

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
PAUL CANNON,		No. 1898 EDA 2012
Appellant		

Appeal from the Judgment of Sentence May 31, 2012,  
in the Court of Common Pleas of Monroe County,  
Criminal Division at No. CP-45-CR-0002527-2010

BEFORE: OLSON, WECHT and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: February 7, 2013

This case is a direct appeal from the judgment of sentence imposed on Appellant after he was convicted of one count of persons not to possess a firearm, one count of possession of a concealed firearm without license to carry, one count of simple assault, and one count of terroristic threats. Appellant challenges the trial court's denial of his motion *in limine* requesting that the jury not be permitted to view a portion of video evidence concerning a theft that did not involve Appellant. We affirm.

The record indicates Appellant's counsel made an oral request at a pretrial conference to exclude a portion of the Commonwealth's video that did not show Appellant in the video, which the trial court denied. The case proceeded to a jury trial. According to the record, the store surveillance

---

\*Retired Senior Judge assigned to the Superior Court.

video introduced by the Commonwealth showed a woman and a man, who was not Appellant, attempting to steal an item from a Home Depot store. The video further depicted Appellant coming in to the store at one point and approaching the man and woman who were attempting to return an item. Additional evidence indicated Appellant was angry that the return was taking too long and then left the store. The woman and man subsequently left the store with merchandise for which they did not pay. The woman was then brought back into the store by store employees. After the woman was detained by store employees, she requested they get Appellant, who she claimed to be her husband. Store employees located Appellant in the parking lot and requested that he come inside with them. Once Appellant was inside the store and became aware of the detention of the woman, a confrontation ensued with store employees when Appellant attempted to leave with the woman. This activity gave rise to the counts against Appellant of simple assault, terroristic threats, and brandishing of a firearm and was captured, in part, on the store surveillance video. Appellant was convicted of the aforementioned counts and sentenced. This timely appeal followed.

Appellant argues the trial court erred in allowing the Commonwealth to introduce, at trial, the portion of the surveillance video concerning a theft in which Appellant was not involved. Appellant argues this evidence was irrelevant. Appellant further argues this evidence was unfairly prejudicial to him as it allowed the jury to improperly infer that Appellant was involved with the theft or was traveling with criminals.

Relevant evidence is evidence having any tendency to make the existence of a consequential fact more or less probable than it would be without the evidence. Pa.R.E. 401. Even if evidence is relevant, a trial court may exclude it if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. Pa.R.E. 403. Unfair prejudice means a tendency to suggest a decision based on an improper basis or to divert the jury's attention from its duty to weigh the evidence impartially. *Id.* cmt.

Decisions regarding the admission of evidence are within the discretion of the trial court, and we will not disturb such decisions unless the court abused that discretion. ***Commonwealth v. Hardy***, 918 A.2d 766, 776 (Pa. Super. 2007). An abuse of discretion is not a mere error in judgment but, rather, involves bias, ill will, partiality, prejudice, manifest unreasonableness, or misapplication of law. ***Commonwealth v. Bradford***, 2 A.3d 628, 632-33 (Pa. Super. 2010).

The trial court concluded that:

[T]he video showing the theft . . . explained why [Appellant] was called into the store, and gave a reason for why he behaved as he did: He wanted to leave the store without the woman being detained for the theft. By showing the portion of the video depicting the theft, it was more understandable to a reasonable person why [Appellant] was in the store and in a confrontation with store employees. The portion of the video objected to was necessary to explain [Appellant's] actions and the circumstances leading up to those actions.

Trial Court Opinion, 08/17/12, at 4.

Appellant has not shown the court's reasoning constituted an abuse of discretion. We note that the video was not the sole source of the events thereon depicted; we fail to see how a video depiction of the theft by another person carried with it a danger of unfair prejudice to Appellant, a risk of confusion of the issues or other improper hazard outweighing its probative value. More particularly, we are unconvinced the video was such as to divert the jurors from their proper duty of weighing the evidence impartially. Accordingly, Appellant has not persuaded us the court abused its discretion when deciding to admit the video. Therefore, Appellant's claim fails.

Based on our foregoing discussion, we affirm the judgment of sentence.

Judgment of sentence affirmed.