NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for the following domestic non-profit corporation were filed in the Department of State of the Commonwealth of Pennsylvania on May 14, 1980:

1. The name of the proposed corporation is the:
COMMUNITY EVANGELICAL FREE CHURCH OF THE VALLEYS
2. The proposed corporation is to be incorporated under the provisions of Article B of the "Non-Profit Corporation Law of 1972," Act No. 271.
3. The promary purpose of the corporation is to present the gospel of Jesus Christ as set forth in the Word of God to the community. In order to effect this purpose the corporation will conduct worship services, Bible studies, fellowship activities, youth programs and activities, Christian music ministries, Christian spiritual revival services, evangelical services and any other lawful activity to implement the above purposes. The corporation shall have the power to conduct any other lawful business for which corporations
3. The primary purpose of the corporamonwealth of Pennsylvania Non-Profit Corporation law.

Marcus A. McKnight, III, Esquire
IRWIN, IRWIN & IRWIN
44 South Hanover Street
Carlisle, Pennsylvania 17013

(7-4)

NOTICE IS HEREBY GIVEN that Articles of Incorporation of a proposed nonprofit corporation to be called "Fannettsburg Wildlife Foundation, Inc." will be filed on Tuesday, June 24, 1980, in the office of the Department of State, Corporation Bureau, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, under the provisions of the Nonprofit Corporation Law of 1972 of the Commonwealth of Pennsylvania.

The purpose or purposes for which the corporation is formed are as follows:

"For educational and scientific research, and protection of the natural resources (including particularly the habitat of fish and waterfowl in the west branch of the Conococheague Creek and the existing lake thereon near Fannettsburg, Pennsylvania) on a scientific basis."

The proposed corporation does not contemplate any pecuniary gain or profit incidental or otherwise, to its members.

William R. Davis, Jr.
of Davis and Zullinger
Suite 410
Chambersburg Trust Company Bldg.
Chambersburg, PA 17201
Attorney

(7-4)

NOTICE

Notice is hereby given that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania, Department of State, in Harrisburg, Pennsylvania, on June 25, 1980, for the purpose of obtaining a Certificate of Incorporatoin for a proposed business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, P.L. 364, as amended. The name of the corporation is KOONS A. I. INC., and the purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any and all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Robert P. Shoemaker, Esquire
237 East Main Street
Waynesboro, Pennsylvania 17268

(7-4)

public place or portion thereof. If the supervisors grant the prayer of such a petition, they are then required to annually assess or cause to be assessed the cost and expense of the maintenance of said lights by an equal assessment on all property within 250 feet of such lighting and in accordance with the other provisions of paragraph 4 of Sec. 702. Supervisors are also required to establish a separate account into which all assessments collected are required to be paid, and from which the costs of illumination are paid out.

3. A majority of the owners of all of the real estate of the township may petition the supervisors to impose an annual tax not exceeding five mills for the purpose of illuminating the highways, roads and other public places in the township. If the supervisors grant the prayer of such a petition, then they would levy an annual tax upon all of the real estate of the township to defray the costs, charges and expenses of such illumination.

The use of federal revenue sharing funds for street lighting purposes is a proper and lawful use. The application of those funds to the cost of street lighting in St. Thomas Township was in relief of the general township funds. Clearly, the Supervisors of St. Thomas Township elected to exercise their authority under Option No. 1 of the Second Class Township Code. There, therefore, was neither the right nor the duty on the part of the supervisors to collect any assessment as provided under Option No. 2, supra, or to levy a separate annual tax as provided under Option No. 3. Consequently, the Auditors of St. Thomas Township had neither the right nor the duty to impose a surcharge on the Township Supervisors as urged by the appellant.

ORDER OF COURT

NOW, this 29th day of April, 1980, the Appeal of R. Eugene Snider from the Auditors' Report of St. Thomas Township is dismissed.

Costs to be paid by the Appellant.

Exceptions granted the Appellant.

COMMONWEALTH v. BARNETT, No. 2, C.P. Fulton County Branch, No. 83 of 1978

Criminal Law - Robbery - Bodily Injury - Leave for Counsel to Withdraw - Right to New Counsel

1. Where the victim was struck three times, his glasses broken, his head cut requiring eight stitches, and a tooth knocked out, sufficient bodily injury was shown to convict the defendant of robbery.

2. Defense counsel was not permitted to withdraw from the case on day of trial where defendant had directed him to pursue a course of action that counsel believed violated the Code of Professional Responsibility.

3. Defense counsel is under no obligation to violate the Code of Professional Responsibility despite defendant's directions.

4. Defendant's motion for new counsel due to counsel's earlier motion to withdraw from the case showed irreconcilable differences between defendant and counsel, was denied in that it is insufficient to establish "good cause."

5. Defendant is not entitled to free counsel of his choice.

Merrill W. Kerlin, District Attorney, Counsel for the Commonwealth

Richard L. Shoap, Esq., Counsel for Defendant.

OPINION AND ORDER

KELLER, J., April 29, 1980:

Pursuant to a negotiated plea, Richard Lee Barnett offered to enter a plea of guilty to robbery, a felony of the third degree, on February 13, 1979, subsequent to the colloquy the plea was accepted and entered on the information. The jury panel which was being held for the trial of the case was dismissed. Subsequent to sentencing Mr. Barnett petitioned the Court for leave to withdraw his guilty plea. This Court concluded that it had inadvertently failed to fully and completely explain the elements of the crime of robbery and an order was entered September 18, 1979 granting the defendant leave to withdraw the plea of guilty.

The case was scheduled for the Trial Term beginning October 8, 1979. Trial was held on October 11, 1979, and the defendant was found guilty of robbery, a felony of the second degree. Timely post trial motions were filed and arguments thereon heard on December 18, 1979. To ensure a complete review of the trial record transcription was ordered. Due to the illness of the official court reporter the transcript was not filed until March 4, 1980, and not certified until April 1, 1980.

The defendant asserted eleven separate grounds in his motion for a new trial, and five separate counts in his motion in arrest of judgment. He incorporated in each motion a separate request in addition to the prayer that he be discharged and the case dismissed, and that the notes of the testimony of the trial and the remainder of the record be transcribed and he be granted leave to state and file additional and supplemental specific grounds and reasons in support of said motions. No request for leave to state and file additional and supplemental specific grounds in support of the post trial motions have been presented to the Court, and we deem his request abandoned. The defendant briefed and argued the following post trial motions:

1. The Commonwealth failed to prove two requisite elements of the crime charged.

2. The learned trial court erred in commenting on the testimony of George Dale Cutchall when giving instruction to the jury.

3. The Court erred in denying defendant's pre-trial motions.

4. The learned trial court's failure to grant defendant's suppression motion acted to chill defendant's constitutional rights.

5. The learned trial court erred in not granting defendant's request for new counsel.

The Court deems all other post trial motions abandoned by reason of defendant's failure to brief and argue them.

I

The defendant contends that the Commonwealth has failed to prove beyond a reasonable doubt that he had the requisite intent to commit the offense of robbery, and that the Commonwealth failed to prove that the victim received bodily injury at the hands of the defendant.

The defendant argues that the victim, Leonard Ford, volunteered money to him as a means of halting his aggression, and thus was in the nature of a gift rather than a taking of Ford's property. This argument ignores the testimony of the defendant's accomplice, George Dale Cutchall, that the defendant asked him for money and he said, "If you want it go over there," and they then got in a car and backed to the other side of the road near the vehicle where Ford was sleeping (N.T. 32). It also ignores the victim's testimony that he

was hit in the head; asked, "What do you guys want, money?";was told, "Yes"; gave them some money; got hit in the mouth again; and then gave them more money and said that was all he had. (N.T. 44)

In our judgment this testimony was sufficient in and of itself if believed by the jury to establish beyond a reasonable doubt the defendant's intention to commit the crime of robbery.

However, in *Commonwealth v. Scott*, 246 Pa. Super. 58, 369 A. 2d 809 (1977), the Superior Court held a verbal utterance is not required to show the intent to rob; the Commonwealth need only show that the defendant's aggressive action put the victim in fear of serious bodily injury. In *Commonwealth v. Gunzer*, 255 Pa. Super. 587, 389 A. 2d 153 (1978), Judge Cercone observed that, "The common law requirement of a nexus between the threat or the placing in fear and the deprivation of property was abrogated, as to robbery, by the Crimes Code." (At page 135)

Turning now to the second aspect of defendant's first contention, we note that "bodily injury" is defined in Sec. 2301 of the Crimes Code as "impairment of physical condition or substantial pain." The victim testified he was struck three times and he sustained a cut in his head which required eight stitches, his glasses were broken, and his left front tooth was knocked out necessitating the purchase of a plate. (N.T. 46,47) Witness, William P. Guilfoy described the victim's appearance as: "Blood was streaming down the side of his face. His head had a gash on top. His glasses were broken and a couple of teeth were knocked out." (N.T. 14). Witness Black described the victim as: "Blood all over his face, one tooth was knocked off, and his glasses were broken, and he was very upset. That is all."

In the Court's charge to the jury, it reviewed in detail and with care the elements of the several crimes of robbery; the legislative definitions of serious bodily injury and bodily injury; and the function of the jury in its deliberations. The fact that the jury found the defendant guilty of the crime of robbery, a felony of the second degree, evidences the jury's comprehension of the charge and of the facts, and correctly applied the facts to the law.

We find no merit in the defendant's contention and it is dismissed.

II

Here the defendant contends that the Court's comment

in connection with the customary accomplice charge, that it was the Court's recollection that there was corroboration of Mr. Cutchall's testimony, constitutes error necessitating post trial relief.

The aspect of the charge complained of is as follows:

"Now you heard the testimony of Mr. George D. Cutchall, and if you believe his testimony, then you would have to conclude that he and the defendant were involved in the commission of the alleged crime that you are here considering concerning this defendant. Mr. Cutchall has told you that he entered a plea of guilty to the charge of assault. That is the same as if he had been convicted by a jury of that particular charge. You keep in mind that you should consider the facts as to what he told you he did and what all the testimony was in the case. We would say to you that you could probably conclude that the evidence clearly indicated that he was an accomplice in this affair along with the defendant, if you believe him.

"Now experience shows that after a person has been caught in the commission of a crime, he may falsely blame others because of some corrupt and wicked motive. On the other hand, such a person may tell the truth about how he and others were involved in the commission of a crime. In deciding whether or not to believe Mr. Cutchall, you should be guided by the following principles which apply directly to his testimony. First, as a matter of law, the testimony of Mr. Cutchall as an accomplice should be looked upon with disfavor because it is deemed to come from a corrupt and polluted source; that is as a person who committed a crime. Second, you should examine Mr. Cutchall's testimony closely and accept it only with caution and care. Third, you should consider whether Mr. Cutchall's testimony that the defendant committed the crime is supported in whole or in part by evidence other than that testimony, for if it is supported by independent evidence it then becomes more dependable. Four, you may find the defendant guilty based on Mr. Cutchall's testimony alone, and even though it would not be supported by any independent evidence.

"We would suggest to the jury that our recollection of the evidence is that there was independent testimony that corroborated or supported Mr. Cutchall's testimony. However, keep in mind it is not the Court's recollection; it is your recollection that must necessarily control.

"So to summarize: Even though you conclude Mr. Cutchall

is an accomplice, his testimony standing alone is sufficient evidence on which to find the defendant guilty, if after following the above principle that I have just discussed with you, you are convinced beyond a reasonable doubt that George D. Cutchall testified truthfully that the defendant committed the crime." (N.T. 80-82).

PENNSYLVANIA LABOR RELATIONS BOARD v. CHAMBERSBURG AREA SCHOOL DISTRICT, A.D. 1979 - 83, C. P. Franklin County Branch

Administrative Agency Law - Appeal From Pennsylvania Labor Relations Board - School District Ban on Smoking - NON-BARGAINABLE ISSUE - Zipper Clause in Contract

1. Where a school district places a smoking ban in all district buildings during the time the custodial employees union was bargaining for a new contract, district did not violate 31201(a)(5) of the Pennsylvania Public Employees Relations Act by implementing the ban without bargaining with the union, in that such a ban is a matter of inherent managerial policy and excluded from bargaining under 3702 of the Act.

2. Determining whether a matter is a bargainable issue or a matter of inherent managerial policy involves a balancing of the impact of the issue on the interests of the employee *in wages, hours and terms and conditions* of employment and its probable effect on basic school policy.

3. A smoking ban in a school district's building covering anyone using the building is a managerial prerogative aimed at implementing the district's ongoing programs against smoking.

4. A zipper clause in a contract signed after a smoking ban is established, is effective to waive the right to bargain on the smoking ban so long as the ban became effective while the contract negotiations were in progress.

Jonathan K. Walters, Esq., Attorney for Union-Intervenor

James L. Crawford, Esq., and Larry J. Rappoport, Esq., Attorneys for Appellee

Jan G. Sulcove, Esq., Attorney for Appellant

OPINION AND ORDER

EPPINGER, P.J., April 2, 1980:

The Chambersburg Area School District (district) and the

American Federation of State, County and Municipal Employees (AFSCME) representing an agreement on March 27, 1976. The agreement was signed December 9, 1976. In the meantime, on September 8, 1976 the district adopted a smoking ban in all of the districts buildings; the ban was to become effective November 1, 1976.

AFSCME filed an unfair labor practice with the Pennsylvania Labor Relations Board (PLRB) against the district on October 28, 1976, alleging a violation of Sec.1201 (a)(5) of the Pennsylvania Public Employee Relations Act (Act), Act of 1970,July 23, P.L. 563, No.195, 43 P.S. Sec.1101.1201. The violation charged was the district's implementation of the prohibition against smoking in the school buildings without bargaining with the union.

After appropriate proceedings, including a nisi decision and order, on March 27, 1979, the PLRB ordered the district to rescind the ban on smoking by custodial employees and the district appealed the final order to this court. Our jurisdiction is permissive under Sec.933 (a)(1)(vii) of the Judicial Code, Act of July 9, 1976, P.L. 586, No. 142, Sec.2, 42 Pa. C.S.A. 101,et seq. Our scope of review is limited to determining whether the PLRB's findings are supported by substantial and legally credible evidence and whether its conclusions are reasonable and not arbitrary, capricious and illegal. *North Star School District v. PLRB*, 35 Cmwlth. 429, 386 A.2d 1059 (1978).

Of the claims to error filed by the district, we will discuss only two. The others we find not well taken or immaterial to the outcome of the case.

The district contends the PLRB erred in holding that the smoking ban was a bargainable issue under Sec.701 of the Act and in failing to hold that it was a matter of inherent managerial prerogative under Sec. 702.The former section requires a public employer to bargain collectively with employee representatives over wages, hours and other terms and conditions of employment and provides:

> Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement of any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.