upon the foregoing, the [c]ourt finds that ... [Campbell] did not have a legitimate expectation of privacy regarding the computer. To that end, the seizure of the computer and its content did not violate [Campbell's] constitutional rights[.]

Trial Court Opinion, 8/3/11, at 6. The trial court's factual findings are supported by the record. At the suppression hearing, Campbell testified that the computer was located on a desk "in the common area [of the Shop]." N.T., 7/1/11, at 39, 41. He further testified that the computer was available "for the general public to use" and, further, that one of the reasons the computer was there was for patron use. ***Id.*** at 39, 43. Campbell testified that while people usually used the computer to look up designs for a tattoo, they could use the computer for any purpose. ***Id.*** at 43. Although the computer was password protected, Campbell testified that the password did

not time-out, so that once it was entered, it would allow anyone access to the computer until the computer was shut down for the night. **Id.** at 40. Campbell also testified that the password was posted beneath the computer, and that "it wasn't [kept] real private." **Id.** Additionally, Campbell acknowledged that there were private, locked office spaces in the Shop, but the computer was not kept in an office. **Id.** at 42.

In **Commonwealth v. Sodomsy**, 939 A.2d 363 (Pa. Super. 2007), this Court considered whether the defendant had an expectation of privacy in the contents of his computer when he gave his computer to technicians at a store to install a DVD drive thereon. We reasoned as follows:

Pennsylvania has adopted the theory of abandonment, which applies as long as improper police conduct did not induce a defendant's desertion of his personal property. Pursuant to this legal construct, when an individual evidences an intent to relinquish control over personal property, he or she has abandoned a privacy interest in property and cannot object to any ensuing search of the item by police. Abandonment revolves around the issue of intent, which is determined from words, acts, and all relevant circumstances existing at the time the property is purportedly deserted. **Accord Commonwealth v. Sanders**, [] 595 A.2d 635, 638 (1991) ('whether a person reasonably may expect that his or her possessions shall be free from unwarranted governmental intrusion depends on the facts and circumstances').

... 'The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer

retain a reasonable expectation of privacy with regard to it at the time of the search.’ [***Commonwealth v. Shoatz***, [469 Pa. 545,] 553, 366 A.2d [1216,] 1220.

The theory of abandonment is extrapolated from the United States Supreme Court's observation that ‘the Fourth Amendment protects people, not places. ***What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.***’ ***Katz v. United States***, 389 U.S. 347, 351–52, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)[.]

Id. at 366-67 (emphasis added). Based upon these principles of abandonment, we concluded that “[i]f a person is aware of, or freely grants to a third party, potential access to his computer contents, he has knowingly exposed the contents of his computer to the public and has lost any reasonable expectation of privacy in those contents.” ***Id.*** at 369.

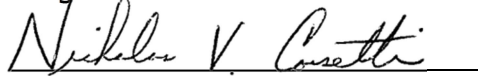
Assuming, without deciding, that Campbell had a possessory right in the computer, the evidence here unequivocally establishes that he exposed the computer to the public. There is no evidence that Campbell attempted to keep the computer private; to the contrary, his testimony establishes that third parties were regular users of the computer and that the computer was there, in part, specifically for third parties to use. We therefore find no error in the trial court’s determination that Campbell did not have a privacy interest in the computer or its contents, and so we find no abuse of discretion in the trial court’s denial of Campbell’s motion to suppress.

J-A09017-13

Having found no merit to Campbell's issues presented on appeal, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 5/2/2013