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IN THE SUPREME COURT
OF THE COMMONWEALTH OF PENNSYLVANIA

SPRING 2008 TERM
Chief Justice Tyler Menzler, Presiding

Civil Appeal No. YAG-0708-01

COMMONWEALTH OF PENNSYLVANIA, Appellant,

v.

STANLEY GUNN, Appellee

BRIEF FOR THE STANLEY GUNN – Appellee

ON APPEAL FROM THE COURT OF COMMON PLEAS AND THE TRIAL COURT FOR ROLLINS
COUNTY

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SECTION 1 - Statement of Questions Presented

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SECTION 2 - Table of Authorities

Commonwealth v. Simmons - 541 Pa. 1995

Commonwealth v. Nazarovitch - 496 Pa. 97 1981

United States v. Wade - 388 U.S. 1967

Commonwealth v. Cichy - 227 Pa.Super. 480 1974

United States v. Brownlee - 454 F. 3d 131 2006

United States v. Byron Mitchell - 365 F. 3d 131 215

SECTION 3 - Statement of Facts

Dr. Jason Lawrence was invited to speak at an annual diversity lecture held at Prince Community College on April 10, 2005. The lecture was held in the college's main auditorium to accommodate the 75 community members. After Dr. Lawrence began his speech two masked men barged into the auditorium yelling profanities at Dr. Lawrence. Bullets flew from the direction of the masked men striking Friar Martin M. Barry. The mysterious men ran out of the auditorium and drove off without interference. 10-minutes after the incident, Officers Lloyd and Bizzoso arrived and they found eight bullet shells along with a P08 Parabellum gun on the floor. Stanley Gunn's fingerprints were identified on the gun.

All witnesses were individually interview with the same set of questions. The answers were compiled into four distant viewpoints. Only a small subset of witnesses stated they did not see anything or their comments were not deemed helpful. The first group, about 20% of the audience, believed the men were both white, medium height, and in their early 20's. The group viewed Stanley, the first masked man, as the shooter of the Friar and the leader with a tattoo of the Confederate flag. A second group of about 35% of the audience stated the men were both wearing masks and one had a ponytail. The group believed both men were holding a gun and fired. However, the group could not determine which man shoot Friar Martin. The third group, making up 10% of the audience, noted as all white, saw two black masked men in their 20's with a medium build enter the auditorium. They stated the second man, Ty, was the shooter of the Friar since the first man, Stanley, was too nervous to pull the trigger. The last group, 30% of the audience, reported Stanley who was wearing a ski mask shot the Friar and Ty who was wearing a mask was the leader.

Six days after the shooting Ty Williams turned himself into the Prince Community College police. Detective Caldwell and District Attorney Lappas held a two-hour interrogation of Ty. In the interrogation Ty claimed he was following the lead of Stanley and they were both wearing masks. Stanley had a yarmulke on top of his mask and a visible tattoo. According to Ty, Stanley who could not shoot a gun well let alone the historic gun used at the incident shot the Friar. Ty reasoned that Stanley shot the Friar since he was a threat. Ty asked for a plea bargain to testify against Stanley in exchange for spending the rest of his life as an alpaca farmer. Based on Ty's confession Stanley was charged with first-degree murder.

D.A. Lappas, the prosecutor, immediately promised to seek the death penalty. Five witnesses from the four major groups were shown pictures of people including Stanley. Twelve identified Stanley and the rest identified three other people. Dr. Christine Yurky, an expert who observed the identifications, prepared a report based on statements made at the crime scene and the photo identification. She concluded there was no doubt Stanley Gunn was the proper identification "from a scientific standpoint".

Before trail commenced Stanley Gunn filed to suppress Dr. Yurky's report on the bases that her eyewitness testimony was too prejudicial. Stanley claimed Ty was the leader and shooter of the Friar. Another motion was filed to suppress the fingerprint evidence. Judge B. Ball of the Court of Common Pleas of Rollins County granted both motions to suppress, believing an expert witness testimony would confuse the average juror. The Superior Court affirmed Judge B. Ball's discretion to disallow an expert witness to testify on eyewitness testimony and fingerprint evidence. Under Commonwealth of Pennsylvania v. Simmons, 541 Pa. 221 (1995) the average juror is capable of judging the reliability of a witness. Applying the standard principle in Frye v. United States scientific evidence needs "general acceptance" to have relevance in a community.

SECTION 4 - Summary of Arguments

Expert eyewitness testimony is irrelevant in this multi-dimensional case. Considering the variety of views collected at the scene one cannot make a general consensus. Identifications of strangers is unreliable given eight out of twenty selected witnesses from the four different groups identified different suspects. The other twelve identified the suspect, Stanley, without having seen his face and only group one claimed to have seen Stanley's identifying mark, a tattoo of the Confederate flag. Therefore the jury should be able to assess Stanley's accountability based on these facts as opposed to the extension of the expert testimony. The assertions made early on in the investigation claiming Stanley's guilt eliminated the possibility of innocence. These claims had the ability to sway the jurors, eyewitnesses, and citizens in Rollins County. D.A. Lappas made Stanley Gunn appear guilty prior to trial. In addition Dr. Yurky affirmed Stanley was the proper identification despite lack of valid, unbiased evidence.

The opinion of an expert eyewitness on fingerprinting is unfitting to the circumstances. Fingerprints are scientifically based and they can be analyzed by forensic specialists. The fingerprint's story is the focus of the jury. A fingerprint cannot indicate where and when it was imprinted and the person's intention behind the biological mark. The jury must conclude whether this evidence fits into the crime's sequence of events or not. Biological evidence cannot be considered part of the crime until the action of touching this object or surface can be determined. Without clear evidence fingerprints are a trace of innocence.

SECTION 5 - Arguments

1. Are the limited scientific additions to the case an expert witness may provide at all useful or constructive to the average jurors ability to make and informed decision? Answer: NO - Pennsylvania rule of evidence 702 Testimony by experts, states that "if scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the tries of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise." In the case of Commonwealth of Pennsylvania vs. Stanley Gunn, the circumstances neither could benefit from nor require the use of an expert witness. In this particular case, it is almost an insult to the average juror's intelligence to bring in an expert witness to describe Stanley Gunn's innocence or guilt. The jurors have the mental capacity and judgment to decide for themselves his innocence or guilt. There is no real technical or specialized knowledge that needs to be explained, unless the expert witness were to describe both sides of witness identification. As in United States vs. Brownlee Stanley Gunn could have been misidentified, but the average jurors should be able to figure that out on his or her own.

Not only is an expert witness unnecessary in the case of eyewitnesses but in fingerprints as well. Jurors know through common sense that fingerprints could get on an object through casual contact. They know that not every fingerprint on a gun was put there with malicious intent to kill. An expert witness is not needed to explain the obvious, especially when the topic will have been brought up in the case before several times. An expert witness is not able to help a juror in any fashion other than to confuse and make the responsibility of bringing about justice all the more hard.

2. Answer: NO -
(Make the arguments that support your answer)

3. Does the manner, in which a report was concluded, i.e. directed at racial context, constitute a reliable identification 'from a scientific standpoint?' Answer: NO - Before Dr. Yurky's report was submitted other confounds in how the case was conducted were present. Scientific studies and other court cases have ruled the way the case is handled is influential on identification. In U.S. v. Wade 388 U.S. 218 (1967) the identification of strangers was deemed "proverbially untrustworthy". The "lineup" or "identification parade" presents an underlying bias. Suggestion can be threaded intentionally or unintentionally in many subtle ways through this rudimentary seeming process. According to thirty years of scientific investigation by Schmechel et. al witnesses were more likely to misidentify when they viewed all suspects "simultaneously in a group" in comparison to "one at a time, in sequence". In addition the study concluded witnesses were more accurate at identifying members of their own race when cross-racial issues were involved.

Schmechel et al. discovered that stressful situations such as a shooting can reduce the witnesses' ability to recollect details about a perpetrator's face. Post event information can also influence a person's recollections. Information learned by the eyewitness after the event can unconsciously become part of the memory and not reflect what the eyewitness actually saw. In the Brewster case detectives influenced a

witness's recollection making the witness able to identify a suspect 3, 850 days after the murder. Although the time frame in which the Prince Community College witnesses were presented with suspects is drastically lower at approximately 7 days there still was sufficient time for the witnesses' memories to be altered by outside factors. According to U.S. v. Wade 388 U.S. 218 (1967) these suggestions upon identifying witnesses account for more faults of justice than any other factor.

According to another scientific analysis, mistaken eyewitnesses account for more convictions of innocent people than "all other causes combined" (Scheck, Neufeld, & Dwyer, 2000; Wells, Small, Penrod, Malpass, Fulero, & Brimacombe, 1998). The possibility of the evidence being contaminated and biased either deliberately or accidentally must be taken into consideration. Under Commonwealth v. Nazarovitch 496 Pa. 97 (1981) a scientific technique needs to be "generally accepted" within the scientific community to be ruled as sufficient in a court of law. Without general acceptance there are unknown consequences. Many times false identifications lead to the admission of innocent people to jail. According to Scheck et al. study conducted in 2000 at least 80 people were released from prison in recent years that were mistakenly identified by witnesses (Scheck et al.) The scientific community seems to discredit that eyewitness testimony is creditable due to its unknown consequences and lack of general acceptance in every case.

As illustrated, bias and unfairness were riddled throughout by the use of suggestion in presentation format and the case's circumstances. At least a week after the shooting incident at Prince Community College a small sample of witnesses were shown pictures of possible suspects, including Stanley's photo. The simultaneous showing of the suspects' photos together instead of sequentially, one at a time, paired with the post event suspect identification correlate low identification accuracy. Even the data collected 10 minutes after the shooter disappeared from the auditorium on April 10th, 2005 is not dependable. 10 minutes allows for witnesses to influence each other's views on the happenings and to forget details they witnessed.

A wide range of people from the community's demographics attended the lecture on diversity on the day of the shooting. The cross-racial aspect of the case as determined by Schmechel et al. can influence an eyewitnesses' ability to accurately identify suspects. The police compilation of four different viewpoints of the event further emphasize the inconsistency of the eyewitness accounts. The common racial background, "all white", was used by Dr. Christine Yurky to identify the third group of witnesses. The racial backgrounds of the witnesses may have been useful to judging the accuracy of the accounts, but not all the groups' racial content was cataloged. Therefore the categorization is prejudice due to its uniformity with the rest of the analysis. Also Dr. Christine Yurky asserted she had "no doubt" Stanley Gunn was the proper identification "from a scientific standpoint". With the wide range of accounts and lurking confounds, Dr. Yurky cannot deduct her conclusions are undoubtedly valid.

4. Do fingerprints on a 'movable object in a public place' establish presence at the scene of the crime at the time committed? Answer: NO - The PA Superior Court in the case of Commonwealth v. Cichy 227 PA. S. Ct. 480 (1974), established the accuracy of fingerprint evidence for identification depends on the circumstances of the case in question. The completely circumstantial evidence submitted to the Judge "exclude[d] every other reasonable possibility except that of guilt". The question becomes whether there is an innocent way of touching a gun.

There are innocent ways of touching an object and fingerprints on a movable object in a public setting does not establish presence at the scene of the crime (Wells et al., 155). Touching a gun can be as innocent as touching any other surface. Everyday fingerprints are left on objects and surfaces without malicious intent to harm or kill. Fingerprints are merely a marker of what someone has touched. These prints cannot indicate the time and location in which this object was handled. Therefore fingerprints cannot be assumed a trace of guilt when they signify only the action of touching.

In addition the collection accuracy of the biological evidence in Commonwealth of Pennsylvania v. Stanley Gunn was never confirmed. The fingerprints could have been latent and mislead the investigators to identify Stanley Gunn or the manner in which the gun was handled could have distorted the accuracy of the fingerprints. Under U.S. vs. Byron Mitchell 365 F. 3d. 215 a statistical computation found that the probability of a latent print matching a full print of an individual was ten to the sixteenth power. The extremely low probability showcases latent fingerprints are not admissible as identification. Although Ty divulged that Stanley Gunn was the co-perpetrator, Ty was offered a plea bargain to escape the bars of prison, giving Ty motive to falsely accuse Stanley Gunn. Multiple guns were seen by many of the witnesses. Ty could have easily shot with one gun and dropped another gun with Gunn's fingerprints on the floor before departure.

In addition Stanley was physically and mentally unable to shoot the Friar. It was noted that Stanley could not shoot a gun well, let alone the historic gun used at the incident. If Stanley killed the Friar, Stanley would have had to shot the historic gun. The third group account obtained by the police states the second man, Stanley, was too nervous to shot a gun. This behavioral perception demonstrates Stanley was not mental capable. Stanley's physical ailment, in regard to shooting a gun, and his observable nervousness at the crime proves Stanley did not shoot the Friar. Stanley's fingerprints on the gun merely show he touched or held the gun at some point.

In the case at hand, Stanley Gunn was immediately apprehended with the charge of first-degree murder under the release of eyewitness and fingerprint evidence. Stanley Gunn was never given the chance to share his side of the story before taken into custody. Although the scientific and hearsay evidence pointed to Gunn, the possibility of innocence should have been considered. In Commonwealth v. Cichy 227 PA. S. Ct. 480 (1974) the appellant was not convicted for incriminating evidence since the evidence was completely exclusive of all possibilities except guilt. This judgment should be applied to Gunn's similar situation. The existing fingerprint evidence cannot convict a man when the possibility of innocence is not given light.

SECTION 6 - Conclusion

In this case the Court of Common Pleas found it necessary to suppress Dr. Yurky's report on eyewitness testimony on the grounds that it was too prejudicial and to grant the motion to suppress fingerprint evidence. The Superior Court affirmed that the motions stating expert eyewitness identifications would "confuse the average juror". Judging the reliability of a witness is something the average juror is capable. The courts both upheld that eyewitness summary and fingerprint testimony is not scientific and not generally accepted. Therefore under Frye v. United States these testimonies are not permitted.

Following precedent and acknowledging the possibility of innocence until proven guilty, we vigorously urge the court to suppress the unnecessary extension of expert testimony in regard to eyewitnesses and fingerprint evidence.