

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

TERRELL HACK

Appellant

No. 30 EDA 2013

Appeal from the Judgment of Sentence December 17, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0014524-2009

BEFORE: PANELLA, J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY PANELLA, J.

FILED DECEMBER 13, 2013

Appellant, Terrell Hack, appeals from the judgment of sentence entered December 17, 2012, by the Honorable Ann M. Butchart, Court of Common Pleas of Philadelphia County. We affirm.

The trial court summarized the facts germane to this appeal as follows:

[The complainant, James] Mills testified that he was held up at gunpoint in front of his home on April 23, 2009. He testified that he saw three men on the block as he was parking his car, and that these same individuals robbed him at gunpoint. He testified that the Defendant, Terrell Hack, was the gunman, and that he chased the three men, saw them get into a car and drive away, and that he committed the license plate number to memory.

* Former Justice specially assigned to the Superior Court.

Mr. Mills further testified that he identified the Defendant from a photo array the night of the incident and again identified him at a preliminary hearing on November 9, 2009.

On direct examination, Mr. Mills testified that he is an artist who creates billboards, photographs, and architectural models. In response to a question regarding his background, Mr. Mills testified that he studied painting, drawing, and sculpting at the Pennsylvania Academy of the Fine Arts.

Trial Court Opinion, 7/11/13 at 2-3 (unnumbered). A jury convicted Hack of robbery,¹ criminal conspiracy,² and possession of an instrument of crime.³ On March 23, 2012, the trial court sentenced Hack to six to twelve years' incarceration, to be followed by three years' probation. Following consideration of Hack's post-sentence motion, the court reduced the sentence to five to ten years' incarceration, followed by three years' probation. This timely appeal followed.

On appeal, Hack raises the following issue for our review:

Did the trial court commit an abuse of discretion when it overruled objections to questions posed to the complainant, which involved his education and family background because such questions sought irrelevant information, impermissibly bolstered the complainant's credibility, and induced information prejudicial to Appellant's defense that the identification was faulty?

Appellant's Brief at 2.

It is well settled that "[e]videntiary rulings are committed to the sound discretion of the trial court and will not be disturbed on appeal absent a clear

¹ 18 PA.CON.S.TAT.ANN. § 3701(a)(1)(i).

² 18 PA.CON.S.TAT.ANN. § 903.

³ 18 PA.CON.S.TAT.ANN. § 907.

abuse of that discretion.” ***Commonwealth v. Johnson***, 556 Pa. 216, 242, 727 A.2d 1089, 1102 (1999). “An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.” ***Commonwealth v. Mendez***, 74 A.3d 256, 260 (Pa. Super. 2013) (citation omitted). An appellant cannot prove an abuse of discretion unless he shows how he was prejudiced by the court’s decision. ***See Commonwealth v. Ograd***, 576 Pa. 412, 462, 839 A.2d 294, 324 (2003).

“All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible.” Pa.R.E. 402. Relevant evidence is defined as “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pa.R.E. 401. However, “relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Pa.R.E., Rule 403. “‘Unfair prejudice’ supporting exclusion of relevant evidence means a tendency to suggest decision on an improper basis or divert the jury’s attention away from its duty of weighing the evidence impartially.” ***Commonwealth v. Wright***, 599 Pa. 270, 325, 961 A.2d 119, 151 (2008).

Instantly, Hack argues that the trial court permitted the Commonwealth to impermissibly bolster the complainant’s identification testimony when it allowed questions pertaining to the complainant’s

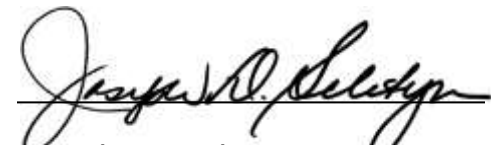
education, work and family histories. He further contends that "the testimony [] should have been precluded because it allowed the jury to infer that the complainant was an expert in identification and that it should view his testimony as being highly reliable because he was an expert." Appellant's Brief at 9.

We find this argument perplexing. There is no indication in the record that the Commonwealth purported to present the complainant as an expert of any kind. We are hard-pressed to fathom in what way the complainant's background and experience as a graphic designer qualifies him as an identification expert or otherwise impermissibly bolstered his credibility to the jury. We find this testimony constituted nothing more than permissible background information, and certainly did not risk any level of unfair prejudice to the defense. Accordingly, we find the trial court did not abuse its discretion in permitting the complainant to testify to routine background information.

Judgment of sentence affirmed.

Fitzgerald, J., concurs in the result.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style with a horizontal line underneath.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/13/2013