J. S68036/13
NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
JARON AMBROSE,	:	
Appellant	:	No. 698 EDA 2013

Appeal from the Judgment of Sentence February 14, 2013
in the Court of Common Pleas of Philadelphia County,
Criminal Division at No: CP-51-CR-0008198-2011

BEFORE: BENDER, P.J., OTT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED DECEMBER 04, 2013**

Jaron Ambrose (Appellant) appeals from the February 14, 2013 judgment of sentence of an aggregate term of life imprisonment after being convicted by a jury of first-degree murder[1] and related charges.[2] We affirm.

> At approximately 1:45 on the afternoon of July 1, 2010, police were called to 4920 North Marvine Street in Philadelphia, where two men had been shot. One of the men, Derrick Holley, was pronounced dead later that afternoon, after having been transported to a hospital. Keith Gilbert was wounded but survived the ordeal. While securing the crime scene, police found a semiautomatic handgun with an extended-capacity clip in a trash receptacle on Ruscomb Street.

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[1] 18 Pa.C.S. § 2502(a).

[2] Appellant was also convicted of aggravated assault (18 Pa.C.S. § 2702(a)), firearms not to be carried without a license (18 Pa.C.S. § 6106(a)(1)), conspiracy (18 Pa.C.S. § 903(c)), and possession of an instrument of crime (18 Pa.C.S. § 907(a)).

*Retired Senior Judge assigned to the Superior Court.

> Shaquita Morton, who lived at 4920 North Marvine Street at the time of the shooting, saw [Appellant] and a second man approach her porch area, and then saw [Appellant] shoot Holley and Gilbert as they sat on the steps in front of her and her neighbor's houses. When [Appellant] pointed his gun at her, she ran inside her house. She saw [Appellant] run north toward Ruscomb Street. Shortly before the shooting, she had seen [Appellant] and an unidentified male walk by her porch area.
>
> Later that night, some individuals from the neighborhood, including Holley's cousin, Robin, were assembled in a vigil. Someone there showed Morton a picture of [Appellant] on Facebook, and Morton identified him as the shooter. When she was re-interviewed by homicide detectives, she picked [Appellant's] photograph out of an eight-person photo array.
>
> A firearms expert determined that spent shell casings found at the scene of the shooting matched the handgun found in [a] trash receptacle [on Ruscomb Street], a Glock-17. Detective Richard Harris testified that he had attempted to find Keith Gilbert, but that he had been unable to secure his attendance at trial.

Trial Court Opinion, 4/25/2013, at 2-3.

After the close of all evidence, the trial court became aware of an incident involving one of the jurors. Specifically, Juror 9 testified that after she and two other jurors finished lunch at a nearby restaurant, she was approached by a woman who grabbed her and whispered "I need you to stop falling asleep and make this a guilty verdict." N.T., 12/6/2012, at 95. Juror 9 felt threatened by this encounter. ***Id***. The trial court noted that it had never seen Juror 9 fall asleep, and asked her to describe the woman who accosted her. That person was later identified as Nikia Alston, a relative of Holley.

Juror 9 further testified that one of the jurors with whom she had lunch (Juror 10) overheard the incident, and Juror 9 talked about the incident with the other juror (Juror 7). Juror 9 testified that she did not mention this to anyone else until she mentioned it to the court officer. Juror 9 also testified that those two jurors may have told three additional jurors.

At that point, the trial court interviewed Juror 10. Juror 10 testified that she saw Alston accost Juror 9, but did not hear what she whispered. She also testified that all of the jurors overheard Juror 9 tell the court officer about the incident. Juror 10 testified that she could render a fair verdict so long as she was not approached by the decedent's family. ***Id***. at 116.

The trial court also interviewed Juror 7. She testified that she witnessed the incident, but did not hear the conversation. However, Juror 9 did tell Juror 7 what Alston said to her. Juror 7 also testified that the "majority" of jurors knew that Juror 9 had been approached. However, Juror 7 testified unequivocally that she would be capable of being fair and impartial. ***Id*** at 123.

The trial court proceeded to interview the rest of the jurors. Nine of the remaining eleven jurors testified that they knew an incident happened at lunch where a juror was approached and possibly threatened; however, all testified unequivocally that they could continue to be fair and impartial in rendering a verdict. Therefore, the trial court released Juror 9 and replaced her with an alternate. Additionally, the trial court conducted a colloquy of

Appellant where Appellant stated that it was his decision to proceed with this jury panel. ***Id***. at 148.

On December 7, 2012, the jury returned a verdict of guilty on the aforementioned charges. On February 14, 2013, the trial court imposed the mandatory sentence of life imprisonment without the possibility of parole for the first-degree murder conviction. The trial court also sentenced Appellant on the additional convictions. Appellant filed a timely notice of appeal.[3]

On appeal, Appellant presents one issue for our review.

> Did the [trial] court err in failing to *sua sponte* declare a mistrial when a family member of the decedent physically accosted a juror and told her, within the hearing of two other jurors, that she must return a verdict of guilty, and after it was learned that eleven of the 14 empaneled jurors were aware of the threat?

Appellant's Brief at 7 (capitalization omitted).

"It is within a trial judge's discretion to declare a mistrial *sua sponte* upon the showing of manifest necessity, and absent an abuse of that discretion, we will not disturb his or her decision." ***Commonwealth v.***

[3] On March 12, 2013, the trial court filed an order permitting Appellant 21 days to file a concise statement of errors complied of on appeal pursuant to Pa.R.A.P. 1925. Thus, Appellant's concise statement was due on April 2, 2013. On April 3, 2013, Appellant filed a petition seeking permission to file a concise statement *nunc pro tunc*, along with his concise statement. Counsel for Appellant averred that he did not receive a copy of the trial court order. On April 16, 2013, the trial court entered an order permitting Appellant to file a concise statement *nunc pro tunc*. Although Appellant has not technically complied with Pa.R.A.P. 1925 by filing a statement within 21 days or requesting an extension of time to do so within the 21 day period (***see Commonwealth v. Gravely***, 970 A.2d 1127 (Pa. 2009), we proceed to address the merits of the appeal because the trial court has addressed the issues contained in this late-filed statement. ***See Commonwealth v. Thompson***, 39 A.3d 335 (Pa. Super. 2012).

Kelly, 797 A.2d 925, 936 (Pa. Super. 2002). Here, Appellant argues "that since the majority of the jurors were aware of the fact that the decedent's family had no compunction about threatening jurors, it is not too far of a leap to believe that the jurors felt compelled to vote in favor of a conviction." Appellant's Brief at 11. Thus, Appellant "was unable to get a fair trial." ***Id***.

The trial court concluded the following.

> In this matter, the [trial court] made the proper inquiry and considered the alternatives, ultimately deciding that a declaration of mistrial was unnecessary and that lesser measures would ensure a fair trial. [The trial court,] with the agreement of the parties, dismissed the juror who had been approached, colloquied other jurors who were aware of the interaction to ensure that they could be fair, and seated one of the alternate jurors so that the trial could continue. The jurors gave testimony that they could continue to serve and to be fair to both sides, and their testimony was realistic, credible, and unchallenged by either party. After replacing Juror 9, [the trial court] still had one more alternate available in case of need, but was satisfied that further juror replacements were unnecessary. [The trial court] asked each remaining juror whether [he or she] could put the incident aside (to the extent that [he or she was] aware of it) and be fair, and each juror answered affirmatively.
>
> Given the procedures that were followed in this case and the jurors' testimony that they would not allow the incident to affect their deliberation and would be fair to both sides, it would have been error to declare a mistrial just before closing arguments in a multiday jury trial, over the inevitable objections of both the defense and prosecution. Further, it is [the trial court's] estimation that the incident, rather than prejudicing the defense, instead was more likely to have been harmful to the Commonwealth, which was through no doing of its own, potentially tarred with the improper actions of the decedent's family member. However, because the jurors were honest, straightforward, and unhesitating in their testimony that they would be fair to both sides, no declaration of mistrial was necessary.

Trial Court Opinion, 4/25/2013, at 5-6.

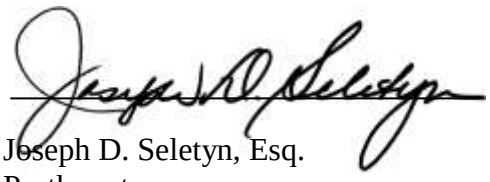
> [A]s a general rule, the trial court is in the best position to gauge potential bias and deference is due the trial court when the grounds for the mistrial relate to jury prejudice. From his or her vantage point, the trial judge is the best arbiter of prejudice, because he or she has had the opportunity to observe the jurors, the witnesses, and the attorneys and evaluate the scope of the prejudice.

Commownealth v. Walker, 954 A.2d 1249, 1255-56 (Pa. Super. 2008) (*en banc*).

Here, the trial court dismissed the juror who was actually approached and thoroughly interviewed every other juror with regard to what he or she may or may not have heard. Moreover, each juror testified unequivocally that he or she could render a fair and impartial verdict. Moreover, Appellant was colloquied and elected to proceed. Accordingly, we conclude that the trial court did not abuse its discretion when it did not grant a mistrial *sua sponte* as there was no manifest necessity to do so. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013