NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. ANNA MARIE PERRETTA-ROSEPINK, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1925 MDA 2010

Appeal from the Judgment of Sentence June 18, 2010
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0004663-2008

BEFORE: BOWES, OTT, and STRASSBURGER,* JJ.

MEMORANDUM BY BOWES, J.: Filed: March 4, 2013

Anna Marie Perretta-Rosepink appeals from the judgment of sentence of three to six months incarceration, a consecutive term of twenty-four months intermediate punishment, and a consecutive period of probation of twenty-four months. Sentence was imposed after Appellant was convicted by a jury of two counts each of conflict of interest and theft of services, and one count of conspiracy to commit conflict of interest.

Appellant, together with her co-defendants Michael Veon and Brett Cott, was convicted after a trial that spanned six weeks. The defendants were charged with participating in schemes involving the use of taxpayer money to fund political work performed to advance the campaigns of

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* Retired Senior Judge assigned to the Superior Court.

candidates of the Democratic Party at the local, state, and national levels. We briefly review the evidence adduced by the Commonwealth.

Michael Manzo, who pled guilty to various crimes and who agreed to testify on behalf of the prosecution, outlined the operational system of Pennsylvania's bi-cameral legislature. Each chamber, the House of Representatives and the Senate, has two caucuses. One caucus consists of Republicans and the other caucus is composed of Democrats. The members of the caucus are paid with taxpayer money because the purpose of each caucus is to obtain the passage of legislation in line with the goals of the respective parties. The members of the House of Representatives elect the people who comprise the caucus of their respective parties.

Each caucus has a leadership team, the head being the majority/minority leader of the House of Representatives and the second in command being the House of Representatives majority/minority whip. There is also an appropriations chairman, a secretary and an administrator. These five leadership caucus members control the flow of money allocated to the caucus. As noted, all four caucuses are funded from the state budget each year so that the caucus can operate. The Democratic Party's caucus for the House of Representatives is appropriately named the House Democratic Caucus (the "Caucus").

In contrast, the House Democratic Campaign Committee is not funded by taxes; it runs political campaigns. The House Democratic Campaign

Committee is funded through political donations and is supposed to operate separately and outside of the Caucus to promote the election campaigns of party members.

Manzo was hired in 1994 by a member of the House of Representatives. In 1999, he became press secretary for William DeWeese, a Democrat who was the minority leader of the House of Representatives at that time and, thus, head of the Caucus. In 2001, Manzo was promoted to Chief of Staff for DeWeese, who later became the majority leader of the House of Representatives and thus remained head of the Caucus after Democrats gained the majority in the House of Representatives. Manzo worked for DeWeese and the Caucus from 1999 until 2007, when Manzo was asked to resign. From 1999 to 2007, Manzo interacted with the Caucus leadership, primarily with Veon and DeWeese, nearly every day.

Manzo delineated that while DeWeese was nominally his supervisor, Veon, another member of the Caucus, was more active in the daily operations of that organization. Manzo explained that DeWeese preferred to give speeches and attend political events while Veon assumed the role of running the Caucus. When Manzo worked for the Caucus, Veon, with the assent of DeWeese, made "the decisions about the money" flowing through the Caucus. N.T. Jury Trial, 2/2/10, at 19. Specifically, requests would come in from members of the Caucus for money, including "expenditures on staffing or salaries or things of that nature." ***Id***. at 21. Manzo would receive the funding request and give it to Veon, Veon would offer an opinion

on the matter, and Veon's view would be forwarded to DeWeese with the funding request. Thus, DeWeese and Veon "had a power sharing agreement as far as the expenditure of resources" given to the Caucus in the state budget. ***Id***. Together, those two men "controlled the expenditure of the budget for the House Democratic Caucus during the years 2000 through 2006." ***Id***. at 23.

Manzo outlined that Appellant was in charge of Veon's district office. Manzo then described the salary structure of Caucus members and their employees. Essentially, everyone who worked for the Caucus was eligible, under the policy and procedures manual, for a raise or bonus on his or her anniversary date, which was the date of hire. On each anniversary date, Caucus employees were eligible for a raise of three to five percent, until they reached the top of their pay band, when they would receive a bonus of the noted percentage. Toward the end of his tenure, Veon instituted an executive bonus system that was designed to reward and retain higher-level talent in the Caucus. This year-end bonus was solely based upon merit and work on special projects outside a person's job description. That bonus was solely for legislative work.

When Manzo first started to work for the Caucus, the Democrats were in the minority in the House of Representatives, and this position made it difficult to pass legislation that was in line with Democratic party goals. In 2004, DeWeese, Veon, and other Caucus employees implemented a bonus program that paid state employees bonuses based purely upon non-

legislative work. ***Id***. at 37. Specifically, in 2004, "folks who were going out on campaigns, people who were working hard on the campaign end, we began giving them payments when they returned from the campaigns." ***Id***. Historically, it had been difficult to obtain volunteers to work on campaigns. In 2004, the Democratic party wanted to gain the majority so it could obtain passage of legislation in line with party goals. In order to regain the majority and obtain volunteers, members of the Caucus started to financially reward people for "going out on campaigns." ***Id***. at 41. Manzo reported, "Once we started rewarding those people, the level of volunteerism [on political campaigns] went through the ceiling." ***Id***.

This bonus program, which used taxpayer money allocated to the Caucus, rewarded people solely for work on political campaigns. The first bonuses emanating from Caucus coffers, and thus, taxpayer funds, were paid in 2004. Eric Webb was in charge of tracking the amount of time people spent on campaign-related matters, and Webb created a list of the people who were to receive compensation for the campaign work performed, with the amount of money increasing with the amount of such work performed. ***Id***. at 43.

Webb gave the list to Manzo, who sent it to Veon for approval. Following Veon's approval, the list went to Scott Brubaker, who was in charge of financial administration. Brubaker cleared the bonuses with DeWeese. Manzo himself received a check for campaign work that year. After the 2004 staff bonuses for campaign work were disseminated, the

number of volunteers increased. The bonuses continued in 2005. Again, these bonus checks were sent to state employees and reflected payment for campaign work tracked by Webb.

After the legislature voted themselves a pay raise in 2005, there was a public outcry, and members of the House of Representatives became vulnerable to losing their seats in the legislature. Accordingly, in 2006, the Caucus eagerly recruited state employees to campaign. Since there had been bonuses in 2004 and 2005 for campaign work, Manzo reported, "in 2006 we emptied the building." ***Id***. at 61. Even though Veon lost the election in 2006, he pushed through the list of people who were paid for campaign work before his tenure ended in the House of Representatives. ***Id***. at 67.

Manzo established Appellant herself received $3,000 of Caucus funds in 2004 for performing campaign work, and $10,000 in 2006 for campaign work. Those bonuses, as noted, were unrelated to any work that Appellant did in furtherance of her duties as a state employee; rather, the amounts were to pay Appellant solely for campaign-related activities. Emails between Appellant and Veon were introduced into evidence and confirmed Appellant's extensive involvement in campaign work.

One aspect of political campaign work performed by state employees was challenging nominating petitions by checking each signature to ascertain that it was a real person with the correct address and that the person was registered to vote. Particularly, in 2004, Veon and his staff desired to have

Ralph Nader removed from the Presidential ballot so that the candidate endorsed by the Democratic Party, John Kerry, had a better chance of winning Pennsylvania's electoral votes. Nader needed 45,000 signatures of registered voters, and his nominating petition had to be reviewed in a two-week window.

Veon told Manzo that he was sending boxes containing the nominating petition to his district office in Beaver Falls, and Veon directed the district office staffers, which included Appellant, to perform signature review. The Commonwealth introduced an email from Appellant confirming that she and her staff were reviewing signatures. After Nader was removed from the ballot, Veon emailed Appellant congratulating her for a "great job by our staff. This would never have been successful without your work. You have given John Kerry an even better chance to win this state. . . . That is . . . a very significant contribution by each one of you to the Kerry for president campaign. You should take great pride in your efforts." N.T. Trial, 2/3/10, at 210.

Commonwealth witness Jeff Foreman, who worked for the Caucus from 1980 through 1994 and then from 2003 until 2008, confirmed that Appellant was part of the conspiracy to pay people Caucus funds for campaign work. Foreman discussed the 2006 list compiled after the general election with Appellant. Specifically:

> Q. If you could focus on the last name again Miss Perretta-Rosepink. What, if anything, did you discuss with her about the bonus list and the amounts?
>
> A. The conversation was general but it was about her opinion that many people would have difficulty finding jobs and some people worked very hard on the election and some people didn't so it was a general discussion about the nature of the bonuses and the people that were getting them, specifically in the district office.
>
> Q. The nature was campaign or legislative?
>
> A. Campaign. What I am talking about is political, campaign work.

N.T. Trial, 2/9/10, at 34-35.

Foreman also related that everyone on Veon's district office staff worked on campaigns, and Appellant supervised the campaign activities. ***Id***. at 48-49. Foreman testified that Appellant played a substantial role in local and state Democratic campaigns. Foreman also testified that no leave records were being kept by Veon's office so that employees were receiving all vacation and sick-leave time while performing campaign work during working hours. ***Id***. at 58. Foreman confirmed Manzo's testimony that Appellant worked on removing Ralph Nader from the 2004 presidential ballot and also stated that during those long hours, dinners were paid for with taxpayer money. ***Id***. at 124.

The Commonwealth introduced numerous additional witnesses to confirm the existence of political work, including by Appellant, on myriad campaigns being performed by Appellant and, at her direction, other state employees during working hours without being required to take leave.

After hearing the evidence, the jury acquitted Appellant of numerous offenses but convicted her of two counts each of conflict of interest and theft of services and one count of conspiracy to commit conflict of interest. In this appeal following imposition of sentence and denial of a post-sentence motion, Appellant raises these issues:

1. Whether the Honorable Trial Court erred in denying Defendant's *Motion to Dismiss/Post-Sentence Motion to set aside Verdict*, as competent evidence was presented and un-rebutted that employees in the District Office were not subject to a 'regular schedule' and thus the 'regular workday' could not be defined. Therefore the Commonwealth presented insufficient evidence as to 'employment' element of the *Conflict of Interest* charge(s).

2. Whether the Honorable Trial Court erred in permitting the Commonwealth to violate a six-week standing Order to provide evidence to the Defense no less than 48 hours prior to each witness's testimony. In particular, permitting a Commonwealth witness in the form of an Agent of the Pennsylvania Office of Attorney General to testify to and reference Campaign Records of Michael Veon without providing the same to Defense Counsel in advance.

3. Whether the Honorable Trial Court erred in denying Defendant's demurrer to the Theft charge(s) at the close of the Commonwealth[']s case where the specific Theft of Services statute does not include the Commonwealth within the definition of "victims" of Theft of Services.

4. Whether the Honorable Trial Court erred in denying Defendant's request to hold an evidentiary hearing regarding the conduct and conversations [if any] members of the jury engaged in during their unauthorized trip to the Capitol Building during trial.

Appellant's brief at 7.[1]

In assessing Appellant's first position on appeal, we first delineate our well-established standard of review in connection with a challenge to the sufficiency of the evidence:

> The standard we apply in reviewing the sufficiency of evidence is whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact[-]finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for that of the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Helsel, 53 A.3d 906, 917-18 (Pa.Super. 2012) (quoting ***Commonwealth v. Bricker***, 41 A.3d 872, 877 (Pa.Super. 2012)).

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[1] On the front page of Appellant's brief, she seeks to incorporate and adopt by reference all arguments raised in the briefs of Veon and Cott pursuant to Pa.R.A.P. 2137. Appellant's reliance upon that rule is misguided. This case does not involve multiple appellants or appellees. It also was never consolidated with that of Veon and Cott. Veon and Cott filed separate appeals and are not appellants in this appeal. Thus, the rule is inapplicable on its face.

In this case, Appellant asserts that the evidence was insufficient to sustain her three convictions relating to conflict of interest. That crime is outlined in 65 Pa.C.S. § 1103(a), conflict of interest, which states: "No public official or public employee shall engage in conduct that constitutes a conflict of interest." The term "conflict of interest" is defined in pertinent part as follows: "Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself[.]" 65 Pa.C.S. § 1102. However, the term "conflict of interest" "does not include an action having a *de minimis* economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated." ***Id***.

Herein, Appellant posits that she worked on political campaigns in addition to her assigned legislative duties, laboring many more hours weekly than required by the state. She continues that since she worked on the campaigns in addition to her state assigned hours, the Commonwealth failed to establish the "employment" aspect of this offense.

Initially, we observe that the Commonwealth's proof was to the contrary, and it established that Appellant worked on political campaigns

during her state-paid work time. Myriad witnesses related the pervasive campaign work performed by Appellant during the workday, and Commonwealth witnesses indicated that no leave time was reported for periods that Appellant was performing campaign activities, which Appellant confirms in her appellate brief.

Moreover, Appellant's argument obfuscates the "employment" element of the statute. Section 1102 requires that the Commonwealth establish that the defendant was employed by the public, which the Commonwealth evidence unquestionably did; Manzo related that Appellant headed Veon's district office. Next, it mandates that the defendant use that employment for private pecuniary gain. Appellant violated the statute when she obtained a bonus of taxpayer money solely for work related to the campaign. Manzo's testimony outlined the 2004-2006 bonus scheme in detail, established that the bonuses were paid solely for political work on campaigns, and related that Appellant received substantial bonuses, which were not *de minimus*, under the scheme. Thus, she used her employment for private financial gain. Appellant's convictions for conflict of interest and conspiracy to commit conflict of interest are therefore not infirm.

Appellant's next averment relates to the Commonwealth's breach of a discovery order. Initially, we observe that "the trial court has discretion in framing an appropriate remedy for a discovery violation." ***Commonwealth v. Burke***, 781 A.2d 1136, 1143 (Pa. 2001); ***see also Commonwealth v.***

Rucci, 670 A.2d 1129, 1140 (Pa. 1996) ("questions involving discovery in criminal cases lie within the discretion of the trial court and that court's decision will not be reversed unless such discretion was abused"). Additionally, Pa.R.Crim.P. 573, which governs discovery, provides:

> **(E) Remedy.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the defendant, or it may enter such other order as it deems just under the circumstances.

Pa.R.Crim.P. 573 (E).

Appellant's contention relates to the following. Due to the voluminous documents that the Commonwealth was using at trial, the court entered an order on January 21, 2010 requiring the Commonwealth to disseminate to the defendants copies of all exhibits as well as documents that it intended to use in direct examination of any witness scheduled to testify after February 2, 2010. The Commonwealth was instructed to give the defendants copies of the material forty-eight hours before the witness was to testify.

On March 5, 2010, the last day of trial, the Commonwealth called Robert Drawbaugh, special agent with the Office of the Attorney General of Pennsylvania, to the stand. During his direct examination, Agent Drawbaugh was asked if he reviewed the financial reports filed by the Committee to Elect Mike Veon (the "Committee"). The defense objected to

the Commonwealth's use of the reports based on the fact that it violated the aforementioned order in that the defendants were not given a copy of the reports forty-eight hours before Agent Drawbaugh was called to testify.

The Commonwealth responded that it wanted to delve into the financial reports filed by the Committee because "the issue of campaign expenditures came up in cross-examination" of other witnesses and it wanted to respond to the impeachment. N.T. Trial, 3/5/10, at 213. Specifically, the defense repeatedly asked witnesses if they had any proof as to whether "the Committee to Elect Mike Veon paid for paper and pens and toner and all kinds of things like that." ***Id***. Thus, the Commonwealth was seeking to establish that the financial reports submitted by the Committee did not outline expenditures of that nature. The reports were not introduced into evidence as exhibits, but were reviewed by Agent Drawbaugh. The reports established that the Committee did not reimburse the Commonwealth for anything. ***Id***. at 214.

Initially, we note that the order in question did not pertain to documents that are subject to mandatory disclosure by the Commonwealth.[2]

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[2] Specifically, Pa.R.Crim.P. 573 (B)(1) provides:

> **(B) Disclosure by the Commonwealth.**
>
> (1) *Mandatory.* In all court cases, on request by the defendant, and subject to any protective order which the Commonwealth might obtain under this rule, the

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> Commonwealth shall disclose to the defendant's attorney all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.
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> > (a) Any evidence favorable to the accused that is material either to guilt or to punishment, and is within the possession or control of the attorney for the Commonwealth;
> >
> > (b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;
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> > (c) the defendant's prior criminal record;
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> > (d) the circumstances and results of any identification of the defendant by voice, photograph, or in-person identification;
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> > (e) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant that are within the possession or control of the attorney for the Commonwealth;
> >
> > (f) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; and
> >
> > (g) the transcripts and recordings of any electronic surveillance, and the authority

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Furthermore, requiring the Commonwealth to disseminate to the defense any document that is to be used during direct examination is also not subject to mandatory disclosure.[3] Thus, the discovery order in question was significantly broader than any disclosure required by the law. In rejecting Appellant's position that a new trial was required based upon the violation of

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> by which the said transcripts and recordings were obtained.

[3] Specifically at the time of trial, Pa.R.Crim.P. 573 (B)(2), which governs discretionary discovery, provided:

> (a) In all court cases, except as otherwise provided in Rule 230 (Disclosure of Testimony Before Investigating Grand Jury), if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:
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> > (i) the names and addresses of eyewitnesses;
> >
> > (ii) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at trial;
> >
> > (iii) all written and recorded statements, and substantially verbatim oral statements, made by co-defendants, and by co-conspirators or accomplices, whether such individuals have been charged or not; and
> >
> > (iv) any other evidence specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice.

its January 21, 2010 order, the trial court noted that since the reports were prepared by Veon, he already knew of their contents. It concluded that "the presentation of these reports" did not result in "surprise or prejudice of a sort which would warrant a new trial." Trial Court Opinion, 10/26/10, at 15.

We concur with this analysis. The reports were primarily utilized against Veon. They established that Veon did not reimburse the Commonwealth for expenditure of Commonwealth resources on his campaign. The trial court ordered disclosure by the Commonwealth considerably broader than that required by Pa.R.Crim.P. 573. Thus, it was uniquely within its discretion to determine whether a sanction was appropriate for the Commonwealth's violation of the January 21, 2010 order.

Appellant's third contention is that she should have been granted a demurrer on the charges of theft of services because the Commonwealth cannot be considered a victim under these theft statutes. Appellant's argument actually involves an interpretation of the theft of services statute and whether, under its terms, the Commonwealth can be a victim of such a crime. Hence, the issue is correctly framed as one of statutory construction. ***Commonwealth v. Gerald***, 47 A.3d 858 (Pa.Super. 2012). Since "statutory interpretation implicates a question of law, our scope of review is plenary and our standard of review is *de novo."* ***Id.*** at 859. Appellant was convicted of theft of services, 18 Pa.C.S. § 3926, which is defined in relevant part as follows:

> **(a) Acquisition of services**.--
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> (1) A person is guilty of theft if he intentionally obtains services for himself or for another which he knows are available only for compensation, by deception or threat . . . .
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> . . . .
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> **(b) Diversion of services.--**A person is guilty of theft if, having control over the disposition of services of others to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

The statute in question does not include within its parameters any limitation on the type of entity or person who can be a victim of that crime. It does not require theft of services from "another" or from a "person;" it merely prohibits a theft of services from anyone or anything. Despite this fact, Appellant's argument is that "the victims contemplated by § 3926 are natural persons, corporations or businesses." Appellant's brief at 23. We disagree.

Our interpretation of a statute is "is guided by the polestar principles set forth in the Statutory Construction Act, 1 Pa.C.S.A. § 1501 *et seq.* [(the "Act")]." ***Gerald***, ***supra*** at 859-60. The overriding principle of the Act is to determine the General Assembly's intent in enacting the statute. ***Id***. at 860; 1 Pa.C.S. § 1921(a). "[T]he General Assembly's intent is best expressed through the plain language of the statute." ***Gerald***, ***supra*** at 860 (quoting ***Commonwealth v. Brown***, 981 A.2d 893, 897 (Pa. 2009)); ***accord*** 18 Pa.C.S. § 105 (the provisions of the Crimes Code are to "be

construed according to the fair import of their terms"). Hence, if the "terms of a statute are clear and unambiguous, they will be given effect consistent with their plain and common meaning." ***Gerald***, ***supra*** at 860; 1 Pa.C.S. § 1921(b). The Act also contains presumptions applicable to interpretation of statutes. ***Gerald***, ***supra***. Applicable herein is the precept that "we must presume that the legislature does not intend a result that is unreasonable, absurd, or impossible of execution[.]" ***Gerald***, ***supra*** at 860; 1 Pa.C.S. § 1922(1).

In this case, § 3926 is plain and unambiguous. There is no limitation on the type of entity or person who can be a victim. It would be an unreasonable interpretation of the theft of services statute to allow a public employee of the Commonwealth or a local authority to commit this crime with impunity. We simply refuse to graft language onto the provision that is not present. Hence, we reject Appellant's third issue.

We now address Appellant's final contention, which is that the trial court should have conducted an evidentiary hearing regarding jury misconduct. It was discovered after trial that certain jurors traveled to the state building to view a room mentioned during the course of trial. Specifically,

> Here, the alleged prejudice [to Appellant] stems from a visit taken by some number of jurors to the State Capitol. In his blog, posted after the trial, one juror gives the reason for this excursion: "we wanted to see room 626 which was talked about so much during the trial." He goes on to report, "well we didn't

> make it to 626. But we did see the large painting of Bill De[W]eese hanging on the wall. Very creepy, I must say."

Trial Court Opinion, 10/26/10, at 18.

The decision of ***Commonwealth v. Pope***, 14 A.3d 139 (Pa.Super. 2011), examines the question of when a new trial is required after a juror or jurors visit a crime scene, which is precisely what occurred herein. Initially, we examine our standard of review:

> The refusal of a new trial on the grounds of alleged misconduct of a juror is largely within the discretion of the trial judge. When the facts surrounding the possible misconduct are in dispute, the trial judge should examine the various witnesses on the question, and his findings of fact will be sustained unless there is an abuse of discretion.

Id. at 145 (quoting ***Commonwealth v. Russell***, 445 Pa.Super. 510, 665 A.2d 1239, 1243 (1995)). In this case, there was no dispute regarding what misconduct was performed by jury members, and we reject Appellant's position that an evidentiary hearing was required. Furthermore, we conclude that the conduct in question did not mandate the grant of a new trial.

As we noted in ***Pope***, a jury member is prohibited from visiting a crime scene unless that trip is sanctioned by the court. Nevertheless, "not every unauthorized visit by a juror requires the grant of a new trial." ***Pope***, ***supra*** at 145. If an unauthorized viewing of the crime scene occurs, the trial court is required to "assess the prejudicial effect of the extraneous

influence of traveling to the place where the crime was committed." ***Id***. In connection with its assessment, the trial court considers:

> (1) whether the extraneous influence relates to a central issue in the case or merely involves a collateral issue; (2) whether the extraneous influence provided the jury with information they did not have before them at trial; and (3) whether the extraneous influence was emotional or inflammatory in nature.

Id. (quoting ***Commonwealth v. Messersmith***, 860 A.2d 1078, 1085 (Pa.Super. 2004)).

In deciding whether prejudice occurred, the trial court does not consider any proof regarding the subjective effect the extraneous influence had on any juror in question; instead, it must determine in what manner an objective and reasonable juror would be impacted by the outside facts to which the juror was exposed. ***Pope***, ***supra***. The moving party has the burden of proving that the visit to the crime scene was prejudicial. ***Id***. As noted, "It is within the discretion of the trial court to determine whether a defendant has been prejudiced by misconduct or impropriety to the extent that a mistrial is warranted." ***Id***. at 145 (quoting ***Commonwealth v. Brown***, 567 Pa. 272, 292, 786 A.2d 961, 972 (2001)).

In ***Pope***, we upheld the trial court's refusal to grant a new trial based on the fact that jurors viewed the crime scene. The trial court noted in that case that the defendant did not establish that any physical aspect of the crime scene, which was described extensively at trial, would have prejudiced him if viewed. Furthermore, the trial court in ***Pope*** relied upon the fact that

the scene of the crime was an unimportant, collateral issue to the facts that were dispositive of proving the crime in question. In ***Pope***, we distinguished a case upon which Appellant herein relies, ***Commonwealth v. Price***, 344 A.2d 493 (Pa. 1975). In ***Price***, a new trial was granted after the jurors traveled to the crime scene. In ***Pope***, we noted that in ***Price***, "the physical aspects of scene of the crime were central to the disposition in ***Price*** and at the time the juror made the unauthorized visit, the crime scene had been substantially and materially changed." ***Pope***, ***supra*** at 146.

In declining to grant a new trial based upon the jurors' visit to the Capitol building, the trial court herein employed reasoning analogous to that applied in ***Pope***. It concluded that Appellant was not prejudiced by the visit in that there was no indication that anything inflammatory or emotional was seen. The court continued that the interior of the Capitol building, including any portraits therein, were not "central to the resolution of the case." Trial Court Opinion, 10/26/10, at 19. The trial court also observed that the jurors' time in the building was brief and that there was no indication that any member of the jury was exposed to any information at the building relevant to the case that had not already been disseminated to him or her at trial.

The trial court's reasoning is unassailable. The building wherein certain activities occurred was entirely peripheral to the facts pertinent to the crimes in question. The viewing of the building did not expose the jurors

to any information pertinent to Appellant's guilt that had not already been outlined by the witnesses. There was nothing emotional or inflammatory viewed by the jurors. The jurors did observe the portrait, which was described as "creepy," of one of the figures in the scheme, DeWeese. However, as the trial court aptly observed, "any sense of menace it may have instilled could well have bolstered Defendants' theory of the case that Mr. DeWeese was the sinister architect of the bonus scheme." ***Id***. at 18 n.10. As the trial court did not abuse its discretion in concluding that the crime scene viewed by the jury did not prejudice Appellant as a matter of law, we affirm its decision to deny Appellant an evidentiary hearing.

Judgment of sentence affirmed.