NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JARRETT ALVIN KINLEY	:	
Appellant	:	No. 617 MDA 2025

Appeal from the PCRA Order Entered April 28, 2025
In the Court of Common Pleas of Northumberland County Criminal Division at No(s): CP-49-CR-0000801-2016

BEFORE: BOWES, J., DUBOW, J., and NEUMAN, J.

DISSENTING MEMORANDUM BY NEUMAN, J.: **FILED: NOVEMBER 19, 2026**

As the Majority recognizes, "[t]he decision to declare a mistrial is within the sound discretion of the court and will not be reversed absent a flagrant abuse of discretion." Majority Memorandum at 12 (quoting ***Commonwealth v. Manley***, 985 A.2d 256, 266 (Pa. Super. 2009)). Considering the totality of the circumstances, I do not believe the court committed a flagrant abuse of discretion in determining a mistrial was manifestly necessary. Therefore, I respectfully dissent.

"In accordance with the scope of our review, we must take into consideration all the circumstances when passing upon the propriety of a declaration of mistrial by the trial court." ***Commonwealth v. Boyer***, 347 A.3d 689, 696 (Pa. Super. 2025) (citation omitted). In my view, the following circumstances demonstrate that the trial court's declaration of a mistrial was not an abuse of discretion.

First, I would conclude Attorney Fees' remarks in her opening statement violated the court's pretrial ruling to exclude the victim's journal entries. In its motion *in limine*, the Commonwealth sought to preclude the journal entries on the grounds that they violated the Rape Shield Law and/or were irrelevant. ***See*** Motion *in Limine*, 1/24/17, at unnumbered 1-2. At the hearing on the motion, Attorney Fees explained the victim's journal entries were written as letters to "Dennis" discussing, among other things, how "she wants to sleep with him, have his kids, and all of that stuff." N.T. Hearing, 2/6/17, at 2. Attorney Fees seemingly conceded certain information contained in the journals was inadmissible, acknowledging she did not "plan on sharing with the jury the 900 times" the victim said she wanted "to sleep with" Dennis. ***Id.*** Counsel nonetheless argued the journal entries were admissible to show that "not once within a two[-]year period of time [did the victim] ever say[] anything" in her journal about Appellant's abuse. ***Id.*** at 4. Counsel also sought to introduce entries in which the victim stated "she'll do anything to make sure" Appellant does not have Dennis arrested for having a relationship with her when he was 20 and she was 15, contending those statements were relevant to show the victim's motive for accusing Appellant of abuse. ***Id.*** at 5-6. Ultimately, the court entered an order on February 7, 2017, ruling "the journals are not relevant[;] however, they may be referred to as being kept by the alleged victim and the fact they contain nothing about the alleged criminal incidents involving [Appellant]." Order, 2/7/17, at 1 (single page).

In her opening statement, Attorney Fees went beyond this ruling. She discussed the victim's desire to have a relationship with Dennis, "a much older man, [who] … was in [his] 20's when she was 15." N.T. Mistrial, 5/8/18, at 16.[1] Counsel also stated the victim "wanted to date" Dennis, ***id.***, and she "wanted to be with someone much older, that she was not allowed to be with[,]" ***id.*** at 18. According to the trial court, Attorney Fees made these remarks "while standing before the jury with the excluded journal of the victim in counsel's hands." Trial Court Opinion (TCO), 9/12/25, at unnumbered 3. Although the record does not confirm counsel was actually holding the journal, her statements about the victim's desire for a relationship with a much older man were plainly drawn from the journal entries the court had deemed inadmissible prior to trial. Attorney Fees' opening statement therefore violated the court's pretrial ruling.[2] Moreover, because the Commonwealth had sought the exclusion of the victim's journal entries on Rape Shield Law

---

[1] I acknowledge the court's pretrial ruling also provided that, "[s]hould the testimony at trial require us to revisit this ruling we will do so and consider [the] same if properly raised at trial." Order, 2/7/17, at 1 (single page). That reservation, however, is not relevant here. Attorney Fees' opening statement was not testimony, and she did not seek reconsideration of the pretrial ruling before addressing the jury.

[2] I also note my disagreement with the Majority's reliance on the fact that the court permitted evidence of the victim's relationship with Dennis — offered to prove motive —at Appellant's second trial. ***See*** Majority Memorandum at 18. In my view, events that occurred at the second trial have no bearing on whether the court properly declared a mistrial at the first trial, and it is inappropriate to consider those subsequent proceedings in conducting that analysis.

grounds, and the court granted that motion in part, I view the court's invocation of that law in declaring a mistrial as an implicit determination that counsel's remarks violated the pretrial order.[3]

Second, I disagree with the Majority's conclusion that "the trial court neglected to consider alternative remedies before granting the Commonwealth's request for a mistrial over Appellant's objection." Majority Memorandum at 18. As an initial matter, Attorney Fees did not object to the mistrial on Appellant's behalf. Instead, she argued her statements did not

---

[3] I also believe it is inappropriate for this Court to assess the validity of the trial court's pretrial ruling precluding admission of the journal entries, whether on Rape Shield Law grounds or any other basis. As the Majority aptly explains, in ***Commonwealth v. Walker***, 954 A.2d 1249 (Pa. Super. 2008) (*en banc*), the trial court permitted certain testimony by several Commonwealth witnesses over defense counsel's objection, but the following day concluded that its ruling had been incorrect, and the testimony should not have been admitted. ***See*** Majority Memorandum at 17-18 (discussing ***Walker***, ***supra***). Significantly, in examining whether a manifest necessity supported the trial court's *sua sponte* declaration of a mistrial, we began our analysis by stating:

> [W]e will not review the soundness of the trial court's evidentiary rulings because they are not truly at issue in this case. This Court is an error-correcting court; it is not an error-finding court. ***See Commonwealth v. Wood***, 833 A.2d 740, 748 (Pa. Super. 2003) (citation omitted), *affirmed*, … 862 A.2d 589 ([Pa.] 2004). Accordingly, we will follow the logic of the trial court's evidentiary rulings in our determination of whether manifest necessity existed for the trial court to declare a mistrial *sua sponte*.

Walker, 954 A.2d at 1255. Thus, the ***Walker*** Court declined to examine whether the underlying evidentiary ruling was correct; it assessed only whether a mistrial was necessary, with that ruling as its premise. In this case, we also must not inquire into whether the trial court properly excluded the victim's journal entries as irrelevant or violative of the Rape Shield Law. Our sole inquiry is whether a mistrial was manifestly necessary once Attorney Fees violated the pretrial ruling that excluded them.

violate the Rape Shield Law, without addressing whether a mistrial was warranted even if they did. ***See*** N.T. Mistrial, 5/8/18, at 19. When the court declared a mistrial, Attorney Fees remained silent. ***Id.*** at 20. Thus, Appellant did not object to the mistrial.

I would also conclude the record sufficiently demonstrates the court considered alternative remedies. After the Commonwealth requested a mistrial and the parties presented their arguments, the court announced a recess of "about 15, 20 minutes." N.T. Mistrial at 19. The court's opinion explains that, "after taking the oral motion of the Commonwealth under advisement, [it] reviewed the trial transcript and ***determined that a curative instruction would be insufficient*** to ensure a fair trial…." TCO at unnumbered 3 (emphasis added). To the extent the Majority suggests the court was required to consider alternative remedies on the record, I have not found authority explicitly imposing that requirement. Rather, the court must simply

> consider all surrounding circumstances before finding that curative instructions were insufficient and the extreme remedy of a mistrial is required. The circumstances which the court must consider include whether the improper remark was intentionally elicited by the Commonwealth, whether the answer was responsive to the question posed, whether the Commonwealth exploited the reference, and whether the curative instruction was appropriate.

Manley, 985 A.2d at 266–67 (cleaned up). Here, the improper remarks were not elicited by the Commonwealth, were not made in response to a question, and were not exploited by the Commonwealth. To the contrary, they were

volunteered by defense counsel during her opening statement — a fact the court expressly acknowledged in explaining its decision to declare a mistrial. ***See*** N.T. Mistrial at 20 (stating it "played back the part of [Attorney Fees'] opening where [she] stated that [the victim] had a relationship with a guy in his 20's" which the court viewed as improper). The court further stated it had considered a curative instruction and found it insufficient. ***See*** TCO at unnumbered 3. I therefore conclude the court did consider alternative remedies before declaring the mistrial.

In sum, Attorney Fees violated the court's pretrial ruling by disclosing, during her opening statement, the contents of the victim's journal entries pertaining to the victim's desire for a relationship with an older man. The Commonwealth requested a mistrial, and defense counsel offered no argument as to why a mistrial was unnecessary. When the court declared a mistrial, neither party challenged the court on its ruling, indicating they accepted what the court said as sufficient to warrant a mistrial. However, once challenged, the court was able to explain in its instant opinion that it had reviewed the record, considered the alternative remedy of a curative instruction, and determined a mistrial was necessary. Considering all of these circumstances, ***see Boyer***, ***supra***, and mindful that the decision to declare a mistrial *sua sponte* is left to the sound discretion of the trial court, ***see Walker***, 954 A.2d at 1256, I would conclude there was no abuse of discretion in the court's determination that a mistrial was manifestly necessary.

Accordingly, I respectfully dissent from the Majority's decision to reverse Appellant's convictions and discharge him.