

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
VANCE LEON HASKELL	:	
	:	
Appellant	:	No. 952 WDA 2018

Appeal from the Order Entered June 21, 2018  
In the Court of Common Pleas of Erie County Criminal Division at No(s):  
CP-25-CR-0000731-1998

BEFORE: OLSON, J., STABILE, J., and McLAUGHLIN, J.

MEMORANDUM BY OLSON, J.: **FILED SEPTEMBER 13, 2019**

Appellant, Vance Leon Haskell, appeals from the order entered on June 21, 2018, which denied his Motion to Dismiss Prosecution on Grounds of Double Jeopardy. We affirm.

In 1998, Appellant was convicted in the Erie County Court of Common Pleas of a number of crimes, including first-degree murder; he was sentenced to serve a term of life in prison. On August 1, 2017, the United States Court of Appeals for the Third Circuit granted Appellant's *habeas corpus* petition, thus resulting in the vacation of Appellant's judgment of sentence. **See *Haskell v. Superintendent Greene SCI*, 866 F.3d 139 (3<sup>rd</sup> Cir. 2017).** In granting Appellant's *habeas* petition, the Third Circuit ruled:

[During Appellant's trial, an eyewitness named Antoinette Blue (hereinafter "Blue")] [] provide[d] consistent testimony claiming she could identify [Appellant as the] shooter. What's more, she claimed to expect nothing in return from the

Commonwealth in exchange for her testimony. But this last claim was untrue. Both Blue and the prosecutor knew that she expected to receive help in her own pending criminal matters in exchange for her testimony. The prosecutor failed to correct Blue's statement; he even went on to rely on it and vouch for Blue in his closing argument.

**Id.** at 140.

The Third Circuit held that the prosecutor committed misconduct and that Appellant was entitled to *habeas* relief because the prosecutor “knew Blue’s testimony was false and failed to correct it” and there was “a reasonable likelihood that Blue’s false testimony could have affected the judgment of the jury.” **Id.** at 146 and 152.

The Commonwealth elected to retry Appellant and the trial court initially scheduled jury selection for March 16, 2018. **See** Trial Court Order, 2/14/18, at 1. Prior to trial, however, Appellant filed a Motion to Dismiss Prosecution on Grounds of Double Jeopardy (hereinafter “Double Jeopardy Motion”), where Appellant claimed that the trial court should dismiss all charges against him, as the double jeopardy clauses of the United States and Pennsylvania Constitutions prevent the Commonwealth from retrying him on the charges. **See** Appellant’s Double Jeopardy Motion, 3/12/18, at ¶¶ 1-31.

On May 25, 2018, the trial court heard argument on Appellant’s Double Jeopardy Motion and, on June 21, 2018, the trial court denied the motion.<sup>1</sup>

---

<sup>1</sup> The trial court expressly concluded that Appellant’s Double Jeopardy Motion was not frivolous. Trial Court Supplemental Opinion, 7/18/19, at 7. Therefore, the trial court’s June 21, 2018 order, which denied Appellant’s motion to dismiss on double jeopardy grounds, is appealable as a collateral

Trial Court Order, 6/21/18, at 1-2. As the trial court explained, it denied Appellant's motion because it found, as a fact, that the prosecutor did not "engage[] in pervasive, incessant, or outrageous conduct [and he did not] intentionally undert[ake] to prejudice [Appellant] to the point of denying him a fair trial."<sup>2</sup> Trial Court Opinion, 8/30/18, at 27-28; **see also Commonwealth v. Smith**, 615 A.2d 321, 325 (Pa. 1992) (holding that the double jeopardy clause of the Pennsylvania Constitution "prohibits retrial of a defendant . . . when the conduct of the prosecutor is intentionally undertaken to prejudice the defendant and thereby deny him a fair trial"); **Commonwealth v. Chmiel**, 777 A.2d 459, 464 (Pa. Super. 2001) ("**Smith** did not create a *per se* bar to retrial in all cases of intentional prosecutorial overreaching. Rather, the **Smith** Court primarily was concerned with

---

order. Pa.R.A.P. 313; Pa.R.A.P. 313 note ("[e]xamples of collateral orders include orders denying pre-trial motions to dismiss based on double jeopardy in which the court does not find the motion frivolous"); Pa.R.Crim.P. 587(B).

<sup>2</sup> As the trial court explained, during discovery, the prosecutor "fully disclosed to defense counsel [] the exact parameters of the Commonwealth's effort to effect leniency for [Blue on her pending criminal charges and] . . . Blue's criminal history." Trial Court Opinion, 8/30/18, at 27. Thus, the trial court held:

The failure to correct Blue's inaccurate testimony about expectations for leniency in [her pending criminal charges] . . . while certainly of significant concern, does not, in the absence of other evidence, rise to the level of the kind of pervasive intentional misconduct from which an intention to deprive [Appellant] of his right to a fair trial can be [found].

**Id.**

prosecution tactics, which actually were designed to demean or subvert the truth seeking process. The **Smith** standard precludes retrial where the prosecutor's conduct evidences intent to so prejudice the defendant as to deny him a fair trial") (quotations and citations omitted); **Commonwealth v. Basemore**, 875 A.2d 350, 356 (Pa. Super. 2005) (holding that "grossly negligent or reckless conduct by a prosecutor" does not implicate double jeopardy concerns).

On July 2, 2018, Appellant filed a notice of appeal from the June 21, 2018 order. Appellant raises one claim on appeal:

Whether the trial court erred in denying [Appellant's] motion to dismiss based upon grounds of double jeopardy, when [Appellant's] conviction was vacated when the Third Circuit Court of Appeals granted [Appellant's] habeas petition on the grounds of intentional prosecutorial misconduct, and the prosecution knowingly used perjured testimony at trial[?]

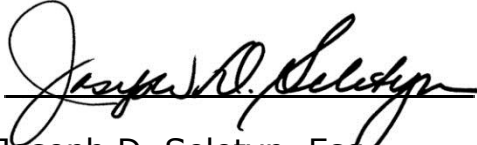
Appellant's Brief at 4.

We have reviewed the briefs of the parties, the relevant law, the certified record, the notes of testimony, and the opinions of the able trial court judge, the Honorable John A. Bozza. We conclude that Appellant is not entitled to relief in this case and that Judge Bozza's August 30, 2018 and July 18, 2019 opinions meticulously and accurately dispose of Appellant's issues on appeal. Therefore, we affirm on the basis of Judge Bozza's thorough opinions and adopt them as our own. In any future filing with this or any other court addressing this ruling, the filing party shall attach a copy of Judge Bozza's August 30, 2018 and July 18, 2019 opinions.

J-S31004-19

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 9/13/2019